

1 FRANCIS M. GREGOREK (144785)  
 gregorek@whafh.com  
 2 BETSY C. MANIFOLD (182450)  
 manifold@whafh.com  
 3 RACHELE R. RICKERT (190634)  
 rickert@whafh.com  
 4 MARISA C. LIVESAY (223247)  
 livesay@whafh.com  
 5 **WOLF HALDENSTEIN ADLER**  
**FREEMAN & HERZ LLP**  
 6 750 B Street, Suite 2770  
 San Diego, CA 92101  
 7 Telephone: 619/239-4599  
 8 Facsimile: 619/234-4599

9 Interim Lead Class Counsel for Plaintiffs and Proposed Class

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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> ,	)	
	)	<b>DECLARATION OF BETSY C.</b>
Plaintiffs,	)	<b>MANIFOLD IN SUPPORT OF</b>
	)	<b>PLAINTIFFS' NOTICE OF MOTION</b>
v.	)	<b>AND MOTION FOR ORDER: (i)</b>
	)	<b>OVERRULING DEFENDANTS' CLAIM</b>
WARNER/CHAPPELL MUSIC,	)	<b>OF PRIVILEGE IN DOCUMENTS</b>
INC., <i>et al.</i> ,	)	<b>PRODUCED BY A NON-PARTY, OR</b>
	)	<b>PERMITTING A SECOND RULE</b>
Defendants.	)	<b>30(B)(6) DEPOSITION TO</b>
	)	<b>DETERMINE THE FACTUAL BASIS</b>
	)	<b>FOR THAT CLAIM; (ii) GRANTING</b>
	)	<b>RELIEF FROM THE DISCOVERY</b>
	)	<b>CUT-OFF TO CONDUCT THAT</b>
	)	<b>DEPOSITION; (iii) AND [PROPOSED]</b>
	)	<b>ORDER THEREON</b>
	)	
	)	Date: July 25, 2014
	)	Time: 9:30 A.M.
	)	Judge: Mag. Michael R. Wilner
	)	Room: H-9th Floor

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 Good  
8 Morning To You Productions Corp., Robert Siegel, Rupa Marya d/b/a Rupa & The  
9 April Fishes, and Majar Productions, LLC's ("Plaintiffs'") for an order: (i)  
10 overruling Defendants' claim of privilege in documents produced by a non-party, or  
11 permitting a second rule 30(B)(6) deposition to determine the factual basis for that  
12 claim, (ii) granting relief from the discovery cut-off to conduct that deposition, and  
13 (iii) and [proposed] order thereon.

14 **Background**

15 3. Plaintiffs commenced this now consolidated class action seeking, *inter*  
16 *alia*, a declaration, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-  
17 2202, that Defendants: (i) do not own any valid copyright to the world's most  
18 popular song, *Happy Birthday to You* (the "Song"); (ii) that any copyright  
19 Defendants do own is limited in scope; and (iii) that the Song itself is in fact  
20 dedicated to public use and in the public domain (hereafter "Claim One"). *See*  
21 *generally* Pls.' Fourth Amend. Consol. Class Action Compl. (Dkt. 95) (the "FAC").

22 4. Pursuant to the Court's suggestion and the parties' subsequent  
23 agreement, Claim One of the FAC was bifurcated from the other claims and the  
24 scope of discovery is therefore limited to the issues raised by Claim One only. *See*  
25 Scheduling Order (Dkt. 92) annexed to the Joint Stipulation as Addendum A.

26 **Discovery Served: Deposition Notices**

27 5. On April 23, 2014, Plaintiffs served Plaintiffs' Notice of Taking  
28 Deposition of the Person Most Knowledgeable of Defendant Warner/Chappell

1 Music, Inc. pursuant to Fed. R. Civ. P. 30(b)(6) upon counsel for Defendants at their  
2 Los Angeles and San Francisco offices. A true and correct copy of Plaintiffs'  
3 Notice of Taking Deposition of the Person Most Knowledgeable of Defendant  
4 Warner/Chappell Music, Inc. pursuant to Fed. R. Civ. P. 30(b)(6) is attached hereto  
5 as Exhibit 1.

6 6. On May 19, 2014, after conferring with Defendants, Plaintiffs served an  
7 Amended Notice of Taking Deposition of the Person Most Knowledgeable of  
8 Defendant Warner/Chappell Music, Inc. A true and correct copy of Plaintiff's  
9 Amended Notice of Taking Deposition of the Person Most Knowledgeable of  
10 Defendant Warner/Chappell Music, Inc. is attached as Exhibit 2.

11 7. On May 22, 2014, Plaintiffs served Plaintiff's Second Notice of Taking  
12 Deposition of the Person Most Knowledgeable of Defendant Warner/Chappell  
13 Music, Inc. pursuant to Fed. R. Civ. P. 30(b)(6) upon counsel for Defendants at their  
14 Los Angeles and San Francisco offices. A true and correct copy of Plaintiff's  
15 Second Notice of Taking Deposition of the Person Most Knowledgeable of  
16 Defendant Warner/Chappell Music, Inc. pursuant to Fed. R. Civ. P. 30(b)(6) is  
17 attached hereto as Exhibit 5.

18 8. On May 27, 2014, Defendants served Defendant's Objections to  
19 Plaintiff's Amended Notice of Taking Deposition of the Person Most Knowledgeable  
20 of Defendant Warner/Chappell Music, Inc. A true and correct copy of Defendant's  
21 Objections to Plaintiff's Amended Notice of Taking Deposition of the Person Most  
22 Knowledgeable of Defendant Warner/Chappell Music, Inc. is attached as Exhibit 6.

23 9. Shortly after the deposition of Mr. Marcotullio, on June 5, 2014,  
24 Plaintiffs served Plaintiff's Notice of Taking Deposition of Jeremy Blietz upon  
25 counsel for Defendants at their Los Angeles and San Francisco offices. A true and  
26 correct copy of Plaintiff's Notice of Taking Deposition of the Jeremy Blietz is  
27 attached hereto as Exhibit 3.

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1           10. Finally, on June 30, 2014, Defendants' counsel, Melinda LeMoine,  
2 finally made Mr. Blietz available for deposition on July 10, 2014 in Los Angeles. A  
3 true and correct copy of the e-mail received by me on or about June 30, 2014 is  
4 attached here to as Exhibit 4.

5 **Defendants' Privilege Logs**

6           11. Defendants produced its initial privilege log on May 9, 2014, a copy of  
7 which was filed with the Court as Exhibit A (Dkt. 101-2) to Plaintiffs' previous  
8 discovery motion filed June 4, 2014 (Dkt. 101). Thereafter, Defendants amended  
9 their privilege log on June 2, 2014, which was filed with the Court as Exhibit B to  
10 the Declaration of Kelly Klaus in the parties' prior L.R. 37-2 Joint Stipulation. *See*  
11 Dkt. 104. The Defendants then amended their privilege log on June 23, 2014 adding  
12 two additional documents. The supplement privileged provided on June 23, 2014 is  
13 attached hereto as Exhibit 7. No further amendments to the privilege log have been  
14 made by Defendants.

15 **ASCAP Motion to Quash**

16           12. On June 4, 2014, Plaintiffs served a subpoena on ASCAP. On June 12,  
17 2014, ASCAP moved in the United States District Court for the Southern District of  
18 New York for an order pursuant to Fed. R. Civ. P. 45(d)(3) to quash the subpoena  
19 served on ASACP by Plaintiffs ("ASCAP Motion to Quash"). On June 19, 2014,  
20 Plaintiffs opposed the ASCAP Motion to Quash, to which ASCAP filed a Reply in  
21 further support of the Motion to Quash. A true and correct copy of the ASCAP  
22 Motion to Quash dated June 12, 2014 and the Reply Memorandum in Further  
23 Support of the ASCAP Motion to Quash dated June 26, 2014 are attached hereto as  
24 Exhibits 8 and 11, respectively (Dkts. 1 and 9 in S.D.N.Y. Misc Case No. 14-mc-  
25 00179) A true and correct copy of the Declaration of Richard H. Reimer ("Reimer  
26 Declaration") filed in support of the ASCAP Motion to Quash (Dkt. 3), omitting all  
27 exhibits except for "Exhibit 2." "Exhibit 2" to the Reimer Declaration attaches a true  
28 and correct copy of the Rule 45 subpoena received by ASCAP.

