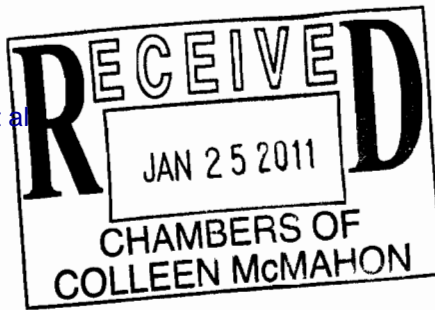


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MEMO ENDORSED

January 25, 2011

BY FACSIMILE

Honorable Colleen McMahon  
United States District Judge  
United States District Court for the  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

*Did you  
move to  
strike the  
demand? IF not,  
why should I  
deal with the  
now?*

Re: Marvel Worldwide, Inc. et., al. v. Kirby, et al., 10 Civ. 141 (CM) (KNF)

Dear Judge McMahon:

We represent Plaintiffs Marvel Worldwide, Inc., Marvel Characters, Inc. and MVL Rights, LLC (collectively, "Marvel") in the above-captioned action. Together with counsel for the Defendants, we write to request the Court's guidance regarding certain upcoming deadlines as set forth in Your Honor's Civil Case Management Plan (Docket No. 28), entered on April 19, 2010.

Both parties in this case intend to file motions for summary judgment, which are due to be filed on or before February 11, 2011. Pursuant to the Civil Case Management Plan, the parties' deadline for the submission of their Joint Pretrial Order, with accompanying pretrial submissions, is February 28, 2011. While both parties acknowledge Your Honor's admonition that the filing of a summary judgment motion does not relieve the parties' obligations to file the pretrial order on the assigned date, we respectfully submit that there exists an outstanding legal issue to be resolved before such pretrial order can be properly prepared and submitted.

Specifically, in filing their Answer and Counterclaims, Defendants made a demand for a jury trial. However, it is Marvel's position that Defendants are not entitled to a jury trial and that the case should be tried to the Court. As the requirements for the contents of a Joint Pretrial Order pursuant to Your Honor's Individual Practices differ depending on whether the case is to be tried to a jury or the Court, the parties respectfully request the opportunity to address and resolve the jury trial issue before preparing their pretrial order.

Accordingly, we write to request a brief telephonic conference to get the Court's guidance as to how Your Honor would like us to proceed, and are prepared to proceed in any manner the Court deems appropriate. However the Court resolves this question, the parties

*Colleen M. McMahon  
1/26/11*

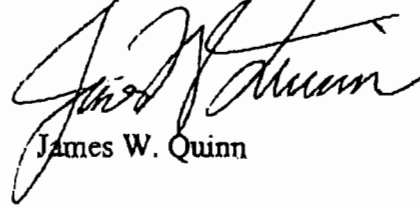
Honorable Colleen McMahon  
January 25, 2011  
Page 2

**Weil, Gotshal & Manges LLP**

respectfully request that the deadline for the submission of the joint pretrial order and other pretrial materials be postponed until thirty (30) days after the jury issue is resolved by the Court.

We appreciate the Court's consideration.

Respectfully submitted,



James W. Quinn

cc: Marc Toberoff, Esq. (by fax and email)  
David Fleischer, Esq.  
Jodi Kleinick, Esq.