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and Summy-Birchard, Inc.

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA -**
 18 **WESTERN DIVISION**

19	GOOD MORNING TO YOU)	Lead Case No. CV 13-04460-GHK (MRWx)
20	PRODUCTIONS CORP., <i>et al.</i> ,)	AMENDED JOINT EVIDENTIARY APPENDIX IN SUPPORT OF NOTICE OF CROSS-MOTIONS AND CROSS- MOTIONS FOR SUMMARY JUDGMENT FILED PURSUANT TO COURT'S DEC. 5, 2014 ORDER [Dkt. 185] (VOLUME 1, EXS. 1-10, PAGES 1-220)
21	Plaintiffs,)	
22	v.)	
23	WARNER/CHAPPELL MUSIC,)	
24	INC., <i>et al.</i> ,)	
25)	Date: January 26, 2015
26	Defendants.)	Time: 9:30 a.m.
27)	Room: 650
28)	Judge: Hon. George H. King, Chief Judge

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Dated: December 17, 2014

Respectfully Submitted,

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DECLARATION REGARDING CONCURRENCE

I, Betsy C. Manifold, am the ECF User whose identification and password are being used to file this AMENDED JOINT EVIDENTIARY APPENDIX IN SUPPORT OF NOTICE OF CROSS-MOTIONS AND CROSS-MOTIONS FOR SUMMARY JUDGMENT FILED PURSUANT TO COURT'S DEC. 5, 2014 ORDER [Dkt. 185] (VOLUME 1, EXS. 1-10, PAGES 1-220). In compliance with Civil Local Rule 5-4.3.4(a)(2), I hereby attest that Kelly M. Klaus has concurred in this filing.

Executed this 17th day of December 2014, in the City of San Diego, State of California.

By: /s/Betsy C. Manifold
BETSY C. MANIFOLD

WARNER/CHAPPELL:21406v2.VOL.1

EXHIBIT 1

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6 [Additional Counsel on Signature Page]

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

10 GOOD MORNING TO YOU
11 PRODUCTIONS CORP.;
12 ROBERT SIEGEL;
13 RUPA MARYA; and
14 MAJAR PRODUCTIONS, LLC,
15 On Behalf of Themselves and All
Others Similarly Situated,

16 Plaintiffs,

17 v.

18
19 WARNER/CHAPPELL MUSIC,
20 INC.; and SUMMY-BIRCHARD,
INC.,

21 Defendants.
22
23
24

) Lead Case No. CV 13-04460-GHK (MRWx)
) **FOURTH AMENDED**
) **CONSOLIDATED COMPLAINT FOR:**
) **(1) DECLARATORY JUDGMENT**
) **(28 U.S.C. § 2201);**
) **(2) DECLARATORY AND**
) **INJUNCTIVE RELIEF AND**
) **DAMAGES (28 U.S.C. § 2202);**
) **(3) VIOLATIONS OF CALIFORNIA’S**
) **UNFAIR COMPETITION LAWS**
) **(Bus. & Prof. Code §§ 17200 et seq.);**
) **(4) BREACH OF CONTRACT;**
) **(5) COMMON LAW MONEY HAD**
) **AND RECEIVED;**
) **(6) RESCISSION FOR FAILURE OF**
) **CONSIDERATION; and**
) **(7) VIOLATIONS OF CALIFORNIA’S**
) **FALSE ADVERTISING LAWS**
) **(Bus. & Prof. Code §§ 17500 et seq.)**
)
) **CLASS ACTION**
) **DEMAND FOR JURY TRIAL**

1 Plaintiffs, Good Morning to You Productions Corp. (“GMTY”), Robert
2 Siegel (“Siegel”), Rupa Marya d/b/a/ Rupa Marya & The April Fishes (“Rupa”), and
3 Majar Productions, LLC (“Majar”) (collectively herein “Plaintiffs”), on behalf of
4 themselves and all others similarly situated, by their undersigned attorneys, as and
5 for their Fourth Amended Consolidated Complaint For: (1) Declaratory Judgment
6 (28 U.S.C. § 2201); (2) Declaratory and Injunctive Relief and Damages (28 U.S.C. §
7 2202); (3) Violations of California’s Unfair Competition Laws (Bus. & Prof. Code
8 §§ 17200 *et seq.*); (4) Breach of Contract; (5) Common Law Money Had and
9 Received; (6) Rescission for Failure of Consideration; and (7) Violations of
10 California’s False Advertising Laws (Bus. & Prof. Code §§ 17500 *et seq.*) against
11 defendants Warner/Chappell Music, Inc. (“Warner/Chappell”) and Summy-
12 Birchard, Inc. (“SBI”) (collectively “Defendants”), hereby allege as follows:

13 **JURISDICTION AND VENUE**

14 1. The Court has subject-matter jurisdiction over this action pursuant to
15 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory
16 and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant
17 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; pursuant to the Class
18 Action Fairness Act, 28 U.S.C. § 1332(d)(2); and supplemental jurisdiction pursuant
19 to 28 U.S.C. § 1367 over the entire case or controversy.

20 2. The Court has personal jurisdiction and venue is proper in this District
21 under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in
22 this Judicial District where both Defendants’ principal places of business are located
23 and where they regularly conduct business.

24 3. Paragraph 8 of the Film and Synchronization and Performance License
25 (“Synchronization License”) by and between assignee plaintiff Siegel and defendant
26 Warner/Chappell states: “this license has been entered into in, and shall be
27 interpreted in accordance with the laws of the state of California, and any action or
28

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1 proceeding concerning the interpretation and/or enforcement of this license shall be
2 heard only in the state or federal courts situated in Los Angeles county. . . .”
3 Defendant Warner/Chappell requires any action or proceeding related thereto to be
4 brought in this District under the Synchronization License.

5 **INTRODUCTION**

6 4. This is an action to declare that Defendants do not own a copyright to
7 the world’s most popular song, *Happy Birthday to You* (the “Song”), that if
8 Defendants own any copyright to the Song, it is limited to four specific piano
9 arrangements or an obscure second verse that has no commercial value, that any
10 other copyright to the Song that Defendants may own or ever owned are invalid or
11 have expired, and that the Song is dedicated to public use and in the public domain;
12 and in turn to declare that Defendants must return millions of dollars of unlawful
13 licensing fees collected by defendant Warner/Chappell pursuant to its wrongful
14 assertion of copyright ownership of the Song.

15 5. According to the United States Copyright Office (“Copyright Office”),
16 a “*musical composition* consists of music, including any accompanying words, and
17 is normally registered as a work of the performing arts.” Copyright Office Circular
18 56A, “Copyright Registration of Musical Compositions and Sound Recordings,” at 1
19 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a
20 musical composition generally is the composer, and the lyricist (if a different
21 person). *Id.*

22 6. More than 120 years after the melody to which the simple lyrics of
23 *Happy Birthday to You* is set was first published, defendant Warner/Chappell
24 boldly, but wrongfully and unlawfully, insists that it owns the copyright to *Happy*
25 *Birthday to You*, and with that copyright the exclusive right to authorize the Song’s
26 reproduction, distribution, and public performances pursuant to federal copyright
27 law. At all relevant times, Warner/Chappell declared in the first two sentences on
28 the “About Us” page of its website that “Warner/Chappell Music is [Warner Music

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1 Group]’s award-winning global music publishing company. The Warner/Chappell
2 Music catalog includes standards such as ‘Happy Birthday To You’ . . .” (*available*
3 *at* www.warnerchappell.com/about.jsp?currenttab=about_us as of June 18, 2013).
4 Defendant Warner/Chappell either has silenced those wishing to record or perform
5 *Happy Birthday to You*, or has extracted millions of dollars in unlawful licensing
6 fees from those unwilling or unable to challenge its ownership claims.

7 7. Irrefutable documentary evidence, some dating back to 1893, shows
8 that if defendant Warner/Chappell owned or owns any copyrights to *Happy Birthday*
9 *to You*, those rights were and are limited to the extremely narrow right to reproduce
10 and distribute specific piano arrangements for the Song, or an obscure second verse
11 that has no commercial value, which were published in 1935. That same evidence
12 also shows that if Warner/Chappell ever owned a copyright to any other part of the
13 Song, it was invalid or expired no later than 1921. Significantly, no court has ever
14 adjudicated either the scope or validity of the Defendants’ claimed interest in *Happy*
15 *Birthday to You*, nor in the Song’s melody or its familiar lyrics, which are,
16 themselves, independent works.

17 8. Various legal scholars and copyright and music industry experts agree
18 with the foregoing, questioning the validity of Defendants’ assertion of copyright in
19 the Song, and supporting the conclusion that *Happy Birthday* properly exists in the
20 public domain. For example, Professor Robert Brauneis, Professor of Law and Co-
21 Director of the Intellectual Property Law Program at George Washington
22 University, and a leading legal scholar in intellectual property law, has stated that it
23 is “doubtful” that *Happy Birthday* “is really still under copyright.”

24 9. Plaintiffs GMTY, Siegel, Rupa, and Majar, on behalf of themselves and
25 all others similarly situated, seek a declaration that *Happy Birthday to You* is
26 dedicated to public use and is in the public domain as well as monetary damages and
27 restitution of all the unlawful licensing fees that defendants have improperly
28 collected from Plaintiffs and all other Class members.

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PLAINTIFFS

1
2 10. Plaintiff GMTY is a New York corporation with its principal place of
3 business located in New York County. Under a claim of copyright by defendant
4 Warner/Chappell, on or about March 26, 2013, GMTY paid defendant
5 Warner/Chappell the sum of \$1,500 for a synchronization license to use *Happy*
6 *Birthday to You* and on or about April 24, 2013, GMTY entered into a
7 synchronization license with Warner/Chappell, as alleged more fully herein.

8 11. Plaintiff Robert Siegel is the assignee of BIG FAN PRODUCTIONS,
9 INC. (“BIG FAN”), an inactive New York corporation and a resident of New York,
10 New York. Under a claim of copyright by defendant Warner/Chappell, on or about
11 September 1, 2009, BIG FAN paid to defendant Warner/Chappell the sum of \$3,000
12 for the Synchronization Licenses to use *Happy Birthday to You*, as alleged more
13 fully herein. Plaintiff Siegel, the then-President of BIG FAN, was assigned BIG
14 FAN’s rights and claims, including those pertaining to the Synchronization License
15 pursuant to Paragraph 7 thereof between defendant Warner/Chappell and BIG FAN,
16 entered into on or about July 20, 2009.

17 12. Plaintiff Rupa is a musician and leader of the band entitled “Rupa &
18 The April Fishes” (“RTAF”), and a member of the American Society of Composers,
19 Authors and Publishers (“ASCAP”). Plaintiff Rupa is a resident of San Mateo
20 County, California. RTAF recorded *Happy Birthday to You* at a live show in San
21 Francisco, California, on April 27, 2013. Under a claim of copyright by defendant
22 Warner/Chappell, on or about June 17, 2013, plaintiff Rupa d/b/a RTAF paid to
23 defendant Warner/Chappell the sum of \$455 for a compulsory license pursuant to 17
24 U.S.C. § 115 (commonly known as a “mechanical license”) to use *Happy Birthday*
25 *to You*, as alleged more fully herein.

26 13. Plaintiff Majar is a Los Angeles-based film production company that
27 produced the award winning documentary film “*No Subtitles Necessary: L szl &*
28 *Vilmos*” (hereafter, “*No Subtitles Necessary*” or the “Film”). The Film follows the

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1 lives of renowned cinematographers László Kovacs (“Kovacs”) and Vilmos
2 Zsigmond (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
3 present day. As film students in Hungary, Kovacs and Zsigmond shot footage of the
4 Russian invasion of Budapest and subsequently risked their lives to smuggle it out
5 of the country. They fled to America and settled in Hollywood, eventually saving
6 enough money to buy their own 16mm camera to begin shooting movies. Both rose
7 to prominence in the late 1960’s and 1970’s having shot films such as “Easy Rider,”
8 “Five Easy Pieces,” “McCabe and Mrs. Miller,” “Deliverance,” “Paper Moon,” and
9 “Close Encounters of the Third Kind.” *No Subtitles Necessary* tells the story of
10 their lives and careers.

11 **DEFENDANTS**

12 14. Defendant Warner/Chappell is a Delaware corporation with its
13 principal place of business located at 10585 Santa Monica Boulevard, Los Angeles,
14 California 90025 and regularly conducts business within this Judicial District.

15 15. Defendant SBI is a Wyoming corporation with its principal place of
16 business located at 10585 Santa Monica Boulevard, Los Angeles, California 90025.
17 SBI regularly conducts business within this Judicial District, where it may be found.
18 On information and belief, SBI is a subsidiary of Warner/Chappell, having been
19 acquired by Warner/Chappell in or around 1998.

20 **FACTUAL BACKGROUND**

21 ***Good Morning to All and the Popular Adoption of Happy Birthday to You***

22 16. Sometime prior to 1893, Mildred J. Hill (“Mildred Hill”) and her sister
23 Patty Smith Hill (“Patty Hill”) (Mildred and Patty Hill are collectively referred to as
24 the “Hill Sisters”) authored a written manuscript containing sheet music for 73
25 songs composed or arranged by Mildred Hill, with words written and adapted by
26 Patty Hill.

27 17. The manuscript included *Good Morning to All*, a song written by the
28 Hill Sisters.

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1 18. On or about February 1, 1893, the Hill Sisters sold and assigned all
2 their right, title, and interest in the written manuscript to Clayton F. Summy
3 (“Summy”) in exchange for 10 percent of retail sales of the manuscript. The sale
4 included the song *Good Morning to All*.

5 19. In or around 1893, Summy published the Hill Sisters’ written
6 manuscript with an introduction by Anna E. Bryan (“Bryan”) in a songbook titled
7 *Song Stories for the Kindergarten*. *Song Stories for the Kindergarten* included the
8 song *Good Morning to All*.

9 20. On or about October 16, 1893, Summy filed a copyright application
10 (Reg. No. 45997) with the Copyright Office for *Song Stories for the Kindergarten*.

11 21. On the October 16, 1893, copyright application, Summy claimed to be
12 the copyright’s proprietor, but not the author of the copyrighted works.

13 22. *Song Stories for the Kindergarten* bears a copyright notice reading
14 “Copyright 1893, by Clayton F. Summy.”

15 23. As proprietor of the 1893 copyright in *Song Stories for the*
16 *Kindergarten*, Summy asserted copyright ownership in the compilation of songs, as
17 well as, the individual songs published therein, including *Good Morning to All*.

18 24. The lyrics to *Good Morning to All* are:

19 Good morning to you
20 Good morning to you
21 Good morning dear children
22 Good morning to all.
23

24 25. The lyrics to *Happy Birthday to You* are set to the melody from the
25 song *Good Morning to All*. As nearly everyone knows, the lyrics to *Happy Birthday*
26 *to You* are:

27 Happy Birthday to You
28 Happy Birthday to You

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1 Happy Birthday dear [NAME]

2 Happy Birthday to You.

3 26. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
4 *for the Kindergarten*.

5 27. On or about January 14, 1895, Summy incorporated the Clayton F.
6 Summy Company (“Summy Co.”) under the laws of the State of Illinois for a
7 limited term of 25 years. On that same date, Summy purported to assign all his
8 right, title, and interest in *Song Stories for the Kindergarten* to Summy Co.

9 28. In 1896, Summy published a new, revised, illustrated, and enlarged
10 version of *Song Stories for the Kindergarten*, which contained eight previously
11 unpublished songs written by the Hill Sisters as well as illustrations by Margaret
12 Byers.

13 29. On or about June 18, 1896, Summy filed a copyright application (Reg.
14 No. 34260) with the Copyright Office for the 1896 publication of *Song Stories for*
15 *the Kindergarten*.

16 30. On its June 18, 1896, copyright application, Summy again claimed to
17 be the copyright’s proprietor, but (again) not the author of the copyrighted works.

18 31. The 1896 version of *Song Stories for the Kindergarten* bears a
19 copyright notice reading “Copyright 1896, by Clayton F. Summy.”

20 32. As proprietor of the 1896 copyright in the revised *Song Stories for the*
21 *Kindergarten*, Summy owned the rights to both the songbook as a compilation and
22 the individual songs published therein, including *Good Morning to All*.

23 33. The lyrics to *Happy Birthday to You* were **not** published in the 1896
24 version of *Song Stories for the Kindergarten*.

25 34. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
26 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday*
27 *School*. One of those songs included in *Song Stories for the Sunday School* was
28

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1 *Good Morning to All*. And yet again, neither the song *Happy Birthday* nor the lyrics
2 to *Happy Birthday* were published in “*Song Stories for the Sunday School*.”

3 35. On or about March 20, 1899, Summy Co. filed a copyright application
4 (Reg. No. 20441) with the Copyright Office for *Song Stories for the Sunday School*.

5 36. On the 1899 copyright application, Summy Co. claimed to be the
6 copyright’s proprietor, but not the author of the copyrighted works.

7 37. The title page to *Song Stories for the Sunday School* states:

8 This collection of songs has been published in response to earnest requests
9 from various sources. They are taken from the book, *Song Stories for the*
10 *Kindergarten* by the MISSES HILL, and ***are the copyright property of the***
11 ***publishers***. (Emphasis added).

12 38. *Song Stories for the Sunday School* bears a copyright notice reading
13 “Copyright 1899 by Clayton F. Summy Co.”

14 39. As proprietor of the 1899 copyright in *Song Stories for the Sunday*
15 *School*, Summy Co. owned the rights to both the songbook as a compilation and the
16 individual songs published therein, including *Good Morning to All*.

17 40. The lyrics to *Happy Birthday to You* were ***not*** published in *Song Stories*
18 *for the Sunday School*.

19 41. Even though the lyrics to *Happy Birthday to You* and the song *Happy*
20 *Birthday to You* had not been fixed in a tangible medium of expression, the public
21 began singing *Happy Birthday to You* no later than the early 1900s.

22 42. For example, in the January 1901 edition of *Inland Educator and*
23 *Indiana School Journal*, the article entitled “First Grade Opening Exercises”
24 described children singing the words “happy birthday to you,” but did not print the
25 Song’s lyrics or melody.

26 43. In or about February, 1907, Summy Co. republished the song *Good*
27 *Morning to All* as an individual musical composition.

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1 44. On or about February 7, 1907, Summy Co. filed a copyright application
2 (Reg. No. 142468) with the Copyright Office for the song *Good Morning to All*.

3 45. The lyrics to *Happy Birthday to You* do **not** appear in the 1907
4 publication of *Good Morning to All*.

5 46. In 1907, Fleming H. Revell Co. (“Revell”) published the book *Tell Me*
6 *a True Story*, arranged by Mary Stewart, which instructed readers to:

7 Sing: “Good-bye to you, good-bye to you, good-bye dear children, good-
8 bye to you.” Also: “Good-bye dear teacher.” (From “Song Stories for the
9 Sunday-School,” published by Summy & Co.)

10 Sing: “Happy Birthday to You.” (Music same as “Good-bye to You.”)

11 47. On or about May 18, 1909, Revell filed an application (Reg. No.
12 A239690) with the Copyright Office for *Tell Me a True Story*.

13 48. *Tell Me a True Story* did **not** include the lyrics to *Happy Birthday to*
14 *You*.

15 49. Upon information and belief, the lyrics to *Happy Birthday to You*
16 (without the sheet music for the melody) were first published in 1911 by the Board
17 of Sunday Schools of the Methodist Episcopal Church (“Board of Sunday Schools”)
18 in *The Elementary Worker and His Work*, by Alice Jacobs and Ermina Chester
19 Lincoln, as follows:

20 Happy birthday to you, Happy birthday to you, Happy birthday, dear John,
21 Happy birthday to you. (Sung to the same tune as the “Good Morning”)
22 [NOTE: The songs and exercises referred to in this program may be found in
23 these books:... “Song Stories for the Sunday School,” by Patty Hill.]

24 50. On or about January 6, 1912, the Board of Sunday Schools filed a
25 copyright application (Reg. No. A303752) with the Copyright Office for *The*
26 *Elementary Worker and His Work*.

27 51. *The Elementary Worker and His Work* attributed authorship or
28 identified the copyrights to many of the works included in the book. Significantly, it

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1 did **not** attribute authorship or identify any copyright for the song *Happy Birthday to*
2 *You*.

3 52. On or about January 14, 1920, Summy Co. was dissolved in accordance
4 with its limited (not perpetual) 25-year term of incorporation. Summy Co. did not
5 extend or renew the 1893 (Reg. No. 45997) or 1907 (Reg. No. 142468) copyrights
6 prior to its dissolution.

7 53. Upon information and belief, by 1912, various companies (such as
8 Cable Company Chicago) had begun producing unauthorized printings of sheet
9 music which included the song known today as *Happy Birthday* (*i.e.*, the melody of
10 Good Morning to You with the lyrics changed to those of *Happy Birthday*). On
11 information and belief, Cable Company Chicago never asserted copyright ownership
12 in *Happy Birthday*.

13 ***Copyright History of Good Morning to All***

14 54. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
15 to the original *Song Stories for the Kindergarten*, *Song Stories for the Sunday*
16 *School*, and *Good Morning to All* were vested solely in their proprietor, Summy Co.

17 55. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
18 to the revised *Song Stories for the Kindergarten* were vested solely in their
19 proprietor, Summy Co.

20 56. The copyright to the original *Song Stories for the Kindergarten* (Reg.
21 No. 45997) was not extended by Summy Co., and consequently expired on October
22 16, 1921. The original *Song Stories for the Kindergarten*, including the song *Good*
23 *Morning to All*, became dedicated to public use and fell into the public domain by
24 no later than that date.

25 57. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
26 No. 34260) was not extended by Summy, and consequently expired on June 18,
27 1924. The revised *Song Stories for the Kindergarten* became dedicated to public
28 use and fell into the public domain by no later than that date.

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1 58. In or around March 1924, the sheet music (with accompanying lyrics)
2 to *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
3 compiled, and edited by Robert H. Coleman (“Coleman”). Upon information and
4 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*
5 *You* were published together.

6 59. Coleman did not claim authorship of the song entitled *Good Morning*
7 *to You* or the lyrics to *Happy Birthday to You*. Although *Harvest Hymns* attributed
8 authorship or identified the copyrights to many of the works included in the book, it
9 did **not** attribute authorship or identify any copyright for *Good Morning to You* or
10 *Happy Birthday to You*.

11 60. On or about March 4, 1924, Coleman filed a copyright application
12 (Reg. No. A777586) with the Copyright Office for *Harvest Hymns*. On or about
13 February 11, 1952, the copyright was renewed (Reg. No. R90447) by the Sunday
14 School Board of the Southern Baptist Convention.

15 61. On or about April 15, 1925, Summy incorporated a new Clayton F.
16 Summy Co. (“Summy Co. II”) under the laws of the State of Illinois. Upon
17 information and belief, Summy Co. II was not a successor to Summy Co.; rather, it
18 was incorporated as a new corporation.

19 62. The sheet music (with accompanying lyrics) to *Happy Birthday to You*
20 was again published in 1928 in the compilation *Children’s Praise and Worship*,
21 compiled and edited by A.L. Byers, Bessie L. Byrum, and Anna E. Koglin (“Byers,
22 Byrum & Koglin”). Upon information and belief, *Children’s Praise and Worship*
23 was the first time the song was published under the title *Happy Birthday to You*.

24 63. On or about April 7, 1928, Gospel Trumpet Co. (“Gospel”) filed a
25 copyright application (Reg. No. A1068883) with the Copyright Office for
26 *Children’s Praise and Worship*.

27 64. *Children’s Praise and Worship* attributed authorship or identified the
28 copyrights to many of the works included in the book. Significantly, it did **not**

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1 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

2 65. *Children's Praise and Worship* did not provide any copyright notice for
3 the combination of *Good Morning to All* with the lyrics to *Happy Birthday to You*,
4 nor did it include the names of Mildred Hill or Patty Hill and did not attribute any
5 authorship or ownership to the Hill Sisters.

6 66. Upon information and belief, the Hill Sisters had not fixed the lyrics to
7 *Happy Birthday to You* or the song *Happy Birthday to You* in a tangible medium of
8 expression, if ever, at any time before Gospel published *Children's Praise and*
9 *Worship* in 1928.

10 67. Upon information and belief, Summy sold Summy Co. II to John F.
11 Sengstack ("Sengstack") in or around 1930.

12 68. Upon information and belief, on or about August 31, 1931, Sengstack
13 incorporated a third Clayton F. Summy Co. ("Summy Co. III") under the laws of the
14 State of Delaware. Upon information and belief, Summy Co. III was not a
15 successor to Summy Co. or Summy Co. II; rather, it was incorporated as a new
16 corporation.

17 69. On May 17, 1933, Summy Co. II was dissolved for failure to pay taxes.

18 70. On July 28, 1933, *Happy Birthday to You* was used in the world's first
19 singing telegram.

20 71. On September 30, 1933, the Broadway show *As Thousands Cheer*,
21 produced by Sam Harris with music and lyrics written by Irving Berlin, began using
22 the song *Happy Birthday to You* in public performances.

23 72. On August 14, 1934, Jessica Hill, a sister of Mildred Hill and Patty
24 Hill, commenced an action against Sam Harris in the Southern District of New
25 York, captioned *Hill v. Harris*, Eq. No. 78-350, claiming that the performance of
26 *Happy to Birthday to You* in *As Thousands Cheer* infringed on the Hill Sisters' 1893
27 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no claim in that
28 action regarding *Happy Birthday to You*, alone or in combination with *Good*

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1 *Morning to All.*

2 73. On January 21, 1935, Jessica Hill commenced an action against the
3 Federal Broadcasting Corp. in the Southern District of New York, captioned *Hill v.*
4 *Federal Broadcasting Corp.*, Eq. No. 79-312, claiming infringement on the Hill
5 Sisters' 1893 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no
6 claim in that action regarding *Happy Birthday to You*, alone or in combination with
7 *Good Morning to All*.

8 74. In 1934 and 1935, Jessica Hill sold and assigned to Summy Co. III
9 certain piano arrangements of *Good Morning to All*, including publishing, public
10 performance, and mechanical reproduction rights, copyright, and extension of
11 copyright in exchange for a percentage of the retail sales revenue from the sheet
12 music.

13 ***Applications for Copyright for New Musical Arrangement***

14 75. On or about December 29, 1934, Summy Co. III filed an Application
15 for Copyright for Republished Musical Composition with new Copyright Matter
16 (Reg. No. E45655) with the Copyright Office for the song *Happy Birthday*.

17 76. In that December 1934 Application for Copyright, Summy Co. III
18 claimed to be the proprietor of the copyright as a work for hire by Preston Ware
19 Orem ("Orem") and claimed the copyrighted new matter as "arrangement by piano
20 solo."

21 77. The lyrics to *Happy Birthday to You* were not included on the work
22 registered with the Copyright Office as Reg. No. E45655. The application did not
23 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
24 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
25 *to All*.

26 78. The work registered with the Copyright Office as Reg. No. E45655 was
27 not eligible for federal copyright protection in that it consisted entirely of
28 information that was common property and contained no original authorship, except

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1 as to the arrangement itself.

2 79. On or about February 18, 1935, Summy Co. III filed an Application for
3 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
4 No. E46661) with the Copyright Office for the song *Happy Birthday*.

5 80. In that February 1935 Application for Copyright, Summy Co. III
6 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
7 the copyrighted new matter as “arrangement for four hands at one piano.”

8 81. The lyrics to *Happy Birthday to You* were not included on the work
9 registered with the Copyright Office as Reg. No. E46661. The application did not
10 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
11 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
12 *to All*.

13 82. The work registered with the Copyright Office as Reg. No. E46661 was
14 not eligible for federal copyright protection in that it consisted entirely of
15 information that was common property and contained no original authorship, except
16 as to the arrangement itself.

17 83. On or about April 5, 1935, Summy Co. III filed an Application for
18 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
19 No. E47439) with the Copyright Office for the song *Happy Birthday*.

20 84. In that April 1935 Application for Copyright, Summy Co. III claimed
21 to be the proprietor of the copyright as a work for hire by Orem and claimed the
22 copyrighted new matter as “arrangement of second piano part.”

23 85. The lyrics to *Happy Birthday to You* were not included on the work
24 registered with the Copyright Office as Reg. No. E47439. The application did not
25 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
26 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
27 *to All*.

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1 86. The work registered with the Copyright Office as Reg. No. E47439 was
2 not eligible for federal copyright protection in that it consisted entirely of
3 information that was common property and contained no original authorship, except
4 as to the arrangement itself.

5 87. On or about April 5, 1935, Summy Co. III filed an Application for
6 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
7 No. E47440) with the Copyright Office for the song *Happy Birthday*.

8 88. In that additional April 1935 Application for Copyright, Summy Co. III
9 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
10 the copyrighted new matter as “arrangement for six hands at one piano.”

11 89. The lyrics to *Happy Birthday to You* were not included on the work
12 registered with the Copyright Office as Reg. No. E47440. The application did not
13 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
14 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
15 *to All*.

16 90. The work registered with the Copyright Office as Reg. No. E47440 was
17 not eligible for federal copyright protection in that it consisted entirely of
18 information that was common property and contained no original authorship, except
19 as to the arrangement itself.

20 91. On December 9, 1935, Summy Co. III filed an Application for
21 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
22 No. E51988) with the Copyright Office for *Happy Birthday to You*.

23 92. In that December 1935 Application for Copyright, Summy Co. III
24 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
25 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
26 Chorus and revised text.” Upon information and belief, Plaintiffs allege that
27 Forman did not write the familiar first verse lyrics to *Happy Birthday to You*. The
28 sheet music deposited with the application credited Forman only for the

Ex. 1

1 arrangement and for the obscure second verse lyrics that lack commercial value, not
2 for the familiar first verse lyrics, and did not credit the Hill Sisters with writing the
3 lyrics to *Happy Birthday to You*.

4 93. For the first time, the lyrics to *Happy Birthday to You*, including an
5 obscure second verse that lacks commercial value as the revised text, were included
6 on the work registered with the Copyright Office as Reg. No. E51988. However,
7 the December 1935 Application for Copyright did not attribute authorship of the
8 lyrics to either of the Hill Sisters and did not claim copyright in the familiar first
9 verse lyrics to *Happy Birthday to You* alone or in combination with the melody of
10 *Good Morning to All*.

11 94. The work registered with the Copyright Office as Reg. No. E51988 was
12 expressly limited in scope and neither claimed nor provided copyright protection to
13 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
14 with the Copyright Office as Reg. No. E51988 had claimed copyright protection to
15 those familiar lyrics, that work was not eligible for federal copyright protection in
16 that it consisted entirely of work that was common property and contained no
17 original authorship, except as to the sheet music arrangement itself.

18 95. Based upon information and belief, the work registered as Reg. No.
19 E51988 was not eligible for federal copyright protection because Summy Co. III did
20 not have authorization from the author to publish any part of that work except as to
21 the arrangement and the obscure second verse.

22 96. On December 9, 1935, Summy Co. III filed an Application for
23 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
24 No. E51990) with the Copyright Office for *Happy Birthday to You*.

25 97. In that additional December 1935 Application for Copyright, Summy
26 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
27 claimed the copyrighted new matter as “arrangement as easy piano solo, with text.”
28 Upon information and belief, Plaintiffs allege that Orem did not write the familiar

Ex. 1

1 lyrics to *Happy Birthday to You*. Upon information and belief, Plaintiffs also allege
2 that the sheet music deposited with the application did not credit either Orem or the
3 Hill Sisters for writing the lyrics to *Happy Birthday to You*.

4 98. Some lyrics to *Happy Birthday to You* may have been included on the
5 work registered with the Copyright Office as Reg. No. E51990. However, the
6 additional December 1935 Application for Copyright did not attribute authorship of
7 the lyrics to either of the Hill Sisters, did not contain the names of either of the Hill
8 Sisters, and did not claim any copyright in the lyrics to *Happy Birthday to You* alone
9 or in combination with the melody of *Good Morning to All*.

10 99. The work registered with the Copyright Office as Reg. No. E51990 was
11 expressly limited in scope and neither claimed nor provided copyright protection to
12 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
13 with the Copyright Office as Reg. No. E51990 had claimed copyright protection to
14 those familiar lyrics, that work was not eligible for federal copyright protection in
15 that it consisted entirely of information that was common property and contained no
16 original authorship, except as to the sheet music arrangement itself.

17 100. Based upon information and belief, the work registered as Reg. No.
18 E51990 was not eligible for federal copyright protection because Summy Co. III did
19 not have authorization from the author to publish any part of that work except as to
20 the arrangement.

21 101. Based upon information and belief, in or about February, 1938, Summy
22 Co. III purported to grant to ASCAP the right to license *Happy Birthday to You* for
23 public performances and to collect fees for such use on behalf of Summy Co. III.
24 ASCAP thus began working as agent for Summy Co. III in collecting fees for
25 Summy Co. III for licensing *Happy Birthday to You*.

26 102. On or about June 8, 1942, Patty Hill and Jessica Hill assigned all of
27 their interest in the 1893, 1896, 1899 and 1907 copyrights to The Hill Foundation.

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Ex. 1

1 103. On October 15, 1942, The Hill Foundation commenced an action
2 against Summy Co. III in the Southern District of New York, captioned *The Hill*
3 *Foundation, Inc. v. Clayton F. Summy Co.*, Case No. 19-377, for an accounting of
4 the royalties received by Summy Co. III for the licensing of *Happy Birthday to You*.
5 The Hill Foundation asserted claims under the 1893, 1896, 1899, and 1907
6 copyrights for *Good Morning to All* and did *not* claim any copyright to the lyrics to
7 *Happy Birthday to You*, alone or in combination with the melody of *Good Morning*
8 *to All*.

9 104. On March 2, 1943, The Hill Foundation commenced an action against
10 the Postal Telegraph Cable Company in the Southern District of New York,
11 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
12 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
13 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
14 1896, and 1899 copyrights for *Good Morning to All* and did *not* claim any copyright
15 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
16 *Good Morning to All*.

17 105. Despite the filing of at least four prior cases in the Southern District of
18 New York asserting copyrights to *Good Morning to All*, there has been no judicial
19 determination of the validity or scope of any copyright related to *Good Morning to*
20 *All*.

21 106. In or about 1957, Summy Co. III changed its name to Summy-Birchard
22 Company.

23 107. In 1962, Summy Co. III (renamed as Summy-Birchard Company) filed
24 renewals for each of the six registrations it obtained in 1934 and 1935 (Reg. Nos.
25 E45655, E46661, E47439, E47440, E51988, and E51990), each renewal was
26 specifically and expressly confined to the musical arrangements.

27 108. In particular, on December 6, 1962, Summy Co. III filed a renewal
28 application for Reg. No. E51988, as employer for hire of Forman. Forman did not

Ex. 1

1 write the familiar first verse lyrics to *Happy Birthday to You* or the combination of
2 those lyrics with the melody of *Good Morning to All*, and neither Summy Co. III nor
3 Defendants have claimed otherwise.

4 109. Also on December 6, 1962, Summy Co. III filed a renewal application
5 for Reg. No. E51990, as employer for hire of Orem. Orem did not write the lyrics to
6 *Happy Birthday to You* or the combination of those lyrics with the melody of *Good*
7 *Morning to All*, and neither Summy Co. III nor Defendants have claimed otherwise.

8 110. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
9 and was acquired by Warner/Chappell in or about 1998. On information and belief,
10 this entity now operates as “Summy Birchard, Inc.” – currently a subsidiary of
11 Warner/Chappell and Warner/Chappell’s co-defendant herein.

12 ***Happy Birthday to You – 100 Years Later***

13 111. According to a 1999 press release by ASCAP, *Happy Birthday to You*
14 was the most popular song of the 20th Century.

15 112. The 1998 edition of the *Guinness Book of World Records* identified
16 *Happy Birthday to You* as the most recognized song in the English language.

17 113. Defendant Warner/Chappell currently claims it owns the exclusive
18 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
19 Co. III published in 1935.

20 114. ASCAP provides non-dramatic public performance licenses to bars,
21 clubs, websites, and many other venues. ASCAP “blanket licenses” grant the
22 licensee the right to publicly perform any or all of the over 8.5 million songs in
23 ASCAP’s repertory in exchange for an annual fee. The non-dramatic public
24 performance license royalties are distributed to ASCAP members based on surveys
25 of performances of each ASCAP repertory song across different media. As an
26 ASCAP member and assignee of the copyrights in *Happy Birthday to You*,
27 Defendant Warner/Chappell obtains a share of blanket license revenue that would
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Ex. 1

1 otherwise be paid to all other ASCAP members, in proportion to their songs' survey
2 shares.

3 ***Plaintiff GMTY's Use of Happy Birthday to You***

4 115. Plaintiff GMTY is producing a documentary movie, tentatively titled
5 ***Happy Birthday***, about the song ***Happy Birthday to You***.

6 116. In one of the proposed scenes to be included in ***Happy Birthday***, the
7 song ***Happy Birthday to You*** is to be sung.

8 117. During the production process, plaintiff GMTY learned that defendant
9 Warner/Chappell claimed exclusive copyright ownership to ***Happy Birthday to You***.

10 118. Accordingly, in September 2012, plaintiff requested a quote from
11 Warner/Chappell for a synchronization license to use ***Happy Birthday to You*** from
12 Warner/Chappell's website.

13 119. On or about September 18, 2012, defendant Warner/Chappell
14 responded to plaintiff GMTY's inquiry by demanding that GMTY pay it the sum of
15 \$1,500 and enter into a synchronization license agreement to use ***Happy Birthday to***
16 ***You***.

17 120. On or about March 12, 2013, defendant Warner/Chappell again
18 contacted plaintiff GMTY and insisted that GMTY was not authorized to use ***Happy***
19 ***Birthday to You*** unless it paid the licensing fee of \$1,500 and entered into the
20 synchronization license that Warner/Chappell demanded.

21 121. Because defendant Warner/Chappell notified plaintiff GMTY that it
22 claimed exclusive copyright ownership of ***Happy Birthday to You***, GMTY faced a
23 statutory penalty of up to \$150,000 under the Copyright Act if it used the song
24 without Warner/Chappell's permission if Warner/Chappell, in fact, owned the
25 copyright that it claimed.

26 122. Faced with a threat of substantial penalties for copyright infringement,
27 on or about March 26, 2013, plaintiff GMTY was forced to and did pay defendant
28 Warner/Chappell the sum of \$1,500 for a synchronization license and, on or about

Ex. 1

1 April 24, 2013, GMTY was forced to and did enter into the synchronization license
2 agreement to use *Happy Birthday to You*.

3 ***Plaintiff Siegel's Use of Happy Birthday to You***

4 123. BIG FAN produced a movie titled *Big Fan*.

5 124. In one of the scenes in *Big Fan*, the familiar lyrics of the song *Happy*
6 *Birthday to You* was sung by the actors.

7 125. (a) In the early summer of 2009, after filming was complete but
8 before *Big Fan* was released, BIG FAN retained the services of a music
9 supervisor to secure the rights to all the music that was used in the movie.

10 (b) The music supervisor identified which music was
11 copyrighted, and advised BIG FAN that it would have to obtain a license
12 from Warner/Chappell and pay a fee to Warner/Chappell to perform
13 *Happy Birthday to You* in the movie because Warner/Chappell
14 claimed to own the exclusive copyright to the Song.

15 (c) Reasonably relying upon the information provided by the
16 music producer regarding the copyright claim by Warner/Chappell, BIG
17 FAN reasonably believed that Warner/Chappell owned the copyright to
18 *Happy Birthday to You*, and would have to obtain a synchronization
19 license from and pay a fee to Warner/Chappell to use the Song in the
20 movie.

21 126. Accordingly, in July 2009, BIG FAN requested that the music
22 supervisor obtain a quote from Warner/Chappell for a Synchronization License to
23 use *Happy Birthday to You* in *Big Fan*.

24 127. On or about July 20, 2009, defendant Warner/Chappell responded to
25 the music supervisor by demanding that BIG FAN pay it the sum of \$3,000 and
26 enter into a synchronization license for use of *Happy Birthday to You*.

27 128. Because Defendant Warner/Chappell notified BIG FAN through the
28 music supervisor that it claimed exclusive copyright ownership of *Happy Birthday*

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1 *to You*, BIG FAN faced a statutory penalty of \$150,000 under the Copyright Act if
2 BIG FAN used the Song without Warner/Chappell's permission and
3 Warner/Chappell, in fact, owned the copyright that it claimed.

4 129. On July 20, 2009, Plaintiff Siegel as President of BIG FAN executed
5 the synchronization license with Warner/Chappell and agreed to pay \$3,000 based
6 upon *Big Fan's* theatrical release.

7 130. (a) Faced with a threat of substantial penalties for copyright
8 infringement, on or about September 1, 2009, BIG FAN was forced to, and
9 did, pay defendant Warner/Chappell the sum of \$3,000 pursuant to the
10 synchronization license.

11 (b) BIG FAN, the music producer it hired, and Plaintiff Siegel
12 did not know, and had no reason to know, that Warner/Chappell did not
13 own any copyright to *Happy Birthday to You*, that the rights
14 Warner/Chappell could claim were limited just to the piano arrangements
15 or the obscure second verse of the Song (which was not performed in *Big*
16 *Fan*), or that any copyright other than that was invalid or expired.

17 (c) BIG FAN, the music producer it hired, and Plaintiff Siegel
18 had no reason to question Warner/Chappell's claim to own the copyright
19 to the Song.

20 (d) Warner/Chappell did not specify which registration(s) or
21 renewal(s) thereof under which it claimed a copyright to *Happy Birthday*
22 *to You*, and thus BIG FAN, the music producer it hired, and Plaintiff
23 Siegel could not investigate Warner/Chappell's claim to determine
24 whether Warner Chappell owned the copyright it claimed or whether that
25 copyright was valid.

26 (e) The commencement of this action on or about June 13, 2013,
27 was widely reported in the press. Prior to the date when the press first
28 reported the claims asserted herein, no one in the position of BIG FAN, the

Ex. 1

1 music producer hired by BIG FAN, or Plaintiff Siegel would know, or
2 have any reason to know, that Warner/Chappell’s copyright claim for
3 *Happy Birthday to You* was in doubt.

4 (f) Plaintiff Siegel learned of the commencement of this action
5 on or about June 14, 2013, from the press reports. Before then, BIG FAN,
6 the music producer it hired, and Plaintiff Siegel did not know, and had no
7 reason to know, that Warner/Chappell’s copyright claim for *Happy*
8 *Birthday to You* had been disputed by anyone or was in doubt.

9 (g) Shortly thereafter, on or about June 19, 2013, and
10 significantly less than three years after he knew or reasonably could or
11 should have known that Warner/Chappell does not own a copyright to the
12 Song, or that its copyright is not valid, plaintiff Siegel commenced a
13 separate class action in Los Angeles County pursuant to the terms of the
14 Synchronization License.

15 ***Rupa’s Performance of Happy Birthday to You***

16 131. Plaintiff Rupa d/b/a RTAF recorded the song *Happy Birthday to You* at
17 a live show in San Francisco, to be released as part of a “live” album. She learned
18 that defendant Warner/Chappell claimed exclusive copyright ownership to *Happy*
19 *Birthday to You*, including the right to issue mechanical licenses.

20 132. Section 115 of the Copyright Act provides for compulsory licenses for
21 the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, Web-based
22 “downloads”) of musical compositions. Failure to obtain such a license prior to
23 distribution of a cover version of a song constitutes a copyright infringement subject
24 to the full remedies of the Copyright Act.

25 133. Accordingly, on June 17, 2013, Plaintiff Rupa provided a Notice of
26 Intention to Obtain Compulsory License to Warner/Chappell and paid
27 Warner/Chappell \$455 for a mechanical license for the reproduction and distribution
28 of 5,000 copies of the Song.

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1 ***Plaintiff Majar Use of Happy Birthday to You***

2 134. (a) Plaintiff Majar produced the Film entitled “*No Subtitles*
3 *Necessary: L szl & Vilmos.*” The Film follows the lives of renowned
4 cinematographers László Kovacs (“Kovacs”) and Vilmos Zsigmond
5 (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
6 present day.

7 (b) Plaintiff Majar wished to use the *Happy Birthday to You* in
8 the opening scene of the Film, wherein Zsigmond and others sang the
9 Song to Kovacs in a celebration of Kovacs’ life and the friendship of the
10 two, thereby setting the tone for the Film.

11 (c) In or around the fall of 2008, during production of the Film,
12 Plaintiff Majar learned from the music clearance supervisor working on
13 the Film that defendant Warner/Chappell claimed exclusive copyright
14 ownership to *Happy Birthday to You*, including for purposes of issuing
15 synchronization licenses, and that if Majar wished to include the Song in
16 the Film, a license would have to be procured and a fee be paid to
17 Warner/Chappell. The director of the Film, James Chressanthis, spoke to
18 experienced producers in the industry, who confirmed that it was common
19 knowledge within the entertainment industry that Warner/Chappell widely
20 claimed exclusive copyright ownership of the Song.

21 (d) Accordingly, upon making the final determination to include
22 use of the Song in the Film, Plaintiff Majar proceeded to obtain a license
23 for the Song from Warner/Chappell. Indeed, Warner/Chappell held itself
24 out to Plaintiff Majar as the exclusive owner of the copyright in the Song
25 (although it did not specify which registration number(s) or renewal
26 number(s) under which it claimed to own a copyright). Thus, on or about
27 October 29, 2009, Plaintiff Majar paid to defendant Warner/Chappell the
28 sum of \$5,000 for a synchronization license to use *Happy Birthday* in the

Ex. 1

1 Film. At the time, Plaintiff Majar did not question and had no reason to
2 question Warner/Chappell’s claim of copyright ownership. Moreover,
3 Plaintiff Majar is informed and believes that Warner/Chappell continued to
4 hold itself out as the exclusive copyright owner of the Song for years after
5 Majar licensed it.

6 (e) Because Defendant Warner/Chappell claimed exclusive
7 copyright ownership of *Happy Birthday to You*, Plaintiff Majar faced a
8 statutory penalty of \$150,000 under the Copyright Act, 17 U.S.C. § 101 *et*
9 *seq.*, if it used the Song without Warner/Chappell’s permission and
10 Warner/Chappell, in fact, owned the copyright that it claimed.

11 (f) Plaintiff Majar did not question, and had no reason to
12 question, on October 29, 2009 (and continuing thereafter),
13 Warner/Chappell’s claim to own the copyright to the Song. Moreover,
14 Plaintiff Majar did not know, and had no reason to know, on October 29,
15 2009 (and continuing thereafter), that Warner/Chappell’s copyright claim
16 for *Happy Birthday to You* had been disputed by anyone.

17 (g) Plaintiff Majar only first learned that Warner/Chappell’s
18 claim of exclusive copyright ownership in the Song was subject to dispute
19 when news of the same was published in a *New York Times* article on June
20 13, 2013. Plaintiff Majar contacted counsel and joined as a plaintiff in this
21 action promptly thereafter.

22 **CLASS ALLEGATIONS**

23 135. Plaintiffs GMTY, Siegel, Rupa, and Majar bring this action pursuant to
24 Rule 23(a)-(b) of the Federal Rules of Civil Procedure as a class action on behalf of
25 themselves and all others similarly situated for the purpose of asserting the claims
26 alleged in this Consolidated Fourth Amended Complaint on a common basis.

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1 136. The proposed Class is comprised of:

2 **All persons or entities (excluding Defendants' directors, officers,**
3 **employees, and affiliates) who entered into a license with**
4 **Warner/Chappell, or paid Warner/Chappell or SBI, directly or**
5 **indirectly through its agents, a licensing fee for the song *Happy***
6 ***Birthday to You* at any time from June 18, 2009, until Defendants'**
7 **conduct as alleged herein has ceased.**

8 137. Although Plaintiffs GMTY, Siegel, Rupa, and Majar do not know the
9 exact size of the Class or the identities of all members of the Class, upon
10 information and belief that information can be readily obtained from the books and
11 records of defendant Warner/Chappell. Plaintiffs believe that the Class includes
12 thousands of persons or entities who are widely geographically disbursed. Thus, the
13 proposed Class is so numerous that joinder of all members is impracticable.

14 138. The claims of all members of the Class involve common questions of
15 law and fact including:

- 16 a. whether *Happy Birthday to You* is in the public domain and dedicated
17 to public use;
- 18 b. whether the 1935 copyrights claimed by Warner/Chappell cover the
19 popular lyrics to *Happy Birthday to You*;
- 20 c. whether the 1935 copyrights claimed by Warner/Chappell are valid;
- 21 d. whether Warner/Chappell is the exclusive owner of the copyright to
22 *Happy Birthday to You* and is thus entitled to all of the rights conferred
23 in 17 U.S.C. § 102;
- 24 e. whether Warner/Chappell has the right to collect fees for the use of
25 *Happy Birthday to You*;
- 26 f. whether Warner/Chappell has violated the law by demanding and
27 collecting fees for the use of *Happy Birthday to You* despite not having
28 a valid copyright to the song; and

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1 g. whether Warner/Chappell is required to return unlawfully obtained
2 payments to plaintiffs GMTY, Siegel, Rupa and Majar and the other
3 members of the Class and, if so, what amount is to be returned.

4 139. With respect to Claims III and VII, the common questions of law and
5 fact predominate over any potential individual issues.

6 140. Plaintiffs GMTY, Siegel, Rupa and Majar's claims are typical of the
7 claims of all other members of the Class and plaintiffs GMTY, Siegel, Rupa and
8 Majar's interests do not conflict with the interests of any other member of the Class,
9 in that plaintiffs and the other members of the Class were subjected to the same
10 unlawful conduct.

11 141. Plaintiffs GMTY, Siegel, Rupa and Majar are committed to the
12 vigorous prosecution of this action and have retained competent legal counsel
13 experienced in class action and complex litigation.

14 142. Plaintiffs are adequate representatives of the Class and, together with
15 their attorneys, are able to and will fairly and adequately protect the interests of the
16 Class and its members.

17 143. A class action is superior to other available methods for the fair, just,
18 and efficient adjudication of the claims asserted herein. Joinder of all members of
19 the Class is impracticable and, for financial and other reasons, it would be
20 impractical for individual members of the Class to pursue separate claims.

21 144. Moreover, the prosecution of separate actions by individual members
22 of the Class would create the risk of varying and inconsistent adjudications, and
23 would unduly burden the courts.

24 145. Plaintiffs GMTY, Siegel, Rupa and Majar anticipate no difficulty in the
25 management of this litigation as a class action.

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FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201
(On Behalf Of Plaintiffs And The Class)
(Against All Defendants)

146. Plaintiffs repeat and reallege paragraphs 1 through 145 set forth above as though they were fully set forth herein.

147. Plaintiffs bring these claims individually on behalf of themselves and on behalf of the proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

148. Plaintiffs seek adjudication of an actual controversy arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants' purported copyright claim to *Happy Birthday to You*. Plaintiffs seek the Court's declaration that the Copyright Act does not bestow upon Warner/Chappell and/or SBI the rights it has asserted and enforced against plaintiffs and the other members of the Class. This is because *either*: (a) the 1935 registrations E51988 and E51990, under which Warner/Chappell claims those copyrights, and the resulting copyrights do not purport to cover and do not cover the familiar lyrics to *Happy Birthday to You*, but instead are limited just to the particular arrangements written by Forman or Orem (and, in the case of E51988, the obscure second verse which has no commercial value); *or* (b) if and to the extent that those copyrights purport to cover the familiar lyrics to *Happy Birthday to You*, the copyrights are invalid or have expired.

149. Defendants assert that they are entitled to mechanical and performance royalties pursuant to 17 U.S.C. § 115 for the creation and distribution of phonorecords and digital downloads of the composition *Happy Birthday to You*, under threat of a claim of copyright infringement.

150. Defendant Warner/Chappell demanded that plaintiff GMTY enter into a synchronization license agreement to use *Happy Birthday to You* and pay Warner/Chappell the sum of \$1,500 for that synchronization license based upon its

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1 claim of copyright ownership. Warner/Chappell's demand was coercive in nature,
2 and GMTY's entering into the license agreement and payment of \$1,500 was
3 involuntary.

4 151. Plaintiff GMTY's claim presents a justiciable controversy because
5 plaintiff GMTY's agreement to pay defendant Warner/Chappell and its actual
6 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film
7 was the involuntary result of Warner/Chappell's assertion of a copyright and the risk
8 that plaintiff GMTY would be exposed to substantial statutory penalties under the
9 Copyright Act had it failed to enter such an agreement and pay Warner/Chappell the
10 price it demanded.

11 152. Defendant Warner/Chappell demanded that BIG FAN as assignor of
12 plaintiff Siegel enter into the Synchronization License agreement to use *Happy*
13 *Birthday to You* and pay Warner/Chappell the sum of \$3,000 for that
14 Synchronization License based upon its claim of copyright ownership.
15 Warner/Chappell's demand was coercive in nature, and BIG FAN'S entering into
16 the Synchronization License and payment of \$3,000 was involuntary.

17 153. Plaintiff Siegel's claim presents a justiciable controversy because
18 plaintiff Siegel's agreement to pay defendant Warner/Chappell and its actual
19 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film
20 *Big Fan*, was the involuntary result of Warner/Chappell's assertion of a copyright
21 and the risk that plaintiff Siegel would be exposed to substantial statutory penalties
22 under the Copyright Act had it failed to enter such an agreement and pay
23 Warner/Chappell the price it demanded, but then used *Happy Birthday to You* in its
24 film anyway.

25 154. Plaintiff Rupa's claim presents a justiciable controversy because
26 plaintiff Rupa's agreement to pay defendant Warner/Chappell and its actual
27 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in her
28 album, was the involuntary result of Warner/Chappell's assertion of a copyright and

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1 the risk that plaintiff Rupa would be exposed to substantial statutory penalties under
2 the Copyright Act had she failed to enter such an agreement and pay
3 Warner/Chappell standard mechanical license royalties it demanded, but then paid
4 for the mechanical license anyway.

5 155. Defendants demanded that Plaintiff Majar pay to Defendants a
6 licensing fee in the sum of \$5,000 pursuant to Defendants' claim of copyright
7 ownership, in order for Plaintiff Majar to use *Happy Birthday* in the Film.
8 Defendants' demand was coercive in nature and Majar's agreement to pay the fee
9 was involuntary.

10 156. Plaintiff Majar's claim presents a justiciable controversy because its
11 actual payment of Defendants' demanded fee to use *Happy Birthday* in the Film was
12 the involuntary result of Defendants' assertion of a copyright and the risk that
13 Plaintiff Majar would be exposed to substantial statutory penalties under the
14 Copyright Act had it failed to seek Defendants' approval to use the Song and/or
15 failed to pay Defendants' demanded fee.

16 157. Plaintiffs seek the Court's determination as to whether Defendants are
17 entitled to assert ownership of the copyright to *Happy Birthday to You* against
18 Plaintiffs pursuant to the Copyright Act as Defendants claim, or whether Defendants
19 are wielding a false claim of ownership to inhibit Plaintiffs' use and enjoyment (and
20 the public's use and enjoyment) of intellectual property which is rightfully in the
21 public domain.

22 158. If and to the extent that Defendants rely upon the 1893, 1896, 1899, or
23 1907 copyrights for the melody for *Good Morning to All*, those copyrights expired
24 or were forfeited as alleged herein.

25 159. As alleged above, the 1893 and 1896 copyrights to the original and
26 revised versions of *Song Stories for the Kindergarten*, which contained the song
27 *Good Morning to All*, were not renewed by Summy Co. or Summy and accordingly
28 expired in 1921 and 1924, respectively.

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1 160. As alleged above, the 1893 copyright to *Song Stories for the*
2 *Kindergarten* and the 1899 copyright to *Song Stories for the Sunday School*, which
3 contained *Good Morning to All*, and the 1907 copyright to *Good Morning to All*
4 were not renewed by Summy Co. before Summy Co. was dissolved in 1920 and
5 accordingly, those copyrights expired in 1927 and 1935, respectively.

6 161. The 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All*
7 were forfeited by the republication of *Good Morning to All* in 1921 without proper
8 notice of its original 1893 copyright.

9 162. The copyright to *Good Morning to All* expired in 1921 because the
10 1893 copyright to *Song Stories for the Kindergarten* was not properly renewed.

11 163. The piano arrangements for *Happy Birthday to You* published by
12 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990): (a) do not give
13 Warner/Chappell copyrights to the familiar lyrics to *Happy Birthday to You*, but
14 instead are limited just to the particular arrangements written by Forman or Orem
15 (and, in the case of E51988, the obscure second verse which has no commercial
16 value); and (b) were not eligible for federal copyright protection because those
17 works did not contain original works of authorship, except to the extent of the piano
18 arrangements themselves.

19 164. The 1934 and 1935 copyrights pertained only to the piano
20 arrangements or the obscure second verse, not to the melody or familiar first verse
21 lyrics of the song *Happy Birthday to You*.

22 165. The registration certificates for *The Elementary Worker and His Work*
23 in 1912, *Harvest Hymns* in 1924, and *Children's Praise and Worship* in 1928, which
24 did not attribute authorship of the lyrics to *Happy Birthday to You* to anyone, are
25 *prima facie* evidence that the lyrics were not authored by the Hill Sisters.

26 166. If declaratory relief is not granted, defendant Warner/Chappell will
27 continue wrongfully to assert the exclusive copyright to *Happy Birthday to You* at
28 least until 2030, when the current term of the copyright expires under existing

Ex. 1

1 copyright law.

2 167. Plaintiffs therefore request a declaration that:

3 (a) defendant Warner/Chappell and defendant SBI do not own the
4 copyright to, or possess the exclusive right to reproduce, distribute, or
5 publicly perform, *Happy Birthday To You*;

6 (b) if defendant Warner/Chappell and defendant SBI own any
7 copyright to *Happy Birthday to You*, it is limited to four specific piano
8 arrangements or an obscure second verse that has no commercial value,

9 (c) any other copyright to *Happy Birthday to You* that defendant
10 Warner/Chappell and defendant SBI may own or ever owned are
11 invalid or have expired;

12 (d) defendant Warner/Chappell and defendant SBI do not own the
13 exclusive right to demand or grant a license for use of *Happy Birthday*
14 *To You*, and

15 (e) *Happy Birthday to You* is in the public domain and is dedicated
16 to the public use.

17 **SECOND CLAIM FOR RELIEF**

18 **UPON ENTRY OF DECLARATORY JUDGMENT**

19 **DECLARATORY AND INJUNCTIVE RELIEF**

20 **PURSUANT TO 28 U.S.C § 2202**

21 **(On Behalf of Plaintiffs and the Class)**

22 **(Against All Defendants)**

23 168. Plaintiffs repeat and reallege paragraphs 1 through 167 set forth above
24 as though they were fully set forth herein.

25 169. Plaintiffs bring these claims individually on their own behalf and on
26 behalf of the Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil
27 Procedure.

28 ///

1 170. Under 28 U.S.C. § 2202 empowers this Court to grant, “necessary or
2 proper relief based on a declaratory judgment or decree . . . after reasonable notice
3 and hearing, against any adverse party whose rights have been determined by such
4 judgment.”

5 171. Plaintiffs and the other proposed Class members have been harmed,
6 and Defendants have been unjustly enriched, by Defendant Warner/Chappell’s
7 takings.

8 172. Plaintiffs seek relief for themselves and the other members of the
9 proposed Class upon the entry of declaratory judgment upon Claim I, as follows:

10 (a) an injunction to prevent Defendants Warner/Chappell and SBI
11 from making further representations of ownership of the copyright to
12 *Happy Birthday To You*,

13 (b) restitution to Plaintiffs and the other Class members of license
14 fees paid to Defendants, directly or indirectly through its agents, in
15 connection with the purported licenses it granted to Plaintiffs GMTY,
16 Siegel, Rupa and Majar and the other Class members;

17 (c) an accounting for all monetary benefits obtained by Defendants,
18 directly or indirectly through its agents, from plaintiffs and the other
19 Class members in connection with its claim to ownership of the
20 copyright to *Happy Birthday to You*; and

21 (d) such other further and proper relief as this Court sees fit.

22 **THIRD CLAIM FOR RELIEF**

23 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF**
24 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

25 **(On Behalf of Plaintiffs and the Class)**

26 **(Against All Defendants)**

27 173. Plaintiffs repeat and reallege paragraphs 1 through 172 set forth above
28 as though they were fully set forth herein.

1 174. Plaintiffs GMTY, Siegel, Rupa, and Majar bring these claims
2 individually on their own behalf, and also on behalf of the Class pursuant to Rule
3 23(b)(3) of the Federal Rules of Civil Procedure.

4 175. As alleged herein, Plaintiffs GMTY, Siegel, Rupa and Majar and the
5 other Class members have paid licensing fees to defendants Warner/Chappell and/or
6 SBI and have therefore suffered injury in fact and have lost money or property as a
7 result of Defendants' conduct.

8 176. California's Unfair Competition Laws, Business & Professions Code
9 §§ 17200 *et seq.* ("UCL"), prohibit any unlawful or unfair business act or practice.

10 177. UCL § 17200 further prohibits any fraudulent business act or practice.

11 178. Defendants' actions, claims, nondisclosures, and misleading
12 statements, as alleged in this Complaint, were unfair, false, misleading, and likely to
13 deceive the consuming public within the meaning of UCL §§ 17200, 17500.

14 179. The conduct of Defendants in exerting control over exclusive copyright
15 ownership to *Happy Birthday to You* to extract licensing fees is deceptive and
16 misleading because neither Warner/Chappell nor SBI own the rights to *Happy*
17 *Birthday to You*.

18 180. Plaintiffs and the other members of the Class have, in fact, been
19 deceived as a result of their reasonable reliance upon Defendants' materially false
20 and misleading statements and omissions, as alleged above.

21 181. As a result of Defendants' unfair and fraudulent acts and practices as
22 alleged above, Plaintiffs and the other Class members have suffered substantial
23 monetary injuries.

24 182. Plaintiffs and the other Class members reserve the right to allege other
25 violations of law which constitute other unfair or deceptive business acts or
26 practices. Such conduct is ongoing and continues to this date.

27 183. As a result of its deception, Defendants Warner/Chappell and SBI have
28 been able to reap unjust revenue and profit.

Ex. 1

1 184. Upon information and belief, Defendants have collected and continue
2 to collect at least \$2 million per year in licensing fees for *Happy Birthday to You*.
3 Therefore, the amount in controversy exceeds \$5 million in the aggregate.

4 185. Unless restrained and enjoined, Defendants will continue to engage in
5 the above-described conduct. Accordingly, injunctive relief is appropriate.

6 186. Plaintiffs, individually on their own behalf and on behalf of the other
7 members of the Class, seek restitution and disgorgement of all money obtained from
8 Plaintiffs and the other members of the Class, collected as a result of unfair
9 competition, and all other relief this Court deems appropriate, consistent with UCL
10 § 17203.

11 **FOURTH CLAIM FOR RELIEF**

12 **BREACH OF CONTRACT**

13 **(On Behalf of Plaintiffs and the Class)**

14 **(Against All Defendants)**

15 187. Plaintiffs repeat and reallege each and every foregoing allegation as
16 though fully set forth herein.

17 188. Plaintiffs entered into license agreements with Defendant
18 Warner/Chappell wherein Warner/Chappell represented and warranted that it and/or
19 its co-Defendant SBI owned the rights to *Happy Birthday* as licensed therein.

20 189. Plaintiffs are informed and believe that Defendants' licensing
21 agreements are the same or substantially similar as to all Class members,
22 particularly with respect to Defendants' claim of ownership of the copyright to
23 *Happy Birthday*.

24 190. Plaintiffs and the Class have satisfied their obligations under each such
25 licensing agreement with Warner/Chappell.

26 191. As alleged herein, Defendants do not own the copyright interests
27 claimed in *Happy Birthday* and, as a result of its unlawful and false assertions of the
28

Ex. 1

1 same, Defendants have violated the representations and warranties made in the
2 licensing agreements, thereby materially breaching the licensing agreements.

3 192. By reason of the foregoing, Plaintiffs and the Class have been damaged
4 in an amount to be determined at trial.

5 **FIFTH CLAIM FOR RELIEF**
6 **COMMON LAW FOR MONEY HAD AND RECEIVED**
7 **(On Behalf of Plaintiffs and the Class)**
8 **(Against All Defendants)**

9 193. Plaintiffs repeat and reallege paragraphs 1 through 192 set forth above
10 as though they were fully set forth herein.

11 194. Within the last four years, Defendants Warner/Chappell and/or SBI
12 became indebted to Plaintiffs and all class members for money had and received by
13 Defendants for the use and benefit of Plaintiffs and class members. The money in
14 equity and good conscience belongs to Plaintiffs and class members.

15 **SIXTH CLAIM FOR RELIEF**
16 **RESCISSION FOR FAILURE OF CONSIDERATION**
17 **(On Behalf of Plaintiffs and the Class)**
18 **(Against All Defendants)**

19 195. Plaintiffs repeat and reallege paragraphs 1 through 194 set forth above
20 as though they were fully set forth herein.

21 196. Defendants' purported licenses were worthless and ineffective, and do
22 not constitute valid consideration.

23 197. The complete lack of consideration obviates any need for notice to
24 Defendants.

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SEVENTH CLAIM FOR RELIEF
FALSE ADVERTISING LAWS IN VIOLATION OF
CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *ET SEQ.*
(On Behalf of Plaintiffs and the Class)
(Against All Defendants)

198. Plaintiffs repeat and reallege paragraphs 1 through 197 set forth above as though they were fully set forth herein.

199. On information and belief, Defendants Warner/Chappell and SBI intended to induce the public to enter into an obligation related to its alleged property, namely the composition *Happy Birthday to You*.

200. Defendants Warner/Chappell and/or SBI publicly disseminated advertising which contained statements which were untrue and misleading and which concerned the composition *Happy Birthday to You*, for which they improperly sought and received licensing fees. Defendants knew, or in the exercise of reasonable care should have known, that these statements were untrue and misleading.

201. Plaintiffs and class members have suffered injury in fact and have lost money as a result of such unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs GMTY, Siegel, Rupa and Majar on behalf of themselves and the other members of the Class, pray for judgment against Defendants as follows:

- A. certifying the Class as requested herein;
- B. declaring that the song *Happy Birthday to You* is not protected by federal copyright law, is dedicated to public use, and is in the public domain;
- C. permanently enjoining Defendants Warner/Chappell and SBI from asserting any copyright to the song *Happy Birthday to You*;

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D. permanently enjoining Defendants Warner/Chappell and SBI from charging or collecting any licensing or other fees for use of the song *Happy Birthday to You*;

E. imposing a constructive trust upon the money Defendants Warner/Chappell and SBI unlawfully collected from Plaintiffs, the other members of the Class, and ASCAP for use of the song *Happy Birthday to You*;

F. ordering Defendants Warner/Chappell and SBI to return to Plaintiffs and the other members of the Class all the licensing or other fees they have collected from them, directly or indirectly through its agents, for use of the song *Happy Birthday to You*, together with interest thereon;

G. awarding Plaintiffs and the other members of the Class restitution for defendant Warner/Chappell and SBI’s prior acts and practices;

H. awarding Plaintiffs and the Class reasonable attorneys’ fees and costs; and

I. granting such other and further relief as the Court deems just and proper.

Dated: April 18, 2014

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: s/ *Betsy C. Manifold*
BETSY C. MANIFOLD

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DEMAND FOR JURY TRIAL

Plaintiffs Good Morning To You Productions Corp. Robert Siegel, Rupa Marya and Majar Productions, LLC, hereby demand a trial by jury to the extent that the allegations contained herein are triable by jury under Rules 38-39 of the Federal Rules of Civil Procedure 38-39 and Civil L.R. 38-1.

Dated: April 18, 2014

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Ex. 1

EXHIBIT 2

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 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.; ROBERT
 14 SIEGEL; RUPA MARYA; and
 MAJAR PRODUCTIONS, LLC; On
 15 Behalf of Themselves and All Others
 Similarly Situated,

16 Plaintiffs,

17 v.

18 WARNER/CHAPPELL MUSIC, INC.,
 19 and SUMMY-BIRCHARD, INC.,

20 Defendants.
 21

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

**DEFENDANTS' ANSWER TO
 CLAIM ONE OF PLAINTIFFS'
 FOURTH AMENDED
 CONSOLIDATED COMPLAINT**

1 In accordance with this Court’s Order of April 29, 2014 (Dkt. 96),
2 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (collectively,
3 “Warner/Chappell”), through undersigned counsel, hereby answer Claim One of
4 Plaintiffs’ Fourth Amended Consolidated Complaint (“FAC”) as follows.¹

5 1. The allegations in Paragraph 1 are conclusions of law to which no
6 responsive pleading is required. To the extent that a response is required,
7 Warner/Chappell denies the allegations in Paragraph 1 of the FAC.

8 2. Warner/Chappell admits that the principal place of business of both
9 Defendants is in this District and that both Defendants regularly conduct business in
10 this District. The remaining allegations in Paragraph 2 are conclusions of law to
11 which no responsive pleading is required. To the extent that a response is required,
12 Warner/Chappell denies such allegations.

13 3. Answering Paragraph 3, Warner/Chappell avers that the written
14 agreement referenced in Paragraph 3 is the best evidence of the contents of that
15 agreement. Except as specifically averred herein, Warner/Chappell denies the
16 allegations in Paragraph 3.

17 4. Paragraph 4 characterizes Plaintiffs’ claims in the FAC and no
18 responsive pleading is required. To the extent that a response is required,
19 Warner/Chappell denies the allegations in Paragraph 4.

20 5. Answering Paragraph 5, Warner/Chappell avers that the written
21 Copyright Office circular referenced in Paragraph 5 is the best evidence of the
22 contents of that document. Except as specifically averred herein, Warner/Chappell
23 denies the allegations in Paragraph 5.

24 6. Warner/Chappell admits that on or about June 18, 2013, the “About
25 Us” page of Warner/Chappell’s website stated that “Warner/Chappell Music is
26 WMG’s award-winning global music publishing company. The Warner/Chappell

27 ¹ Warner/Chappell denies all allegations in Claim One of the FAC (including
28 headings and captions) not specifically admitted in this Answer.

1 Music catalog includes standards such as ‘Happy Birthday to You’, ‘Rhapsody in
2 Blue’, ‘Winter Wonderland’, the songs of Cole Porter and George and Ira Gershwin,
3 as well as the music of Eric Clapton, Green Day, Katy Perry, Led Zeppelin, Lil
4 Wayne, Madonna, Nickelback, Paramore, Red Hot Chili Peppers, T. I.,
5 Timbaland, and others.” The remaining allegations in Paragraph 6 state conclusions
6 of law to which no responsive pleading is required. To the extent that a response is
7 required, Warner/Chappell denies such allegations.

8 7. The allegations in Paragraph 7 are conclusions of law to which no
9 responsive pleading is required. To the extent that a response is required,
10 Warner/Chappell denies the allegations in Paragraph 7.

11 8. Warner/Chappell is without knowledge or information sufficient to
12 form a belief as to the truth of the allegations in the first sentence of Paragraph 8 and
13 on that basis denies such allegations. Warner/Chappell admits that Robert Brauneis
14 published an article regarding the copyright in *Happy Birthday to You*, and avers
15 that the article, while irrelevant and inadmissible in support of Plaintiffs’ claims, is
16 the best evidence of its contents. The remaining allegations in Paragraph 8 are legal
17 conclusions to which no responsive pleading is required. To the extent that a
18 response is required, Warner/Chappell denies such allegations.

19 9. Paragraph 9 characterizes Plaintiffs’ claims in the FAC and no
20 responsive pleading is required. To the extent that a response is required,
21 Warner/Chappell denies the allegations in Paragraph 9.

22 10. Warner/Chappell is without knowledge or information sufficient to
23 form a belief as to the truth of the allegations in the first sentence of Paragraph 10
24 and on that basis denies such allegations. Warner/Chappell admits that on or about
25 March 26, 2013, Plaintiff GMTY paid Warner/Chappell \$1,500 for a
26 synchronization license to use *Happy Birthday to You*, and that on or about April 24,
27 2013, Plaintiff GMTY mailed Warner/Chappell an executed synchronization license
28 agreement for the use *Happy Birthday to You*, which was “dated” September 26, Ex. 2

1 2012 “as of” April 1, 2013. Except as specifically admitted herein,
2 Warner/Chappell denies the allegations in Paragraph 10.

3 11. Warner/Chappell is without knowledge or information sufficient to
4 form a belief as to the truth of the allegations in the first sentence of Paragraph 11
5 and on that basis denies such allegations. Warner/Chappell admits that on or about
6 July 20, 2009, BIG FAN, entered into a synchronization license with
7 Warner/Chappell for the use of *Happy Birthday to You* and that BIG FAN paid
8 Warner/Chappell \$3,000 pursuant to that license. Warner/Chappell is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations
10 in the third sentence of Paragraph 11 and on that basis denies such allegations.
11 Except as specifically admitted herein, Warner/Chappell denies the allegations in
12 Paragraph 11.

13 12. Warner/Chappell is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations in the first, second and third sentences
15 of Paragraph 12 and on that basis denies such allegations. Warner/Chappell admits
16 that on or about June 17, 2013, Plaintiff Rupa paid Warner/Chappell \$455 for a
17 compulsory license to use *Happy Birthday to You*. Except as specifically admitted
18 herein, Warner/Chappell denies the allegations in Paragraph 12.

19 13. Warner/Chappell is without knowledge or information sufficient to
20 form a belief as to the truth of the allegations in Paragraph 13 and on that basis
21 denies the allegations in Paragraph 13.

22 14. Warner/Chappell admits the allegations in Paragraph 14.

23 15. Warner/Chappell admits the allegations in Paragraph 15, except that
24 Warner/Chappell denies that Defendant Summy-Birchard, Inc. was acquired by
25 Defendant Warner/Chappell Music, Inc. in or around 1998.

26 16. On information and belief, Warner/Chappell admits that some time
27 prior to 1893, Mildred J. Hill and her sister Patty Smith Hill authored a written
28 manuscript containing sheet music for numerous songs composed and written by Ex. 2

1 these sisters. Warner/Chappell is without knowledge or information sufficient to
2 form a belief as to the truth of the remaining allegations in Paragraph 16 and on that
3 basis denies such allegations. Except as specifically admitted herein,
4 Warner/Chappell denies the allegations in Paragraph 16.

5 17. On information and belief, Warner/Chappell admits the allegations in
6 Paragraph 17.

7 18. Answering Paragraph 18, Warner/Chappell avers that the written
8 agreement referenced in Paragraph 18 is the best evidence of the contents of this
9 agreement. Except as specifically averred herein, Warner/Chappell denies the
10 allegations in Paragraph 18.

11 19. On information and belief, Warner/Chappell admits the allegations in
12 Paragraph 19.

13 20. Warner/Chappell admits that on or about October 13, 1893, Clayton F.
14 Summy filed a copyright application (Reg. No. 45997) with the Copyright Office for
15 *Song Stories for the Kindergarten*. Except as specifically admitted herein,
16 Warner/Chappell denies the allegations in Paragraph 20.

17 21. Answering Paragraph 21, Warner/Chappell avers that the written
18 Copyright Application referenced in Paragraph 20 above is the best evidence of the
19 contents of this document. Except as specifically averred herein, Warner/Chappell
20 denies the allegations in Paragraph 21.

21 22. Warner/Chappell admits the allegations in Paragraph 22.

22 23. The allegations in Paragraph 23 are conclusions of law to which no
23 responsive pleading is required. To the extent that a response is required,
24 Warner/Chappell denies the allegations in Paragraph 23.

25 24. Warner/Chappell admits the allegations in Paragraph 24.

26 25. Warner/Chappell admits the lyrics to *Happy Birthday to You* are as
27 alleged and that the lyrics frequently are performed in conjunction with the melody

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Ex. 2

1 to *Good Morning to All*. Except as specifically admitted herein, Warner/Chappell
2 denies the allegations in Paragraph 25.

3 26. On information and belief, Warner/Chappell admits the allegations in
4 Paragraph 26.

5 27. Warner/Chappell admits that in or about 1895, Clayton F. Summy
6 incorporated the Clayton F. Summy Company under the laws of the State of Illinois.
7 On information and belief, Warner/Chappell further admits that in or about 1895,
8 Clayton F. Summy assigned all his right, title, and interest in *Song Stories for the*
9 *Kindergarten* to Clayton F. Summy Company. Warner/Chappell is without
10 knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations in Paragraph 27 and on that basis denies such allegations. Except as
12 specifically admitted herein, Warner/Chappell denies the allegations in Paragraph
13 27.

14 28. Warner/Chappell admits that in or about 1896, Clayton F. Summy Co.
15 published a new, revised, illustrated, and enlarged version of *Song Stories for the*
16 *Kindergarten*, which contained illustrations by Margaret Byers. Warner/Chappell is
17 without knowledge or information sufficient to form a belief as to the truth of the
18 remaining allegations in Paragraph 28 and on that basis denies such allegations.
19 Except as specifically admitted herein, Warner/Chappell denies the allegations in
20 Paragraph 28.

21 29. On information and belief, Warner/Chappell admits that on or about
22 June 8, 1896, Clayton F. Summy filed a copyright application (Reg. No. 34260)
23 with the Copyright Office for the 1896 publication of *Song Stories for the*
24 *Kindergarten*. Except as specifically admitted herein, Warner/Chappell denies the
25 allegations in Paragraph 29.

26 30. Answering Paragraph 30, Warner/Chappell avers that the written
27 Copyright Application referenced in Paragraph 30 is the best evidence of the
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Ex. 2

1 contents of this document. Except as specifically averred herein, Warner/Chappell
2 denies the allegations in Paragraph 30.

3 31. Warner/Chappell admits the allegations in Paragraph 31.

4 32. The allegations in Paragraph 32 are conclusions of law to which no
5 responsive pleading is required. To the extent that a response is required,
6 Warner/Chappell denies the allegations in Paragraph 32.

7 33. On information and belief, Warner/Chappell admits the allegations in
8 Paragraph 33.

9 34. On information and belief, Warner/Chappell admits that in or about
10 1899, Clayton F. Summy Company published *Song Stories for the Sunday School*,
11 which included the song *Good Morning to All* and did not include the song *Happy*
12 *Birthday to You* or the lyrics to *Happy Birthday to You*. Warner/Chappell is without
13 knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations in Paragraph 34 and on that basis denies such allegations.

15 35. On information and belief, Warner/Chappell admits that on or about
16 March 20, 1899, Clayton F. Summy Company filed a copyright application (Reg.
17 No. 20441) with the Copyright Office for *Song Stories for the Sunday School*.
18 Except as specifically admitted herein, Warner/Chappell denies the allegations in
19 Paragraph 35.

20 36. Answering Paragraph 36, Warner/Chappell avers that the written
21 Copyright Application referenced in Paragraph 36 is the best evidence of the
22 contents of this document. Except as specifically averred herein, Warner/Chappell
23 denies the allegations in Paragraph 36.

24 37. Warner/Chappell is without knowledge or information sufficient to
25 form a belief as to the truth of the allegations in Paragraph 37 and on that basis
26 denies the allegations in Paragraph 37.

27 38. On information and belief, Warner/Chappell admits the allegations in
28 Paragraph 38.

Ex. 2

1 39. The allegations in Paragraph 39 are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies the allegations in Paragraph 39.

4 40. On information and belief, Warner/Chappell admits the allegations in
5 Paragraph 40.

6 41. Warner/Chappell is without knowledge or information sufficient to
7 form a belief as to the truth of the allegations in Paragraph 41 and on that basis
8 denies the allegations in Paragraph 41.

9 42. Warner/Chappell is without knowledge or information sufficient to
10 form a belief as to the truth of the allegations in Paragraph 42 and on that basis
11 denies the allegations in Paragraph 42.

12 43. Warner/Chappell admits that in or about February, 1907, Clayton F.
13 Summy Company released *Good Morning to All* as an individual musical
14 composition. Except as specifically admitted herein, Warner/Chappell denies the
15 allegations in Paragraph 43.

16 44. Warner/Chappell admits that on or about February 7, 1907, Clayton F.
17 Summy Company filed a copyright application (Reg. No. 142468) with the
18 Copyright Office for *Good Morning to All*. Except as specifically admitted herein,
19 Warner/Chappell denies the allegations in Paragraph 44.

20 45. On information and belief, Warner/Chappell admits the allegations in
21 Paragraph 45.

22 46. Warner/Chappell is without knowledge or information sufficient to
23 form a belief as to the truth of the allegations in Paragraph 46 and on that basis
24 denies the allegations in Paragraph 46.

25 47. Warner/Chappell is without knowledge or information sufficient to
26 form a belief as to the truth of the allegations in Paragraph 47 and on that basis
27 denies the allegations in Paragraph 47.

28

Ex. 2

1 48. Warner/Chappell is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations in Paragraph 48 and on that basis
3 denies the allegations in Paragraph 48.

4 49. Warner/Chappell is without knowledge or information sufficient to
5 form a belief as to the truth of the allegations in Paragraph 49 and on that basis
6 denies the allegations in Paragraph 49.

7 50. Warner/Chappell is without knowledge or information sufficient to
8 form a belief as to the truth of the allegations in Paragraph 50 and on that basis
9 denies the allegations in Paragraph 50.

10 51. Warner/Chappell is without knowledge or information sufficient to
11 form a belief as to the truth of the allegations in Paragraph 51 and on that basis
12 denies the allegations in Paragraph 51.

13 52. Warner/Chappell is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations in the first sentence of Paragraph 52
15 and on that basis denies such allegations. The allegations in the second sentence of
16 Paragraph 52 are conclusions of law to which no responsive pleading is required.
17 To the extent that a response is required, Warner/Chappell denies such allegations.

18 53. Warner/Chappell is without knowledge or information sufficient to
19 form a belief as to the truth of the allegations in Paragraph 53 and on that basis
20 denies the allegations in Paragraph 53.

21 54. The allegations in Paragraph 54 are conclusions of law to which no
22 responsive pleading is required. To the extent that a response is required,
23 Warner/Chappell denies the allegations in Paragraph 54.

24 55. The allegations in Paragraph 55 are conclusions of law to which no
25 responsive pleading is required. To the extent that a response is required,
26 Warner/Chappell denies the allegations in Paragraph 55.

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Ex. 2

1 56. The allegations in Paragraph 56 are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies the allegations in Paragraph 56.

4 57. The allegations in Paragraph 57 are conclusions of law to which no
5 responsive pleading is required. To the extent that a response is required,
6 Warner/Chappell denies the allegations in Paragraph 57.

7 58. Warner/Chappell is without knowledge or information sufficient to
8 form a belief as to the truth of the allegations in Paragraph 58 and on that basis
9 denies the allegations in Paragraph 58.

10 59. Warner/Chappell is without knowledge or information sufficient to
11 form a belief as to the truth of the allegations in Paragraph 59 and on that basis
12 denies the allegations in Paragraph 59.

13 60. Warner/Chappell is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations in Paragraph 60 and on that basis
15 denies the allegations in Paragraph 60.

16 61. Warner/Chappell is without knowledge or information sufficient to
17 form a belief as to the truth of the allegations in Paragraph 61 and on that basis
18 denies the allegations in Paragraph 61.

19 62. Warner/Chappell is without knowledge or information sufficient to
20 form a belief as to the truth of the allegations in Paragraph 62 and on that basis
21 denies the allegations in Paragraph 62.

22 63. Warner/Chappell is without knowledge or information sufficient to
23 form a belief as to the truth of the allegations in Paragraph 63 and on that basis
24 denies the allegations in Paragraph 63.

25 64. Warner/Chappell is without knowledge or information sufficient to
26 form a belief as to the truth of the allegations in Paragraph 64 and on that basis
27 denies the allegations in Paragraph 64.

28

Ex. 2

1 65. Warner/Chappell is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations in Paragraph 65 and on that basis
3 denies the allegations in Paragraph 65.

4 66. Warner/Chappell is without knowledge or information sufficient to
5 form a belief as to the truth of the allegations in Paragraph 66 and on that basis
6 denies the allegations in Paragraph 66.

7 67. Upon information and belief, Warner/Chappell admits that Clayton F.
8 Summy sold Clayton F. Summy Company to John F. Sengstack in or around 1930.
9 Except as specifically admitted herein, Warner/Chappell denies the allegations in
10 Paragraph 67.

11 68. Upon information and belief, Warner/Chappell admits that in or about
12 1931, John F. Sengstack incorporated Clayton F. Summy Company under the laws
13 of the State of Delaware. Warner/Chappell is without knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations in Paragraph
15 68 and on that basis denies such allegations. Except as specifically admitted herein,
16 Warner/Chappell denies the allegations in Paragraph 68.

17 69. Warner/Chappell is without knowledge or information sufficient to
18 form a belief as to the truth of the allegations in Paragraph 69 and on that basis
19 denies the allegations in Paragraph 69.

20 70. Warner/Chappell is without knowledge or information sufficient to
21 form a belief as to the truth of the allegations in Paragraph 70 and on that basis
22 denies the allegations in Paragraph 70.

23 71. Warner/Chappell is without knowledge or information sufficient to
24 form a belief as to the truth of the allegations in Paragraph 71 and on that basis
25 denies the allegations in Paragraph 71.

26 72. On information and belief, Warner/Chappell admits that “[o]n August
27 14, 1934, Jessica Hill, a sister of Mildred Hill and Patty Hill, commenced an action
28 against Sam Harris in the Southern District of New York, captioned Hill v. Harris, Ex. 2

1 Eq. No. 78-350.” Answering the remaining allegations in Paragraph 72,
2 Warner/Chappell avers that the complaint/s referenced in Paragraph 72 is/are the
3 best evidence of the claims asserted in the lawsuit referenced in Paragraph 72.
4 Except as specifically admitted or averred herein, Warner/Chappell denies the
5 allegations in Paragraph 72.

6 73. On information and belief, Warner/Chappell admits that “[o]n January
7 21, 1935, Jessica Hill commenced an action against the Federal Broadcasting Corp.
8 in the Southern District of New York, captioned Hill v. Federal Broadcasting Corp.,
9 Eq. No. 79-312.” Answering the remaining allegations in Paragraph 73,
10 Warner/Chappell avers that the complaint/s referenced in Paragraph 73 is/are the
11 best evidence of the claims asserted in the lawsuit referenced in Paragraph 73.
12 Except as specifically admitted or averred herein, Warner/Chappell denies the
13 allegations in Paragraph 73.

14 74. Answering Paragraph 74, Warner/Chappell avers that the written
15 agreement referenced in Paragraph 74 is the best evidence of the contents of this
16 agreement. Except as specifically averred herein, Warner/Chappell denies the
17 allegations in Paragraph 74.

18 75. Warner/Chappell admits that on or about December 27, 1934, Clayton
19 F. Summy Co. submitted an Application for Copyright, which application is the best
20 evidence of its contents. Except as specifically admitted herein, Warner/Chappell
21 denies the allegations in Paragraph 75.

22 76. Answering Paragraph 76, Warner/Chappell avers that the written
23 Application for Copyright referenced in Paragraph 75 above is the best evidence of
24 the contents of this document. Except as specifically averred herein,
25 Warner/Chappell denies the allegations in Paragraph 76.

26 77. Warner/Chappell admits the allegations in the first sentence of
27 Paragraph 77. Answering the second sentence of Paragraph 77, Warner/Chappell
28 avers that the written Application for Copyright referenced in Paragraph 75 above is

1 the best evidence of the contents of this document, and that the allegation regarding
2 the scope of the copyright claimed by this Application is a conclusion of law to
3 which no response is required. To the extent that a response is required to this
4 allegation regarding the scope of the copyright claimed, Warner/Chappell denies
5 this allegation. Except as specifically admitted or averred herein, Warner/Chappell
6 denies the allegations in Paragraph 77.

7 78. The allegations in Paragraph 78 are conclusions of law to which no
8 responsive pleading is required. To the extent that a response is required,
9 Warner/Chappell denies the allegations in Paragraph 78.

10 79. Warner/Chappell admits that on or about February 15, 1935, Clayton F.
11 Summy Co. submitted an Application for Copyright, which application is the best
12 evidence of its contents. Except as specifically admitted herein, Warner/Chappell
13 denies the allegations in Paragraph 79.

14 80. Answering Paragraph 80, Warner/Chappell avers that the written
15 Application for Copyright referenced in Paragraph 79 above is the best evidence of
16 the contents of this document. Except as specifically averred herein,
17 Warner/Chappell denies the allegations in Paragraph 80.

18 81. Warner/Chappell admits the allegations in the first sentence of
19 Paragraph 81. Answering the second sentence of Paragraph 81, Warner/Chappell
20 avers that the written Application for Copyright referenced in Paragraph 79 above is
21 the best evidence of the contents of this document, and that the allegation regarding
22 the scope of the copyright claimed by this Application is a conclusion of law to
23 which no response is required. To the extent that a response is required to this
24 allegation regarding the scope of the copyright claimed, Warner/Chappell denies
25 this allegation. Except as specifically admitted or averred herein, Warner/Chappell
26 denies the allegations in Paragraph 81.

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Ex. 2

1 82. The allegations in Paragraph 82 are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies the allegations in Paragraph 82.

4 83. Warner/Chappell admits that on or about April 3, 1935, Clayton F.
5 Summy Co. submitted an Application for Copyright, which application is the best
6 evidence of its contents. Except as specifically admitted herein, Warner/Chappell
7 denies the allegations in Paragraph 83.

8 84. Answering Paragraph 84, Warner/Chappell avers that the written
9 Application for Copyright referenced in Paragraph 83 above is the best evidence of
10 the contents of this document. Except as specifically averred herein,
11 Warner/Chappell denies the allegations in Paragraph 84.

12 85. Warner/Chappell admits the allegations in the first sentence of
13 Paragraph 85. Answering the second sentence of Paragraph 85, Warner/Chappell
14 avers that the written Application for Copyright referenced Paragraph 83 above is
15 the best evidence of the contents of this document, and that the allegation regarding
16 the scope of the copyright claimed by this Application is a conclusion of law to
17 which no response is required. To the extent that a response is required to this
18 allegation regarding the scope of the copyright claimed, Warner/Chappell denies
19 this allegation. Except as specifically admitted or averred herein, Warner/Chappell
20 denies the allegations in Paragraph 85.

21 86. The allegations in Paragraph 86 are conclusions of law to which no
22 responsive pleading is required. To the extent that a response is required,
23 Warner/Chappell denies the allegations in Paragraph 86.

24 87. Warner/Chappell admits that on or about April 3, 1935, Clayton F.
25 Summy Co. submitted an Application for Copyright, which application is the best
26 evidence of its contents. Except as specifically admitted herein, Warner/Chappell
27 denies the allegations in Paragraph 87.

28

Ex. 2

1 88. Answering Paragraph 88, Warner/Chappell avers that the written
2 Application for Copyright referenced in Paragraph 87 above is the best evidence of
3 the contents of this document. Except as specifically averred herein,
4 Warner/Chappell denies the allegations in Paragraph 88.

5 89. Warner/Chappell admits the allegations in the first sentence of
6 Paragraph 89. Answering the second sentence of Paragraph 89, Warner/Chappell
7 avers that the written Application for Copyright referenced in Paragraph 87 above is
8 the best evidence of the contents of this document, and that the allegation regarding
9 the scope of the copyright claimed by this Application is a conclusion of law to
10 which no response is required. To the extent that a response is required to this
11 allegation regarding the scope of the copyright claimed, Warner/Chappell denies
12 this allegation. Except as specifically admitted or averred herein, Warner/Chappell
13 denies the allegations in Paragraph 89.

14 90. The allegations in Paragraph 90 are conclusions of law to which no
15 responsive pleading is required. To the extent that a response is required,
16 Warner/Chappell denies the allegations in Paragraph 90.

17 91. Warner/Chappell admits that on or about December 6, 1935, Clayton F.
18 Summy Co. submitted an Application for Copyright as alleged in Paragraph 91.
19 Except as specifically admitted herein, Warner/Chappell denies the allegations in
20 Paragraph 91.

21 92. Answering the first sentence of Paragraph 92, Warner/Chappell avers
22 that the written Application for Copyright referenced in Paragraph 91 above is the
23 best evidence of the contents of this document. Warner/Chappell admits the
24 allegations in the second sentence of Paragraph 92. Except as specifically averred
25 or admitted herein, Warner/Chappell denies the allegations in Paragraph 92.

26 93. Warner/Chappell denies the allegations in Paragraph 93.
27
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Ex. 2

1 94. The allegations in Paragraph 94 are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies the allegations in Paragraph 94.

4 95. The allegations in Paragraph 95 are conclusions of law to which no
5 responsive pleading is required. To the extent that a response is required,
6 Warner/Chappell denies the allegations in Paragraph 95.

7 96. Warner/Chappell admits that on or about December 6, 1935, Clayton F.
8 Summy Co. submitted an Application for Copyright as alleged in Paragraph 96.
9 Except as specifically admitted herein, Warner/Chappell denies the allegations in
10 Paragraph 96.

11 97. Answering the first sentence of Paragraph 97, Warner/Chappell avers
12 that the written Application for Copyright referenced in Paragraph 96 above is the
13 best evidence of the contents of this document. Warner/Chappell admits the
14 allegations in the second sentence of Paragraph 97. Except as specifically averred
15 or admitted herein, Warner/Chappell denies the allegations in Paragraph 97.

16 98. Warner/Chappell admits that the copy of the work deposited with the
17 application that resulted in registration E51990 contained the lyrics “Happy
18 Birthday to you, Happy Birthday to you, Happy Birthday dear _____, Happy
19 Birthday to you!” Except as specifically admitted herein, Warner/Chappell denies
20 the allegations in Paragraph 98.

21 99. The allegations in Paragraph 99 are conclusions of law to which no
22 responsive pleading is required. To the extent that a response is required,
23 Warner/Chappell denies the allegations in Paragraph 99.

24 100. The allegations in Paragraph 100 are conclusions of law to which no
25 responsive pleading is required. To the extent that a response is required,
26 Warner/Chappell denies the allegations in Paragraph 100.

27 101. Answering Paragraph 101, Warner/Chappell avers that the written
28 agreement referenced in Paragraph 101 is the best evidence of the contents of this **Ex. 2**

1 agreement. Except as specifically averred herein, Warner/Chappell denies the
2 allegations in Paragraph 101.

3 102. Answering Paragraph 102, Warner/Chappell avers that the written
4 agreement referenced in Paragraph 102 is the best evidence of the contents of this
5 agreement. Except as specifically averred herein, Warner/Chappell denies the
6 allegations in Paragraph 102.

7 103. On information and belief, Warner/Chappell admits that “[o]n October
8 15, 1942, The Hill Foundation commenced an action against [Clayton F. Summy
9 Co.] in the Southern District of New York, captioned The Hill Foundation, Inc. v.
10 Clayton F. Summy Co., Case No. 19-377.” Answering the remaining allegations in
11 Paragraph 103, Warner/Chappell avers that the complaint/s referenced in Paragraph
12 103 is/are the best evidence of the claims asserted in the lawsuit referenced in
13 Paragraph 103. Except as specifically admitted or averred herein, Warner/Chappell
14 denies the allegations in Paragraph 103.

15 104. On information and belief, Warner/Chappell admits that “[o]n March 2,
16 1943, The Hill Foundation commenced an action against the Postal Telegraph Cable
17 Company in the Southern District of New York, captioned The Hill Foundation, Inc.
18 v. Postal Telegraph-Cable Co., Case No. 20- 439.” Answering the remaining
19 allegations in Paragraph 104, Warner/Chappell avers that the complaint/s referenced
20 in Paragraph 104 is/are the best evidence of the claims asserted in the lawsuit
21 referenced in Paragraph 104. Except as specifically admitted or averred herein,
22 Warner/Chappell denies the allegations in Paragraph 104.

23 105. Warner/Chappell is not aware of any judicial determination of the
24 validity or scope of any copyright related to *Good Morning to All*. Except as
25 specifically admitted herein, Warner/Chappell denies the allegations in Paragraph
26 105.

27 106. Warner/Chappell denies the allegations in Paragraph 106.

28

Ex. 2

1 107. Warner/Chappell admits that in or about 1962, Summy-Birchard
2 Company filed renewals for Reg. Nos. E45655, E46661, E47439, E47440, E51988,
3 and E51990. Except as specifically admitted herein, Warner/Chappell denies the
4 allegations in Paragraph 107.

5 108. Warner/Chappell admits that on or about December 6, 1962, Summy-
6 Birchard Company filed a renewal application for Reg. No. E51988, and avers that
7 the written copyright renewal referenced in Paragraph 108 is the best evidence of
8 the contents of this document. Except as specifically admitted or averred,
9 Warner/Chappell denies the allegations in Paragraph 108.

10 109. Warner/Chappell admits that on or about December 6, 1962, Summy-
11 Birchard Company filed a renewal application for Reg. No. E51990, and avers that
12 the written copyright renewal referenced in Paragraph 109 is the best evidence of
13 the contents of this document. Except as specifically admitted or averred,
14 Warner/Chappell denies the allegations in Paragraph 109.

15 110. Warner/Chappell denies the allegations in the first sentence of
16 Paragraph 110. Warner/Chappell admits that Summy-Birchard, Inc., is a subsidiary
17 of Warner/Chappell and a co-defendant in this action. Except as specifically
18 admitted herein, Warner/Chappell denies the allegations in Paragraph 110.

19 111. Warner/Chappell is without knowledge or information sufficient to
20 form a belief as to the truth of the allegations in Paragraph 111 and on that basis
21 denies the allegations in Paragraph 111.

22 112. Warner/Chappell is without knowledge or information sufficient to
23 form a belief as to the truth of the allegations in Paragraph 112 and on that basis
24 denies the allegations in Paragraph 112.

25 113. Warner/Chappell denies the allegations in Paragraph 113.

26 114. Warner/Chappell is without knowledge or information sufficient to
27 form a belief as to the truth of the allegations in Paragraph 114 and on that basis
28 denies the allegations in Paragraph 114.

Ex. 2

1 115. Warner/Chappell is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations in Paragraph 115 and on that basis
3 denies the allegations in Paragraph 115.

4 116. Warner/Chappell is without knowledge or information sufficient to
5 form a belief as to the truth of the allegations in Paragraph 116 and on that basis
6 denies the allegations in Paragraph 116.

7 117. Warner/Chappell is without knowledge or information sufficient to
8 form a belief as to the truth of the allegations in Paragraph 117 and on that basis
9 denies the allegations in Paragraph 117.

10 118. Warner/Chappell admits that in September 2012, Plaintiff GMTY
11 requested a quote from Warner/Chappell for a synchronization license to use *Happy*
12 *Birthday to You*. Warner/Chappell is without knowledge or information sufficient to
13 form a belief as to the truth of the allegation that this request was made through
14 Warner/Chappell’s website and on that basis denies this allegation. Except as
15 specifically admitted herein, Warner/Chappell denies the allegations in Paragraph
16 118.

17 119. Warner/Chappell denies the allegations in Paragraph 119.

18 120. Warner/Chappell denies the allegations in Paragraph 120.

19 121. The allegations in Paragraph 121 are conclusions of law to which no
20 responsive pleading is required. To the extent that a response is required,
21 Warner/Chappell denies the allegations in Paragraph 121.

22 122. Warner/Chappell admits that on or about March 26, 2013, Plaintiff
23 GMTY paid Warner/Chappell \$1,500 for a synchronization license to use *Happy*
24 *Birthday to You*, and that on or about April 24, 2013, Plaintiff GMTY mailed
25 Warner/Chappell an executed synchronization license agreement for the use *Happy*
26 *Birthday to You*, which was “dated” September 26, 2012 “as of” April 1, 2013.
27 Except as specifically admitted herein, Warner/Chappell denies the allegations in
28 Paragraph 122.

Ex. 2

1 123. Warner/Chappell is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations in Paragraph 123 and on that basis
3 denies the allegations in Paragraph 123.

4 124. Warner/Chappell is without knowledge or information sufficient to
5 form a belief as to the truth of the allegations in Paragraph 124 and on that basis
6 denies the allegations in Paragraph 124.

7 125. Warner/Chappell is without knowledge or information sufficient to
8 form a belief as to the truth of the allegations in Paragraph 125(a) and (b) and on
9 that basis denies the allegations in Paragraph 125(a) and (b). The allegations in
10 Paragraph 125(c) are conclusions of law to which no responsive pleading is
11 required. To the extent that a response is required, Warner/Chappell denies the
12 allegations in Paragraph 125(c).

13 126. Warner/Chappell is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations in Paragraph 126 and on that basis
15 denies the allegations in Paragraph 126.

16 127. Warner/Chappell denies the allegations in Paragraph 127.

17 128. The allegations in Paragraph 128 are conclusions of law to which no
18 responsive pleading is required. To the extent that a response is required,
19 Warner/Chappell denies the allegations in Paragraph 128.

20 129. Warner/Chappell admits the allegations in Paragraph 129.

21 130. Paragraph 130(a):

22 Warner/Chappell admits that BIG FAN paid Warner/Chappell \$3,000
23 pursuant to its synchronization license. Except as specifically admitted herein,
24 Warner/Chappell denies the allegations in Paragraph 130(a).

25 Paragraph 130(b):

26 Warner/Chappell is without knowledge or information sufficient to form a
27 belief as to what BIG FAN, the music producer it allegedly hired, or Plaintiff Siegel
28 knew or had reason to know and on that basis denies such allegations. The **Ex. 2**

1 remaining allegations in paragraph 130(b) are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies such allegations.

4 Paragraph 130(c):

5 Warner/Chappell is without knowledge or information sufficient to form a
6 belief as to what BIG FAN, the music producer it allegedly hired, or Plaintiff Siegel
7 had reason to know and on that basis denies such allegations. The remaining
8 allegations in paragraph 130(c) are conclusions of law to which no responsive
9 pleading is required. To the extent that a response is required, Warner/Chappell
10 denies such allegations.

11 Paragraph 130(d):

12 Warner/Chappell admits that, in accordance with custom and practice in the
13 industry, it did not specify the numbers of the copyright registrations or renewals
14 pursuant to which it owns copyright rights in *Happy Birthday to You* when it
15 negotiated with BIG FAN regarding BIG FAN's synchronization license. Except as
16 specifically admitted herein, Warner/Chappell denies the allegations in Paragraph
17 130(d).

18 Paragraph 130(e):

19 Warner/Chappell admits that there were stories in the press regarding this
20 action. Warner/Chappell is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations in the second sentence of Paragraph 130(e)
22 regarding when one in the position of BIG FAN, the music producer it hired, or
23 Plaintiff Siegel allegedly would know the alleged facts supporting this action and on
24 that basis denies such allegations. The allegations in the second sentence of
25 Paragraph 130(e) regarding when BIG FAN, the music producer it hired, or Plaintiff
26 Siegel allegedly had reason to know the alleged facts supporting this action are
27 conclusions of law to which no responsive pleading is required. To the extent that a
28 response is required, Warner/Chappell denies such allegations. Except as **Ex. 2**

1 specifically admitted herein, Warner/Chappell denies the allegations in Paragraph
2 130(e).

3 Paragraph 130(f):

4 Warner/Chappell is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations in the first sentence of Paragraph 130(f) and
6 on that basis denies such allegations. Warner/Chappell is without knowledge or
7 information sufficient to form a belief as to what BIG FAN, the music producer it
8 allegedly hired, or Plaintiff Siegel knew or had reason to know and on that basis
9 denies such allegations. The remaining allegations in paragraph 130(f) are
10 conclusions of law to which no responsive pleading is required. To the extent that a
11 response is required, Warner/Chappell denies such allegations.

12 Paragraph 130(g):

13 Warner/Chappell admits that Plaintiff Siegel commenced a putative class
14 action against Warner/Chappell on or about June 19, 2013. Warner/Chappell is
15 without knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 130(g) regarding when Plaintiff Siegel allegedly knew the
17 alleged facts supporting this action and on that basis denies such allegations. The
18 allegations in Paragraph 130(g) regarding when Plaintiff Siegel allegedly reasonably
19 could or should have known the alleged facts supporting this action are conclusions
20 of law to which no responsive pleading is required. To the extent that a response is
21 required, Warner/Chappell denies such allegations. Except as specifically admitted
22 herein, Warner/Chappell denies the allegations in Paragraph 130(g).

23 131. Warner/Chappell is without knowledge or information sufficient to
24 form a belief as to the truth of the allegations in Paragraph 131 and on that basis
25 denies the allegations in Paragraph 131.

26 132. The allegations in Paragraph 132 are conclusions of law to which no
27 responsive pleading is required. To the extent that a response is required,
28 Warner/Chappell denies the allegations in Paragraph 132.

Ex. 2

1 133. Warner/Chappell admits the allegations in Paragraph 133.

2 134. Paragraph 134(a):

3 Warner/Chappell is without knowledge or information sufficient to form a
4 belief as to the truth of the allegations in Paragraph 134(a) and on that basis denies
5 the allegations in Paragraph 134(a).

6 Paragraph 134(b):

7 Warner/Chappell is without knowledge or information sufficient to form a
8 belief as to the truth of the allegations in Paragraph 134(b) and on that basis denies
9 the allegations in Paragraph 134(b).

10 Paragraph 134(c):

11 Warner/Chappell is without knowledge or information sufficient to form a
12 belief as to the truth of the allegations in Paragraph 134(c) and on that basis denies
13 the allegations in Paragraph 134(c).

14 Paragraph 134(d):

15 Warner/Chappell admits that on or about October 29, 2009, Plaintiff Majar
16 paid Warner/Chappell \$5,000 for a synchronization license to use *Happy Birthday to*
17 *You* in the Film “No Subtitles Necessary: László & Vilmos” and that, in accordance
18 with custom and practice in the industry, Warner/Chappell did not specify the
19 numbers of the copyright registrations or renewals pursuant to which it owns
20 copyright rights in *Happy Birthday to You* when it negotiated with Plaintiff Majar
21 regarding this license. Warner/Chappell is without knowledge or information
22 sufficient to form a belief as to the truth of the allegations in Paragraph 134(d)
23 regarding when Plaintiff Majar allegedly knew the alleged facts supporting this
24 action and on that basis denies such allegations. The allegations in Paragraph
25 134(d) regarding when Plaintiff Majar allegedly had reason to know the alleged
26 facts supporting this action are conclusions of law to which no responsive pleading
27 is required. To the extent that a response is required, Warner/Chappell denies such
28 allegations. Warner/Chappell admits that it is the exclusive copyright owner of **Ex. 2**

1 *Happy Birthday to You* and has held itself out as such since October 29, 2009.
2 Except as specifically admitted herein, Warner/Chappell denies the allegations in
3 Paragraph 134(d).

4 Paragraph 134(e):

5 The allegations in Paragraph 134(e) are conclusions of law to which no
6 responsive pleading is required. To the extent that a response is required,
7 Warner/Chappell denies the allegations in Paragraph 134(e).

8 Paragraph 134(f):

9 Warner/Chappell is without knowledge or information sufficient to form a
10 belief as to what Plaintiff Majar thought or had reason to think and on that basis
11 denies such allegations. The remaining allegations in paragraph 134(f) are
12 conclusions of law to which no responsive pleading is required. To the extent that a
13 response is required, Warner/Chappell denies such allegations.

14 Paragraph 134(g):

15 Warner/Chappell is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in the Paragraph 134(g) and on that basis
17 denies the allegations in Paragraph 134(g).

18 135. Paragraph 135 characterizes Plaintiffs' claims in the FAC and no
19 responsive pleading is required. To the extent that a response is required,
20 Warner/Chappell denies the allegations in Paragraph 135.

21 136. Paragraph 136 characterizes Plaintiffs' claims in the FAC and no
22 responsive pleading is required. To the extent that a response is required,
23 Warner/Chappell denies the allegations in Paragraph 136. Warner/Chappell further
24 denies that Plaintiffs can maintain this action as a class action or that any such class
25 can properly be certified.

26 137. Paragraph 137 characterizes Plaintiffs' claims in the FAC and their
27 purported class and contains conclusions of law, and no responsive pleading is
28 required. To the extent that a response is required, Warner/Chappell denies the **Ex. 2**

1 allegations in Paragraph 137. Warner/Chappell further denies that Plaintiffs can
2 maintain this action as a class action or that any such class can properly be certified.

3 138. The allegations in Paragraph 138 are conclusions of law to which no
4 responsive pleading is required. To the extent that a response is required,
5 Warner/Chappell denies the allegations in Paragraph 138. Warner/Chappell further
6 denies that Plaintiffs can maintain this action as a class action or that any such class
7 can properly be certified.

8 139. The allegations in Paragraph 139 are conclusions of law to which no
9 responsive pleading is required. To the extent that a response is required,
10 Warner/Chappell denies the allegations in Paragraph 139. Warner/Chappell further
11 denies that Plaintiffs can maintain this action as a class action or that any such class
12 can properly be certified.

13 140. The allegations in Paragraph 140 are conclusions of law to which no
14 responsive pleading is required. To the extent that a response is required,
15 Warner/Chappell denies the allegations in Paragraph 140. Warner/Chappell further
16 denies that Plaintiffs can maintain this action as a class action or that any such class
17 can properly be certified.

18 141. The allegations in Paragraph 141 are conclusions of law to which no
19 responsive pleading is required. To the extent that a response is required,
20 Warner/Chappell denies the allegations in Paragraph 141. Warner/Chappell further
21 denies that Plaintiffs can maintain this action as a class action or that any such class
22 can properly be certified.

23 142. The allegations in Paragraph 142 are conclusions of law to which no
24 responsive pleading is required. To the extent that a response is required,
25 Warner/Chappell denies the allegations in Paragraph 142. Warner/Chappell further
26 denies that Plaintiffs can maintain this action as a class action or that any such class
27 can properly be certified.

28

Ex. 2

1 143. The allegations in Paragraph 143 are conclusions of law to which no
2 responsive pleading is required. To the extent that a response is required,
3 Warner/Chappell denies the allegations in Paragraph 143. Warner/Chappell further
4 denies that Plaintiffs can maintain this action as a class action or that any such class
5 can properly be certified.

6 144. The allegations in Paragraph 144 are conclusions of law to which no
7 responsive pleading is required. To the extent that a response is required,
8 Warner/Chappell denies the allegations in Paragraph 144. Warner/Chappell further
9 denies that Plaintiffs can maintain this action as a class action or that any such class
10 can properly be certified.

11 145. Warner/Chappell is without knowledge or information sufficient to
12 form a belief as to the truth of the allegations in Paragraph 145 and on that basis
13 denies the allegations in Paragraph 145. Warner/Chappell further denies that
14 Plaintiffs can maintain this action as a class action or that any such class can
15 properly be certified.

16 146. Answering the allegations in Paragraph 146, Warner/Chappell hereby
17 incorporates its responses in Paragraphs 1 through 145 by reference as if fully set
18 forth herein. To the extent that any further response is required, Warner/Chappell
19 denies the allegations in Paragraph 146.

20 147. Paragraph 147 characterizes Plaintiffs' claims in the FAC and no
21 responsive pleading is required. To the extent that a response is required,
22 Warner/Chappell denies the allegations in Paragraph 147.

23 148. Paragraph 148 characterizes Plaintiffs' claims in the FAC and contains
24 conclusions of law, and no responsive pleading is required. To the extent that a
25 response is required, Warner/Chappell denies the allegations in Paragraph 148.

26 149. Warner/Chappell admits that it holds a valid and enforceable copyright
27 in the composition *Happy Birthday to You* and that pursuant to 17 U.S.C. § 115, it is
28 entitled to royalties for the mechanical licensing of this composition in accordance **Ex. 2**

1 with the legal requirements of that provision. Except as specifically admitted
2 herein, Warner/Chappell denies the allegations in Paragraph 149.

3 150. Warner/Chappell denies the allegations in Paragraph 150.

4 151. The allegations in Paragraph 151 are conclusions of law to which no
5 responsive pleading is required. To the extent that a response is required,
6 Warner/Chappell denies the allegations in Paragraph 151.

7 152. Warner/Chappell denies the allegations in Paragraph 152.

8 153. The allegations in Paragraph 153 are conclusions of law to which no
9 responsive pleading is required. To the extent that a response is required,
10 Warner/Chappell denies the allegations in Paragraph 153.

11 154. The allegations in Paragraph 154 are conclusions of law to which no
12 responsive pleading is required. To the extent that a response is required,
13 Warner/Chappell denies the allegations in Paragraph 154.

14 155. Warner/Chappell denies the allegations in Paragraph 155.

15 156. The allegations in Paragraph 156 are conclusions of law to which no
16 responsive pleading is required. To the extent that a response is required,
17 Warner/Chappell denies the allegations in Paragraph 156.

18 157. Paragraph 157 characterizes Plaintiffs' claims in the FAC and contains
19 conclusions of law, and no responsive pleading is required. To the extent that a
20 response is required, Warner/Chappell denies the allegations in Paragraph 157.

21 158. The allegations in Paragraph 158 are conclusions of law to which no
22 responsive pleading is required. To the extent that a response is required,
23 Warner/Chappell denies the allegations in Paragraph 158.

24 159. On information and belief, Warner/Chappell admits that the 1893 and
25 1896 versions of *Song Stories for the Kindergarten* included the song *Good*
26 *Morning to All*. The remaining allegations in Paragraph 159 are conclusions of law
27 to which no responsive pleading is required. To the extent that a response is
28 required, Warner/Chappell denies such allegations.

Ex. 2

1 160. On information and belief, Warner/Chappell admits that the 1893
2 version of *Song Stories for the Kindergarten* and the 1899 version of *Song Stories*
3 *for the Sunday School* included the song *Good Morning to All*. The remaining
4 allegations in Paragraph 160 are conclusions of law to which no responsive pleading
5 is required. To the extent that a response is required, Warner/Chappell denies such
6 allegations.

7 161. The allegations in Paragraph 161 are conclusions of law to which no
8 responsive pleading is required. To the extent that a response is required,
9 Warner/Chappell denies the allegations in Paragraph 161.

10 162. The allegations in Paragraph 162 are conclusions of law to which no
11 responsive pleading is required. To the extent that a response is required,
12 Warner/Chappell denies the allegations in Paragraph 162.

13 163. The allegations in Paragraph 163 are conclusions of law to which no
14 responsive pleading is required. To the extent that a response is required,
15 Warner/Chappell denies the allegations in Paragraph 163.

16 164. The allegations in Paragraph 164 are conclusions of law to which no
17 responsive pleading is required. To the extent that a response is required,
18 Warner/Chappell denies the allegations in Paragraph 164.

19 165. The allegations in Paragraph 165 are conclusions of law to which no
20 responsive pleading is required. To the extent that a response is required,
21 Warner/Chappell denies the allegations in Paragraph 165.

22 166. The allegations in Paragraph 166 are conclusions of law to which no
23 responsive pleading is required. To the extent that a response is required,
24 Warner/Chappell denies the allegations in Paragraph 166.

25 167. Paragraph 167 characterizes Plaintiffs' claims in the FAC and contains
26 conclusions of law, and no responsive pleading is required. To the extent that a
27 response is required, Warner/Chappell denies the allegations in Paragraph 167.

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Ex. 2

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RESPONSE TO PRAYER FOR RELIEF

Warner/Chappell denies that Plaintiffs are entitled to any of the relief requested in paragraphs A through I of the Prayer for Relief contained in the FAC or to any relief whatsoever.

RESPONSE TO JURY DEMAND

Plaintiffs’ request for a jury trial does not require a responsive pleading. To the extent that a response is required, Warner/Chappell denies that Plaintiffs are entitled to a jury.

AFFIRMATIVE DEFENSES

Warner/Chappell asserts the following affirmative defenses and reserves the right to raise additional defenses if and when appropriate, including if and when it responds to other claims in the FAC (and/or if and when it responds to this and/or other claims in subsequent amended complaints). In asserting these defenses, Warner/Chappell does not assume the burden of proof for any issue with respect to which the applicable law places the burden on Plaintiffs.

First Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, fails to state a claim against Warner/Chappell upon which relief can be granted. Further, Claim One of the FAC and Plaintiffs’ other claims are ambiguous, vague, and/or unintelligible. Warner/Chappell avers that Plaintiffs’ claims, including Claim One, do not describe the events or legal theories with sufficient particularity to permit Warner/Chappell to ascertain all defenses that may exist.

Second Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, by the applicable statute of limitations.

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Third Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, by the doctrines of laches, waiver, and/or one or more doctrines of estoppel.

Fourth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, has been waived by Plaintiffs in whole or in part and are, to that extent, barred.

Fifth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because of Plaintiffs’ unclean hands.

Sixth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because Plaintiffs have suffered no injury or damages as a result of the matters alleged in the FAC, or alternatively, because the alleged damages, if any, are speculative and because of the impossibility of ascertaining and allocating those alleged damages.

Seventh Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because Plaintiffs lack standing to sue for the injuries alleged in the FAC.

Eighth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because Plaintiffs are not entitled to restitution or disgorgement of profits.

Ninth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because Plaintiffs would be unjustly enriched if allowed to recover any portion of the damages alleged in the FAC.

Ex. 2

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Tenth Affirmative Defense

Claim One, and every purported claim contained in Plaintiffs’ FAC, is barred, in whole or in part, because the remedies sought are unconstitutional, contrary to public policy, or are otherwise unauthorized.

Reservation of Rights to Assert Additional Defenses

Warner/Chappell has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent during discovery in this matter. Warner/Chappell reserves the right to amend or seek to amend its answer and/or affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, Warner/Chappell respectfully demands the entry of judgment in its favor and against Plaintiffs as follows:

1. That Plaintiffs and the members of the purported plaintiff class take nothing by the FAC;
2. That the FAC and each and every allegation and subpart contained therein be dismissed with prejudice;
3. That Warner/Chappell recover its costs of suit incurred herein, including reasonable attorneys’ fees; and
4. For such other and further relief as the Court may deem just and proper.

DATED: May 6, 2013

MUNGER, TOLLES & OLSON LLP

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

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

Ex. 2

EXHIBIT 3

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7 Telephone: 619/239-4599
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9 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

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

13
14 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
15 PRODUCTIONS CORP., *et al.*,)
16 Plaintiffs,) **DECLARATION OF MARK C. RIFKIN**
17) **IN SUPPORT OF NOTICE OF MOTION**
18 v.) **AND CROSS-MOTION AND MOTION**
19) **AND CROSS-MOTION FOR**
20 WARNER/CHAPPELL MUSIC,) **SUMMARY JUDGMENT**
21 INC., *et al.*,)
22 Defendants.)
23) Date: January 26, 2015
24) Time: 9:30 a.m.
25) Room: 650
26) Judge: Hon. George H. King,
27) Chief Judge
28

1 I, Mark C. Rifkin, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the states of New York
3 and Pennsylvania and am admitted to the bar of this Court *pro hac vice* as interim
4 lead class counsel for plaintiffs in the above-captioned matter. I am a member of
5 the law firm of Wolf Haldenstein Adler Freeman & Herz LLP, Interim Lead Class
6 Counsel for the Plaintiffs in the above-captioned action. I have personal knowledge
7 of the facts stated herein and, if called as a witness, I could and would testify
8 competently thereto.

9 2. The evidentiary record in this matter does not contain a copy of the
10 February 1, 1893 assignment (the "1893 Assignment") from Mildred J. Hill and
11 Patty S. Hill (the "Hill Sisters") to Clayton F. Summy ("Summy").

12 3. No copy of the 1893 Assignment is known to exist.

13 4. Consequently, it is impossible to know the terms of the 1893
14 Assignment between the Hill Sisters and Summy.

15 5. The record in this matter does not contain any evidence that Mildred Hill
16 or Patty Hill were every employed by Summy or any corporation owned by Summy.
17 To the contrary, the New Song Information Sheet (App'x, Ex. 27 [WC0001983-84])
18 produced by Defendant Warner/Chappell Music, Inc. states that the Hill Sisters were
19 not employees-for-hire.

20 6. By 1912, Cable Company Chicago had begun publishing sheet music
21 under the following title:

22 Good-Morning to You.

23 GOOD-BYE TO YOU - HAPPY BIRTHDAY TO YOU

24 App'x, Ex. 13 [P003423-3424].

25 7. The evidentiary record in this matter does not contain any evidence that
26 Cable Company Chicago ever purported to own a copyright to *Happy Birthday*.

27 ///

28 ///

EXHIBIT 4

1 FRANCIS M. GREGOREK (144785)
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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**

14 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
15 PRODUCTIONS CORP., *et al.*,)
16 Plaintiffs,) **DECLARATION OF BETH A. LANDES**
17) **IN SUPPORT OF NOTICE OF MOTION**
18 v.) **AND CROSS-MOTION AND MOTION**
19) **AND CROSS-MOTION FOR**
20 WARNER/CHAPPELL MUSIC,) **SUMMARY JUDGMENT**
21 INC., *et al.*,)
22 Defendants.)
23) Date: January 26, 2014
24) Time: 9:30 a.m.
25) Room: 650
26) Judge: Hon. George H. King,
27) Chief Judge
28)

1 I, Beth A. Landes, hereby declare as follows:

2 1. I am an associate attorney at Wolf Haldenstein Adler Freeman & Herz
3 LLP, interim lead class counsel for Plaintiffs in the above-entitled action. I have
4 personal knowledge of the facts stated herein and, if called as a witness, I could and
5 would testify competently thereto.

6 2. On April 24, 2014, I requested certified copies of various records from
7 the United States Copyright Office, including Certificate of Registrations for the
8 copyrights registered under Reg. Nos. E51988, E51990, R306185, and R306186.

9 3. On or about June 12, 2014, I received registration certificates for the
10 copyrights in question, certified by Maria A. Pallante, Register of Copyrights and
11 Associate Librarian for Copyright Services, as follows:

12 a. Additional Certificate of Registration of a Claim to Copyright for
13 E51988, the original certified copyright record will be lodged and
14 manually filed with this Court, and a true and correct copy of which is
15 attached at App'x, Ex. 44 at pp. 626-627;

16 b. Additional Certificate of Registration of a Claim to Copyright for
17 E51990, the original certified copyright record will be lodged and
18 manually filed with this Court, and a true and correct copy of which is
19 attached at App'x, Ex. 48 at pp. 653-654;

20 c. Additional Certificate of Registration of a Claim to Copyright for
21 R306185, the original certified copyright record will be lodged and
22 manually filed with this Court, and a true and correct copy of which is
23 attached at App'x, Ex. 67 at pp. 808-810;

24 d. Additional Certificate of Registration of a Claim to Copyright for
25 R306186, the original certified copyright record will be lodged and
26 manually filed with this Court, and a true and correct copy of which is
27 attached at App'x, Ex. 68 at pp. 812-814;

28

Ex. 4

- 1 e. Additional Certificate of Registration of a Claim to Copyright for
2 A303752, the original certified copyright record will be lodged and
3 manually filed with this Court, and a true and correct copy of which is
4 attached at App'x, Ex. 12 at pp. 488-490;
- 5 f. Additional Certificate of Registration of a Claim to Copyright for
6 A777586, the original certified copyright record will be lodged and
7 manually filed with this Court, and a true and correct copy of which is
8 attached at App'x, Ex. 19 at pp. 514-516;
- 9 g. Additional Certificate of Registration of a Claim to Copyright for
10 A1068883, the original certified copyright record will be lodged and
11 manually filed with this Court, and a true and correct copy of which is
12 attached at App'x, Ex. 22 at pp. 530-532; and
- 13 h. Additional Certificate of Registration of a Claim to Copyright for R90447,
14 the original certified copyright record will be lodged and manually filed
15 with this Court, and a true and correct copy of which is attached at App'x,
16 Ex. 61 at pp. 757-758.

17 4. On November 13, 2014, I spoke by telephone with Jarletta Walls, a
18 Supervisory Copyright Specialist in the Records Research and Certification Section,
19 Office of Public Records and Repositories, of the U.S. Copyright Office and asked Ms.
20 Walls to confirm that the documents I received on June 12, 2014, are certified copies of
21 the authentic copyright registration certificates.

22 5. Ms. Walls confirmed that the Additional Certificates of Registration are
23 authentic and are what the Copyright Office regards as registration certificates for the
24 four copyrights in question.

25 6. Ms. Walls explained that the Copyright Office maintains many other
26 copyright records and may distribute uncertified, unofficial copies of such records to the
27 public under the designation "Copy of Registration," but that an official copy of a
28 certificate of registration is specifically identified by the Copyright Office only by the

1 distinct designation “Certificate of Registration.”

2 7. A true and correct copy of Chapter 19 of the Compendium (II) Copyright
3 Office Practices (1984) (hereinafter “Copyright Compendium II”) is available at App’x,
4 Ex. 99, pp.1119-1140. According to 37 CFR 201.2(b)(7), the Copyright Office
5 maintains this administrative manual for the general guidance of its staff in making
6 registrations and recording documents.

7 8. Plaintiffs’ certified Certificates of Registration, described at ¶ 3a-h, *supra*,
8 are titled “Additional Certificates of Registration”. The Copyright Compendium II,
9 §1906 provides that “[a]dditional certificates are certified copies of the record of
10 registration and have the same legal effect as the original certificate.”

11 9. The Copyright Compendium II also specifies that an additional certificate
12 of registration, for any registration dating to or before December 31, 1977, consists of “a
13 photocopy of the application that was used to make the original registration with a pre-
14 printed certification statement attached. The registration number, date of certification,
15 and the signature of the current Register of Copyrights are added to the certification
16 statement form, which is issued under the seal of the Copyright Office.” *Id.* § 1906.02.

17 10. A true and correct copy of Plaintiffs’ Receipt from the Copyright Office for
18 Order of Certified Certificates of Registration is available at App’x, Ex. 98, p. 1118.
19 Plaintiffs’ Receipt identifies the *certified* Certificates of Registration received by
20 Plaintiffs and presented to the Court (at *supra*, ¶ 3a-h), as “Additional Certificates,”
21 consistent with Copyright Compendium II, § 1906.

22 I hereby declare under the penalty of perjury under the laws of the United States
23 that the foregoing statements are true and correct to the best of my knowledge,
24 information, and belief.

25 Executed this 25th day of November, 2014, at New York, New York.

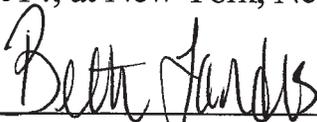
26 By: 
27 _____
28 BETH A. LANDES

EXHIBIT 5

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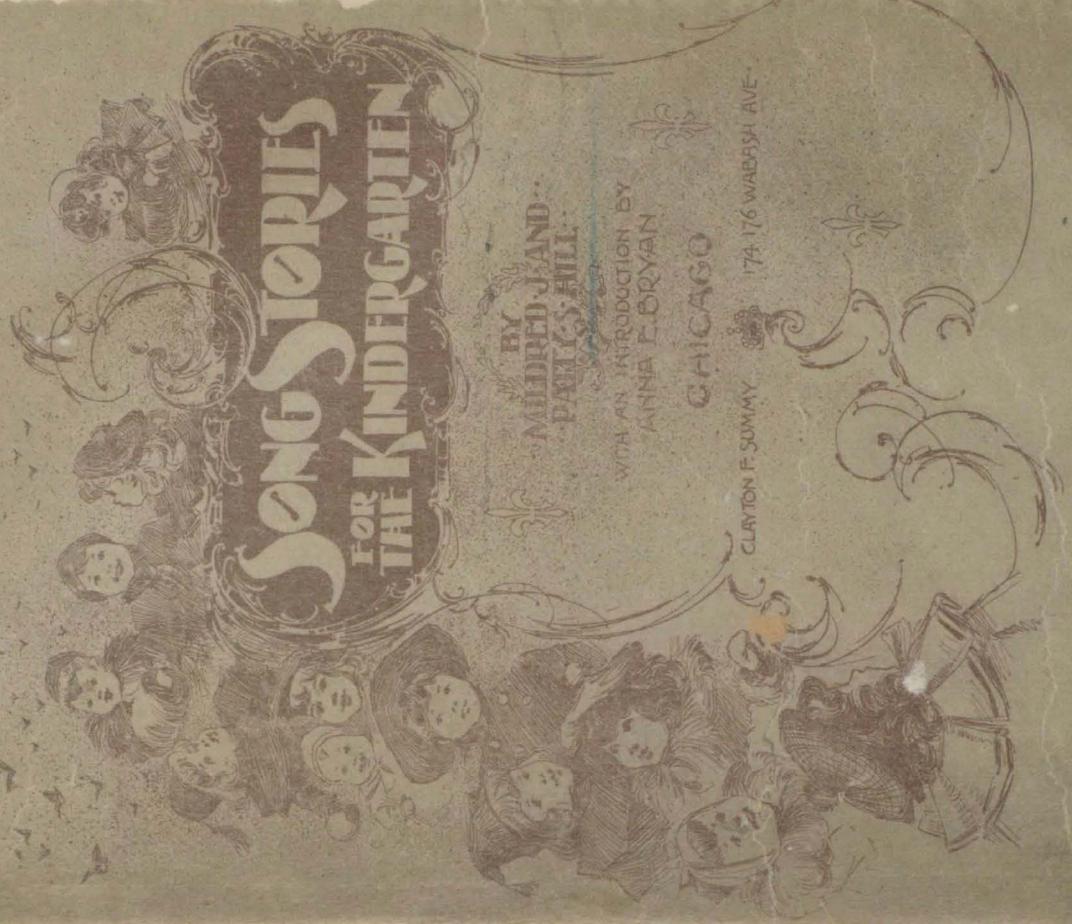
SONG STORIES FOR THE KINDERGARTEN

BY
MILDRED J. AND
PAUL C. HILL

WITH AN INTRODUCTION BY
ANNA E. BRYAN

CHICAGO

CLAYTON F. SUMMY 174 176 WABASH AVE.



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For the Kindergarten.

Music composed and Arranged by

Mildred J. Hill.

Words Written and Adapted by

Patty S. Hill.

With an Introduction by

ANNA E. BRYAN.

BOARDS, \$1.00.
CLOTH, 1.50.



Chicago :

CLAYTON F. SUMMY,

174-176 Wabash Ave.

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5-29
7

THIS LITTLE VOLUME
IS
RESPECTFULLY DEDICATED
TO
THE LOUISVILLE FREE KINDERGARTEN ASSOCIATION.

I am much indebted to Mr. Calvin B. Cady for his careful revision of these songs
which gives me confidence to place them before the public.

MILDRED J. HILL.

(iii)

M 1990
H4455

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