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Attorneys for Defendants Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby

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 M. KIRBY,

Defendants.

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

**REPLY DECLARATION OF MARC  
TOBEROFF IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

[Hon. Colleen McMahan]

[ECF Case]

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LISA R. KIRBY, BARBARA J. KIRBY,  
NEAL L. KIRBY and SUSAN M. 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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I, Marc Toberoff, hereby declare as follows:

1. I am familiar with the facts set forth below and make this declaration in further support of defendants' Motion for Summary Judgment. The facts set forth herein are known to me of my own personal firsthand knowledge and, if called as a witness, I could and would testify competently thereto under oath.

2. I am an attorney and the founding partner of Toberoff & Associates, P.C., located at 2049 Century Park East, Suite 3630, Los Angeles, California, 90067.

3. My firm represents Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby (the "Kirbys"), the children of legendary comic book artist and writer Jack Kirby.

4. Attached hereto as "Exhibit 1" are true and correct copies of excerpts from the book "Five Fabulous Decades of the World's Greatest Comics: Marvel" by Les Daniels, which was marked as Exhibit 38 at the December 8, 2010 deposition of Stan Lee, which I attended.

5. Attached hereto as "Exhibit 2" are true and correct copies of excerpts from the December 8, 2010 deposition of Stan Lee, which I attended.

6. Attached hereto as "Exhibit 3" are true and correct copies of excerpts from the December 6, 2010 deposition of Mark Evanier, which I attended.

7. Attached hereto as "Exhibit 4" are true and correct copies of excerpts from the October 21, 2010 deposition of John V. Romita, Sr., which I attended.

8. Attached hereto as "Exhibit 5" are true and correct copies of excerpts from the October 26-27, 2010 deposition of Roy Thomas, which I attended.

9. Attached hereto as "Exhibit 6" is a true and correct copy of the Notice of

Motion, Memorandum of Points and Authorities, the Declaration of Donald S. Engle and exhibits “C,” “D,” and “E” attached thereto submitted on November 12, 1980 in the action *Stephen Gerber v. Cadence Industries Corporation, et al.*, Case No. 80-3840, U.S. District Court, Central District of California.

I declare under the penalty of perjury that to the best of knowledge the foregoing is true and correct.

Dated: April 8, 2011

/s/ Marc Toberoff

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Marc Toberoff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this court.

Dated: April 8, 2011

TOBEROFF & ASSOCIATES, P.C.

By:           /s/Marc Toberoff            
          Marc Toberoff (MT 4862)

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