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

12 GOOD MORNING TO YOU)
13 PRODUCTIONS CORP., *et al.*,)
14 Plaintiffs,)
15 v.)
16 WARNER/CHAPPELL MUSIC,)
17 INC., *et al.*,)
18 Defendants.)

Lead Case No. CV 13-04460-GHK (MRWx)
**[PROPOSED] ORDER GRANTING
PLAINTIFFS' APPLICATION UNDER
LOCAL RULE 37-2 FOR AN ORDER:
(i) OVERRULING DEFENDANTS'
CLAIM OF PRIVILEGE IN
DOCUMENTS PRODUCED BY A NON-
PARTY, OR PERMITTING A SECOND
RULE 30(B)(6) DEPOSITION TO
DETERMINE THE FACTUAL BASIS
FOR THAT CLAIM; AND (ii)
GRANTING RELIEF FROM THE
DISCOVERY CUT-OFF TO CONDUCT
THAT DEPOSITION**

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

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HAVING FOUND GOOD CAUSE APPEARING in Plaintiffs’, Good Morning To You Productions Corp., Robert Siegel, Rupa Marya, and Majar Productions, LLC (“Plaintiffs”) application under Local Rule 37-2 brought under Fed. R. Civ. P. 26(b)(5)(B) for an order: (i) overruling the claim of privilege by defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (“Defendants”), to certain documents produced by non-party American Society of Composers, Authors and Publishers (“ASCAP”), or, in the alternative, permitting a Fed. R. Civ. P. 30(b)(6) deposition to determine the factual basis for the claimed privilege to be fully briefed and heard by Magistrate Judge Michael R. Wilner (“the Motion”). The Court makes the following findings:

Findings of Fact and Conclusions of Law

1. The Court initially set the fact discovery deadline for June 27, 2014. (Dkt. 92);
2. On June 9, 2014, the fact discovery deadline was extended by this Court, and at the request of both parties, to July 11, 2014 in order to successfully resolve an outstanding discovery dispute relating to Defendants’ privilege log;
3. Plaintiffs were diligent in their discovery and have made substantial efforts to complete discovery prior to July 11, 2014;
4. Plaintiffs served a document subpoena on ASCAP on March 28, 2014; and the parties received the ASCAP Documents on May 9, 2014. On May 22, 2014, for the first time, ASCAP advised Plaintiffs that Defendants claimed certain of the ASCAP Documents were privileged and that counsel for the Defendants would be contacting Plaintiffs directly;

- 1 5. As required under Fed. R. Civ. P. 26(b)(5)(B), copies of the disputed
2 ASCAP Documents were sequestered by Plaintiffs' counsel and were
3 submitted to the Magistrate Judge under seal for a determination of
4 Defendants' claim of privilege;
- 5 6. On May 22, 2014, Plaintiffs promptly noticed the deposition of
6 Defendants pursuant to Fed. R. Civ. P. 30(b)(6) for the corporation's
7 testimony about the extent of ASCAP's interest (if any) in the Song
8 and the royalties it collects for public performances of the Song and
9 whether ASCAP produced the documents knowingly and
10 intentionally. On May 27, 2014, Defendants objected to Fed. R. Civ.
11 P. 30(b)(6) deposition and declined to produce a witness;
- 12 7. Plaintiffs also subpoenaed ASCAP under Fed. R. Civ. P. 45 and
13 30(b)(6) for the deposition of a representative of ASCAP most
14 knowledgeable about the scope or validity of any copyright to Song
15 and other related issues but ASCAP moved to quash the subpoena.
16 ASCAP and Plaintiffs then resolved the dispute and ASCAP
17 withdrew its motion to quash;
- 18 8. ASCAP's deposition took place in New York on July 11, 2014 and
19 was continued thereafter for additional questioning;
- 20 9. On July 9, 2014, the Court granted Plaintiffs' *Ex Parte* Application to
21 extend the discovery deadline to resolve this evidentiary dispute
22 relating to Defendants' privilege claims as to certain ASCAP
23 Documents;
- 24 10. Leave of court is warranted to permit a Second Rule 30(b)(6)
25 Deposition on the limited grounds set forth in Plaintiffs' Noticed
26 Deposition relating to the circumstances of Defendants' claim of
27 privilege in certain ASCAP Documents;
- 28 11. The Court has reviewed the ASCAP Documents at issue *in camera* as
 provided by Fed. R. Civ. P. 26(b)(5)(B); and

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12. The Court hereby concludes that Defendants’ production of these documents to a third party, ASCAP, waived Defendants’ claim of privilege as to the documents reviewed by the Court.

ORDER

THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, Plaintiffs’ *Ex Parte* Application is hereby **GRANTED**, as follows:

1. Plaintiffs acted diligently in serving its discovery requests and deposition notices, meeting and conferring with Defendants and ASCAP, and filing its motion to challenge Defendants’ designation of the ASCAP Documents as privileged.
2. There is no prejudice to Defendants in having this motion heard now.
3. The discovery cut-off has been extended for the purpose of this evidentiary challenge.
4. The Court having reviewed the ASCAP Documents at issue *in camera* concludes that Defendants waived their claim of privilege by production of these documents to a third party, ASCAP.

IN THE ALTERNATIVE:

- [4. Plaintiffs are granted leave of Court to take a Second Rule 30(b)(6) deposition limited to the factual basis for their claim of privilege as set forth in Plaintiffs’ Notice of Deposition.]

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[5. Upon completion of the deposition, the parties shall have seven days to file a five page Supplemental Memorandum. Once filed, the Court will consider the issue fully briefed and will issue an order.]

IT IS SO ORDERED.

Dated: _____

HON. MICHAEL R. WILNER,
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT