

Stories for the Kindergarten*, referred to as Renewal
Registration No. 25771 be marked Exhibit "G" for
identification.

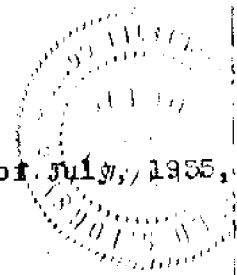
Jessica M. Hief

Sworn to and subscribed before me this 16th day
of July, 1935.

Alfred S. Forsyth

Read

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's. No. 548 Reg. No. 5F464
Term expires March 30, 1936



AD JOURNMENT taken to the 16th day of July, 1935,
at 10:30 A.M.

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

I, Alfred J. Forsyth, a Notary Public, in and for the County of Westchester, State of New York, my certificate being filed in New York County, duly commissioned and qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that pursuant to the notice dated June 17, 1935, issued and served in the civil cause depending in the District Court of the United States for the Southern District of New York, wherein Jessica M. Hill is plaintiff, and Sam H. Harris, Sam H. Harris Theatrical Enterprises Inc., Irving Berlin and Moss Hart, are defendants, I was attended at my office, No. 70 Pine Street, in New York City, by McKercher & Link (Malcolm B. Stark, Esq., of Counsel), attorneys for said plaintiff, and also by O'Brien, Driscoll & Raftery (Benjamin Pepper, Esq., of Counsel), Attorneys for Defendants Sam H. Harris and Sam H. Harris Theatrical Enterprises, Inc., on the said days and dates hereinbefore stated: that the aforementioned witnesses Patty S. Hill and Jessica M. Hill, who were of sound mind and lawful age and were by me first carefully examined and cautioned and duly sworn, did testify the truth, the whole truth, and nothing but the truth; and they thereupon testified as is above shown and that the depositions both subscribed as above set forth were reduced to writing by Miss Gertrude Esterhaus in the presence of the witnesses themselves and from the statements of them, and were subscribed by the said witnesses in my presence, and were taken at the place in the aforesaid notice specified and at the times as set forth, adjournments being had or taken from day to day as provided for in said notice, and that all was so done, written and signed in the presence of said counsel for said plaintiff and defendants.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that both of the deponents live in New York City and are ancient and infirm. That I am neither of Counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said depositions with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand and speedily and safely

transmitted to the said court for which it was taken, and to remain under my seal until they are opened.

As witness my hand and seal as such Examiner at New York City on this 16th day of July, 1935.

(Amd)

APF Alfred S. Forsyth (L.S.)
(attorney)

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's No. 948 Reg. No. 6F494
Term expires March 30, 1936

EXHIBIT 88

"STRANGE INTERLUDE"

REEL 8 SCENE NO. 15

FADE IN - CU - Birthday cake on table - little
sail-boat on top of cake - writing on sail reads:
Happy
Birthday
to
Gordon

CAMERA PULLS BACK - showing Gordon and children
seated around table - Nina standing by Gordon -
children clap their hands - Butler enters left
f.g. - carrying ice cream boat -
Another butler removes birthday cake from table -
(Children singing - "Happy Birthday to You"
composer unknown - Nursery Rhymes by Casini - Sc.
15 to 19 inclusive.)

Children singing

Happy birthday to you -
Happy birthday to you -
Happy birthday dear Gordon -
Happy birthday to you -

Nina

Now take a deep breath, Gordon, and see if you
can blow them all out at once.
(Children ad lib -- oh - oh look at the ice cream -
etc.)

EXHIBIT 89

FILE COPY

Date July 14, 1932.
Production No.: 7608
Total No. Compositions: _____

Music Rights Department,
Electrical Research Products Inc.,
New York, N. Y.

Notification is hereby given of our intention to use the following musical compositions in connection with ^{Photoplay} ~~xxx~~ entitled "STRANGE INTERLUDE"

To be recorded at (Studio) Metro-Goldwyn-Mayer on or about (date) _____
(Location) Culver City, California.

Please secure domestic licenses as indicated.
Please secure foreign licenses as indicated, if and when picture is exported.

Signed Metro-Goldwyn-Mayer
By _____
Musical Director

Remarks:

1. Title of Composition: ROMANCE
Composer: Rubinstein
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x
2. Title of Composition: WEDDING MARCH
Composer: Mendelssohn
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x
3. Title of Composition: HAPPY BIRTHDAY TO YOU
Composer: UNKNOWN
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. _____ Voc. x
Secure foreign license: Yes _____ No x
4. Title of Composition: NURSPRY RHYMES
Composer: Casini
Publisher: Photoplay
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
5. Title of Composition: PROMENADE
Composer: Rapee-Axt
Publisher: Robbins
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
6. Title of Composition: TENDER MEMORIES
Composer: Rapee-Axt
Publisher: Robbins
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
7. Title of Composition: DEAR LITTLE BOY OF MINE
Composer: Ball
Publisher: Witmark
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
8. Title of Composition: OLD PAL
Composer: Van Alstyne
Publisher: Remick
Secure domestic license: Yes x No _____
Extent of use: P _____ E x
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
9. Title of Composition: THERE'S LOVE IN THE AIR
Composer: McHugh
Publisher: Unpub. perm. grant.
Secure domestic license: Yes _____ No x
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x

WB042

Ex. 89
1045

EXHIBIT 90


[Back to Article](#)
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TIME

Monday, Aug. 27, 1934

Music: Good Morning

When she was 25 Patty Smith Hill was running a model kindergarten in Louisville, Ky. Grover Cleveland was President and Lillian Russell was the talk of Broadway. One day, Patty Hill's sister, Mildred, wrote a jingling little tune to which Patty fitted words. They published the song, copyrighted it, and sometimes Patty Hill would sing thus to her kindergarten children:

Good morning to you,
 Good morning to you,
 Good morning, dear children,
 Good morning to all.

From Louisville the ditty and the tune spread far and wide throughout the land. By a process of corruption it became a schoolroom classic which moppets sang as follows:

Good morning, dear teacher
 Good morning to you!

When she was 66, Patty Smith Hill was professor of Education at Teachers College, Columbia, a recognized authority on child education. Franklin D. Roosevelt was in the White House and *As Thousands Cheer*, starring Marilyn Miller (later, Dorothy Stone) and Clifton Webb, had Broadway by the ears. In one of this revue's most popular skits Clifton Webb appears as John D. Rockefeller Sr. while his children and grandchildren dance about him offering him a birthday cake and Rockefeller Center as a birthday present. They sing:

Happy birthday to you
 Happy birthday to you
 Happy birthday, dear grandpa
 Happy birthday to you.

Because the tune of "Happy Birthday to You" sounds precisely like the tune of "Good Morning to All," Sam H. Harris, producer of *As Thousands Cheer*, last week found himself the defendant in a Federal plagiarism suit asking payment of \$250 for each and every performance of the song. If *As Thousands Cheer* closes on schedule the first week in September the grand total demanded will be \$100,750 for 403 performances. Lyricist Patty Hill, who will share in the damages, if any, had no complaint to make on the use of the words because she long ago resigned herself to the fact that her ditty had become common property of the nation.

Fox Film Corp. used the same song in Shirley Temple's *Baby, Take a Bow* and in a newsreel shot of President Roosevelt's last birthday. For permission to use it Fox paid a total of \$250.

 [Click to Print](#)

Find this article at:

<http://content.time.com/time/magazine/article/0,9171,747783,00.html>

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EXHIBIT 91

DW 20-439
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 20-439

THE HILL FOUNDATION, INC.,
Plaintiff,

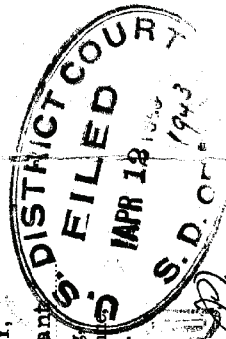
-vs-

POSTAL TELEGRAPH-CABLE COMPANY,
Defendant.

A N S W E R

DARBY & DARBY,

Attorneys for Defendant
Chrysler Building
405 Lexington Avenue
New York, N. Y.



APR 12 1943

SAMUEL MANN
Att. for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE HILL FOUNDATION, INC., ;
 Plaintiff, ;
 Civil Action ;
 - vs - ;
 No. 20-439. ;
POSTAL TELEGRAPH-CABLE COMPANY, ;
 Defendant. ;
-----X

A N S W E R

Defendant for answer to the complaint herein, or to as much thereof as it is advised is material or necessary to be answered, says:

1. Defendant admits the allegations of Paragraph 1 of the complaint.

2. Defendant admits the allegations of Paragraph 2 of the complaint.

3. Defendant admits the allegations of Paragraph 3 of the complaint.

4. Defendant admits the allegations of Paragraph 4 of the complaint.

5. Defendant, on information and belief, denies the allegation of Paragraph 5 of the complaint.

6. Defendant denies each and every allegation of Paragraph 6 of the complaint, except that it admits the entry of the songs collectively entitled "Song Stories for the Kindergarten" in the Office of the Register of Copyrights of the United States on the 13th day of October,

1893 under Copyright No. 45,997.

7. Defendant denies each and every allegation of Paragraph 7 of the complaint, except that it admits the entry of the songs collectively entitled "Song Stories for the Kindergarten" in the Office of the Register of Copyrights of the United States on the 8th day of June, 1896 under Copyright No. 34,260; but defendant avers, on information and belief, that the said work was not duly copyrighted thereby.

8. Defendant denies each and every allegation of Paragraph 8 of the complaint, except that it admits that one of the songs contained in the collection of songs described in Paragraphs 6 and 7 was entitled "Good Morning to All"; but defendant avers that the words of the song "Happy Birthday to You" are entirely different from the words of the song "Good Morning to All".

9. Defendant denies each and every allegation contained in Paragraph 9 of the complaint, except that it admits that the song "Happy Birthday to You" has acquired a nationwide popularity and that performances thereof have been given vocally, orchestrally, and over the radio.

10. Defendant is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraph 10 of the complaint and therefore denies them, except that defendant admits the allegations as to the renewal registration of the alleged copyrights therein referred to; but defendant denies that copyright in the song "Happy Birthday to You" was included in the renewal copyright registrations in said paragraph of the complaint mentioned.

11. Defendant admits the allegations of Paragraph 11 of the complaint.

12. Defendant admits the allegations of Paragraph 12 of the complaint that it transmitted and delivered birthday greetings by the use of the song "Happy Birthday to You"; but denies that the said song was copyrighted. Defendant kept no record of the number of such birthday greetings transmitted and delivered by it commencing in February 1938 and therefore is without knowledge sufficient to form a belief that it transmitted and delivered the number of said birthday greetings as set forth in the said paragraph of the complaint.

13. Defendant admits that its use of the song "Happy Birthday to You" was without the consent or authority of plaintiff's assignors, but avers, on information and belief, that the consent and authority of the said plaintiff's assignors were unnecessary in that they were not then the owners and proprietors of the said song or any copyrights thereto; and further denies that the said song was copyrighted; and further denies that defendant's use of the said song, as alleged in the said paragraph of the complaint was in infringement of any copyrights owned by plaintiff.

14. Defendant admits the allegation in Paragraph 14 of the complaint of the assignment to plaintiff dated June 2, 1942 and the recording thereof in the Copyright Office of the United States on June 8, 1942 in Copyright Office Book 485 at pages 242-243; but defendant denies that the said assignment was in conformity with the laws of the United States concerning copyrights, and denies that plaintiff by virtue of the said assignment became and was or is the owner of the alleged copyright.

15. Defendant admits the allegations of Paragraph 15 of the complaint, but denies that it was under any obligation to render the accounting demanded of it.

FIRST DEFENSE

16. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

17. The defendant avers that a copy of the book entitled "Song Stories for the Kindergarten", said book containing a song entitled "Good Morning to All", was deposited and registered in the Copyright Office of the United States on October 13, 1893, under Entry No. 45,997, and that said book deposited in the Copyright Office bears the following notice of copyright: "Copyright, 1893, Clayton F. Summy Co."

18. That a later edition of the said book entitled "Song Stories for the Kindergarten" containing a copy of the identical song entitled "Good Morning to All" was deposited and registered in the Copyright Office by Clayton F. Summy Co., on June 8, 1896, under Entry No. 34,260. That the said book bears a copyright notice reading: "Copyright, 1896, Clayton F. Summy Co.", but that the said work fails to give notice of the copyright registered on the said work by Clayton F. Summy Co. in 1893.

19. That a later work entitled "Song Stories for the Sunday School", containing a copy of the identical song entitled "Good Morning to All", was deposited and registered in the Copyright Office by Clayton F. Summy Co., on March 20, 1899, under Entry No. 20,441. That said book bears a

copyright notice reading: "Copyright 1899, Clayton F. Summy Co.", but that said work fails to give notice of the copyright registered by Clayton F. Summy Co. in 1893.

20. That the identical song entitled "Good Morning to All" was again deposited and registered for copyright in the name of Clayton F. Summy Co., February 7, 1907, under Entry No. C:142648. The said work deposited bears a copyright notice reading: "Copyright 1907, Clayton F. Summy Co.", but fails to give notice of the copyright registered on the said work in 1893 or 1899.

21. Defendant avers that the successive republications of the said song entitled "Good Morning to All" with notices of copyright in 1896, 1899 and 1907 as described therein, and the successive registrations of claims of copyright in the said song by the said Clayton F. Summy Co. in 1896, 1899 and 1907 as described in Paragraphs 18, 19 and 20 hereof, caused a forfeiture of the alleged copyright secured in this work in 1893; that by reason of said successive republications and re-registrations the claimed copyright of 1893 became void, and that the said song entitled "Good Morning to All" or "Happy Birthday to You" became dedicated to public use and is now a part of the public domain.

THIRD DEFENSE

22. On information and belief defendant avers that one, Jessica M. Hill, filed application in the Copyright Office for a renewal of the copyright alleged to have been secured on the 13th day of October 1893, and that said renewal application was filed on September 3, 1921 by the said Jessica M. Hill as "next-of-kin" of Mildred J. Hill,

the alleged composer of the music of the song entitled "Good Morning to All". That at the time of the said filing of the said application for renewal of the alleged copyright Patty S. Hill, one of the alleged authors of the said song, was living. That, in consequence, the renewal copyright claimed by Jessica M. Hill was void in that the said Jessica M. Hill was not a person authorized by law to renew the said copyright and in that the copyright sought to be renewed had theretofore become invalid.

FOURTH DEFENSE

23. Defendant avers that prior to June 2, 1942, the date of assignment from Patty S. Hill and Jessica M. Hill to plaintiff, The Hill Foundation, Inc., as alleged in Paragraph 14 of the complaint, the said Patty S. Hill and Jessica M. Hill had sold, assigned, transferred and conveyed to Clayton F. Summy Co., a Delaware corporation, with its principal office at 321 South Wabash Avenue, Chicago, Illinois, their entire right, title and interest in and to their said copyrights and their then renewals and extensions thereof; and of all other right, title and interest of every kind and character and in and to any rights, claims, demands and causes of action which the said Patty S. Hill and Jessica M. Hill, or either of them, had or might have had against any person or persons who had theretofore infringed any of the alleged copyrights; that the said assignment was dated September 2, 1939 and, on the 21st day of September, 1939, was duly recorded in the assignment records of the Copyright Office of the United States in Volume 425, pages 36, 37 and 38 thereof, all as appears from a copy of the said assignment hereto attached and

made a part hereof; and that the records of the Copyright Office disclose no subsequent assignment from Clayton F. Summy Co. to Patty S. Hill and Jessica M. Hill, wherefore plaintiff is without title to maintain this action.

FIFTH DEFENSE

24. Defendant avers that prior to February 1938 Clayton F. Summy Co. was and since then has continued to be a member of the American Society of Composers and Publishers (generally known as ASCAP), which was and is vested by the copyright owning members thereof (and specifically by Clayton F. Summy Co.) with the right to grant permission and license to use and reproduce works, the copyrights to which are owned by its members. That defendant was expressly licensed by ASCAP to use the words and music of the song "Happy Birthday to You" in the delivery of birthday greetings; that defendant's utilization of the song "Happy Birthday to You" in the delivery of birthday greetings complained of in Paragraphs 11 and 12 of the complaint was under said license from ASCAP.

SIXTH DEFENSE

25. Defendant avers that the utilization of the song "Happy Birthday to You" in delivering birthday greetings was not a public performance and, in consequence, was not in infringement of any copyright.

WHEREFORE defendant denies that plaintiff is entitled to the relief prayed for, or to any relief, and therefore prays that the complaint be dismissed with defendant's costs sustained in connection therewith, together with attorneys' fees, as prescribed by law.

Harby St. Darby
Attorneys for Defendant
405 Lexington Av., New York, N.Y.
Samuel K. Darby, Jr.
Of Counsel.

POSTAL TELEGRAPH-CABLE COMPANY

By F. J. Toque
Its Vice President

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

F. J. Logue, being duly sworn, deposes and says:

That he is *Vice President* of POSTAL TELEGRAPH-CABLE COMPANY, the defendant named in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is not made by the defendant personally is that the defendant is a corporation.

F. J. Logue

Sworn to and subscribed before me this 12 day of April, 1943.

William J. Dallas
Notary Public.

Notary Public for the State of New York
Commission Expires March 30, 1945

EXHIBIT 92 - CONFIDENTIAL

[PROVISIONALLY LODGED UNDER SEAL]

**[PAGES 1059 TO 1068 INTENTIONALLY OMITTED -
FILED UNDER SEAL]**

EXHIBIT 93



Home • Departments • Archives • Databases • Illinois Statewide Death Index

ILLINOIS STATE ARCHIVES

Illinois Statewide Death Index

Search Criteria: **summy and clayton**

Death certificates filed after 1947 are not currently available in the Illinois State Archives Reference Room. For deaths occurring after 1947, the death date will appear in **BOLD**

Last Name	First Name	Middle Name	Sex/Race	Age	Cert No.	Death Date	County	City	Date Filed
SUMMY	CLAYTON	F	MW	UNK	0220062	1932-02-10	DU PAGE	HINSDALE	32-02-11

[Return to Search](#)

EXHIBIT 94

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 Counsel for Plaintiffs and the [Proposed] Class*

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

13 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
14 PRODUCTIONS CORP., *et al.*,)
15 Plaintiffs,) **PLAINTIFFS' REQUESTS FOR**
16 v.) **PRODUCTION OF DOCUMENTS TO**
17) **DEFENDANTS – SET NO. ONE**
18 WARNER/CHAPPELL MUSIC,)
19 INC., *et al.*)
20 Defendant.)
21)

22 **PROPOUNDING PARTIES: PLAINTIFFS GOOD MORNING TO YOU**
23 **PRODUCTIONS CORP., ROBERT SIEGEL,**
24 **RUPA MARYA, AND MAJAR PRODUCTIONS,**
25 **LLC**

26 **RESPONDING PARTIES: DEFENDANTS WARNER/CHAPPELL MUSIC,**
27 **INC. AND SUMMY-BIRCHARD, INC.**

28 **SET NO.: ONE**

1 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiffs
2 GOOD MORNING TO YOU PRODUCTIONS CORP., ROBERT SIEGEL, RUPA
3 MARYA, AND MAJAR PRODUCTIONS, LLC (“Plaintiffs”), by and through their
4 undersigned counsel, hereby propound the following interrogatories upon defendants
5 WARNER/CHAPPEL MUSIC, INC. and SUMMY-BIRCHARD, INC.
6 (“Defendants”). Defendants shall identify and produce the requested documents and
7 things for inspection and copying within thirty (30) days—or such other time as the
8 parties may agree or the Court may order—during normal business hours, at the
9 offices of Wolf Haldenstein Adler Freeman & Herz LLP, 750 B Street, Suite 2770,
10 San Diego, California 92101.

11 DEFINITIONS

12 1. “Defendants” means Warner/Chappell Music, Inc., and Summy-
13 Birchard, Inc. (or each individually, as context requires).

14 2. “Warner/Chappel,” means Warner/Chappell Music, Inc., its subsidiaries
15 and predecessors in interest, including without limitation Summy-Birchard, Inc.

16 3. “Summy-Birchard” means Summy-Birchard, Inc., its subsidiaries and
17 predecessors in interest, including without limitation Summy-Birchard, Inc.

18 4. “CFSC” refers to the Clayton F. Summy Co. identified as copyright
19 owner in the applications for Copyright E51988 and Copyright E51990.

20 5. “ASCAP” refers to the American Society of Composers, Authors and
21 Publishers.

22 6. “You” or “Your” refers to each Defendant served with these requests.

23 7. “*Happy Birthday to You*” means the song *Happy Birthday to You*.

24 8. “Copyright Office” refers to the United States Copyright Office.

25 9. “Copyright” means statutory copyright.

26 10. “Right” means an interest, including license and Copyright, in or to a
27 work.

28

Ex 94
1073

1 11. "Copyright E51988" means the Copyright recorded with the Copyright
2 Office under the registration number E51988.

3 12. "Copyright E51990" means the Copyright recorded with the Copyright
4 Office under the registration number E51990.

5 13. "Including" and "includes" shall be construed to mean "including
6 without limitation."

7 14. The use of the singular form of any word includes the plural and
8 vice versa.

9 **INSTRUCTIONS**

10 1. Plaintiffs incorporate the Instructions set forth in Plaintiffs' First Set of
11 Interrogatories as if fully set forth herein.

12 2. In producing documents and other materials in response to this
13 document request, You are requested to furnish all documents in Your possession,
14 custody, or control, regardless of whether such documents are possessed directly by
15 You or Your partners, agents, employees, representatives, subsidiaries, affiliates or
16 investigators, or by Your attorneys or their agents, employees or investigators.

17 3. Respondent shall produce the original of each document described
18 below or, if the original is not available, then a copy thereof; and in any event also all
19 non-identical copies which differ from the original or from the other copies produced
20 for any reason, including the making of notes thereon (on either the front or back of
21 the document), and drafts. A document also shall be considered non-identical and
22 must be produced if it was kept in a different file from another copy of the same
23 document (which otherwise was identical). For example, if the same document was
24 kept in the usual course of business in the files of two different corporate directors
25 then both copies must be produced even if they were otherwise identical.

26 4. All documents produced shall be bound or stapled in the same manner
27 as the original.
28

1 5. All documents shall be produced as they are kept in the usual course of
2 business or the documents shall be organized and labeled to correspond to the
3 categories in these requests.

4 6. Documents shall be produced in their original folders, binders, covers or
5 containers, or facsimile(s) thereof.

6 7. In Your response to each request, identify by Bates Number, including
7 prefix, or otherwise, the identity of the person, department, branch, division or office
8 from whose files the document(s) are being produced.

9 8. The fact that a document has been or shall be produced by one party or
10 entity does not relieve any other party or entity from the obligation to produce its
11 copy of the same document, even if the two documents are identical in all respects.

12 9. All documents that originated in electronic form shall be produced in
13 their native electronic form, with metadata. These documents shall be produced with
14 an accompanying index, to the extent one exists, that lists:

- 15 Beg doc # - Document first Bates number;
- 16 End doc # - Document last Bates number;
- 17 Secondary begin doc # - First Bates number of unit;
- 18 Secondary end doc # - End Bates number of unit (last
19 page of last attachment to doc);
- 20 Owner – Name of person whose files the document
21 comes from;
- 22 Doc date – date of file;
- 23 File size – number of bytes in the file;
- 24 File name – name of the file;
- 25 Document type – document type;
- 26 Doc title – re: line of document;
- 27 Author – Author;
- 28 Recipient – recipients;
- cc- carbon copies; and
- bcc – blind copies.

 10. All other documents shall be produced in searchable PDF format to the
extent they are available, or can be made available, in that format.

1 11. All electronic mail shall be provided in native e-mail format (e.g., pst,
2 nsf, .xls, and .doc), with metadata, with the following fields combined in an
3 accompanying index:

4 Owner – Name of person whose e-mail file or other e-
5 files are being provided;
6 File Name – Name of file;
7 File Date – Date of file; and
8 File Size – Size of file.

9 12. For those paper documents which have been created digitally but
10 executed with a hand-written signature or physical seal, then both the digital version
11 and the signed paper copy should be produced.

12 13. You are instructed to produce each document in response to this
13 document request in its entirety, without deletion or excision, regardless of whether
14 You consider the entire document to be relevant or responsive. If any requested
15 document cannot be produced in full, produce it to the extent possible, indicating
16 which document, or portion of that document, is being withheld, and the reason that
17 document or portion is being withheld.

18 14. If You object to any request in this document request on the ground that
19 it is overly broad, You are instructed to produce documents in response to the request
20 as narrowed to conform to Your objection within the period allowed for a response
21 and to state in Your responses: (1) how You narrowed the request, and (2) the reason
22 why You claim the request is overly broad. Plaintiffs do not waive the right to
23 compel the production as originally sought from Defendant.

24 15. If You assert any claim of privilege in objecting to any document
25 request herein, and withhold any responsive document pursuant to that objection,
26 identify each document being withheld by providing a date, title and brief description
27 of same.

28 16. If a document responsive to a document request has been destroyed or
discarded, identify the document.

1 17. If no documents responsive to a particular document request exist or are
2 within Your possession, custody, or control, You must so state in Your response to
3 the request.

4 18. These requests are continuing such that they require supplemental
5 production pursuant to Rule 26(a) of the Federal Rules of Civil Procedure if You
6 discover, obtain possession of, or create varying or additional documents responsive
7 to a document request between the time of the original response and the time set for
8 trial. In that event, notice of such supplemental documents and copies thereof shall
9 be served on Plaintiffs' counsel no later than thirty days after the discovery of any
10 such documents, but in no event later than one week before the first day of trial.

11 **REQUESTS FOR PRODUCTION**

12 **REQUEST FOR PRODUCTION NO. 1:**

13 All documents constituting, creating, describing, or relating to each Right You
14 claim to *Happy Birthday to You*, including, for the following listing of Copyrights
15 and every other Right You claim to *Happy Birthday to You*, applications for
16 Copyright, Copyright registration documents, certificates of registration, Copyright
17 renewal documents, Deposit Copies, correspondence with the Copyright Office, and
18 business records:

19

Registration Number	Registration Date	Renewal Number	Renewal Date
E45655	Dec. 29, 1934	R289194	Jan. 22, 1962
E46661	Feb. 18, 1935	R291287	Feb. 19, 1962
E47439	Apr. 5, 1935	R293413	Apr. 4, 1962
E47440	Apr. 5, 1935	R293412	Apr. 4, 1962
E51988	Dec. 9, 1935	R306185	Dec. 6, 1962
E51990	Dec. 9, 1935	R306186	Dec. 6, 1962
45997	Oct. 16, 1893	R19043	Sep. 3, 1921

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Registration Number	Registration Date	Renewal Number	Renewal Date
34260	Jun. 18, 1896	R25771	Jan. 9, 1924
20441	Mar. 20, 1899	R36618	Jan. 3, 1927
142468	Feb. 7, 1907	R34877	Jan. 2, 1935
E513745	Jul. 28, 1921		
286958	Feb. 14, 1942		
EP26375	Apr. 13, 1948		
EP32204	Dec. 9, 1948		
EP45486	Apr. 13, 1950		
EP72792	Jun. 18, 1953	RE103939	Oct. 20, 1981
EP108379	Apr. 26, 1957	RE243304	Mar. 25, 1985
PA66009	Apr. 16, 1980		
PA140843	Jun. 17, 1982		

REQUEST FOR PRODUCTION NO. 2:

All documents constituting, creating, describing, or relating to Your acquisition of each Right You claim to *Happy Birthday to You*, including documentation of all assignment(s) or transfer(s) of such Rights.

REQUEST FOR PRODUCTION NO. 3:

Pertinent publications of *Happy Birthday to You*, including the scores, lyrics, arrangements, notes on arrangements, Deposit Copies, and other documents related to *Happy Birthday to You* and *Good Morning to All*.

REQUEST FOR PRODUCTION NO. 4:

All documents constituting, evidencing, describing or relating to the origin of *Happy Birthday to You* or any part thereof.

1 **REQUEST FOR PRODUCTION NO. 5:**

2 The closing binder and all other documents constituting, memorializing, or
3 relating to Warner/Chappell's acquisition of Birchtree Limited in or around 1988.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 The due diligence file and all other documents including without limitation,
6 reports, opinion letters, audit documents and representations of warranty in
7 connection with Warner/Chappell's acquisition of Birchtree Limited in or around
8 1988.

9 **REQUEST FOR PRODUCTION NO. 7:**

10 All documents constituting, evidencing, describing or relating to the Rights of
11 the following persons and entities to *Happy Birthday to You* or *Good Morning to All*:

- 12 a. Clayton F. Summy
- 13 b. Clayton F. Summy Co. (incorporated 1895, Ill.)
- 14 c. Clayton F. Summy Co. (incorporated 1925, Ill.)
- 15 d. Clayton F. Summy Co. (incorporated 1931, Del.)
- 16 e. John F. Segenstack
- 17 f. Mildred Hill
- 18 g. Patty Hill
- 19 h. Jessica Hill
- 20 i. The Hill Foundation

21 **REQUEST FOR PRODUCTION NO. 8**

22 All documents constituting, evidencing, describing or relating to litigation over
23 Rights (including infringement of any Right) to *Happy Birthday to You* or *Good*
24 *Morning to All*, including without limitation docket sheets, pleadings, motions,
25 briefs, affidavits, declarations, memoranda, transcripts, opinions, settlement
26 agreements, orders and judgments.

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO. 9**

2 All documents describing the corporate structure, relationship and revenue
3 sharing agreements and policies concerning *Happy Birthday to You* between and
4 among Warner/Chappell and Summy-Birchard.

5 **REQUEST FOR PRODUCTION NO. 10**

6 All documents constituting, evidencing, describing or relating to ASCAP's
7 Right(s) to license *Happy Birthday to You*.

8 **REQUEST FOR PRODUCTION NO. 11**

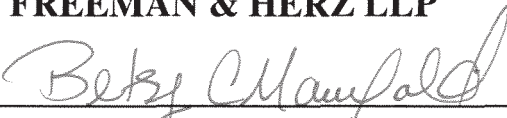
9 All documents constituting, evidencing, describing or relating to Mildred
10 Hill's induction into ASCAP.

11 **REQUEST FOR PRODUCTION NO. 12**

12 All documents constituting, evidencing, describing or relating to CFSC's
13 induction into ASCAP.

14
15 Dated: February 12, 2014

**WOLF HALDENSTEIN ADLER
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EXHIBIT 95

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7 Attorneys for Defendants
8 Warner/Chappell Music, Inc. and
Summy-Birchard, Inc.
9

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

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

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

**DEFENDANTS' OBJECTIONS AND
RESPONSES TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

1 Pursuant to Federal Rule of Civil Procedure 34, Defendants Warner/Chappell
2 Music, Inc. and Summy-Birchard, Inc. (jointly “Warner/Chappell”) hereby submit
3 the following objections and responses to Plaintiff’s First Set of Requests for
4 Production of Documents (“Requests”).

5 **GENERAL OBJECTIONS**

6 The following General Objections are incorporated by reference into each
7 response to each specific Request, whether or not such General Objections are
8 expressly incorporated by reference in such response.

9 1. Warner/Chappell objects to the Requests to the extent they purport to
10 impose on Warner/Chappell any obligation that is different from or greater than any
11 imposed by the Federal Rules of Civil Procedure, the Local Rules of the United
12 States District Court for the Central District of California, or any other applicable
13 law, rule or order.

14 2. Warner/Chappell objects to the Requests to the extent they request
15 production of documents subject to the attorney-client privilege, the attorney work
16 product doctrine, or any other applicable privilege or protection from disclosure,
17 including without limitation any joint privilege relating to the same.
18 Warner/Chappell claims such privileges and protections to the extent implicated by
19 each Request, and excludes privileged and protected information from its responses
20 to the Requests. Any disclosure of such protected or privileged information is
21 inadvertent, and is not intended to waive those privileges or protections.

22 3. Warner/Chappell objects to the Requests to the extent they seek
23 documents not in Warner/Chappell’s possession, custody or control; or documents
24 or information that are equally available to Plaintiffs and Warner/Chappell; or
25 documents or information that could be derived or ascertained by Plaintiffs with
26 substantially the same effort that would be required of Warner/Chappell.

27 4. Warner/Chappell objects to the Requests to the extent they seek
28 documents that contain any confidential, proprietary, trade secret information, **Ex 95**

1 and/or competitively sensitive material. Warner/Chappell will produce responsive,
2 non-privileged documents containing such information only upon the entry of, and
3 in accordance with the terms of, an appropriate protective order.

4 5. Warner/Chappell's responses are necessarily preliminary and are made
5 without prejudice to its right to produce, introduce or rely upon documents that may
6 be later discovered or produced.

7 6. Warner/Chappell objects to the Requests to the extent they seek
8 documents created after, or related to events after, the filing of the Complaint in this
9 action, on the grounds that such documents are neither relevant nor reasonably
10 calculated to lead to the discovery of admissible evidence.

11 7. Warner/Chappell will make reasonable efforts to search for documents
12 in the places where they would be reasonably likely to be found, and
13 Warner/Chappell objects to the Requests to the extent they purport to require a
14 broader search.

15 8. Warner/Chappell objects to the Requests to the extent they seek
16 documents outside of any applicable limitations period, whether arising by statute,
17 contract or otherwise.

18 9. In responding to the Requests, Warner/Chappell does not waive, or
19 intend to waive, any privilege or objection, including, but not limited to, any
20 objections to the competency, relevance, materiality, or admissibility of any of the
21 documents produced in response to the Requests. No objection or response made in
22 these responses and objections shall be deemed to constitute a representation by
23 Warner/Chappell as to the existence or non-existence of the documents requested or
24 within the scope of Warner/Chappell's agreement to search for and produce.

25 10. Warner/Chappell objects to Plaintiff's use of the terms "documents"
26 and "things" as vague, ambiguous, overly broad and unduly burdensome to the
27 extent any of those terms has a meaning or scope that is different than that required
28 by Rule 34 of the Federal Rules of Civil Procedure, including, without limitation, Ex 105

1 the extent the terms require Warner/Chappell to search for and provide electronic
2 documents and information that are not reasonably accessible.

3 11. Warner/Chappell objects to any Request to the extent it purports to
4 require it to produce documents or information for inspection and copying in
5 violation of a legal or contractual obligation of non-disclosure to a third party.

6 12. Warner/Chappell objects to any Request to the extent it calls for a legal
7 conclusion. Any response by Warner/Chappell shall not be construed as providing a
8 legal conclusion regarding the meaning or application of any terms or phrases used
9 in the Requests.

10 13. Warner/Chappell objects to the Requests to the extent they call for the
11 production of “all” documents concerning a subject matter on the ground that such
12 Requests are, to that extent, overly broad and unduly burdensome.

13 14. Warner/Chappell objects to any Request containing the defined terms
14 “You,” “Your,” “Defendants,” “Warner/Chappell” [sic], and/or “Summy-Birchard”
15 as vague, ambiguous, overbroad and unduly burdensome to the extent any of these
16 terms include any entity other than the responding Defendant(s).

17 15. Warner/Chappell objects to Instruction Paragraph 1 to the extent that it
18 incorporates by reference instructions that are inapposite to the Requests.

19 16. Warner/Chappell objects to all Instructions (including all subparts
20 thereof), including Instruction Paragraphs 3 through 17, to the extent they purport to
21 require Warner/Chappell to produce documents in certain formats and pursuant to
22 certain procedures on the ground that they are unduly burdensome and seek to
23 impose costs and obligations beyond those set forth in the Federal Rules of Civil
24 Procedure. Subject to and without waiving this objection, any documents that
25 Warner/Chappell agrees to produce, with the exception of email or efile documents,
26 will be produced as static TIFF images branded with bates numbers, along with a
27 loadfile/index that will indicate document breaks. With respect to any email or efile
28 documents that Warner/Chappell agrees to produce (to the extent there are such

1 documents), Warner/Chappell will produce such documents as TIFF images,
2 branded with bates numbers, with searchable metadata/information (where
3 available) sufficient to make these documents reasonably usable as required under
4 the Federal Rules of Civil Procedure. Warner/Chappell is willing to meet and
5 confer with Plaintiffs regarding specific metadata fields and/or other mutually
6 agreeable protocols.

7 17. Warner/Chappell objects to Instruction Paragraph 15 to the extent it
8 purports to impose any obligation for Warner/Chappell to prepare a privilege log, if
9 any, in excess of the requirements of the Federal Rules of Civil Procedure. Any
10 privilege log that Warner/Chappell prepares will be completed in accordance with
11 the requirements of the Federal Rules of Civil Procedure. Further, Warner/Chappell
12 will not log any documents withheld on the basis of privilege or work product
13 created after the date of the filing of Plaintiffs' original Complaint.

14 18. Warner/Chappell objects to Instruction Paragraph 16 to the extent it
15 purports to impose any obligation for Warner/Chappell to prepare a log of destroyed
16 or discarded documents, if any, in excess of the requirements of the Federal Rules of
17 Civil Procedure.

18 19. Warner/Chappell objects to Instruction Paragraph 18 to the extent it
19 purports to impose upon Warner/Chappell any obligation in excess of those required
20 under the supplementation rules of the Federal Rules of Civil Procedure. Except as
21 expressly provided in the Rules, Warner/Chappell specifically disclaims any
22 obligation to supplement its responses or production in response to Plaintiff's
23 Requests.

24 20. These General Objections are incorporated into each individual
25 response and supplement response below without further reference.

26 Warner/Chappell reserves the right to supplement or modify its responses and
27 objections to the Requests.

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1 registrations referred to in Plaintiffs’ operative Complaint. To the extent that
2 Warner/Chappell discovers during that search non-privileged documents that
3 constitute or relate to filings with the Copyright Office regarding copyright
4 registrations contained in the Request but not referred to in Plaintiffs’ operative
5 Complaint, Warner/Chappell will produce such non-privileged documents.

6 **REQUEST FOR PRODUCTION NO. 2:**

7 All documents constituting, creating, describing, or relating to Your
8 acquisition of each Right You claim to *Happy Birthday to You*, including
9 documentation of all assignment(s) or transfer(s) of such Rights.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

11 Warner/Chappell incorporates its General Objections.
12 Warner/Chappell specifically objects to this Request as vague and ambiguous,
13 including in its use of the undefined terms (“acquisition,” “assignment(s),” or
14 “transfer(s).” Warner/Chappell further objects to this Request as overly broad,
15 unduly burdensome, not reasonably calculated to lead to the discovery of admissible
16 evidence, and/or lacking in the reasonable particularity required by law.
17 Warner/Chappell further objects to this Request to the extent it calls for information
18 protected by the attorney-client privilege and/or work product doctrine.

19 Subject to and without waiving those objections, Warner/Chappell
20 responds as follows: Warner/Chappell will produce responsive, non-privileged
21 documents, if any, following a search of reasonable diligence that memorialize or
22 relate to Warner/Chappell’s acquisition of the copyright to *Happy Birthday to You*.

23 **REQUEST FOR PRODUCTION NO. 3:**

24 Pertinent publications of *Happy Birthday to You*, including the scores,
25 lyrics, arrangements, notes on arrangements, Deposit Copies, and other documents
26 related to *Happy Birthday to You* and *Good Morning to All*.

27
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1 including in its use of the undefined term “due diligence file.” Warner/Chappell
2 further objects to this Request as overly broad, unduly burdensome, not reasonably
3 calculated to lead to the discovery of admissible evidence, and/or lacking in the
4 reasonable particularity required by law. Warner/Chappell further objects to this
5 Request to the extent it calls for information protected by the attorney-client
6 privilege and/or work product doctrine.

7 Subject to and without waiving those objections, Warner/Chappell
8 responds as follows: Warner/Chappell will produce responsive, non-privileged
9 documents, if any, following a search of reasonable diligence.

10 **REQUEST FOR PRODUCTION NO. 7:**

11 All documents constituting, evidencing, describing or relating to the
12 Rights of the following persons and entities to *Happy Birthday to You* or *Good*
13 *Morning to All*:

- 14 a. Clayton F. Summy
- 15 b. Clayton F. Summy Co. (incorporated 1895, Ill.)
- 16 c. Clayton F. Summy Co. (incorporated 1925, Ill.)
- 17 d. Clayton F. Summy Co. (incorporated 1931, Del.)
- 18 e. John F. Segenstack
- 19 f. Mildred Hill
- 20 g. Patty Hill
- 21 h. Jessica Hill
- 22 i. The Hill Foundation

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

24 Warner/Chappell incorporates its General Objections.
25 Warner/Chappell specifically objects to this Request as vague and ambiguous.
26 Warner/Chappell further objects to this Request as overly broad, unduly
27 burdensome, not reasonably calculated to lead to the discovery of admissible
28 evidence, and/or lacking in the reasonable particularity required by law.

Ex 95
1090

1 Warner/Chappell further objects to this Request to the extent it calls for information
2 protected by the attorney-client privilege and/or work product doctrine.

3 Subject to and without waiving those objections, Warner/Chappell
4 responds as follows: Warner/Chappell will produce responsive, non-privileged
5 documents, if any, following a search of reasonable diligence.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 All documents constituting, evidencing, describing or relating to
8 litigation over Rights (including infringement of any Right) to *Happy Birthday to*
9 *You* or *Good Morning to All*, including without limitation docket sheets, pleadings,
10 motions, briefs, affidavits, declarations, memoranda, transcripts, opinions,
11 settlement agreements, orders and judgments.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

13 Warner/Chappell incorporates its General Objections.
14 Warner/Chappell specifically objects to this Request as vague and ambiguous.
15 Warner/Chappell further objects to this Request as overly broad, unduly
16 burdensome, not reasonably calculated to lead to the discovery of admissible
17 evidence, and/or lacking in the reasonable particularity required by law, insofar as
18 the Request purports to seek documents related to this litigation. Warner/Chappell
19 further objects to this Request to the extent it calls for information protected by the
20 attorney-client privilege and/or work product doctrine.

21 Subject to and without waiving those objections, Warner/Chappell
22 responds as follows: Warner/Chappell will produce non-privileged documents, if
23 any, following a search of reasonable diligence, that relate to the lawsuits referred to
24 in Paragraphs 103 and 104 of Plaintiffs' operative Complaint.

25 **REQUEST FOR PRODUCTION NO. 9:**

26 All documents describing the corporate structure, relationship and
27 revenue sharing agreements and policies concerning *Happy Birthday to You*
28 between and among Warner/Chappell and Summy-Birchard.

Ex 95
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Subject to and without waiving those objections, Warner/Chappell responds as follows: Warner/Chappell will produce responsive, non-privileged documents, if any, following a search of reasonable diligence.

DATED: March 21, 2014

MUNGER, TOLLES & OLSON LLP

By: /s/ Kelly M. Klaus
KELLY M. KLAUS

Attorneys for Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc.

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PROOF OF SERVICE

*Good Morning to You Productions Corp., et al. v.
Warner/Chappel Music, Inc., et al.*
U.S. District Court Case No. CV 13-04460-GHK (MRWx)

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On March 21, 2014, I served true copies of the following document(s) described as

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

on the interested parties in this action as follows:

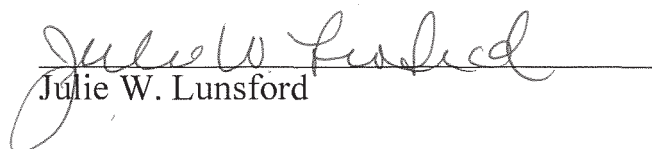
**** SEE ATTACHED SERVICE LIST ****

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid, as indicated on the attached service list.

BY ELECTRONIC MAIL: As indicated on attached Service List. I caused such document(s) to be sent by electronic mail for instantaneous transmittal via telephone line.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 21, 2014, at San Francisco, California.


Julie W. Lunsford