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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)

**DECLARATION OF MARC  
TOBEROFF IN OPPOSITION TO  
PLAINTIFFS' MOTION TO  
EXCLUDE THE EXPERT REPORT  
AND TESTIMONY OF JOHN  
MORROW**

[Hon. Colleen McMahon]

[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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## **DECLARATION OF MARC TOBEROFF**

I, Marc Toberoff, declare as follows:

1. I am familiar with the facts set forth below and make this declaration in support of defendants' memorandum of law in opposition to plaintiffs' motion to exclude the expert report and testimony of John Morrow. 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, CA 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" is a true and correct copy of Defendants' Initial Designation of Expert Witness John Morrow, with the attached Expert Report of John Morrow, served on Plaintiffs' counsel on November 4, 2010.

6. Attached hereto as "Exhibit B" are true and correct copies of excerpts from the transcript of the May 13, 2010 deposition of Stan Lee, which I attended.

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

8. Attached hereto as “Exhibit D” is a true and correct copy of Defendants’ Initial Designation of Expert Witness Mark Evanier, with the attached Expert Report of Mark Evanier, served on Plaintiffs’ counsel on November 4, 2010.

9. Attached hereto as “Exhibit E” is a true and correct copy of “Battling the Kirby Bug” by John Morrow from The Collected Jack Kirby Collector Vol. 1, Bates No. K 00580, produced to Plaintiffs’ counsel on May 10, 2010.

10. Attached hereto as “Exhibit F” is a true and correct copy of the cover of *Challengers of the Unknown*, No. 1, retrieved from the website “comics.org,” and located at <http://www.comics.org/series/1293/covers/>.

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

Dated: March 25, 2011

/s/ Marc Toberoff  
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: March 25, 2011

TOBEROFF & ASSOCIATES, P.C.

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

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