

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

Defendants.

Civil Action No. 10-141 (CM) (KF)

[Hon. Colleen McMahon]

[ECF Case]

DEFENDANTS' INITIAL DISCLOSURES

Defendants Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby (collectively “Defendants” or the “Kirbys”), by and through their attorneys, hereby submit their Initial Disclosures pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure. Defendants expressly reserve the right to supplement and change these disclosures as discovery proceeds. The inclusion of witnesses or documents in this disclosure statement shall not be construed to waive: (i) the attorney-client privilege and/or the work-product doctrine, either generally or as to such witnesses or documents, or (ii) any objections as to the admissibility of testimony from such witnesses or such documents.

I. Rule 26(a)(1)(A)(i) Disclosure

To date, Defendants have identified the following individuals who may have discoverable information that Defendants may use to support their claims and defenses in this case. Depending on the results of discovery and on the evidence introduced at trial, Defendants reserve the right to introduce further witnesses at trial.

1. Neal Kirby
c/o Toberoff & Associates, P.C.
2049 Century Park East, Suite 2720
Los Angeles, CA 90067

Mr. Kirby has knowledge regarding the circumstances under which many of the Works (as defined in the complaint) were created or co-created by his father Jack Kirby, and Jack Kirby’s relationship with Plaintiffs’ predecessors-in-interest.

2. Dick Ayers
64 Beech Street
White Plains, NY 10604

Mr. Ayers has knowledge regarding the circumstances under which the Works were created or co-created by Jack Kirby as a freelancer, and his relationship with

Plaintiffs' predecessors-in-interest. Mr. Ayers has knowledge regarding the comic book industry and its customs and practices during the period the Works were created.

3. Gene Colan
2240 Burnett Street, Apt. 5D
Brooklyn, NY 11229

Mr. Colan has knowledge regarding the circumstances under which the Works were created or co-created by Jack Kirby as a freelancer, and his relationship with Plaintiffs' predecessors-in-interest. Mr. Colan has knowledge regarding the comic book industry and its customs and practices during the period the Works were created.

4. Joe Simon
330 West 56th Street, Apt. 6M
New York, NY 10019

Mr. Simon has knowledge of how Jack Kirby worked as a freelancer. Mr. Simon has knowledge regarding the comic book industry and its customs and practices during the period the Works were created.

5. Mark Evanier
6282 Drexel Ave.
Los Angeles, CA 90048

Mr. Evanier has knowledge regarding the circumstances under which the Works were created or co-created by Jack Kirby. Mr. Evanier has knowledge regarding the comic book industry and its customs and practices, including during the period the Works were created.

6. Neal Adams
15 W 39th St., 9th Floor
New York, NY 10018

Mr. Adams has knowledge regarding the circumstances under which the Works were created or co-created by Jack Kirby. Mr. Adams has knowledge regarding the comic book industry and its customs and practices, including during the period the Works were created.

7. John Morrow
10407 Bedfordtown Dr.
Raleigh, NC 27614

John Morrow has knowledge regarding the circumstances under which the Works were created or co-created by Jack Kirby. Mr. Morrow has knowledge regarding the comic book industry and its customs and practices, including during the period the Works were created.

II. Rule 26(a)(1)(A)(ii) Disclosure

Defendants may use documents in their possession, custody or control sufficient to show that the Works were not created or co-created by Jack Kirby as “works made for hire” for Plaintiffs’ predecessors-in-interest.

The following categories of documents are located at the offices of Toberoff & Associates, P.C., 2049 Century Park East, Suite 2720, Los Angeles, CA 90067:

1. Defendants’ Notices of Terminations and related documents.
2. The 1972 grant between Jack Kirby and Marvel’s predecessor terminated by the Notices.
3. Copyright Registrations for works identified in the Notices of Terminations.
4. Documents relating to the history of the comic book business and Marvel.
5. Documents relating to Plaintiffs and their predecessors-in-interest.
6. Documents relating to Jack Kirby’s work as a freelancer in the comic book industry.
7. Documents relating to Jack Kirby’s creation or co-creation of various characters and comic books during the 1950s and 1960s.
8. Documents reflecting communications between Jack Kirby and Plaintiffs’ predecessors-in-interest.
9. Documents identified in Defendants’ answer, affirmative defenses and counterclaims.

III. Rule 26(a)(1)(A)(iii) Disclosure

Defendants have not asserted a claim for damages in connection with their claim for declaratory relief regarding their Notices of Termination. If the Notices of Termination are held to be effective, then with respect to those works co-created by Jack Kirby, Defendants will co-own the renewal copyright to such works upon the effective date of the Notices and thereafter be entitled to an accounting of their *pro rata* share of the profits from the exploitation of such co-owned copyrights. Defendants are also entitled to damages, in an amount yet to be determined, arising from Plaintiffs' conversion of Jack Kirby's original artwork, or in the alternative, Plaintiffs' breach of the October 31, 1986 contract between Jack Kirby and Plaintiffs' predecessors-in-interest regarding the return of Jack Kirby's original artwork to him. Defendants will also seek damages pursuant to the Lanham Act, 15 U.S.C. §§ 1125 and 1117, in an amount yet to be determined. Defendants' computation of damages is necessarily contingent on obtaining through discovery information in Plaintiffs' possession, and, as such, Defendants currently do not have sufficient information to make an accurate calculation with regard to any category of damages prayed for in their counterclaims.

IV. Rule 26(a)(1)(A)(iv) Disclosure

No such insurance agreements of Defendants are applicable.

Dated: New York, New York
April 28, 2010

TOBEROFF & ASSOCIATES, P.C.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2010, I caused a true and correct copy of the foregoing Defendants' Initial Disclosures to be served by first class mail on the following counsel of record:

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