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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 N. KIRBY,

Defendants.

Civil Action No. 10-141 (CM) (KF)

[Hon. Colleen McMahon]

[ECF Case]

**DECLARATION OF JOE SINNOTT IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Joe Sinnott, hereby declare as follows:

1. I am familiar with the facts set forth below and make this declaration of my own personal firsthand knowledge in support of defendants' motion for summary judgment and defendants' opposition to plaintiffs' motion for summary judgment.

2. I first began working as a comic book artist soon after I began my studies in 1949 at the Cartoonists and Illustrators School, which later became the School of Visual Arts, in New York City, on the G.I. Bill. Tom Gill, an instructor at the school, asked me to act as his assistant on his freelance comics work. I drew backgrounds and incidentals on Gill's Western comic books published by Dell Comics.

3. I then branched out on my own. For my first professional solo art job, I drew the feature Trudi for issue No. 12 of the humor comic "Mopsy" (September 1950). I made contact with Stan Lee at Timely Comics (a.k.a. Atlas Comics), which is what the company generally was called before it became Marvel Comics, and I began drawing and selling freelance artwork to Timely. During the 1950s and 1960s, I created artwork for hundreds of stories and comic book covers published by Marvel, including for "Adventures into Terror" (February 1952 to February 1954), "Strange Tales" (June 1952 to October 1959, March 1962 and December 1965), "Arrowhead" (April 1954 to November 1954), "Battle" (March 1954 to March 1955, February 1958, April 1958, and February 1959 to October 1959), "Wild Western" (June 1954 to December 1954 and May 1957 to July 1957), "Navy Combat" (June 1955 to October 1956), "Journey into Mystery" (July 1955 to January 1960 and March 1962, April 1962, and March 1963 to September 1963), "World of Fantasy" (February 1959 to August 1959), "Tales of Suspense" (March 1959 to November 1959), "Tales to Astonish" (March 1959 to November 1959, March 1963 and April 1963), "Strange Tales Annual #2" (1963), "Journey into Mystery Annual #1" (1965), "Fantasy Masterpieces" (February 1966 and

August 1966), “Thor Annual #2” (1966), and “Marvel Tales” (July 1967 to November 1967).

4. While selling freelance artwork to Marvel, I also sold comic book artwork to Standard Comics in 1952, to DC Comics in 1957, to Harwyn Publishing for the *Harwyn Picture Encyclopedia* for children in 1958, to Charlton Comics from 1959 to 1963, to Dell Comics from 1963 to 1969, and to George A. Pflaum (publisher of *Treasure Chest*) from 1962 to 1963, and from 1970 to 1971.

5. I was also a freelance inker. For instance, in 1962 I inked “Fantastic Four” no. 5 in which Jack Kirby introduced “Dr. Doom,” and I inked the now famous 56-issue run of Kirby’s artwork on “Fantastic Four” from issue no. 44 in November 1965 to issue no. 102 in September 1970. I also inked many issues of Kirby’s “The Mighty Thor,” and “The Avengers.” In the process I got to know Jack Kirby’s work and remarkable creativity quite well and witnessed his characters and stories as they evolved.

6. There is no question in my mind that Jack Kirby was the driving creative force behind most of Marvel’s top characters today including “The Fantastic Four,” “The Mighty Thor,” “The Incredible Hulk,” “X-Men” and “The Avengers.” The prolific Kirby was literally bursting with ideas and these characters and stories have all the markings of his fertile and eclectic imagination.

7. I was awarded the Alley Award in 1967 and 1968 by comic book fans. I also was honored with the Inkpot Award at the 1995 Comic-Con International convention in San Diego. In 2008, when the Inkwell Awards were created, the Joe Sinnott Hall of Fame Award was named after me. I received my own Joe Sinnott Hall of Fame Award in 2008.

8. I semi-retired in the early 1990’s. However, I still ink “The Amazing Spider-Man” Sunday strip for Stan Lee.

9. In the 1950’s and 1960’s I was not on staff at Marvel, but instead worked on a piecemeal freelance basis. I did not work in Marvel’s offices; I worked out of my

home. I furnished and paid for all of my own art supplies and overhead. I was not reimbursed by Marvel for these or any other expenses. I also did not receive health or other benefits from Marvel in this period.

10. I had no contract with Marvel when working as a freelancer in the 1950's and 1960's. In those days the business was very small, hectic and disorganized. You worked hand-to-mouth to feed your family with no financial security at all. In about 1957 Marvel decided to fire nearly all its staff, and even stopped buying any freelance material from freelancers like me for six or seven months, because it apparently had a surplus of material.

11. Although I had a good relationship with Marvel, it was my understanding that they were under no legal obligation to buy any work from me, and that payment for my material was always subject to their acceptance and approval of the finished product. It was only after I submitted completed material, and Marvel approved it, that I was paid at a page rate multiplied by the number of pages Marvel bought.

12. In the mid-1970's, I went under contract with Marvel, and Marvel provided me with health insurance, vacation pay and other benefits.

13. I recall that the checks that I received from Marvel in the 1960's as a freelancer had pre-printed language on the back. It said that by endorsing the check, I was acknowledging payment for my assignment of the copyright and all other rights in my work. I was not being paid for my time or services. I remember a particular instance when I was asked to change the splash page of a story I had drawn; I was only paid for the final story not for redrawing the first one. From all of this, I understood in the 1950's and 1960's that Marvel was buying my material once they approved and accepted it.

14. Years later, beginning I believe in around 1978 or 1979, Marvel suddenly changed the printed statement on the back of its checks to say that by endorsing the check the artist was acknowledging that Marvel owned all rights in the artist's work as "work for hire." This may well be the first time I even heard the term "work for hire."

15. In the 1950's through the 1960's, I certainly did not consider my freelance artwork to be "work for hire." Nor did the other freelance artists I knew. No one was thinking along those lines as we worked out of our houses at all hours trying to make a living by creating and selling artwork. Neither Stan Lee nor anyone else at Marvel ever told me at the time that they considered my freelance work to be "work for hire." I honestly do not believe that freelance artists or Marvel in those days understood or intended that the freelance material Marvel bought was "work for hire."

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

Dated: March 21, 2011



Joe Sinnott

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

Respectfully submitted,
TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff

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