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9
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**
17 **MUSIC, INC., et al.**

18 Defendants.

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

13 **PLAINTIFFS' APPLICATION TO FILE**
14 **UNDER SEAL PLAINTIFFS'**
15 **[UNREDACTED] NOTICE OF MOTION**
16 **AND MOTION FOR REVIEW OF**
17 **MAGISTRATE JUDGE WILNER'S**
18 **ORDER RE: DISCOVERY MOTION**
19 **DENYING PLAINTIFFS' MOTION TO**
20 **OVERRULE DEFENDANTS' CLAIM OF**
21 **ATTORNEY-CLIENT PRIVILEGE AND**
22 **[UNREDACTED] DECLARATION OF**
23 **MARK C. RIFKIN IN SUPPORT**
24 **THEREOF**

Date: September 15, 2014

Time: 9:30 A.M.

Judge: Hon. George H. King

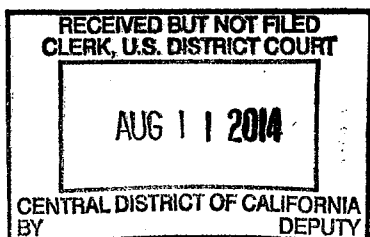
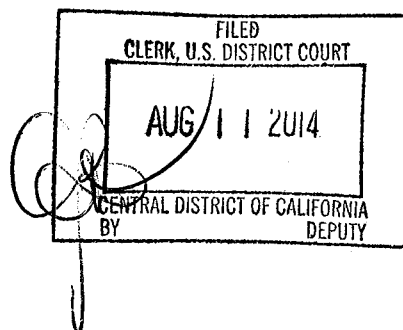
Room:

Disc. Cutoff: July 11, 2014

Pretrial Conf.: N/A

Trial Date: N/A

L/D File Jt. MSJ: 11/14/14



1 **TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE**
2 **COUNSEL OF RECORD:**

3 Pursuant to Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure and
4 Central District of California Civil Local Rule 79-5.1, the Stipulated Protective
5 Order approved and entered by this Court on May 5, 2014 (Dkt. 98), and the
6 Magistrate Judge's Order sealing the same documents (Dkt. 138) in the above-
7 captioned action, Plaintiffs Good Morning To You Productions Corp., Robert
8 Siegel, Rupa Marya, and Majar Productions, LLC, (collectively, "Plaintiffs")
9 hereby request an order permitting the following to be filed under seal: (i)
10 Plaintiffs' [Unredacted] Motion for Review of Magistrate Judge's Order Re:
11 Discovery Motion Denying Plaintiffs' Motion to Overrule Defendants' Claim of
12 Attorney-client Privilege ("Motion for Review"); and (ii) the [Unredacted]
13 Declaration of Mark C. Rifkin in Support thereof, including Exhibits A, C, D, E, F,
14 G, and H annexed thereto.¹

15 This application is based upon the Declaration of Mark C. Rifkin in Support
16 of the Motion for Review, an earlier order by the Magistrate Judge sealing the
17 documents, all pleadings, and any other information that the Court deems
18 appropriate. Plaintiffs have concurrently filed a [Redacted] Notice of Motion and
19 Motion for Review of Magistrate Judge Wilner's Order Re: Discovery Motion
20 Denying Plaintiffs' Motion to Overrule Defendants' Claim of Attorney-Client
21 Privilege and [Redacted] Declaration of Mark C. Rifkin in Support thereof.

22 ¹ Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc.
23 ("Defendants") asserted the privilege over certain documents produced by a non-
24 party. Plaintiffs filed a motion to overrule this claim, which the Magistrate Judge
25 denied. *See* Dkt. 132. *See* Stip. Protective Order at 11-13, §§ 11-12 (incorporating
26 by reference the duties imposed by Rule 26(b)(5)(B) upon any party who received
27 documents during discovery that are subsequently identified as being privileged
and inadvertently produced); *see also* Fed. R. Civ. P. 26(b)(5)(B) ("a party . . . may
promptly present the information to the court under seal for a determination of the
[privilege] claim").

1 Specifically, Exhibits C, D, and E are the documents at issue in Plaintiffs'
2 Motion for Review and, along with Exhibits F and G, were timely designated
3 "Confidential" under the Protective Order at the time of production by Non-Party
4 American Society of Composers, Artists, and Publishers ("ASCAP"). Decl. of
5 Mark C. Rifkin. Exhibit A contains relevant excerpts of the deposition transcript
6 of Defendants' Rule 30(b)(6) designee Mr. Thomas Marcotullio, which Defendants
7 timely designated in its entirety as "Confidential" as permitted by Section 12 of the
8 Protective Order.² *Id.* These documents were also attached to the Sealed
9 Document – Confidential Declaration of Mark C. Rifkin in Support of Plaintiffs'
10 Motion for Order for (i) Overruling Defendants' Claim of Privilege in Documents
11 Produced by a Non-Party, or Permitting a Second Rule 30(b)(6) Deposition to
12 Determine the Factual Basis for that Claim; (ii) Granting Relief from the
13 Discovery Cutoff to Conduct that Deposition [Fed. R. Civ. P. 26(b)(5)(B) & Civ.
14 L.R. 79-5.1] Dkt. 137 as Exhibits A-G and were sealed by Order of the Magistrate
15 Judge. *See* Dkt. 137.

16 Therefore, to ensure compliance with the Magistrate Judge's Order sealing
17 these exhibits as well as the Court's Protective Order, Plaintiffs submit the
18 [Unredacted] Motion for Review and [Unredacted] Rifkin Declaration, inclusive of
19 Exhibits A, C, D, E, F, G and H provisionally under seal until resolution of
20 Plaintiffs' Motion for Review challenging the Magistrate Judge's Order Re:
21 Discovery Motion. In the event that the Court overrules the Magistrate Judge's
22 Order Re: Discovery Motion, Plaintiffs reserve the right to seek modification to

23 ² Once a court finds good cause to enter a Protective Order, "it has already
24 determined that 'good cause' exists to protect this information from being
25 disclosed to the public by balancing the needs for discovery against the needs for
26 confidentiality." *Foltz v. State Farm Mutual Automobile Ins. Co.*, 331 F.3d 1122,
27 1135 (9th Cir. 2003) (quoting *Phillips v. General Motors Corp.*, 307 F.3d 1206,
28 1213 (9th Cir. 2002)).

1 unseal any or all of the documents. Accordingly, Plaintiffs respectfully request
2 that the Court grant their Application to file the [Unredacted] Motion for Review
3 and [Unredacted] Rifkin Declaration, inclusive of Exhibits A, C, D, E, F, G and H
4 thereto, until the Motion for Review has been resolved.

5
6 Dated: August 11, 2014

Respectfully submitted,

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