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 9 Warner/Chappell Music, Inc. and
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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13 **WESTERN DIVISION**

14 GOOD MORNING TO YOU
 PRODUCTIONS CORP.; et al.,
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 Plaintiffs,
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 v.
 17 WARNER/CHAPPELL MUSIC, INC.,
 18 et al.,
 19 Defendants.

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

**DECLARATION OF KELLY M.
 KLAUS IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' EX PARTE
 APPLICATION**

Judge: Hon. Michael R. Wilner
 Room: H-9th Floor

Fact Disc. Completion: July 11, 2014
 Expert Reports: July 25, 2014
 Rebuttal Expert Reports: Aug. 25, 2014
 L/D File Jt. MSJ: Nov. 14, 2014
 Pretrial Conference: N/A
 Trial: N/A

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’ *Ex Parte* Application. I have personal knowledge of the
7 facts stated herein. If called upon as a witness to testify as to the contents of this
8 declaration, I could and would competently do so.

9 2. On May 19, ASCAP informed Warner/Chappell that Plaintiffs had
10 sought ASCAP’s permission to remove the confidentiality designation from two
11 documents ASCAP had produced on May 9 with the control numbers ASCAP0095
12 through ASCAP0117. These documents were memoranda drafted by legal counsel
13 at Coudert Brothers, at the time counsel to Warner/Chappell’s predecessor-in-
14 interest (the “Coudert Memos”). Warner/Chappell’s counsel had neither seen nor
15 known of the Coudert Memos prior to the May 19 notification from ASCAP.

16 3. Warner/Chappell’s counsel reviewed the Coudert Memos on May 19
17 and recognized that ASCAP had produced materials subject to Warner/Chappell’s
18 privilege.

19 4. On May 20, consistent with Paragraph 11 of the parties’ Protective
20 Order, Warner/Chappell instructed ASCAP to notify Plaintiffs that ASCAP had
21 inadvertently produced materials subject to Warner/Chappell’s attorney-client
22 privilege.

23 5. On the morning of May 22, ASCAP sent Plaintiffs a letter, via email,
24 explaining that it had inadvertently produced materials subject to Warner/Chappell’s
25 privilege, including the Coudert Memos. About an hour later, during a previously
26 scheduled telephonic meet and confer, Warner/Chappell’s counsel reiterated to
27 Plaintiffs’ counsel that the Coudert Memos were protected by Warner/Chappell’s
28 privilege. Warner/Chappell’s counsel further explained that this privilege had not

1 waived, and it instructed Plaintiffs to handle the documents in accordance with
2 Federal Rule of Civil Procedure 26(b)(5)(B).

3 6. During the same meet and confer, Plaintiffs’ counsel asked
4 Warner/Chappell’s counsel why the Coudert Memos were not on Warner/Chappell’s
5 privilege log. Plaintiffs’ counsel stated that after he reviewed the Coudert Memos
6 from ASCAP’s production, he had gone to Warner/Chappell’s privilege log to see if
7 the documents were logged there. Warner/Chappell’s counsel explained that it had
8 not logged the Coudert Memos because they were not in Warner/Chappell’s files.

9 7. On the afternoon of May 22, after the parties’ meet and confer,
10 Plaintiffs sent Warner/Chappell a letter, via email, stating that Plaintiffs disputed
11 “any purported claim of privilege” and would “investigate and bring the matter to
12 the Court’s attention.”

13 8. On May 27, Plaintiffs sent Warner/Chappell, via email, Plaintiffs’
14 portion of a motion to compel the production of all documents Warner/Chappell had
15 withheld as privileged. This motion, which Plaintiffs filed on June 4, did not
16 mention the Coudert Memos. *See* Dkt. No. 101-1.

17 9. Plaintiffs began seeking to take depositions regarding the Coudert
18 Memos on May 22. Since then, Warner/Chappell has repeatedly informed Plaintiffs
19 that the discovery they were pursuing from Warner/Chappell and ASCAP was not
20 permitted by Rule 26(b)(5)(B), which required Plaintiffs to bring their privilege-
21 contest motion to the Court “promptly.” Warner/Chappell has also informed
22 Plaintiffs on numerous occasions since May 22 that their discovery regarding the
23 circumstances of ASCAP’s production is irrelevant because ASCAP could not
24 waive Warner/Chappell’s privilege.

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