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 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU
 PRODUCTIONS CORP.; et al.,

14 Plaintiffs,

15 v.

16 WARNER/CHAPPELL MUSIC, INC.,
 17 et al.,

18 Defendants.
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Lead Case No. CV 13-04460-GHK
 (MRWx)

**DECLARATION OF KELLY M.
 KLAUS IN SUPPORT OF
 OPPOSITION TO PLAINTIFFS’
 NOTICE OF MOTION FOR
 ORDER: (i) COMPELLING
 DEFENDANTS TO PRODUCE
 WITHHELD DOCUMENTS; OR (ii)
 RELIEF FROM DISCOVERY
 CUTOFF TO CONDUCT COURT
 REVIEW *IN CAMERA* OF
 WITHHELD DOCUMENTS**

Date: June 25, 2014
Time: 9:30 A.M.
Judge: Mag. Michael R.
Wilner
Room: H-9th Floor
Disc. Cutoff: June 27, 2014
Pretrial Conf.: N/A
Trial Date: N/A
L/D File Jt. MSJ: 11/14/14

1 I, KELLY KLAUS, hereby declare:

2 1. I am a member of the firm Munger, Tolles & Olson LLP, counsel for
3 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,
4 “Warner/Chappell”). I am admitted to practice law in the State of California and
5 before this Court. I submit this declaration in support of Warner/Chappell’s
6 Opposition to Plaintiffs’ Notice of Motion for Order: (i) Compelling Defendants to
7 Produce Withheld Documents; Or (ii) Relief from Discovery Cutoff to Conduct
8 Court Review *In Camera* of Withheld Documents. I have personal knowledge of
9 the facts stated herein. If called upon as a witness to testify as to the contents of this
10 declaration, I could and would competently do so.

11 2. On February 12, 2014, Plaintiffs personally served document requests
12 (and other written discovery) on Warner/Chappell. I thereafter asked Plaintiffs for a
13 brief extension of the time to serve responses and objections to the discovery
14 requests because one of my colleagues working with me on this matter, Adam
15 Kaplan, was out of the office on paternity leave. On March 3, 2014, the parties
16 agreed that (1) Warner/Chappell would serve written objections to the document
17 requests by March 21, 2014; (2) Warner/Chappell would produce all responsive,
18 non-privileged documents by April 11, 2014; and (3) Plaintiffs’ response to any
19 discovery served on them by Warner/Chappell would not be due before April 11,
20 2014. Attached hereto as **Exhibit A** is a true and correct copy of the email chain
21 memorializing this agreement.

22 3. On March 6, 2014, Warner/Chappell personally served document
23 requests on Plaintiffs. Plaintiffs’ response and production would have been due on
24 April 7, but pursuant to the parties’ March 3 agreement, Plaintiffs’ response and
25 production was due on April 11, 2014. Plaintiffs never asked Warner/Chappell to
26 extend that deadline beyond April 11, 2014.

27 4. On March 21, Warner/Chappell timely served objections and
28 responses to Plaintiffs’ document requests, which included objections explicitly

1 based on the attorney-client privilege and the attorney work-product doctrine.
2 Plaintiffs served objections and responses to Warner/Chappell's document requests
3 on April 7.

4 5. On April 7, after Warner/Chappell had served its objections and
5 responses to Plaintiffs' document requests but before it had served its document
6 production, the parties met and conferred about various discovery issues. During
7 this telephonic meet and confer Warner/Chappell explained that its privilege log
8 would take a few weeks to complete, and that if Warner/Chappell needed additional
9 time, it would let Plaintiffs know. Plaintiffs did not object to this proposed timeline
10 or procedure.

11 6. On April 8, Plaintiffs wrote Warner/Chappell a letter stating that the
12 parties had agreed that Warner/Chappell's privilege log would be produced by April
13 21, unless the volume of withheld documents proved to be voluminous and
14 defendants discussed with Plaintiffs an extension of this deadline. On April 11,
15 Warner/Chappell produced approximately 1,100 pages to Plaintiffs, as agreed. On
16 April 16, Warner/Chappell responded to Plaintiffs' April 8 letter by clarifying that it
17 had not said that its privilege log would be completed by April 21, but instead said
18 that it would try to complete the log within a couple weeks of its production and
19 would let Plaintiffs know if it could not finish the log by then. Warner/Chappell
20 further noted that it would not have the log done by April 25, but should have a
21 better idea the following week when it might be completed. Again, Plaintiffs did
22 not object (or even respond) to Warner/Chappell's clarification or proposed
23 timeline.

24 7. On April 25, Warner/Chappell received Plaintiffs' production of
25 documents, which, pursuant to the parties' March 3 agreement, had been due two
26 weeks earlier on April 11. Plaintiffs did not produce a privilege log or redaction log
27 at that time. Nor did Plaintiffs ask Warner/Chappell to extend the deadline for
28 production of Plaintiffs' log, or inform Warner/Chappell that its log would take

1 additional time to complete.

2 8. On May 1, Warner/Chappell explained to Plaintiffs that it had taken
3 considerable time to put its log together given the breadth of Plaintiffs' document
4 requests and the positions Plaintiffs had subsequently taken during the April 7 meet-
5 and-confer regarding the scope of their requests. Warner/Chappell told Plaintiffs
6 that it was aiming to finish the log by the following week. Plaintiffs responded that
7 day by telling Warner/Chappell, for the first time, that it considered
8 Warner/Chappell's privilege log "overdue." Plaintiffs also requested that
9 Warner/Chappell serve its log by May 9.

10 9. Warner/Chappell served its privilege log on May 9, along with a
11 redaction log and a supplemental production of about 800 pages of documents (a
12 small number of which contained redactions).

13 10. Warner/Chappell's log took a substantial amount of time for a number
14 of reasons. First, Warner/Chappell had to review nearly 5,000 pages of documents,
15 some of which dated back to the 1800s. Some of the older documents took a
16 significant amount of time to review and analyze for privilege given their age and/or
17 condition. Second, Warner/Chappell encountered a substantial number of privileged
18 documents responsive to Plaintiffs' requests, because those requests were broad and
19 encompassed topics—such as disputes about the copyright or analyses of the
20 same—that are of a type likely to involve privileged and confidential legal advice.
21 Third, Warner/Chappell succeeded to the privileges of its immediate predecessor as
22 well as its predecessor's predecessors, and it was time-consuming to ascertain
23 privilege for these populations of documents, a process that required investigation
24 concerning lawyers now deceased and law firms no longer in existence.

25 11. Warner/Chappell initially withheld about 325 pages, or 157 documents,
26 that were subject to the attorney-client privilege and/or the work product doctrine.
27 Warner/Chappell made redactions to 15 documents. The large majority of the
28 withheld documents were privileged communications between Warner/Chappell (or

1 its predecessors) and inside counsel, or between Warner/Chappell (or its
2 predecessors) and outside counsel, or between Warner/Chappell's (or its
3 predecessors') inside and outside counsel. A smaller number of documents involved
4 privileged communications with Warner/Chappell's (or its predecessors') agents
5 and/or involved privileged communications among parties that shared common legal
6 interests with one another. Warner/Chappell's log identified the company and title
7 of the authors and recipients of the logged documents—and whether these
8 individuals were attorneys—to the extent Warner/Chappell reasonably could
9 determine such information from its files or otherwise. Warner/Chappell
10 determined, either from explicit statements in its files or from the context of
11 communications, that the following attorneys and/or law firms served as outside
12 counsel for Warner/Chappell or its predecessors: Robert G. Shepherd, Esq.
13 (Matthews, Woodbridge, Goebel, Pugh & Collins, P.C.); Neil Boorstyn, Esq.
14 (Townsend and Townsend); David Nimmer, Esq. (Irell & Manella, LLP); Ken
15 Abdo, Esq. (Abdo & Abdo, P.A.); Rubenstein, Nash & Co.; John A. Kelly, Jr., Esq.;
16 Patrick W. O'Brien, Esq. (Mayer, Friedlich, Spless, Tierney, Brown & Platt); Dennis
17 Angel, Esq.; D. Arthur Yergey, Esq.; Theodore R. Jackson, Esq. (Gilbert & Gilbert);
18 Charles Liebman, Esq.; C. Lyman Emrich, Jr., Esq. (Brown, Jackson, Boettcher &
19 Dienner); and Theodore Kupferman, Esq. (Kupferman & Price).

20 12. On May 12, less than two hours before the parties were scheduled to
21 meet and confer about various discovery issues, Plaintiffs requested that
22 Warner/Chappell also meet and confer about 33 entries on Warner/Chappell's
23 privilege log that Plaintiffs claimed were not privileged. Warner/Chappell wrote
24 back and explained that there was insufficient time before the meeting to consider
25 Plaintiffs' objections. There indeed was insufficient time for Warner/Chappell to
26 consider Plaintiffs' objections, and Warner/Chappell made this statement in good
27 faith. During the meet and confer, Warner/Chappell asked Plaintiffs when they
28 would be producing their own privilege log. Warner/Chappell noted that in the

1 event the parties would need to present privilege log issues to the Court, the Court
2 likely would prefer to deal with both sides' issues at once, rather than in piecemeal
3 motions.

4 13. On May 14, Plaintiffs sent Warner/Chappell a letter, dated May 13,
5 claiming that Warner/Chappell had waived all of its privilege objections due to a
6 purportedly untimely and deficient privilege log. This May 14 letter requested that
7 the parties meet and confer two days later, on May 16. Because I was on extended
8 business travel out of the office from May 15 through May 21, we proposed that the
9 parties meet and confer on May 22. Plaintiffs agreed to meet and confer on May 22
10 without any accusation that I was trying to delay meeting with Plaintiffs' counsel
11 (which I was not).

12 14. On May 19, ten days after Warner/Chappell produced its log, Plaintiffs
13 produced a redaction log consisting of four entries that took place between April and
14 November 2013.

15 15. The parties met and conferred about their respective privilege logs on
16 May 22. During this meet and confer, Defendants agreed, among other things, to
17 consider supplementing any log entries that Plaintiffs identified as deficient (either
18 in their May 12 letter, during the meet and confer, or otherwise), and to provide the
19 additional information Plaintiffs requested if Plaintiffs provided authority to
20 Warner/Chappell justifying the provision of such information. During the same
21 meet-and-confer, Plaintiffs' counsel stated that Warner/Chappell had not identified
22 all persons who had received the logged communications or were informed of their
23 substance *other than* those identified on the log. Mr. Kaplan and I told Plaintiffs
24 that Warner/Chappell was not aware of any persons who were recipients of the
25 communications or their contents other than the individuals reflected on the
26 documents, and these were the individuals listed on the log itself

27 16. On May 27, Warner/Chappell agreed to supplement its privilege log.
28 After 9:30 PM that night, Plaintiffs sent an email to me with their portion of the

1 stipulation regarding the instant motion to compel. On June 2, Warner/Chappell
2 served Plaintiffs with a revised privilege log containing additional descriptive
3 materials. Attached hereto as **Exhibit B** is a true and correct copy of the revised
4 privilege log. In performing its re-review of privilege log entries, Warner/Chappell
5 determined that the claim of privilege should be withdrawn as to a small number of
6 documents (Nos. 126-128 and 137-38). Warner/Chappell produced those documents
7 on June 4.

8 I declare under penalty of perjury that the foregoing is true and correct.
9 Executed this 4th day of June, 2013, at San Francisco, California.

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/s/ Kelly M. Klaus

KELLY M. KLAUS