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DANIEL M. PETROCELLI (S.B. #097802)
dpetrocelli@omm.com
MATTHEW T. KLINE (S.B. #211640)
mkline@omm.com
CASSANDRA L. SETO (S.B. #246608)
cseto@omm.com
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-6035
Telephone: (310) 553-6700
Facsimile: (310) 246-6779

Attorneys for the DC Comics Parties

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAURA SIEGEL LARSON,
individually and as personal
representative of the ESTATE OF
JOANNE SIEGEL,

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT
INC., DC COMICS, and DOES 1-10,

Defendants and
Counterclaimants.

LAURA SIEGEL LARSON,
individually and as personal
representative of the ESTATE OF
JOANNE SIEGEL,

Plaintiff,

v.

TIME WARNER INC., WARNER
COMMUNICATIONS INC.,
WARNER BROS. ENTERTAINMENT
INC., WARNER BROS. TELEVISION
PRODUCTION INC., DC COMICS,
and DOES 1-10,

Defendants and
Counterclaimants.

Case No. CV 04-8400 ODW (RZx)
Case No. CV 04-8776 ODW (RZx)

**REPLY IN SUPPORT OF
DEFENDANT DC COMICS'
MOTION FOR SUMMARY
JUDGMENT IN THE SIEGEL
SUPERMAN AND SUPERBOY
CASES**

The Hon. Otis D. Wright II

Hearing Date: March 25, 2013
(Hearing Vacated)

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TABLE OF AUTHORITIES

CASES	PAGE(S)
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<i>Campanelli v. Bockrath</i> , 1997 U.S. Dist. LEXIS 7981 (N.D. Cal. June 4, 1997)	4
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<i>Conley v. Gibson</i> , 355 U.S. 41 (1957)	5
<i>Constantino v. U.S. Bank, N.A.</i> , 2011 U.S. Dist. LEXIS 107795 (D. Haw. Sept. 23, 2011)	8
<i>DC Comics v. Pacific Pictures Corp.</i> , 2012 WL 4936588 (C.D. Cal. 2012).....	5, 9, 11
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<i>Edgerly v. City & County of San Francisco</i> , 2011 U.S. Dist. LEXIS 155192 (N.D. Cal. May 26, 2011)	6
<i>Facebook, Inc. v. Pac. Nw. Software, Inc.</i> , 640 F.3d 1034 (9th Cir. 2011).....	9
<i>Ferguson v. Cathedral City</i> , 197 Cal. App. 4th 1161 (2011).....	7
<i>Freeman v. Mostafavi</i> , 2005 Cal. App. Unpub. LEXIS 10154 (Cal. App. Nov. 8, 2005).....	11
<i>GN Hello Direct, Inc. v. Plantronics, Inc.</i> , 2004 WL 1775674 (Cal. App. Aug. 10, 2004).....	7
<i>Gonzalez v. Preferred Freezer Servs., LBF, LLC</i> , 2012 U.S. Dist. LEXIS 93015 (C.D. Cal. July 5, 2012)	6
<i>Grunwald-Marx, Inc. v. Los Angeles Joint Board, Amalgamated Clothing Workers of Am.</i> ,	

1 192 Cal. App. 2d 268 (1961) 11

2 *Guidiville Band of Pomo Indians v. NGV Gaming, Ltd.*,

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4 *Hall v. City of Los Angeles*,

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6 *Honda v. Reed*,

7 156 Cal. App. 2d 536 (1958) 11

8 *Hull v. Ray*,

9 211 Cal. 164 (1930) 10

10 *In re Marriage of Burkle*,

11 139 Cal. App. 4th 712 (2006) 7, 8

12 *Jaunich v. Nat’l Union Fire Ins. Co.*,

13 647 F. Supp. 209 (N.D. Cal. 1986) 10

14 *Jorst v. D’Ambrosio Bros. Inv. Co.*,

15 2001 WL 969039 (N.D. Cal. Aug. 13, 2001) 6

16 *Larkspur v. Marin Cnty. Flood Control Dist.*,

17 168 Cal.App.3d 947 (1985) 9

18 *Larson v. Warner Bros. Entm’t Inc.*,

19 2012 WL 6822241 (9th Cir. Jan. 10, 2013) *passim*

20 *Li’l Red Barn, Inc. v. Red Barn Sys., Inc.*,

21 322 F. Supp. 98 (N.D. Ind. 1970) 4

22 *McCreay v. Mercury Lumber Dists.*,

23 124 Cal. App. 2d 477 (1954) 11

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26 *Morrison v. Mahoney*,

27 399 F.3d 1042 (9th Cir. 2005) 5

28 *N.W. Acceptance Corp. v. Lynwood Equip.*,

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Newman v. Phan,

2002 WL 31421568 (Cal. App. Oct. 29, 2002) 5

Niss v. Columbia Pictures Indus., Inc.,

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Ocean Air Tradeways, Inc. v. Arkay Realty Corp.,

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Odima v. Westin Tucson Hotel,

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1 *Paulsell v. Cohen*,
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2
3 *Penguin Grp. (USA) Inc. v. Steinbeck*,
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4 *Qarbon.com Inc. v. eHelp Corp.*,
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5
6 *Rubin v. Mellvine Fuchs et al.*,
1 Cal. 3d 50 (1969) 10

7 *SCO Group, Inc. v. Novell, Inc.*,
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8
9 *Sram Corp. v. Shimano, Inc.*,
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10 *Strickland v. Becks*,
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11
12 *U.S. use of Building Rentals Corp. v. The W. Cas. & Sur. Co.*,
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13 *United Brotherhood of Carpenters & Jointers v. Endicott Enters., Inc.*,
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14
15 *Vier Const. Co., Inc. v. Local Union No. 12 of Int’l Union of Operating*
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16
17 *Vineland Homes v. Barish*,
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18 *Wilson v. Lewis*,
106 Cal. App. 3d 802 (1980) 10

19

20 **OTHER AUTHORITIES**

21 WILLISTON ON CONTRACTS § 63:31, at 548 (4th ed. 2002) 8

22 1 WITKIN SUMMARY OF CAL. LAW, CONTRACTS §§ 849, 851 (10th Ed. 2010)..... 8

23 RESTATEMENT 2D CONTRACTS § 253, cmt b (1981) 8

24 **STATUTES**

25 17 U.S.C. § 204(a) 3

26 17 U.S.C. § 505.....9-10

27 CAL. CIV. P. CODE § 337(3) 6

28 CAL. CIV. CODE § 1440..... 7, 8

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