UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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MARVEL WORLDWIDE, INC., MARVEL CHARACTERS, INC. and MVL RIGHTS, LLC,

Plaintiffs,

- against-

LISA R. KIRBY, BARBARA J. KIRBY, : NEAL L. KIRBY and SUSAN N. KIRBY, :

Defendants.

Civil Action No. 10 Civ. 141 (CM) (KNF)

LISA R. KIRBY, BARBARA J. KIRBY, : NEAL L. KIRBY and SUSAN N. KIRBY, :

Counterclaimants,

- against-

MARVEL ENTERTAINMENT, INC., MARVEL WORLDWIDE, INC., MARVEL CHARACTERS, INC., MVL RIGHTS, LLC, THE WALT DISNEY COMPANY, and DOES 1 through 10,

Counterclaim-Defendants.

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DECLARATION OF JODI A. KLEINICK IN SUPPORT OF PLAINTIFFS' AND COUNTERCLAIM-DEFENDANTS' MOTION TO STRIKE (1) THE DECLARATIONS OF JOE SINNOTT AND JAMES F. STERANKO, AND (2) CERTAIN DOCUMENTS ATTACHED AS EXHIBITS TO DEFENDANTS' DECLARATIONS IN SUPPORT OF THEIR OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

- I, Jodi A. Kleinick, declare under penalty of perjury as follows:
- I am a partner of Paul, Hastings, Janofsky & Walker LLP and am duly admitted to practice in the State of New York and before this Court. Together with the law firms Weil,
 Gotshal & Manges LLP and Haynes and Boone, LLP, I am counsel to Plaintiffs and

Counterclaim-Defendants Marvel Worldwide, Inc., Marvel Characters, Inc., MVL Rights, LLC, Marvel Entertainment, LLC (sued herein as Marvel Entertainment, Inc.) (collectively, "Marvel") and The Walt Disney Company ("Disney") in this action.

- 2. Annexed hereto as Exhibit 1 is a true and correct copy of Defendants' Initial Disclosures, served on April 28, 2010.
- 3. Annexed hereto as Exhibit 2 is a true and correct copy of Plaintiffs' Document Request, which was served on each Defendant on March 10, 2010.
- 4. Annexed hereto as Exhibit 3 is a true and correct copy of Plaintiffs' Second Document Request, which was served on each Defendant on August 17, 2010.
- 5. Annexed hereto as Exhibit 4 is a true and correct copy of Plaintiffs' Request For The Production Of Expert Documents, served on November 12, 2010.
- 6. On March 16, 2011, in connection with the parties' preparation of their proposed joint pre-trial order to be filed April 1, 2011, counsel for Defendants provided counsel for Marvel and Disney with a list of their proposed witnesses for trial. This list included, among others, Joe Sinnott and Stan Goldberg, neither of whom had been disclosed in Defendants' Initial Disclosures. A true and correct copy of Defendants' March 16, 2011 list of trial witnesses is attached hereto as Exhibit 5.
- 7. On March 23, 2011, Defendants served an amended list of trial witnesses, to which they added James Steranko, who was also not disclosed in Defendants' Initial Disclosures. A true and correct copy of Defendants' March 23, 2011 amended list of trial witnesses is attached hereto as Exhibit 6.
- 8. On March 23, 2011, Marvel and Disney advised Defendants that they objected to Defendants' reliance on the testimony of Messrs. Sinnott, Goldberg and Steranko because they

had not been timely disclosed. A true and correct copy of Marvel's and Disney's objection to Defendants' witness list is attached hereto as Exhibit 7.

- 9. On March 25, 2011, Defendants served their opposition to Marvel's and Disney's motion for summary judgment and included with their opposition papers, among other things, declarations of Messrs. Sinnott and Steranko. *See* Docket Nos. 92, 94.
- 10. During a call on the night of March 30, 2011 to discuss the proposed joint pretrial order, Randi Singer of Weil and I reiterated our objection to the inclusion of the undisclosed witnesses because, among other reasons, Defendants had never identified them in their Initial Disclosures and failed to timely supplement those disclosures. We also advised Defendants' counsel that Marvel and Disney intended to make appropriate motions to preclude any testimony from these undisclosed witnesses.
- 11. On March 31, 2011, Defendants agreed to remove Stan Goldberg from their list of proposed trial witnesses.
- 12. On April 5, 2011, Defendants served Plaintiffs with Defendants' First Amended Initial Disclosures, formally identifying Messrs. Sinnott and Steranko for the first time. A true and correct copy of Defendants' First Amended Initial Disclosures is annexed hereto as Exhibit 8.

I declare under penalty of perjury that the foregoing facts are true and correct. This declaration was executed on the 8th day of April, 2011 in New York, New York.

/s/ Jodi A. Kleinick