

TOBEROFF & ASSOCIATES, P.C.
2049 Century Park East, Suite 3630
Los Angeles, CA 90067
Tel: 310-246-3333
Fax: 310-246-3101
MToberoff@ipwla.com

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
.....

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 JOHN
MORROW IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

[Hon. Colleen McMahon]

[ECF Case]

.....
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.
.....

DECLARATION OF JOHN MORROW

I, John Morrow, declare as follows:

1. I have been involved in the comic book industry for more than twenty years as a writer, archivist and publisher. I submit this declaration in support of defendants' opposition to plaintiffs' Motion for Summary Judgment. I have personal knowledge of the facts set forth in this Declaration and my attached expert report and, if called as a witness, could and would testify competently to such facts under oath.

2. In 1989, my wife Pamela and I started TwoMorrows Advertising in Raleigh, North Carolina, providing advertising and graphic design services to local and national accounts. In early 1994, after hearing of Jack Kirby's death, I produced a newsletter about his life and achievements entitled *The Jack Kirby Collector* #1. In September 1994, I mailed free to 125 other Kirby fans. The magazine became popular and I have now published 55 issues of the magazine through Fall 2010. At first I was releasing issues approximately every two months. More recently, I have been putting out approximately three issues a year, in a larger, tabloid-size format. Periodically I collate these issues and release *The Collected Jack Kirby Collector*. To date we have issued seven of these books, collecting issues up through #30 along with new material. In the process of putting these issues together I have done extensive research into Jack Kirby's life and amassed a wealth of archival material relating to his entire career. I have also spoken to and formally interviewed dozens of the leading lights in the comic book business from the 1950s onward as well as members of Jack Kirby's family. I am also a Trustee of the non-profit (501c3) online Jack Kirby Museum.

3. In 1998, I teamed with editor Jon Cooke to produce the Eisner Award-winning magazine *Comic Book Artist*, followed by the revival in 1999 of comic writer Roy Thomas' 1960s fanzine *Alter Ego*, which focuses on the Golden and Silver Age of comics (1940s to 1960s) and their creators. TwoMorrows also publishes comic book illustrator Mike Manley's *Draw!*, the professional how-to magazine about comics,

cartooning, and animation, and formerly published comic book writer/editor Danny Fingeroth's *Write Now!*, which offers tips and lessons on writing for comics. In 2004, TwoMorrows launched *Back Issue!* magazine (edited by comic book writer/editor Michael Eury), covering the history of comics of the 1970s, 1980s, up to today, and in 2006, we spun the "Rough Stuff" section of *Back Issue!* into its own magazine, edited by comic book illustrator Bob McLeod, which celebrates the art of creating comics.

4. Today, TwoMorrows is widely recognized as the premier publisher of books and magazines about the history of the comic book medium. Our publications have been nominated for and won numerous Eisner Awards, recognizing excellence in historical and journalistic presentation, and I have been commissioned by both industry heavyweights Marvel and DC Comics to write introductions to several of their books reprinting classic comic book series by Jack Kirby, including collections reprinting DC's *Challengers of the Unknown* and *Sandman*, and Marvel's *Fantastic Four*, *Thor*, *Nick Fury*, and *Captain America*.

5. Both DC Comics and Marvel Comics have contacted me for assistance in tracking down both missing art, and alternate or unused/rejected art, for many of their reprint projects, including art for DC's *Kamandi*, *OMAC*, *Demon*, *Jimmy Olsen*, and *New Gods* series, and Marvel's *Thor*, *Spider-Man*, *X-Men*, and *Fantastic Four* series.

6. I have had the privilege of serving as a panelist or moderator at numerous comic book industry events, including Comic-Con International in San Diego, the New York Comicon, and others. I also appeared on camera in the documentary *Jack Kirby: Storyteller*, which was one of the special features on 20th Century Fox's DVD release of the 2005 *Fantastic Four* theatrical film. I also provided research materials and audio and video footage of Jack Kirby to the documentary's producer at his request.

7. Attached hereto as "Exhibit A" is a true and correct copy of my expert report submitted to plaintiffs on November 4, 2010.

8. In 2006, Marvel Comics requested my assistance in re-assembling an entire unpublished *Fantastic Four* story by Jack Kirby. The genesis of this project was an article I wrote about this unused story entitled *Fantastic Four #108: Kirby's Way*, which appeared in my publication, *The Jack Kirby Collector*, in 1996. Prior to my 1996 article, the unused *Fantastic Four* story was unknown to the public at large, and to the then-current Marvel Comics editorial department. Marvel paid me to update my *Jack Kirby Collector* article, which was used as both as an "Afterword" in a *Fantastic Four* reprint collection in 2006, and an introduction to the stand-alone *Fantastic Four: The Lost Adventure #1* comic book in 2008, wherein Marvel commissioned Stan Lee to finally add dialogue to Kirby's plotted/penciled pages, over 35 years after Kirby drew them. In the course of this project, Marvel paid Jack Kirby's estate \$325 per page for the use of that unused story Kirby drew in 1970, which appears in *Fantastic Four: The Lost Adventure #1*.

9. Attached hereto as "Exhibit B" is a true and correct copy of the comic book *Fantastic Four: The Lost Adventure # 1* published by Marvel.

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

Dated: March 25, 2011

A handwritten signature in black ink, appearing to read "John Morrow". The signature is written in a cursive, flowing style with a long horizontal tail stroke.

John Morrow

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)

2049 Century Park East, Suite 3630
Los Angeles, CA 90067
Tel: 310-246-3333

Attorneys for defendants Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby