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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

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)

**DECLARATION OF MARC
TOBEROFF IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE**

[Hon. Colleen McMahon]

[ECF Case]

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.

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' opposition to plaintiffs' Motion to Strike. 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. On September 16, 2009, the Kirbys availed themselves of their right under the Copyright Act to recapture their father's copyright interests by serving 45 notices of termination ("Termination Notices") by first class mail on plaintiffs and all of their known predecessors and successors-in-interest pursuant to 17 U.S.C. § 304(c).

5. Attached hereto as "Exhibit A" are true and correct copies of excerpts from the January 10, 2011 deposition of John Morrow, which I attended.

6. Attached hereto as "Exhibit B" is a true and correct copy of an article entitled "The Joe Sinnott Interview" which was "Exhibit 25" at the January 10, 2011 deposition of John Morrow, which I attended.

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

8. Attached hereto as "Exhibit D" is a true and correct copy of article entitled "Leave 'Em Wanting More" which was "Exhibit 23" at the January 10, 2011 deposition

of John Morrow, which I attended.

9. Attached hereto as “Exhibit E” is a true and correct copy of plaintiffs’ Initial Disclosures, served on March 10, 2010.

10. Attached hereto as “Exhibit F” is a true and correct copy of plaintiffs’ Response to Defendants’ Second Set of Interrogatories, served on December 20, 2010.

11. Attached hereto as “Exhibit G” is a true and correct copy of Defendants’ Objections to Plaintiffs’ Request for the Production of Expert Documents, served December 15, 2010.

12. Attached hereto as “Exhibit H” are true and correct copies of excerpts from *The Collected Jack Kirby Collector*, Volume 5.

13. Attached hereto as “Exhibit I” are true and correct copies of excerpts from *The Collected Jack Kirby Collector*, Volume 6.

14. Attached hereto as “Exhibit J” is a true and correct copy of a document entitled “List of Research Materials in Possession of John Morrow,” produced by defendants’ expert John Morrow in this action on December 21, 2010.

15. Attached hereto as “Exhibit K” is a true and correct copy of a letter from me to plaintiffs’ counsel Randi Singer, dated October 6, 2010.

16. Attached hereto as “Exhibit L” are true and correct copies of excerpts from the Objections and Responses of Roy Thomas to Defendants’ Subpoena to Produce Documents, including “Exhibit A”.

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

Dated: April 22, 2011

/s/ Marc Toberoff

Marc Toberoff

