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

GOOD MORNING TO YOU	)	Lead Case No. CV 13-04460-GHK (MRWx)
PRODUCTIONS CORP., <i>et al.</i> ,)	
	)	DECLARATION OF BETSY C.
Plaintiffs,	)	MANIFOLD IN SUPPORT OF
	)	PLAINTIFFS' <i>EX PARTE</i>
v.	)	APPLICATION TO HAVE MOTION TO
	)	COMPEL HEARD AFTER DISCOVERY
WARNER/CHAPPELL MUSIC,	)	CUT-OFF
INC., <i>et al.</i> ,)	
	)	Judge: Hon. George H. King, Chief Judge
Defendants.	)	Courtroom: 650
	)	Fact Discovery Cutoff: July 11, 2014
	)	Expert Reports: July 25, 2014
	)	Rebuttal Expert Reports: August 25, 2014
)	Expert Discovery Cutoff: Sept. 26, 2014
)	L/D File Jt. MSJ: November 14, 2014
)	Pretrial Conference: N/A
)	Trial: N/A
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1 I, Betsy C. Manifold, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the States of California,
3 New York, and Wisconsin, and before this Court. I am a partner with the law firm
4 Wolf Haldenstein Adler Freeman & Herz LLP, interim lead class counsel for
5 plaintiffs and the class. I have personal knowledge of the following facts, and if
6 called upon to do so, I could and would competently testify as to them.

7 2. I submit this declaration in support of the motion by Plaintiffs' *Ex Parte*
8 Application to Have Motion to Compel Heard After Discovery Cut-off Date.

9 **Notice of Application Pursuant to Local Rule 7-19.1**

10 3. On the evening of July 1, 2014, I e-mailed counsel for the defendants
11 (Kelly Klaus, Melinda LeMoine and Adam Kaplan) to advise them that plaintiffs
12 intended to file this *ex parte* application. On July 2, 2012, at 9:27 A.M., I spoke
13 with Adam Kaplan, one of the counsel for Defendants, and orally advised him that
14 Plaintiffs intended to file this *ex parte* application on Thursday, July 3, 2014 seeking
15 to have Plaintiffs' motion to compel heard after the discovery cut-off date. By email
16 dated July 2, 2014, Defendants advised that they intend to file a written response,
17 and then on July 3, 2014, Plaintiffs' served a copy of this *ex parte* application and
18 supporting papers electronically on Defendants' counsel prior to filing.

19 **Plaintiffs' Motion to Compel**

20 4. Plaintiffs make this *ex parte* application for an extension of the current
21 fact discovery cut-off deadline of July 11, 2014. The extension is sought to permit
22 Plaintiffs' motion under Fed. R. Civ. P. 26(b)(5)(B) for an order: (i) overruling the
23 claim of privilege by defendants Warner/Chappell Music, Inc. and Summy-Birchard,
24 Inc. ("Defendants"), to certain documents produced by non-party American Society
25 of Composers, Authors and Publishers ("ASCAP"), or, in the alternative, permitting
26 a Fed. R. Civ. P. 30(b)(6) deposition to determine the factual basis for the claimed
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1 privilege to be fully briefed and heard by Magistrate Judge Michael R. Wilner (“the
2 Motion”) on July 30, 2014, after the discovery cut-off date.

3 5. The pre-filing conference of counsel has already occurred and
4 Plaintiffs, prior to the filing of this *ex parte* application, provided Defendants’
5 counsel with Plaintiffs’ portion of the Local Rule 37-2.2 Joint Stipulation and
6 noticed the Motion for July 30, 2014, the first available motion date under the Rules,
7 on Judge Wilner’s motion calendar. A redacted copy of Plaintiffs’ section of the
8 Local Rule 37-2.3 Joint Stipulation (without the supporting declarations) is attached
9 hereto as Exhibit 1. Plaintiffs do not seek to litigate the merits of their Motion here
10 but simply to inform the Court of their significance of the issue, the diligence with
11 which the discovery was sought, and the need for a decision on the merits.

12 6. Since the Motion cannot be filed and argued prior to the July 11, 2014
13 discovery cut-off date, the Magistrate Judge will likely consider the Motion to be
14 untimely absent an appropriate extension of the discovery cut-off date to permit the
15 motion to be heard and decided. Therefore, Plaintiffs seek this *ex parte* relief so the
16 motion may be heard on July 30, 2014 and the relief therein granted or denied by the
17 Magistrate Judge.

18 **ASCAP Documents At Issue**

19 7. Plaintiffs served a document subpoena on ASCAP on March 28, 2014.
20 Before producing any responsive documents, Plaintiffs’ counsel spoke with Richard
21 H. Reimer, Esquire, ASCAP’s Senior Vice President – Legal Services, and learned
22 that ASCAP was sending approximately 500 pages of documents to Plaintiffs (the
23 “ASCAP Documents”). Plaintiffs received ASCAP’s documents on May 9, 2014, as
24 did Defendants.

25 8. All of the documents were marked “Confidential” pursuant to a
26 stipulated protective order approved by this Court on May 5, 2014. *See* Dkts. 97 and
27 98. One week after receiving the documents from ASCAP, on May 16, 2014,
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1 Plaintiffs' counsel, spoke by telephone with Mr. Reimer to ask ASCAP to withdraw
2 the "Confidential" designation for the ASCAP Documents.

3 9. After a short conversation, Mr. Reimer said he would need to speak with
4 the Defendants before agreeing to the request, but that he did not oppose
5 withdrawing the "Confidential" designation for the certain ASCAP Documents.

6 **Defendants' Belated Claim of Privilege**

7 10. Six days after that, Mr. Reimer advised Plaintiffs that Defendants
8 claimed certain of the ASCAP Documents were privileged and that counsel for the
9 defendants would be contacting Plaintiffs directly to provide the details as to the
10 basis for *their clients'* claim of privilege. Two of the ASCAP Documents, letters
11 from Richard Wincor, Esquire, of Coudert Brothers to David K. Sengstack, President
12 of Summy-Birchard Company ("Summy-Birchard"), Warner/Chappell's
13 predecessor-in-interest (collectively, the "Coudert Letters"), discussed in detail the
14 Defendants' predecessors' disputed ownership of the song.

15 11. As required under Fed. R. Civ. P. 26(b)(5)(B), copies of the ASCAP
16 Documents at issue will be submitted to the Magistrate Judge under seal for a
17 determination of Defendants' claim of privilege. *See* Fed. R. Civ. P. 26(b)(5)(B)
18 ("After being notified, a party . . . may promptly present the information to the court
19 under seal for a determination of the claim."). To date, none of the ASCAP
20 Documents have appeared on the various privilege logs produced by Defendants.

21 12. After receiving Mr. Reimer's May 22nd letter, Plaintiffs' counsel
22 exchanged correspondence and participated in a series of telephone calls with
23 Defendants' counsel and ASCAP regarding their belated claim of privilege. The
24 parties vigorously dispute whether any of the ASCAP Documents, are privileged, in
25 light of the fact that the ASCAP Documents were in the hands of a third-party
26 (ASCAP), and under circumstances plainly indicating that Defendants' purported
27 privilege in the ASCAP Documents, if any, has been waived.

28 **Discovery Noticed by Plaintiffs**

1 13. To establish facts the Court may deem necessary to determine whether
2 any of the ASCAP Documents are privileged, on May 22, 2014, Plaintiffs noticed the
3 deposition of Defendants pursuant to Fed. R. Civ. P. 30(b)(6) for the corporation's
4 testimony about the extent of ASCAP's interest (if any) in the Song and the royalties
5 it collects for public performances of the Song and whether ASCAP produced the
6 documents knowingly and intentionally.

7 14. On May 27, 2014, Defendants opposed the Fed. R. Civ. P. 30(b)(6)
8 deposition notice on various grounds and declined to produce a witness. On June
9 16, 2014, the parties met and conferred with regard to this discovery but could not
10 resolve their dispute.

11 15. Plaintiffs also subpoenaed ASCAP under Fed. R. Civ. P. 45 and
12 30(b)(6) for the deposition of a representative of ASCAP most knowledgeable about
13 the scope or validity of any copyright to the Song, disputes regarding the scope and
14 validity of any copyright to the Song, the distribution of fees or royalties from the
15 Song, the nature of the relationship between ASCAP and Summy-Birchard Co., the
16 services provided by ASCAP to Summy-Birchard Co., and the circumstances
17 surrounding ASCAP's production of the Documents to Plaintiffs pursuant to the
18 document subpoena.

19 **ASCAP Motion to Quash**

20 16. On June 12, 2014, ASCAP moved in the United States District Court for
21 the Southern District of New York for an order pursuant to Fed. R. Civ. P. 45(d)(3)
22 to quash the subpoena served on ASACP by Plaintiffs ("ASCAP Motion to Quash").
23 On June 19, 2014, Plaintiffs opposed the ASCAP Motion to Quash, to which ASCAP
24 filed a Reply in further support of the Motion to Quash. *See Good Morning to You*
25 *Prod. Corp., et al. v. Warner/Chappell Music, Inc. and Summy-Birchard, Inc.*
26 (S.D.N.Y. June 16, 2014) Misc Case No. 14-mc-00179.

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17. On June 30, 2014, ASCAP withdrew its Motion to Quash and agreed to appear for deposition for July 11, 2014.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 3rd day of July 2014, in the City of San Diego, State of California.

By: /s/Betsy C. Manifold
BETSY C. MANIFOLD