

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 :
 MARVEL WORLDWIDE, INC., :
 MARVEL CHARACTERS, INC. and :
 MVL RIGHTS, LLC, :
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 Plaintiffs, :
 :
 - against- :
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 LISA R. KIRBY, BARBARA J. KIRBY, :
 NEAL L. KIRBY and SUSAN N. KIRBY, :
 :
 Defendants. :
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Civil Action No. 10 Civ. 141 (CM) (KNF)

**DECLARATION OF ELI BARD IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

I, Eli Bard, declare under penalty of perjury as follows:

1. I am currently employed as Vice President, Deputy General Counsel of Marvel Entertainment, LLC, the parent company of the plaintiffs in this action. I have been employed by Marvel or its predecessor-in-interest (together, "Marvel") since 2003.

2. The facts set forth herein are known to me of my own personal knowledge, or based on my review of Marvel's records or publicly available documents.

3. Jack Kirby ("Kirby") was an artist whose drawings appeared in numerous comic books published by predecessors-in-interest of Marvel. Upon information and belief, Kirby contributed to these works from at least 1939 to 1978, with some periods of absence.

4. During the years 1958 through 1963, Kirby contributed to numerous comic books published by Marvel that feature many famous characters.

5. From 1939 and throughout the timeframe relevant to this litigation, Marvel and its predecessors-in-interest have maintained headquarters in New York. During the years 1958 through 1963, Marvel's principal place of business was located in New York and Marvel maintained no offices or other business outside of New York.

6. Marvel's publishing business, including publication of the comic books at issue in this action, has always been run out of New York, and all creative and executive decision-making relating to these publications has been in New York.

7. Upon information and belief, Kirby resided in New York and worked entirely in New York during the time period relevant to this action.

8. Upon information and belief, assignments were given to all artists, including Kirby, by Marvel's management in New York, all discussions about the creation of these publications occurred in New York, and all of the pages created by the artists, including Kirby, were delivered to Marvel in New York. To my knowledge, none of these interactions took place outside of New York. Indeed, all of the work that went into the writing, illustrating, editing, layout, proofreading and creation of the works at issue in this lawsuit took place in New York.

9. Upon information and belief, based on Marvel's payroll practices and interviews Kirby himself gave in the early 1990s, Kirby was paid on a per-page basis and received his paychecks from the accounting department at Marvel's New York office. Having lived and worked in New York, Kirby presumably paid income taxes to the State of New York in all of the years from 1958 to 1963.

10. On approximately September 16, 2009, Kirby's four children – Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan J. Kirby (the "Kirby Heirs") – collectively sent a total of forty-five (45) Termination Notices to various Marvel entities and licensees. The Termination

Notices identify eleven entities that purport to be Marvel entities in New York, as well as other Marvel entities. It is my understanding that the Kirby Heirs also sent the Termination Notices to Marvel licensees in New York, including, for example, NBC Universal.

11. The Termination Notices, each of which pertains to a specific Marvel comic book character or group of characters, purport to exercise a right to terminate certain alleged pre-1978 grants of transfers or licenses of renewal copyrights to the works in question from Kirby to Marvel.

12. By their terms, if valid, the Termination Notices would go into effect automatically upon the dates designated therein, which vary from 2014 to 2019.

13. Defendant Lisa Kirby has entered into several agreements with Marvel entities located in New York, pursuant to which Marvel purchased certain works of Jack Kirby's artwork, including artwork relating to certain of the characters listed in one or more of the Termination Notices. Each of these agreements is executed by Lisa Kirby in her capacity as administrator of Jack Kirby's estate. All but one of the agreements contain New York choice-of-law and forum-selection provisions. The one agreement that lacks such provisions contains no choice-of-law or forum-selection provisions at all. Pursuant to these agreements, Marvel paid for the subject artwork in New York and subsequently published works containing that artwork in New York.

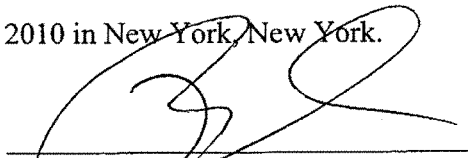
14. Defendant Lisa Kirby also entered into several agreements with Marvel entities located in New York concerning Galactic Bounty Hunters, a comic book property based on concepts and artwork created by Kirby. Lisa Kirby granted to Marvel the rights to print, publish and distribute comic book works based on this property. Pursuant to the agreements with Lisa

Kirby, Marvel employees, working at Marvel offices in New York, performed editing, proofreading, production and accounting services, as well as the coordination of sales, printing and distribution with respect to the Galactic Bounty Hunters works. The agreements contain New York choice-of-law and forum-selection provisions. Six editions of the Galactic Bounty Hunters works and a hardcover compilation were published and placed on sale by Marvel between July 2006 and June 2008. Payments under those agreements were made by Marvel from New York.

15. Lisa Kirby sent various emails to Marvel in New York in connection with the production and renewal contracts relating to Galactic Bounty Hunters, as well as the negotiations and agreements for the sale of Jack Kirby's artwork to Marvel.

16. Upon information and belief, over the last several years, various books examining the life and work of Jack Kirby have been published by New York publishers that include credits and acknowledgements to the estate of Kirby for the right to reprint certain images and material. Marvel believes in good faith that, in her capacity as administrator of Jack Kirby's estate, Lisa Kirby had contacts in New York relating to the publication of these books. Additionally, it would have been common practice for the publishers of these books to have paid a fee to reprint the artwork in this fashion.

I declare under penalty of perjury that the foregoing facts are true and correct. This declaration was executed on the 25th day of March, 2010 in New York, New York.



Eli Bard