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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.
19
20

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

**DECLARATION OF JEREMY
BLIETZ IN SUPPORT OF
OPPOSITION TO PLAINTIFFS'
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, JEREMY BLIETZ, hereby declare:**

2 1. I currently serve as the Vice President of Administration for
3 Warner/Chappell Music, Inc. (“Warner/Chappell”). I started working in the
4 Copyright department at Warner/Chappell in June 1994, and have served in various
5 capacities in that department for approximately twenty years. During the course of
6 my work with Warner/Chappell, I have become familiar with the books and records
7 of the company. I have also become familiar with our practices with regard to
8 communicating with licensing agents, performing rights organizations (“PROs”) and
9 subpublishers. I have been asked to provide this Declaration in support of
10 Warner/Chappell’s Opposition to Plaintiff’s Motion for Order (i) Compelling
11 Defendants to Produce Withheld Documents; or (ii) Relief from Discovery Cutoff to
12 Conduct Court Review *In Camera* of Withheld Documents. I have personal
13 knowledge of the facts stated herein and if called upon as a witness to testify as to
14 them, I could and would competently do so.

15 2. I understand that Plaintiffs in this lawsuit claim that the attorney-client
16 privilege has been waived as to certain documents withheld by our outside counsel
17 on privilege grounds because those documents were shared with third parties. In my
18 work with Warner/Chappell, I have developed a familiarity with the entities that I
19 understand Plaintiffs identify as those third-parties: the Harry Fox Agency (“HFA”),
20 Clearing House Ltd., U.S. PROs such as the American Society of Composers,
21 Authors & Publishers (“ASCAP”), foreign PROs such as the Performing Rights
22 Society, subpublishers such as EMI, and several of our own affiliates. I am familiar
23 with our practices and expectations with regard to sharing confidential information
24 with these various entities, which I will describe below.

25 **Documents Exchanged Between Warner/Chappell Affiliates and Consultants**

26 3. Warner/Chappell has foreign affiliates around the world, some of
27 which are referred to in the documents that I understand Plaintiffs are challenging.
28 For example, Warner Bros. Publications, Warner/Chappell Music Scandinavia AB,

1 Warner Chappell Music France S.A., and Warner /Chappell Music UK refer to
2 certain of these affiliates and their successors-in-interest that are or have been part
3 of the same corporate family as Warner/Chappell. While these are separate
4 companies, they are not unaffiliated third parties. Warner/Chappell conducts
5 business through these affiliates around the world, and the affiliates conduct
6 business through Warner/Chappell in the United States. We routinely share
7 confidential information with our affiliated entities. Any confidential
8 communication shared with these entities would be shared with the expectation that
9 those communications would be kept confidential.

10 4. I have reviewed the documents marked as Privilege Number 6, 32, 54,
11 and 106. In my view, these are the type of communications that I would exchange
12 with affiliates with the expectation that it would remain privileged. In fact, the
13 documents marked as Privilege Number 6 is a document that I received from
14 Warner/Chappell's Scandinavian affiliate. I understood when I received this
15 communication that it was from an affiliate of Warner/Chappell, was shared in
16 confidence, and that I was expected to convey this request for legal advice, and the
17 privileged information contained in this fax, to Warner/Chappell's counsel.

18 5. I also understand Plaintiffs claim that a 1990 communication between
19 Warner/Chappell and David Sengstack should not be deemed privileged because
20 Sengstack is a third party, and not an agent or consultant. Mr. Sengstack was a
21 consultant. Under an agreement dated December 1, 1988, Sengstack agreed to work
22 for Warner/Chappell as a "consultant in the field of printed music."

23 6. I have reviewed the document marked as Privilege Number 32. In my
24 view, this appears to be a communication with Sengstack, a consultant who acted,
25 functionally, like an employee for Warner/Chappell. I have shared communications
26 with consultants like Sengstack with the expectation that those communications
27 would remain privileged.

28

1 *Documents Exchanged Between Warner/Chappell, HFA or Other Licensing*
2 *Agents*

3 7. I also understand Plaintiffs claim that documents shared with HFA
4 should not be deemed privileged because HFA is a third party, and not an agent or
5 an entity with a common interest.

6 8. Warner/Chappell is an affiliate publisher with HFA. HFA serves as a
7 licensing agent for mechanical licenses of our compositions that music users seek to
8 obtain in order to make copies of our compositions embodied in phonorecords,
9 digital downloads, or interactive streams. HFA makes it possible for
10 Warner/Chappell to exercise our legal rights by licensing mechanical rights to many
11 more music users than we would be able to license on our own. As our licensing
12 agent, we occasionally must share privileged information with HFA in order to
13 obtain and benefit from HFA's assistance in our exercise of our legal rights.

14 9. As our licensing agent for these uses, HFA and Warner/Chappell often
15 share a common legal interest as well. For example, I am aware of instances in
16 which HFA and Warner/Chappell have shared a common legal interest in ensuring
17 that works are properly attributed to the correct set of writers, in ensuring that
18 copyright owners are compensated for the licensing at the appropriate rate, and in
19 avoiding and resolving disputes between publishers and other copyright holders as
20 to the appropriate "splits" or attribution of authorship for a particular work.

21 10. I have reviewed the documents marked as Privilege Number 135-136.
22 In my view, these appear to be either privileged communications shared with an
23 agent, or communications to further a common legal interest similar to the types of
24 communications I have shared with our agents with the expectation that those
25 communications would remain privileged.

26 11. Similarly, I understand Plaintiffs claim that documents shared with
27 Clearing House Ltd. should not be deemed privileged because Clearing House is a
28 third party, and not an agent or an entity with a common interest. Clearing House,

1 although no longer in business, performed the same functions and services as HFA,
2 and likewise acted as Warner/Chappell's agent. Also, Clearing House and
3 Warner/Chappell often shared common legal interests similar to those shared with
4 HFA.

5 12. I have reviewed the documents marked as Privilege Number 101. In
6 my view, this appears to be either privileged communications shared with an agent,
7 or communications to further a common legal interest similar to the types of
8 communications I have shared with our agents with the expectation that those
9 communications would remain privileged.

10 **Documents Exchanged with Licensing Agents Such as the PROs, Including**
11 **Exchanges Between Foreign Subpublishers and Foreign PROs**

12 13. In the United States, the three PROs are ASCAP, Broadcast Music, Inc.
13 ("BMI") and SESAC. These PROs license the non-dramatic public performance
14 rights for those Warner/Chappell compositions registered with that PRO. The PRO
15 also serves as a collector and distributor of the royalties earned from its licensees.
16 PRO licensees in the United States include a broad range of music users, such as
17 television stations, radio stations, restaurants, bars, music venues, internet radio
18 services – and many more. Through the PROs as our agent, we are able to license
19 many more music users than we otherwise would if we were acting on our own. We
20 require our agents' assistance to fully exercise our legal rights in the material.

21 14. Outside of the United States, similar functions are performed by foreign
22 PROs, such as the Performing Right Society ("PRS") in the United Kingdom and
23 S.A.C.E.M. in France. Foreign countries also have organizations similar to HFA,
24 which license the mechanical rights in works (e.g., S.D.R.M., S.A.C.E.M.'s affiliate
25 in France). These organizations share the same sort of relationship with
26 Warner/Chappell's dedicated foreign subpublishers and affiliates as
27 Warner/Chappell shares with the U.S. PROs.

28 15. As an example of the historical relationship between the copyright

1 holder and one of the U.S. PROs, Warner/Chappell's predecessors' membership
2 agreements with ASCAP (dated 1935, 1965 and 1976) granted ASCAP the
3 exclusive "right to enforce and protect such rights of public performance under any
4 and all copyrights" and appointed ASCAP as the predecessors' "true and lawful
5 attorney ... to do all acts, take all proceedings" and perform various other acts
6 "necessary, proper or expedient to restrain infringements or recover damages."

7 16. Warner/Chappell occasionally licenses works through subpublishers,
8 including in territories outside the United States. If we have no affiliate in a
9 territory, we may assign our interest in our works to a subpublisher on an exclusive
10 basis, for the particular territory for which the subpublisher is responsible, in
11 exchange for a royalty. Or, more commonly, we may obtain rights in a composition
12 or catalogue that is already subject to a subpublishing agreement in other territories
13 – as is the case with the work at issue in this case. In either of such instances, the
14 subpublisher serves as an agent for us in the territory, and we may need to share
15 confidential communications with our subpublisher, who communicates directly
16 with the PROs with whom they are affiliated in that territory. We share certain
17 common legal interests with our subpublishers as to (among other things) the
18 validity of the copyright in the territory, and so may need to share confidential
19 information in furtherance of that common legal interest.

20 17. EMI is today the successor-in-interest to Keith Prowse & Company
21 Limited ("Prowse"), the subpublisher for Warner/Chappell's predecessor-in-interest
22 Summy-Birchard, Inc. for some territories. Under an agreement dated May 10,
23 1939, Summy-Birchard, Inc. assigned to Prowse the rights to the *Happy Birthday to*
24 *You!* copyright for the United Kingdom and granted Prowse various other exclusive
25 copyright rights in that work. Among other things, this agreement also set forth the
26 royalty rates that Prowse would pay Summy-Birchard, Inc. in connection with the
27 royalties that Prowse received.

28 18. As Warner/Chappell's licensing agents, the U.S. PROs (such as

1 ASCAP) and Warner/Chappell often share common legal interests, just as
2 Warner/Chappell's foreign subpublishers and/or affiliates often share common legal
3 interests with the PRO in their territory. For example, the U.S. PROs and
4 Warner/Chappell, or EMI and PRS (to name one foreign subpublisher and
5 performing right society), share a common legal interest in the validity of the
6 copyright in the works U.S. PROs (or PRS) license on Warner/Chappell's (or
7 EMI's) behalf, in the collection of royalties for the use of the music, and in stopping
8 infringing uses of the works licensed through the U.S. PROs (or PRS).
9 Warner/Chappell and its foreign subpublishers and affiliates sometimes must share
10 confidential communications with the U.S. and foreign PROs in furtherance of those
11 common legal interests.

12 19. I can recall specific examples where I have shared our confidential,
13 attorney-client privileged communications with PROs. For example, I have shared
14 privileged communications with foreign subpublishers and PROs in order to further
15 a common legal interest in stopping the unlicensed use of works in Europe. I have
16 also shared privileged communications with PROs in order to further our common
17 legal interest of identifying the correct rightsholder in a particular work or sample
18 included within a work.

19 20. I have reviewed the documents marked as Privilege Number 12-13,
20 103, and 105-106. In my view, these appear to be either privileged communications
21 shared with an agent, or communications to further a common legal interest similar
22 to the types of communications I have shared with subpublishers as well as U.S. and
23 foreign PROs with the expectation that those communications would remain
24 confidential.

25 **Documents Exchanged Between Warner/Chappell and its Copyright Research**
26 **Agent**

27 21. Finally, I understand Plaintiffs claim that documents exchanged
28 between Thomson & Thomson and Warner/Chappell should not be deemed

1 privileged because Thomson & Thomson is a third party, and not an agent.

2 22. Warner/Chappell engages Thomson & Thomson, a copyright research
3 company, as its agent to perform targeted searches within the records of the
4 Copyright Office. Warner/Chappell's research and instructions to Thomson &
5 Thomson are often at the direction of counsel, and as such, are made with the
6 expectation that those communications would be privileged and kept confidential.
7 While the documents referenced in Thomson & Thomson's research would be
8 public record, Warner/Chappell's own instructions and request would not be.
9 Similarly, Warner/Chappell expects that Thomson & Thomson will provide its
10 responses to such inquiries to Warner/Chappell only, and that such responses, when
11 obtained at the direction of counsel, will also be privileged and kept confidential.

12 23. I have reviewed the documents marked as Privilege Number 1-2. In
13 my view, these appear to be privileged communications shared by
14 Warner/Chappell's agent in response to instructions provided at the direction of
15 counsel, similar to the types of communications I have received from Thomson &
16 Thomson in response to instructions that I made at the direction of counsel and with
17 the expectation that those instructions, and the responses would remain privileged.

18 I declare under penalty of perjury that the foregoing is true and correct.
19 Executed this 4th day of June, 2014, at Los Angeles, California.

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JEREMY BLIETZ