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) |

**DECLARATION OF JAMES W. QUINN IN RESPONSE TO THE DECLARATION OF MARC TOBEROFF REGARDING THE COURT'S NOVEMBER 3, 2010 REQUEST FOR DOCUMENTS**

I, James W. Quinn, declare under penalty of perjury as follows:

1. I am a partner at the law firm Weil, Gotshal & Manges LLP and am duly admitted to practice in the State of New York and before this Court. Together with the law firms Haynes and Boone LLP and Paul, Hastings, Janofsky & Walker LLP, I serve as counsel for Marvel Worldwide, Inc., Marvel Characters, Inc. and MVL Rights, LLC (collectively, "Marvel") in this action.

2. The facts set forth herein are known to me of my own personal knowledge.

3. On May 24, 2010, Marvel filed its Motion to Dismiss Defendants' Counterclaims Pursuant to Rule 12(b)(6) in which it moved to dismiss, among other things, Defendants' fourth counterclaim for breach of contract relating to the return of Jack Kirby's artwork. Specifically, paragraphs 50-51 of Defendants' Answer and Counterclaims allege the existence of an October 31, 1986 agreement. The motion was fully briefed on June 21, 2010.

4. On November 3, 2010, due to Defendants' failure to attach the purported October 31, 1986 contract that Marvel allegedly breached, or to otherwise properly allege its provisions, this Court requested that either of the parties furnish a copy of the contract that is the subject of Defendants' fourth counterclaim.

5. On November 4, 2010, Defendants submitted to the Court a document, dated October 31, 1986, that they apparently contend constitutes the contract that is the subject of their fourth counterclaim. Defendants' counsel avers that "[t]o date, plaintiffs have not produced a fully executed copy of this alleged agreement [and] [a]t this time, defendants do not have in their possession or control a final, fully executed agreement pertaining to the return of Jack Kirby's original artwork."

6. Defendants' submission and concomitant representations to the Court are simply wrong.

7. First, the document attached to Mr. Toberoff's Declaration as Exhibit A is not a contract between the parties. Rather, it appears to be a proposed modified version of Marvel's form Artwork Release that Jack Kirby purportedly signed on October 31, 1986. Marvel rejected this modified document in a letter dated March 11, 1987, which Marvel produced to Defendants in discovery on May 25, 2010. See Exhibit A hereto (March 11, 1987 letter and attachment at MARVEL0013659-661; MARVEL0013632). In that letter, Marvel expressly stated that it "is unwilling to accept any changes to the Artwork Release to be signed by Jack" and requested that Kirby's counsel "[p]lease arrange for Jack to execute [certain documents, including the Artwork Release] – without modification – and return them to [Marvel's counsel's] attention."

8. It is therefore no surprise that Marvel has not produced a fully executed version of the October 31, 1986 document that Defendants' counsel has submitted to the Court, because, as

best as can be ascertained, no such fully executed document exists. The only effective document referring to artwork bearing the date October 31, 1986 that we have been able to locate is a document entitled Acknowledgement of Copyright Ownership signed by Jack Kirby and notarized on that date. See Exhibit B hereto (October 31, 1986 Acknowledgement of Copyright Ownership at MARVEL0013620-21). That document was also produced to Defendants on May 25, 2010.

9. In response to the March 11, 1987 letter from Marvel's counsel, Kirby ultimately did execute and submit to Marvel an unmodified Artwork Release. See Exhibit C hereto (Artwork Release, dated June 16, 1987 at MARVEL 0013635-644). That document was signed by both parties and was also produced to Defendants on May 25, 2010. Accordingly, Defendants' counsel misstates the known facts in representing to this Court that Defendants do not have in their possession a final, fully executed agreement pertaining to the return Jack Kirby's original artwork.

I declare under penalty of perjury that the foregoing facts are true and correct. This declaration was executed on the 5th day of November, 2010 in New York, New York.

James W. Quinn