

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE is made and entered into by and between plaintiff Harlan Ellison, on the one hand, and defendants Fantagraphics Books, Inc., Gary Groth and Kim Thompson (collectively, "Defendants"), on the other hand. Plaintiff and Defendants are referred to collectively in this Agreement as the "Parties."

### RECITALS

This Agreement is entered into with reference to the following facts:

A. On or about September 7, 2006, Plaintiff filed an action captioned Ellison v. Fantagraphics, Inc., et al., in Los Angeles County Superior Court, Case No. SC091008 (the "Lawsuit"). The Lawsuit subsequently was removed to the United States District Court for the Central District of California and assigned Case No. CV-06-6532 ABC (FFMx). Following the District Court's denial of a Special Motion to Strike filed by Defendants under California Code of Civil Procedure § 425.16, Defendants filed an appeal to the United States Court of Appeals for the Ninth Circuit, Case No. 07-55289.

B. In the Complaint, Plaintiff alleged claims against Defendants for defamation and violation of plaintiff's right of publicity under California Civil Code § 3344, based on two publications by Fantagraphics: a forthcoming book titled Comics As Art: We Told You So (hereinafter "Comics As Art") and a published book titled The Comics Journal Library 6: The Writers (hereinafter "The Writers"). Defendants have denied Plaintiff's claims and allegations.

C. In order to defray attorneys' fees and other costs incurred in defending the Lawsuit, Defendants have established a Fantagraphics Defense Fund and have solicited contributions of money, artwork and other items.

D. Without in any way admitting any liability, the Parties now desire to resolve fully and finally without the further expenditure of time or cost of litigation all of the disputes and differences that exist or may exist between them arising out of or relating to the Lawsuit and the events, conduct, transactions or occurrences alleged in the Lawsuit.

**ACCORDINGLY, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Dismissal of the Action. In exchange for the consideration given in this Agreement, the sufficiency of which is expressly acknowledged, Plaintiff agrees to dismiss the Lawsuit in its entirety with prejudice. Simultaneously with the the execution of this Agreement, Plaintiff, through his counsel, shall deliver to Defendants' counsel (1) a fully executed Stipulation and Order for Dismissal With Prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, in the form attached hereto as Exhibit A, which Defendants shall file immediately with the District Court, and (2) a fully executed Stipulation for Dismissal of Appeal, pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, in the form attached hereto as Exhibit B, which Defendants shall file immediately with the Court of Appeals.

2. Acknowledgement of Compromise. The Parties agree and acknowledge that this Agreement is the result of a compromise and shall not at any time be construed by the Parties, their attorneys or anyone else as an admission by any Party of any liability of any kind. The Parties further acknowledge that Defendants specifically deny any liability or responsibility for any injuries or damages allegedly suffered by Plaintiff.

3. Fees and Costs. No monetary payment is being made by any Party under this Agreement. The Parties shall bear their own costs and attorneys' fees incurred in connection with the Lawsuit and this Agreement.

4. Future Conduct. Plaintiff and Defendants agree that henceforth (1) Defendants shall refrain from making ad hominem, personal attacks on Plaintiff so long as Plaintiff shall live, and (2) Plaintiff shall refrain from making ad hominem, personal attacks on any of the Defendants so long as such Defendant shall live (or be in existence, in the case of a business entity). Notwithstanding the foregoing, the Parties agree and affirm that they shall be free at all times to review, criticize or comment upon one another's work, writings, advocacy, public statements or other public activities, broadly construed. The Parties further agree that they shall make no further statements or nonverbal communications regarding the settlement of the Lawsuit, except that they (1) may make the following statement: "The litigation between the parties has been resolved"; and (2) may provide third parties with a copy of this Agreement or otherwise publish this Agreement in its entirety, including on their respective Internet web sites.

5. Changes To Defendants' Publications. Defendants agree to make the following changes to the books Comics As Art and The Writers:

a. With respect to Comics As Art, Defendants shall remove two passages, quoted in Paragraph 9 of the Complaint (page 5, lines 2-7) and Paragraph 12 of the Complaint (page 5, line 22 through page 6, line 1), from the printed book prior to publication, and shall remove those passages from chapters of the book posted on the Fantagraphics Internet web site. The two passages are set forth in a side letter dated August 8, 2007, signed by counsel for all Parties.

b. With respect to The Writers, Defendants agree that in future editions or printings of the book, if any are issued, and in any medium in which the book is available for downloading or printing on demand, Plaintiff's name shall be removed from the cover of the

book and the interview with Plaintiff, currently entitled "Notes On An Industry In Progress," shall be deleted from the book.

6. Plaintiff's Web Site. Plaintiff shall permit Defendants to post a statement not to exceed 500 words on Plaintiff's web site [www.harlanellison.com](http://www.harlanellison.com) for a period of 30 days, commencing within 5 business days of the execution of this Agreement, for the purpose of rebutting statements made by Plaintiff that accused Mr. Groth of embezzling funds in the Fleisher litigation and soliciting contributions to the Fantagraphics Defense Fund under false pretenses, and that likened Mr. Groth to a child molester (the "Defendants' Rebuttal Statement"). A copy of the Defendants' Rebuttal Statement shall be attached to this Agreement as Exhibit C. Plaintiff shall ensure that the Defendants' Rebuttal Statement is posted in its entirety on his web site, and shall not edit or otherwise alter the content of the Defendants' Rebuttal Statement. Plaintiff, his heirs, successors and assigns (1) shall indemnify and hold harmless Defendants, and their respective predecessors, successors, parent and subsidiary companies, affiliated entities, owners, partners, joint venturers, attorneys, officers, directors, employees, agents, representative, shareholders, heirs, successors and assigns from any liability, loss or cost (including attorneys' fees) arising from or based upon the Defendants' Rebuttal Statement, and (2) hereby release and discharge Defendants, and their respective predecessors, successors, parent and subsidiary companies, affiliated entities, owners, partners, joint venturers, attorneys, officers, directors, employees, agents, representative, shareholders, heirs, successors and assigns from any and all actions, causes of action, rights, claims, suits, grievances, demands, losses, costs, damages, obligations and liabilities of any kind, arising from or based upon the Defendants' Rebuttal Statement.

7. Solicitation of Contributions. Defendants shall not engage in any further

advertising or solicitation for contributions to the Fantagraphics Defense Fund on and after the date of the execution of this Agreement. Notwithstanding the foregoing, Defendants shall be permitted to sell and promote the sale of artwork and other items that already have been donated or committed to Defendants for purposes of the Fantagraphics Defense Fund, provided that Defendants may state only that the sale is for the purpose of defraying attorneys' fees and costs incurred in a legal matter that has been resolved.

8. Copies of Publications. Fantagraphics shall provide Plaintiff with two gratis copies of any work published by Fantagraphics or any of its imprints which contains material written by Plaintiff.

9. Release by Plaintiff. In exchange for the consideration given in this Agreement, Plaintiff, on behalf of himself, his heirs, successors and assigns, hereby fully and forever releases and discharges Defendants and their respective predecessors and successors, parent companies, subsidiaries, affiliated entities, owners, partners, joint venturers, attorneys, officers, directors, employees, agents, representatives, shareholders, heirs, successors, and assigns, from any and all actions, causes of action, rights, claims, suits, grievances, demands, losses, costs, damages, obligations and liabilities of any kind, whether actual or potential, known or unknown, based in law or equity, arising from or relating to the Lawsuit or to the facts, circumstances, conduct, events, transactions or occurrences alleged in the Lawsuit, including any matters arising from or related to the claims made or that could have been made in the Lawsuit (collectively, "Plaintiff's Released Matters").

10. Release by Defendants. In exchange for the consideration given in this Agreement, Defendants, on behalf of themselves, their heirs, successors and its assigns, and any and all parent, subsidiary and affiliated entities, release and discharge Plaintiff, his partners, joint

venturers, attorneys, employees, agents, representatives, heirs, successors and assigns from any and all actions, causes of action, rights, claims, suits, grievances, demands, losses, costs, damages, obligations and liabilities of any kind, whether actual or potential, known or unknown, based in law or equity arising from or relating to the Lawsuit or the prosecution of the Lawsuit by Plaintiff (collectively, "Defendants' Released Matters").

11. Waiver of California Civil Code Section 1542. With respect to the matters released herein, the Parties acknowledge that there is a possibility that, after the execution of this Agreement, a Party will discover facts or claims, or discover that he or it has sustained losses or damages, that were unknown or unsuspected at the time this Agreement was executed, and which if known by it at that time might have materially affected that Party's decision to execute this Agreement. The Parties acknowledge and agree that by reason of this Agreement, and the releases contained in the preceding paragraphs, they are assuming any risk of such unknown facts and such unknown and unsuspected claims, losses or damages. The Parties have been advised by their respective counsel of the existence of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

12. Notwithstanding such provisions, the releases in this Agreement shall constitute a full release of Plaintiffs' Released Matters and the Defendants' Released Matters in accordance with their terms. The Parties knowingly and voluntarily waive the provisions of Section 1542, as well as any other statute, law, or rule of similar effect, and acknowledge and agree that this waiver is an essential and material term of this Agreement and the settlement which it memorializes, and without such waiver the settlement would not have been accepted.

13. Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any of Plaintiff's Released Matters, any portion thereof, or any interest therein. Plaintiff specifically represents and warrants that no other person has any right, title, or interest in the Plaintiff's Released Matters or any other matter that formed the basis of the Lawsuit.

14. The Parties, and each of them, represent and warrant that they have not, directly or indirectly, filed any charges or complaints or initiated any action against any other Party with any local, state or federal agency or court, based upon, arising out of, or related to the facts, circumstances, allegations, claims, causes of action, conduct, events, transactions or occurrences alleged in the lawsuit, or arising out of or related to the Lawsuit, other than the Lawsuit filed by Plaintiff.

15. If any portion of this Agreement is found to be unenforceable, the Parties desire that all other portions that can be separated from it or appropriately limited in scope will remain fully valid and enforceable.

16. The laws of the State of California shall govern the validity, interpretation and performance of this Agreement, without regard to conflicts of laws principles.

17. The Parties acknowledge that they have been represented by independent counsel of their choice throughout the Lawsuit and throughout all negotiations related to this Agreement and its execution. The Parties represent that they have read carefully and have fully understood all of the provisions of this Agreement, and that they are entering into this Agreement voluntarily.

18. This Agreement contains the entire agreement and understanding concerning this subject matter between the Parties, and supersedes and replaces all prior negotiations, proposed

agreements and agreements, written or oral. The Parties, and each of them, acknowledge that no other Party, nor any agent or attorney of any such party, has made any promise, representation or warranty whatever, express or implied, not contained in this Agreement, to induce them to execute this Agreement. The Parties, and each of them, further represent and acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement.


19. In any construction of this Agreement, the Agreement shall not be interpreted against or in favor of any Party based on the identity of the drafter of the Agreement, or any term or provision in it.

20. This Agreement may be executed in two or more counterparts, each of which shall be an original as against any Party who signed it, and all of which shall constitute one and the same document.

21. Each Party represents and warrants that he or it has the full right and authority to enter this Agreement, and that each person executing this Agreement on that Party's behalf in a representative capacity is fully authorized and empowered to do so.

August 14, 2007

HARLAN ELLISON

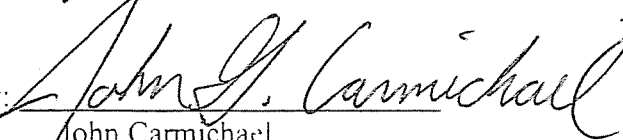


Harlan Ellison

August 14, 2007

APPROVED AS TO FORM:

LAW OFFICES OF JOHN CARMICHAEL  
Attorneys for Plaintiff

By:   
John Carmichael



August 13, 2007

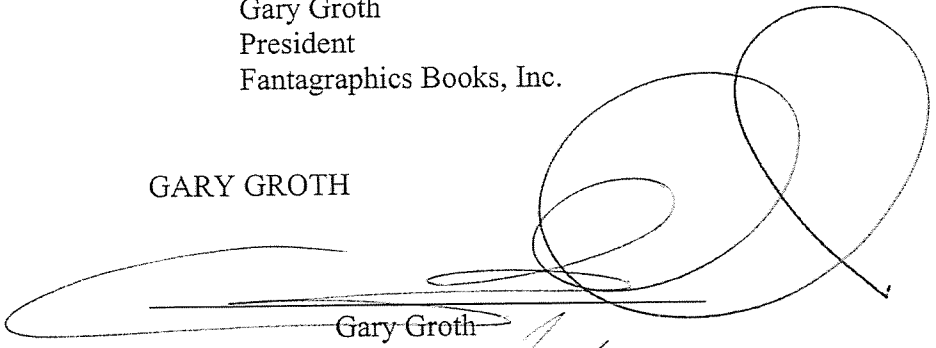
FANTAGRAPHICS BOOKS, INC.

By: 

Gary Groth  
President  
Fantagraphics Books, Inc.

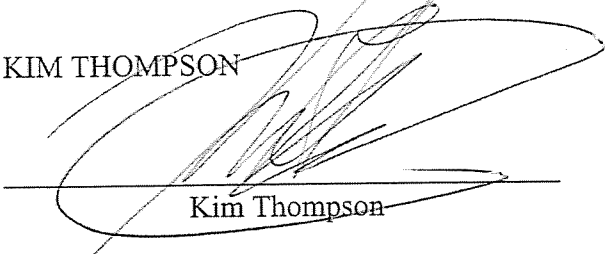
August 13, 2007

GARY GROTH

  
Gary Groth

August 13, 2007

KIM THOMPSON

  
Kim Thompson

August 14, 2007

APPROVED AS TO FORM:

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Fantagraphics Books, Inc., Gary Groth  
and Kim Thompson

By: 

Andrew J. Thomas

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DAVIS WRIGHT TREMAINE LLP  
865 S. FIGUEROA ST.  
SUITE 2400  
LOS ANGELES, CALIFORNIA 90017-2566  
TELEPHONE (213) 633-6800  
FAX (213) 633-6899

KELLI L. SAGER (State Bar No. 120162)  
kellisager@dwt.com  
ANDREW J. THOMAS (State Bar No. 159533)  
ajthomas@dwt.com

Attorneys for Defendants  
FANTAGRAPHICS BOOKS, INC.,  
GARY GROTH and KIM THOMPSON

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HARLAN ELLISON, an individual,  
Plaintiff,

vs.

FANTAGRAPHICS, INC., a  
corporation; GARY GROTH, an  
individual; KIM THOMPSON, an  
individual; and DOES 1 THROUGH  
20, inclusive,  
Defendants.

Case No. CV 06-6532 ABC (FFMX)

STIPULATION AND ORDER FOR  
DISMISSAL WITH PREJUDICE

[Fed. R. Civ. P. 41(a)(1)]

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Pursuant to Federal Rule of Civil Procedure 41(a)(1), plaintiff Harlan Ellison and defendants Fantagraphics Books, Inc. (erroneously sued as Fantagraphics, Inc.), Gary Groth and Kim Thompson, through their respective undersigned counsel of record, HEREBY STIPULATE AND AGREE THAT:

1. This action shall be dismissed in its entirety with prejudice; and
2. Each side shall bear its own costs.

DATED: July \_\_\_\_, 2007

DAVIS WRIGHT TREMAINE LLP  
KELLI L. SAGER  
ANDREW J. THOMAS

By: \_\_\_\_\_  
Andrew J. Thomas

Attorneys for Defendants  
FANTAGRAPHICS BOOKS, INC.,  
GARY GROTH and KIM THOMPSON

DATED: July \_\_\_\_, 2007

LAW OFFICES OF JOHN H. CARMICHAEL

By: \_\_\_\_\_  
John H. Carmichael

Attorneys for Plaintiff  
HARLAN ELLISON

[PROPOSED] ORDER

Having reviewed the foregoing Stipulation, and good cause appearing therefor,  
IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2007

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 07-55289

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FANTAGRAPHICS, INC., GARY GROTH,  
and KIM THOMPSON,

Defendants-Appellants,

vs.

HARLAN ELLISON,

Plaintiff-Appellee.

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On Appeal from the United States District Court  
for the Central District of California

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STIPULATION FOR DISMISSAL OF APPEAL

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KELLI L. SAGER  
ANDREW J. THOMAS  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa St., Suite 2400  
Los Angeles, California 90017-2566  
Telephone: (213) 633-6800  
Facsimile: (213) 633-6899

Attorneys for Defendants-Appellants  
FANTAGRAPHICS, INC., GARY  
GROTH, and KIM THOMPSON

Pursuant to Federal Rule of Appellate Procedure 42(b), plaintiff Harlan Ellison and defendants Fantagraphics Books, Inc. (erroneously sued as Fantagraphics, Inc.), Gary Groth and Kim Thompson, by and through their respective counsel of record, hereby stipulate that this appeal be dismissed in its entirety with prejudice, each side to bear its own costs and fees.

DATED: July \_\_\_\_, 2007

DAVIS WRIGHT TREMAINE LLP  
KELLI L. SAGER  
ANDREW J. THOMAS

By: \_\_\_\_\_  
Andrew J. Thomas

Attorneys for Defendants-Appellants  
FANTAGRAPHICS BOOKS, INC.,  
GARY GROTH and KIM THOMPSON

DATED: July \_\_\_\_, 2007

LAW OFFICES OF JOHN H.  
CARMICHAEL

By: \_\_\_\_\_  
John H. Carmichael

Attorneys for Plaintiff  
HARLAN ELLISON

**Ellison v. Fantagraphics, et al.**  
U.S. District Court, C. D. Cal., Case No. CV 06-6532 ABC (FFMx)  
U.S. Court of Appeals, Ninth Circuit, Case No. 07-55289

EXHIBIT C  
to  
SETTLEMENT AGREEMENT

**DEFENDANTS' REBUTTAL STATEMENT**  
By Gary Groth

[TO BE ATTACHED AS AN EXHIBIT WHEN  
PROVIDED TO PLAINTIFF WITHIN FIVE BUSINESS  
DAYS OF THE EXECUTION OF THIS  
AGREEMENT BY ALL PARTIES.]