

EXHIBIT 117

Ex. 117

—

1751

MINUTES OF SPECIAL MEETING

of

BOARD OF DIRECTORS

of

C. F. S. MUSICAL COMPANY

A special meeting of the board of directors of C. F. S. Musical Company was held at Room 1600, 105 South LaSalle Street, on September 29, 1931, at 11 o'clock, a.m., pursuant to waiver of notice.

The following directors were present:

Clayton F. Summy
M. M. Hyland
Bruce Johnstone

constituting all of the board of directors. Mr. Summy acted as chairman of the meeting and Miss Hyland as secretary.

Mr. Summy reported that the name of the company had been changed on September 12, 1931 from Clayton F. Summy Co. to C. F. S. Musical Company in compliance with resolution adopted by the stockholders at the special meeting held August 31, 1931. The company has proceeded to carry out the plan of reorganization dated August 7, 1931 and approved by the directors and stockholders of this company at their re-

spective meeting on August 1, 1931. The Clayton F. Summy Co., a Delaware corporation, was granted a charter by the state of Delaware on August 31, 1931 and adopted the said plan of reorganization on August 7, 1931. Pursuant to this plan of reorganization, all of the assets of this company were exchanged for the capital stock of the Clayton F. Summy Co., a Delaware corporation, and pursuant to a request of this company the said stock was immediately transferred to the stockholders of this company in proportion to their stockholdings of record August 31, 1931. In further pursuance to the plan of reorganization, the Clayton F. Summy Co., a Delaware corporation, assumed all of the liabilities of this company as of August 31, 1931, except tax liabilities, if any, resulting from the transfer of the assets to the Delaware corporation. The Delaware corporation at a meeting of its directors held on September 4, 1931, among other things, adopted a contract whereby the Clayton F. Summy Co., a Delaware corporation, agreed to carry out all of the provisions pertaining to it contained in the reorganization agreement dated August 7, 1931, a copy of which agreement is inserted in the record book of this company following the minutes of this meeting.

Thereupon the following resolution was unanimously adopted:

RESOLVED, That the foregoing report of the chairman of the meeting in connection with the carrying out of the plan of reorganization of this company dated August 7, 1931, and all the acts and doings of the company and the officers of the company since the last meeting of the board of directors, and particularly all steps and doings in connection with carrying out the said plan of reorganization of August 7, 1931, be, and the same are hereby approved, ratified and confirmed; and be it further

RESOLVED, That a special meeting of the stockholders of this company be called for September 29, 1931, at 11:30 o'clock A.m., for the purpose of passing upon the acts and doings of this company and its officers since the last stockholders' meeting of August 31, 1931, particularly in reference to carrying out the plan of reorganization of August 7, 1931.

There being no further business, the meeting adjourned.

Wm. H. ...
Wm. H. ...
Secretary.

EXHIBIT 118

COPYRIGHT 1930 BY
DWIGHT & M. H. JACKSON
CHICAGO
PATENT PENDING

INCORPORATED UNDER THE LAWS OF THE STATE OF

WYOMING



NUMBER
2

SHARES
953

CANCELLED

BIRCH TREE GROUP LIMITED

AUTHORIZED CAPITAL 953 SHARES \$100 PAR VALUE

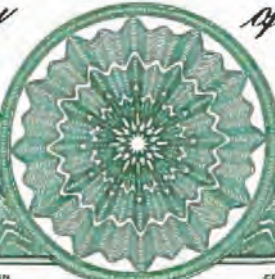
This Certifies That ^{1/3/89} ~~ATE~~ David R. Sengstack is the owner of
Nine Hundred and Fifty-three full paid and non-assessable

SHARES OF THE CAPITAL STOCK OF Birch Tree Group Limited
*transferable on the books of the Corporation in person or by duly authorized Attorney upon
surrender of this Certificate properly endorsed.*

*In Witness Whereof the said Corporation has caused this Certificate to be signed by its duly
authorized officers and sealed with the Seal of the Corporation,*

this 12th day of February A.D. 19 86

Lynn A Sengstack
SECRETARY



[Signature]
PRESIDENT

0	1	2
3	4	5
6	7	8
9	0	0
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
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9	9	9
0	0	0



STOCK POWER

FOR VALUE RECEIVED, I, David K. Sengstack

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto
Warner/Chappell Music, Inc.

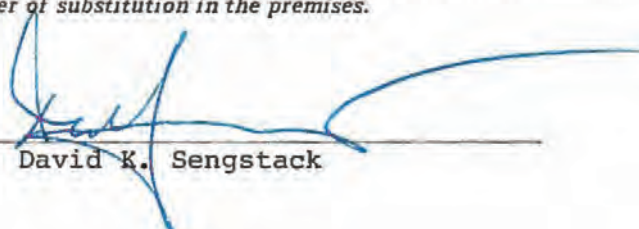
(953) Shares of the Common Capital Stock of Summy-Bichard, Inc.,
(formerly Birch Tree Group, Ltd.) a Wyoming corporation standing in my (own) name (as)

on the books of said Corporation represented by Certificate (no) No (00) 2

herewith, and do hereby irrevocably constitute and appoint _____

_____ attorney to transfer the
said stock on the books of said Corporation with full power of substitution in the premises.

Dated January 3, 1989



David K. Sengstack

In presence of


To the Value Received, _____ hereby sell, assign and transfer
into _____
represented by the within Certificate, and do hereby
Shares

THIS SPACE IS NOT TO BE
COVERED IN ANY WAY

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CE
ASSIGNMENT

(RESERVE THIS SPACE TO PASTE BACK CANCELLED STOCK CERTIFICATE)

Certificate No. 2 For 953 Shares

Dated 2/12 1986

Issued to Daniel K. Sengstad

IF NOT AN ORIGINAL ISSUE SHOW DETAILS OF TRANSFER BELOW

<i>Transferred from</i>	<i>Original Certificate</i>		<i>No. of Origl. Shares</i>	<i>No. of Shrs Transfd.</i>
	<i>No.</i>	<i>Date</i>		

IF THIS CERTIFICATE IS SURRENDERED FOR TRANSFER SHOW DETAILS

Received this Certificate 19

Surrendered this Certificate January 3 1989

<i>New Certificate Issued to</i>	<i>No. of New Certificate</i>	<i>No. of Shares Transferred</i>

(RESERVE THIS SPACE TO PASTE BACK CANCELLED STOCK CERTIFICATE)

Certificate No. 3 For 953 Shares

Dated January 3 1989

Issued to Harmon / Chappel Mearns, Inc.

IF NOT AN ORIGINAL ISSUE SHOW DETAILS OF TRANSFER BELOW

<i>Transferred from</i>	<i>Original Certificate</i>		<i>No. of Origl. Shares</i>	<i>No. of Shrs Transfd.</i>
	<i>No.</i>	<i>Date</i>		

IF THIS CERTIFICATE IS SURRENDERED FOR TRANSFER SHOW DETAILS

Received this Certificate 19

Surrendered this Certificate 19

<i>New Certificate Issued to</i>	<i>No. of New Certificate</i>	<i>No. of Shares Transferred</i>

EXHIBIT 119

SUMMARY FACT SHEET

Company: Birch Tree Group Ltd. ("Birch Tree", "BTG" or the "Company")

Corporate Headquarters: Princeton, New Jersey

Business: Birch Tree, through a series of predecessor companies, has been operated continuously by the Sengstack family since 1931 and the acquired companies date back as far as 1876. The Company currently operates as an international publisher and distributor of educational music used principally by music teachers for both class and individual instruction and performance. Notable in the catalog are two highly respected methods of instrumental instruction: The SuzukiTM Method ("Suzuki") and the Frances Clark[®] Library for Piano Students ("Clark" or the "Library"). Also, Birch Tree owns the copyright in "Happy Birthday To You", an internationally recognized song. The Company owns and controls a catalog of approximately 50,000 copyrights of which only 1,700 to 1,800 are active at this time. During 1987, approximately 81.0% of BTG's gross revenues were generated in the United States (7.1% in Japan) and 78.1% of gross revenues were generated by the two above-mentioned instrumental instruction methods and the song "Happy Birthday To You" ("HBTY").

Ownership: Birch Tree is 100% owned by its chairman, David K. Sengstack (66).

Proposed Transaction: See Exhibit #1.

THE COMPANY

HISTORY

Birch Tree Group Ltd. currently operates principally as an international publisher and distributor of educational music, music instruction methods and books about music. The Company controls over 50,000 copyrights of which only 1,700 to 1,800 are currently active. The Company also distributes the unique Folkways Record catalog for the Smithsonian Institution.

BTG has, through a series of predecessor companies, operated continuously since 1931 when John F. Sengstack, an accountant, purchased and reorganized Clayton F. Summy Co., a Chicago sheet music retailer and publisher. In 1956, the company changed its name to Summy-Birchard Publishing Company to reflect the purchase of C.C. Birchard & Company, and in 1961, after the acquisition of magazine and concert businesses, the company name was changed to Summy-Birchard Company. John F. Sengstack remained president until 1958, when he was succeeded by his son, David K. Sengstack, the present chairman.

During the 1950's and 1960's, the Company acquired a number of additional publishing companies: Creative Music Publishers, 1953 (Piano instruction method); Southwestern Music Publishers, 1957 (Band); C.C. Birchard & Co., 1957 (20th century American composers, school music textbooks, choral and instrumental music); Chart Music Publishing House, 1960 (School instrumental music); Arthur P. Schmidt Co., 1960 (20th century American composers and piano teaching music); James Allan Dash & Company (formerly Baltimore Music Co.), 1961 (Choral music) and Traficante Music Publishing Company, 1969 (Accordion music). Each of these companies had an area of specialization which added breadth and depth to Summy-Birchard.

A.P. Schmidt Co., a Delaware Corporation, was created in 1968 as a wholly-owned subsidiary of Summy-Birchard to hold the copyrights of the above-mentioned companies

(with the exception of Summy and Birchard) and affiliated with SESAC, Inc. (formerly Society of European Stage Authors and Composers), a privately owned rights company. In 1972, the copyrights of McLaughlin & Reilly Company (principally Catholic choral and organ music) were assigned to A.P. Schmidt Company.

In 1958, Summy-Birchard founded a magazine, *The Piano Teacher*, which existed for nine years. The magazine was the outgrowth of bulletins and pamphlets included with the Summy Subscription Service through which piano teachers could receive new issues on a regular, low-cost basis.

In 1961, Summy-Birchard Company further expanded into magazine publishing and entered the concert business with the purchase of Musical Courier, Inc., National Concert and Artists Corporation ("NCAC") and Civic Concert Service. The magazine was sold in 1964 while NCAC and Civic Concert Service were liquidated in 1971.

Acquisitions in the 1970's included Educational Music Bureau and Don Sellers, Inc. Educational Music Bureau was a Chicago supplier of school music and merchandise, while Don Sellers, Inc., was formed by Don Sellers in 1955 to market his recorded self-teaching piano and organ courses.

In 1982 BTG established a wholly-owned, Japanese subsidiary, Summy Music K.K., to enhance the Company's ability to promote its catalog of rights and publications in Japan as well as develop an independent catalog of Japanese rights and publications.

Recently, the Company entered into an agreement for the sole distribution rights to the 2,100 title Folkways Records catalog (in cooperation with the Smithsonian Institution), which includes a large collection of recordings for children.

The Company's principal office is at 180 Alexander Street, Princeton, New Jersey 08540 (609-683-0090).

EXHIBIT 120

1 BETSY C. MANIFOLD (182450)
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11 Telephone: 510/451-0544
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12 Attorneys for Plaintiff Rupa Marya
13 [Additional counsel appear on signature page.]
14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 RUPA MARYA On Behalf Of
19 Herself And All Others Similarly
Situated,

21 Plaintiff,

22 v.

23 WARNER/CHAPPELL MUSIC,
24 INC.,

26 Defendant.

Case No. **CV 13- 4460** PSWL (FFW)

) COMPLAINT FOR DECLARATORY
) JUDGMENT; INJUNCTIVE AND
) DECLARATORY RELIEF; AND
) DAMAGES FOR: (1) INVALIDITY
) OF COPYRIGHT UNDER THE
) COPYRIGHT ACT (17 U.S.C. §§ 101
) *et seq.*; AND (2) VIOLATIONS OF
) CALIFORNIA UNFAIR
) COMPETITION LAWS (Cal. Bus. &
) Prof. Code §§ 17200 *et seq.*)

) CLASS ACTION

) DEMAND FOR JURY TRIAL

FILED
13 JUN 20 AM 11:57
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SAN FRANCISCO

1 Plaintiff Rupa Marya d/b/a/ Rupa Marya & The April Fishes (“Marya”), on
2 behalf of herself and all others similarly situated, by her undersigned attorneys, as
3 and for her Class Action Complaint against defendant Warner/Chappell Music, Inc.
4 (“Warner/Chappell”), alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. The Court has subject-matter jurisdiction over this action pursuant to
7 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory
8 and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant
9 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; pursuant to the Class
10 Action Fairness Act, 28 U.S.C. § 1332(d)(2); and supplemental jurisdiction pursuant
11 to 28 U.S.C. § 1367 over the entire case or controversy.

12 2. The Court has personal jurisdiction and venue is proper in this District
13 under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in
14 this Judicial District where defendant Warner/Chappell’s principal place of business
15 is located and where Warner/Chappell regularly conducts business and may be
16 found.

17 **INTRODUCTION**

18 3. This is an action to declare invalid the copyright that defendant
19 Warner/Chappell claims to own to the world’s most popular song, *Happy Birthday*
20 *to You* (the “Song”), to declare that *Happy Birthday to You* is dedicated to public use
21 and in the public domain; and to return millions of dollars of unlawful licensing fees
22 collected by defendant Warner/Chappell pursuant to its wrongful assertion of
23 copyright ownership of the Song.

24 4. According to the United States Copyright Office (“Copyright Office”),
25 a “*musical composition* consists of music, including any accompanying words, and
26 is normally registered as a work of the performing arts.” Copyright Office Circular
27 56A, “Copyright Registration of Musical Compositions and Sound Recordings,” at 1
28 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a

1 musical composition generally is the composer, and the lyricist (if a different
2 person). *Id.*

3 5. More than 120 years after the melody to which the simple lyrics of
4 *Happy Birthday to You* is set was first published, defendant Warner/Chappell
5 boldly, but wrongfully and unlawfully, insists that it owns the copyright to *Happy*
6 *Birthday to You*, and with that copyright the exclusive right to authorize the song's
7 reproduction, distribution, and public performances pursuant to federal copyright
8 law. Defendant Warner/Chappell either has silenced those wishing to record or
9 perform *Happy Birthday to You*, or has extracted millions of dollars in unlawful
10 licensing fees from those unwilling or unable to challenge its ownership claims.

11 6. Irrefutable documentary evidence, some dating back to 1893, shows
12 that the copyright to *Happy Birthday to You*, if there ever was a valid copyright to
13 any part of the song, expired no later than 1921 and that if defendant
14 Warner/Chappell owns any rights to *Happy Birthday to You*, those rights are limited
15 to the extremely narrow right to reproduce and distribute specific piano
16 arrangements for the song published in 1935. Significantly, no court has ever
17 adjudicated the validity or scope of the defendant's claimed interest in *Happy*
18 *Birthday to You*, nor in the song's melody or lyrics, which are themselves
19 independent works.

20 7. Plaintiff Marya, on behalf of herself and all others similarly situated,
21 seeks a declaration that *Happy Birthday to You* is dedicated to public use and is in
22 the public domain as well as monetary damages and restitution of all the unlawful
23 licensing fees that defendant Warner/Chappell improperly collected from Marya and
24 all other Class members.

25 PARTIES

26 8. Plaintiff Marya is a musician and leader of the band entitled "Rupa &
27 The April Fishes" ("RTAF"), and a member of the American Society of Composers,
28 Authors and Publishers ("ASCAP"). Plaintiff Marya is a resident of San Mateo

1 County, California. RTAF recorded *Happy Birthday to You* at a live show in San
2 Francisco, California, on April 27, 2013. Under a claim of copyright by defendant
3 Warner/Chappell, on or about June 17, 2013, Plaintiff Marya d/b/a RTAF paid to
4 defendant Warner/Chappell the sum of \$455 for a compulsory license pursuant to 17
5 U.S.C. § 115 (commonly known as a “mechanical license”) to use *Happy Birthday*
6 *to You*, as alleged more fully herein.

7 9. Defendant Warner/Chappell is a Delaware corporation with its
8 principal place of business located at 10585 Santa Monica Boulevard, Los Angeles,
9 California 90025. Warner/Chappell regularly conducts business within this Judicial
10 District, where it may be found.

11 **FACTUAL BACKGROUND**

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

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

18 11. The manuscript included *Good Morning to All*, a song written by the
19 Hill Sisters.

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

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

28

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

3 15. On the October 16, 1893, copyright application, Summy claimed to be
4 the copyright's proprietor, but not the author of the copyrighted works.

5 16. *Song Stories for the Kindergarten* bears a copyright notice reading
6 "Copyright 1893, by Clayton F. Summy."

7 17. As proprietor of the 1893 copyright in *Song Stories for the*
8 *Kindergarten*, Summy owned the rights to both the songbook as a compilation and
9 the individual songs published therein, including *Good Morning to All*.

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

11 Good morning to you

12 Good morning to you

13 Good morning dear children

14 Good morning to all.

15
16 19. The lyrics to *Happy Birthday to You* are set to the melody from the
17 song *Good Morning to All*. As nearly everyone knows, the lyrics to *Happy Birthday*
18 *to You* are:

19 Happy Birthday to You

20 Happy Birthday to You

21 Happy Birthday dear [NAME]

22 Happy Birthday to You.

23
24 20. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
25 *for the Kindergarten*.

26 21. On or about January 14, 1895, Summy incorporated the Clayton F.
27 Summy Co. ("Summy Co.") under the laws of the State of Illinois for a limited term
28 of 25 years.

1 22. In 1896, Summy published a new, revised, illustrated, and enlarged
2 version of *Song Stories for the Kindergarten*, which contained eight previously
3 unpublished songs written by the Hill Sisters as well as illustrations by Margaret
4 Byers.

5 23. On or about June 18, 1896, Summy filed a copyright application (Reg.
6 No. 34260) with the Copyright Office for the 1896 publication of *Song Stories for*
7 *the Kindergarten*.

8 24. On its June 18, 1896, copyright application, Summy again claimed to
9 be the copyright's proprietor, but (again) not the author of the copyrighted works.

10 25. The 1896 version of *Song Stories for the Kindergarten* bears a
11 copyright notice reading "Copyright 1896, by Clayton F. Summy."

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

15 27. The lyrics to *Happy Birthday to You* were *not* published in the 1896
16 version of *Song Stories for the Kindergarten*.

17 28. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
18 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday*
19 *School*. One of those songs included in *Song Stories for the Sunday School* was
20 *Good Morning to All*.

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

23 30. On the 1899 copyright application, Summy Co. claimed to be the
24 copyright's proprietor, but not the author of the copyrighted works.

25 31. The title page to *Song Stories for the Sunday School* states:

26 This collection of songs has been published in response to earnest
27 requests from various sources. They are taken from the book, *Song*
28 *Stories for the Kindergarten* by the MISSES HILL, and *are the*

1 **copyright property of the publishers.** (Emphasis added).

2 32. *Song Stories for the Sunday School* bears a copyright notice reading
3 “Copyright 1899 by Clayton F. Summy Co.”

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

7 34. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
8 *for the Sunday School*.

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

12 36. For example, in the January 1901 edition of *Inland Educator and*
13 *Indiana School Journal*, the article entitled “First Grade Opening Exercises”
14 described children singing the words “happy birthday to you,” but did not print the
15 song’s lyrics or melody.

16 37. In or about February, 1907, Summy Co. republished the song *Good*
17 *Morning to All* as an individual musical composition.

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

20 39. The lyrics to *Happy Birthday to You* do **not** appear in the 1907
21 publication of *Good Morning to All*.

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

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

27 Sing: “Happy Birthday to You.” (Music same as “Good-bye to
28

1 You.”)

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

4 42. *Tell Me a True Story* did **not** include the lyrics to *Happy Birthday to*
5 *You*.

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

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

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

19 45. *The Elementary Worker and His Work* attributed authorship or
20 identified the copyrights to many of the works included in the book. Significantly, it
21 did **not** attribute authorship or identify any copyright for the song *Happy Birthday to*
22 *You*.

23 46. On or about January 14, 1920, Summy Co. was dissolved in accordance
24 with its limited (not perpetual) 25-year term of incorporation. Summy Co. did not
25 extend or renew the 1899 (Reg. No. 20441) or 1907 (Reg. No. 142468) copyrights
26 prior to its dissolution.

27 47. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
28

1 to the original and revised *Song Stories for the Kindergarten* were vested solely in
2 their proprietor, Summy.

3 48. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
4 to *Song Stories for the Sunday School* and *Good Morning to All* were vested solely
5 in their proprietor, Summy Co.

6 49. The copyright to the original *Song Stories for the Kindergarten* (Reg.
7 No. 45997) was not extended by Summy, and consequently expired on October 16,
8 1921. *Song Stories for the Kindergarten*, including the song *Good Morning to All*,
9 became dedicated to public use and fell into the public domain by no later than that
10 date.

11 50. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
12 No. 34260) was not extended by Summy, and consequently expired on June 18,
13 1924. The revised *Song Stories for the Kindergarten* became dedicated to public
14 use and fell into the public domain by no later than that date.

15 51. In or around March 1924, the sheet music (with accompanying lyrics)
16 to *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
17 compiled, and edited by Robert H. Coleman (“Coleman”). Upon information and
18 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*
19 *You* were published together.

20 52. Coleman did not claim authorship of the song entitled *Good Morning*
21 *to You* or the lyrics to *Happy Birthday to You*. Although *Harvest Hymns* attributed
22 authorship or identified the copyrights to many of the works included in the book, it
23 did **not** attribute authorship or identify any copyright for *Good Morning to You* or
24 *Happy Birthday to You*.

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

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

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

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

13 57. *Children’s Praise and Worship* attributed authorship or identified the
14 copyrights to many of the works included in the book. Significantly, it did *not*
15 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

16 58. *Children’s Praise and Worship* did not provide any copyright notice for
17 the combination of *Good Morning to All* with the lyrics to *Happy Birthday to You*,
18 nor did it include the names of Mildred Hill or Patty Hill and did not attribute any
19 authorship or ownership to the Hill Sisters.

20 59. Upon information and belief, the Hill Sisters had not fixed the lyrics to
21 *Happy Birthday to You* or the song *Happy Birthday to You* in a tangible medium of
22 expression, if ever, at any time before Gospel published *Children’s Praise and*
23 *Worship* in 1928.

24 60. Upon information and belief, Summy sold Summy Co. II to John F.
25 Sengstack (“Sengstack”) in or around 1930.

26 61. Upon information and belief, on or about August 31, 1931, Sengstack
27 incorporated a third Clayton F. Summy Co. (“Summy Co. III”) under the laws of the
28 State of Delaware. Upon information and belief, Summy Co. III was not a

1 successor to Summy Co. or Summy Co. II; rather, it was incorporated as a new
2 corporation.

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

4 63. On July 28, 1933, *Happy Birthday to You* was used in the world's first
5 singing telegram.

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

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

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

22 67. In 1934 and 1935, Jessica Hill sold and assigned to Summy Co. III
23 certain piano arrangements of *Good Morning to All*, including publishing, public
24 performance, and mechanical reproduction rights, copyright, and extension of
25 copyright in exchange for a percentage of the retail sales revenue from the sheet
26 music.

27 68. On or about December 29, 1934, Summy Co. III filed an Application
28 for Copyright for Republished Musical Composition with new Copyright Matter

1 (Reg. No. E45655) with the Copyright Office for the song *Happy Birthday*.

2 69. In that December 1934 Application for Copyright, Summy Co. III
3 claimed to be the proprietor of the copyright as a work for hire by Preston Ware
4 Orem (“Orem”) and claimed the copyrighted new matter as “arrangement by piano
5 solo.”

6 70. The lyrics to *Happy Birthday to You* were not included on the work
7 registered with the Copyright Office as Reg. No. E45655. The application did not
8 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
9 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
10 *to All*.

11 71. The work registered with the Copyright Office as Reg. No. E45655 was
12 not eligible for federal copyright protection in that it consisted entirely of
13 information that was common property and contained no original authorship, except
14 as to the arrangement itself.

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

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

21 74. The lyrics to *Happy Birthday to You* were not included on the work
22 registered with the Copyright Office as Reg. No. E46661. 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 75. The work registered with the Copyright Office as Reg. No. E46661 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

1 as to the arrangement itself.

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

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

8 78. The lyrics to *Happy Birthday to You* were not included on the work
9 registered with the Copyright Office as Reg. No. E47439. 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 79. The work registered with the Copyright Office as Reg. No. E47439 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 80. 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. E47440) with the Copyright Office for the song *Happy Birthday*.

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

23 82. The lyrics to *Happy Birthday to You* were not included on the work
24 registered with the Copyright Office as Reg. No. E47440. 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*.

28 83. The work registered with the Copyright Office as Reg. No. E47440 was

1 not eligible for federal copyright protection in that it consisted entirely of
2 information that was common property and contained no original authorship, except
3 as to the arrangement itself.

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

7 85. In that December 1935 Application for Copyright, Summy Co. III
8 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
9 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
10 Chorus and revised text.” The sheet music deposited with the application credited
11 Forman only for the arrangement, not for any lyrics, and did not credit the Hill
12 Sisters with writing the lyrics to *Happy Birthday to You*.

13 86. The lyrics to *Happy Birthday to You*, including a second verse as the
14 revised text, were included on the work registered with the Copyright Office as Reg.
15 No. E51988. However, the December 1935 Application for Copyright did not
16 attribute authorship of the lyrics to either of the Hill Sisters and did not claim
17 copyright in the lyrics to *Happy Birthday to You* alone or in combination with the
18 melody of *Good Morning to All*.

19 87. The work registered with the Copyright Office as Reg. No. E51988 was
20 not eligible for federal copyright protection in that it consisted entirely of
21 information that was common property and contained no original authorship, except
22 as to the sheet music arrangement itself.

23 88. The work registered as Reg. No. E51988 was not eligible for federal
24 copyright protection because Summy Co. III did not have authorization from the
25 author to publish that work.

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

1 90. In that additional December 1935 Application for Copyright, Summy
2 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
3 claimed the copyrighted new matter as “arrangement as easy piano solo, with text.”
4 The sheet music deposited with the application credited Orem only for the
5 arrangement, not for any lyrics, and did not credit the Hill Sisters with writing the
6 lyrics to *Happy Birthday to You*.

7 91. The lyrics to *Happy Birthday to You* were included on the work
8 registered with the Copyright Office as Reg. No. E51990. However, the additional
9 December 1935 Application for Copyright did not attribute authorship of the lyrics
10 to either of the Hill Sisters, did not contain the names of either of the Hill Sisters,
11 and did not claim any copyright in the lyrics to *Happy Birthday to You* alone or in
12 combination with the melody of *Good Morning to All*.

13 92. The work registered with the Copyright Office as Reg. No. E51990 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 sheet music arrangement itself.

17 93. The work registered as Reg. No. E51990 was not eligible for federal
18 copyright protection because Summy Co. III did not have authorization from the
19 author to publish that work.

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

25 95. On October 15, 1942, The Hill Foundation commenced an action
26 against Summy Co. III in the Southern District of New York, captioned *The Hill*
27 *Foundation, Inc. v. Clayton F. Summy Co.*, Case No. 19-377, for an accounting of
28 the royalties received by it for the licensing of *Happy Birthday to You*. The Hill

1 Foundation asserted claims under the 1893, 1896, 1899, and 1907 copyrights for
2 *Good Morning to All* and did **not** claim any copyright to the lyrics to *Happy*
3 *Birthday to You*, alone or in combination with the melody of *Good Morning to All*.

4 96. On March 2, 1943, The Hill Foundation commenced an action against
5 the Postal Telegraph Cable Company in the Southern District of New York,
6 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
7 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
8 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
9 1896, and 1899 copyrights for *Good Morning to All* and did **not** claim any copyright
10 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
11 *Good Morning to All*.

12 97. Despite the filing of four prior cases in the Southern District of New
13 York asserting copyrights to *Good Morning to All*, there has been no judicial
14 determination of the validity or scope of any copyright related to *Good Morning to*
15 *All*.

16 98. In or about 1957, Summy Co. III changed its name to Summy-Birchard
17 Company.

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

22 100. In particular, on December 6, 1962, Summy Co. III filed a renewal
23 application for Reg. No. E51988, as employer for hire of Forman. Forman did not
24 write the lyrics to *Happy Birthday to You* or the combination of those lyrics with the
25 melody of *Good Morning to All*, and neither Summy Co. III nor defendant
26 Warner/Chappell has claimed otherwise.

27 101. Also on December 6, 1962, Summy Co. III filed a renewal application
28 for Reg. No. E51990, as employer for hire of Orem. Orem did not write the lyrics to

1 *Happy Birthday to You* or the combination of those lyrics with the melody of *Good*
2 *Morning to All*, and neither Summy Co. III nor defendant Warner/Chappell has
3 claimed otherwise.

4 102. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
5 and was acquired by Warner/Chappell in or about 1998.

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

7 103. According to a 1999 press release by ASCAP, *Happy Birthday to You*
8 was the most popular song of the 20th Century.

9 104. The 1998 edition of the *Guinness Book of World Records* identified
10 *Happy Birthday to You* as the most recognized song in the English language.

11 105. Defendant Warner/Chappell currently claims it owns the exclusive
12 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
13 Co. III published in 1935.

14 106. ASCAP provides public performance licenses to bars, clubs, websites,
15 and many other venues. ASCAP “blanket licenses” grant the licensee the right to
16 publicly perform any or all of the over 8.5 million songs in ASCAP repertory in
17 exchange for an annual fee. The public performance license royalties are distributed
18 to ASCAP members based on surveys of performances of each ASCAP repertory
19 song across different media. By registering *Happy Birthday to You* with ASCAP,
20 Defendant Warner/Chappell obtains a share of blanket license revenue that would
21 otherwise be paid to all other ASCAP members, in proportion to their songs’ survey
22 shares.

23 107. Plaintiff Marya d/b/a RTAF recorded the song *Happy Birthday to You*
24 at a live show in San Francisco, to be released as part of a “live” album. She learned
25 that defendant Warner/Chappell claimed exclusive copyright ownership to *Happy*
26 *Birthday to You*, including for purposes of issuing mechanical licenses.

27 108. Accordingly, on June 17, 2013, Plaintiff Marya paid Warner/Chappell
28 \$455 for a mechanical license for the reproduction and distribution of 5,000 albums.

1 **CLASS ALLEGATIONS**

2 109. Plaintiff Marya brings this action under Federal Rules of Civil
3 Procedure 23(a) and (b) as a class action on behalf of herself and all others similarly
4 situated for the purpose of asserting the claims alleged in this Complaint on a
5 common basis.

6 110. The proposed Class is comprised of:

7 **All persons or entities (excluding Warner/Chappell’s directors,**
8 **officers, employees, and affiliates) who entered into a license with**
9 **Warner/Chappell, or paid Warner/Chappell, directly or indirectly**
10 **through its agents, a licensing fee for the song *Happy Birthday to***
11 ***You* at any time from June 18, 2009, until Warner/Chappell’s**
12 **conduct as alleged herein has ceased.**

13 111. Although Plaintiff Marya does not know the exact size of the Class or
14 the identities of all members of the Class, upon information and belief that
15 information can be readily obtained from the books and records of defendant
16 Warner/Chappell. Plaintiff believes that the Class includes thousands of persons or
17 entities who are widely geographically disbursed. Thus, the proposed Class is so
18 numerous that joinder of all members is impracticable.

19 112. The claims of all members of the Class involve common questions of
20 law and fact including:

- 21 a. whether *Happy Birthday to You* is in the public domain and dedicated
22 to public use;
- 23 b. whether Warner/Chappell is the exclusive owner of the copyright to
24 *Happy Birthday to You* and is thus entitled to all of the rights conferred
25 in 17 U.S.C. § 102;
- 26 c. whether Warner/Chappell has the right to collect fees for the use of
27 *Happy Birthday to You*;
- 28

1 d. whether Warner/Chappell has violated the law by demanding and
2 collecting fees for the use of *Happy Birthday to You* despite not having
3 a valid copyright to the song; and

4 e. whether Warner/Chappell is required to return unlawfully obtained
5 payments to plaintiff Marya and the other members of the Class and, if
6 so, what amount is to be returned.

7 113. With respect to Claim III, the common questions of law and fact
8 predominate over any potential individual issues.

9 114. Plaintiff Marya's claims are typical of the claims of all other members
10 of the Class and plaintiff Marya's interests do not conflict with the interests of any
11 other member of the Class, in that plaintiff and the other members of the Class were
12 subjected to the same unlawful conduct.

13 115. Plaintiff Marya is committed to the vigorous prosecution of this action
14 and has retained competent legal counsel experienced in class action and complex
15 litigation.

16 116. Plaintiff is an adequate representative of the Class and, together with its
17 attorneys, is able to and will fairly and adequately protect the interests of the Class
18 and its members.

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

23 118. Moreover, the prosecution of separate actions by individual members
24 of the Class would create the risk of varying and inconsistent adjudications, and
25 would unduly burden the courts.

26 119. Plaintiff Marya anticipates no difficulty in the management of this
27 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 Plaintiff And The Class)
(Against Defendant Warner/Chappell)

120. Plaintiff Marya repeats and realleges paragraphs 1 through 119 set forth above as though they were fully set forth herein.

121. Plaintiff Marya brings this claim individually on her own behalf and on behalf of the proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

122. Plaintiff Marya seeks adjudication of an actual controversy arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with defendant Warner/Chappell’s purported copyright claim to *Happy Birthday to You*. Plaintiff seeks the Court’s declaration that the Copyright Act does not bestow upon Warner/Chappell the rights it has asserted and enforced against plaintiff Marya and the other members of the Class.

123. Defendant Warner/Chappell asserts that it is entitled to 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.

124. Plaintiff Marya’s claim presents a justiciable controversy because plaintiff Marya’s agreement to pay defendant Warner/Chappell and its actual **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in her album, was the involuntary result of Warner/Chappell’s assertion of a copyright and the risk that plaintiff Marya would be exposed to substantial statutory penalties under the Copyright Act had she failed to enter such an agreement and pay Warner/Chappell standard mechanical license royalties it demanded, but then paid for the mechanical license anyway.

125. Plaintiff Marya seeks the Court’s determination as to whether

1 defendant Warner/Chappell is entitled to assert ownership of the copyright to *Happy*
2 *Birthday to You* against Marya pursuant to the Copyright Act as Warner/Chappell
3 claims, or whether Warner/Chappell is wielding a false claim of ownership to inhibit
4 plaintiff Marya's use and enjoyment (and the public's use and enjoyment) of
5 intellectual property which is rightfully in the public domain.

6 126. If and to the extent that defendant Warner/Chappell relies upon the
7 1893, 1896, 1899, or 1907 copyrights for the melody for *Good Morning to All*, those
8 copyrights expired or were forfeited as alleged herein.

9 127. As alleged above, the 1893 and 1896 copyrights to the original and
10 revised versions of *Song Stories for the Kindergarten*, which contained the song
11 *Good Morning to All*, were not renewed by Summy and accordingly expired in 1921
12 and 1924, respectively.

13 128. As alleged above, the 1899 copyright to *Song Stories for the Sunday*
14 *School*, which contained *Good Morning to All*, and the 1907 copyright to *Good*
15 *Morning to All* were not renewed by Summy Co. before its expiration in 1920 and
16 accordingly expired in 1927 and 1935, respectively.

17 129. The 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All*
18 were forfeited by the republication of *Good Morning to All* in 1921 without proper
19 notice of its original 1893 copyright.

20 130. The copyright to *Good Morning to All* expired in 1921 because the
21 1893 copyright to *Song Stories for the Kindergarten* was not properly renewed.

22 131. The piano arrangements for *Happy Birthday to You* published by
23 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990) were not eligible for
24 federal copyright protection because those works did not contain original works of
25 authorship, except to the extent of the piano arrangements themselves.

26 132. The 1934 and 1935 copyrights pertained only to the piano
27 arrangements, not to the melody or lyrics of the song *Happy Birthday to You*.

28 133. The registration certificates for *The Elementary Worker and His Work*

1 in 1912, *Harvest Hymns* in 1924, and *Children’s Praise and Worship* in 1928, which
2 did not attribute authorship of the lyrics to *Happy Birthday to You* to anyone, are
3 *prima facie* evidence that the lyrics were not authored by the Hill Sisters.

4 134. If declaratory relief is not granted, defendant Warner/Chappell will
5 continue wrongfully to assert the exclusive copyright to *Happy Birthday to You* at
6 least until 2030, when the current term of the copyright expires under existing
7 copyright law.

8 135. Plaintiff therefore requests a declaration that:

9 (a) defendant Warner/Chappell does not own the copyright to, or possess
10 the exclusive right to reproduce, distribute, or publicly perform, *Happy*
11 *Birthday To You*;

12 (b) Warner/Chappell does not own the exclusive right to demand or grant a
13 license for use of *Happy Birthday To You*; and

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

16 **SECOND CLAIM FOR RELIEF**

17 **UPON ENTRY OF DECLARATORY JUDGMENT**

18 **DECLARATORY AND INJUNCTIVE RELIEF**

19 **PURSUANT TO 28 U.S.C § 2202**

20 **(On Behalf of Plaintiff and the Class)**

21 **(Against Defendant Warner/Chappell)**

22 136. Plaintiff Marya repeats and realleges paragraphs 1 through 135 set forth
23 above as though they were fully set forth herein.

24 137. Plaintiff Marya brings this claim individually on her own behalf and on
25 behalf of the Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil
26 Procedure.

27 138. Under 28 U.S.C. § 2202 empowers this Court to grant, “necessary or
28 proper relief based on a declaratory judgment or decree . . . after reasonable notice

1 and hearing, against any adverse party whose rights have been determined by such
2 judgment.”

3 139. Plaintiff Marya and the other proposed Class members have been
4 harmed, and defendant Warner/Chappell has been unjustly enriched, by
5 Warner/Chappell’s takings.

6 140. Plaintiff Marya seeks relief for herself and the other members of the
7 proposed Class upon the entry of declaratory judgment upon Claim I, as follows:

8 (a) an injunction to prevent defendant Warner/Chappell from
9 making further representations of ownership of the copyright to
10 *Happy Birthday To You*;

11 (b) restitution to plaintiff Marya and the other Class members of
12 license fees paid to defendant Warner/Chappell, directly or indirectly
13 through its agents, in connection with the purported licenses it granted
14 to Marya and the other Class members;

15 (c) an accounting for all monetary benefits obtained by defendant
16 Warner/Chappell, directly or indirectly through its agents, from
17 plaintiff Marya and the other Class members in connection with its
18 claim to ownership of the copyright to *Happy Birthday to You*; and

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

20 **THIRD CLAIM FOR RELIEF**

21 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF**
22 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.**

23 **(On Behalf of Plaintiff and the Class)**

24 **(Against Defendant Warner/Chappell)**

25 141. Plaintiff Marya repeats and realleges paragraphs 1 through 119 set forth
26 above as though they were fully set forth herein.

27 142. Plaintiff Marya brings this claim individually on her own behalf and on
28 behalf of the Class pursuant to Rule 23(b)(3) of the Federal Rules of Civil

1 Procedure.

2 143. As alleged herein, plaintiff Marya and the other Class members have
3 paid licensing fees to defendant Warner/Chappell and have therefore suffered injury
4 in fact and have lost money or property as a result of defendant Warner/Chappell's
5 conduct.

6 144. California's Unfair Competition Law, Business & Professions Code §§
7 17200 *et seq.* ("UCL"), prohibits any unlawful or unfair business act or practice.

8 145. UCL § 17200 further prohibits any fraudulent business act or practice.

9 146. Defendant Warner/Chappell's actions, claims, nondisclosures, and
10 misleading statements, as alleged in this Complaint, were unfair, false, misleading,
11 and likely to deceive the consuming public within the meaning of UCL §§ 17200,
12 17500.

13 147. Defendant Warner/Chappell's conduct in exerting control over
14 exclusive copyright ownership to *Happy Birthday to You* to extract licensing fees is
15 deceptive and misleading because Warner/Chappell does not own the rights to
16 *Happy Birthday to You*.

17 148. Plaintiff Marya and the other members of the Class have, in fact, been
18 deceived as a result of their reasonable reliance upon defendant Warner/Chappell's
19 materially false and misleading statements and omissions, as alleged above.

20 149. As a result of defendant Warner/Chappell's unfair and fraudulent acts
21 and practices as alleged above, plaintiff Marya and the other Class members have
22 suffered substantial monetary injuries.

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

26 151. As a result of its deception, defendant Warner/Chappell has been able
27 to reap unjust revenue and profit.

28 152. Upon information and belief, defendant Warner/Chappell has collected

1 and continues to collect at least \$2 million per year in licensing fees for *Happy*
2 *Birthday to You*. Therefore, the amount in controversy exceeds \$5 million in the
3 aggregate.

4 153. Unless restrained and enjoined, defendant Warner/Chappell will
5 continue to engage in the above-described conduct. Accordingly, injunctive relief is
6 appropriate.

7 154. Plaintiff Marya, individually on its own behalf and on behalf of the
8 other members of the Class, seeks restitution and disgorgement of all money
9 obtained from plaintiff and the other members of the Class, collected as a result of
10 unfair competition, and all other relief this Court deems appropriate, consistent with
11 UCL § 17203.

12 **FOURTH CLAIM FOR RELIEF**

13 **COMMON COUNT FOR MONEY HAD AND RECEIVED**

14 **(On Behalf of Plaintiff and the Class)**

15 **(Against Defendant Warner/Chappell)**

16 155. Plaintiff Marya repeats and realleges paragraphs 1 through 135 set forth
17 above as though they were fully set forth herein.

18 156. Within the last four years Defendant Warner/Chappell became indebted
19 to all Plaintiff Marya and all class members for money had and received by
20 Defendant Warner/Chappell for the use and benefit of Plaintiff Marya and class
21 members. The money in equity and good conscience belongs to Plaintiff Marya and
22 class members.

23 **FIFTH CLAIM FOR RELIEF**

24 **RECISSION FOR FAILURE OF CONSIDERATION,**

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

26 **(Against Defendant Warner/Chappell)**

27 157. Plaintiff Marya repeats and realleges paragraphs 1 through 135 set forth
28 above as though they were fully set forth herein.

1 158. Defendant’s purported licenses were worthless and ineffective, and do
2 not constitute a valid consideration.

3 159. The complete lack of consideration obviates any need for notice to
4 Defendant.

5 **SIXTH CLAIM FOR RELIEF**
6 **FALSE ADVERTISING, CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**
7 **(On Behalf of Plaintiff and the Class)**
8 **(Against Defendant Warner/Chappell)**

9 160. Plaintiff Marya repeats and realleges paragraphs 1 through 135 set forth
10 above as though they were fully set forth herein.

11 161. On information and belief, Defendant Warner/Chappell intended to
12 induce the public to enter into an obligation related to its alleged property, namely
13 the composition *Happy Birthday to You*.

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

19 163. Plaintiff and class members have suffered injury in fact and have lost
20 money as a result of such unfair competition.

21 **DEMAND FOR JURY TRIAL**

22 160. Plaintiff Marya hereby demands a trial by jury to the extent that the
23 allegations herein are triable by jury under Federal Rules of Civil Procedure 38-39.

24 **PRAYER RELIEF**

25 **WHEREFORE**, plaintiff Marya, on behalf of herself and the other members
26 of the Class, prays for judgment against defendant Warner/Chappell as follows:

- 27 A. certifying the Class as requested herein;
28 B. declaring that the song *Happy Birthday to You* is not protected by

1 federal copyright law, is dedicated to public use, and is in the public domain;

2 C. permanently enjoining defendant Warner/Chappell from asserting any
3 copyright to the song *Happy Birthday to You*;

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

6 E. imposing a constructive trust upon the money defendant
7 Warner/Chappell unlawfully collected from plaintiff Marya, the other members of
8 the Class, and ASCAP for use of the song *Happy Birthday to You*;

9 F. ordering defendant Warner/Chappell to return to plaintiff Marya and
10 the other members of the Class all the licensing or other fees it has collected from
11 them, directly or indirectly through its agents, for use of the song *Happy Birthday to*
12 *You*, together with interest thereon;

13 G. awarding plaintiff Marya and the other members of the Class restitution
14 for Warner/Chappell's prior acts and practices;

15 H. awarding plaintiff Marya and the Class reasonable attorneys' fees and
16 costs; and

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

19 Dated: June 19, 2013

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

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Dated: June 19, 2013

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Attorneys for Plaintiff Rupa Marya

WARNER:19984.complaint

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Central District of California

RUPA MAYRA, On Behalf of Herself and All Others
Similarly Situated,

Plaintiff(s)

v.

WARNER/CHAPPELL MUSIC, INC.,

Defendant(s)

)
)
) **CV13- 4460** P.S.W.L. (FRANK)
)
) Civil Action No.
)
)
)
)
)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* WARNER/CHAPPELL MUSIC, INC.
10585 Santa Monica Boulevard
Los Angeles, CA 90025
Tel: 310/441-6840

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

BETSY C. MANIFOLD (SBN182450)
manifold@whafh.com
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B Street, Suite 2770
San Diego, CA 92101
T: 619/239-4599

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: JUN 20 2013

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

RUPA MAYRA, On Behalf of Herself and All Others
Similarly Situated,

Plaintiff(s)

v.

WARNER/CHAPPELL MUSIC, INC.,

Defendant(s)

CV13- 4460 PSLW (FFU)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WARNER/CHAPPELL MUSIC, INC.
10585 Santa Monica Boulevard
Los Angeles, CA 90025
Tel: 310/441-6840

A lawsuit has been filed against you.

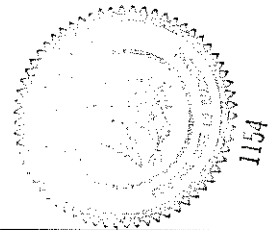
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

BETSY C. MANIFOLD (SBN182450)
manifold@whafh.com
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B Street, Suite 2770
San Diego, CA 92101
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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUN 20 2013

CLERK OF COURT
JULIE PRADO



Date: _____

Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Ronald S. W. Lew and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV13 - 4460 RSWL (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) RUPA MAYRA, on behalf herself and others similarly situated	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) WARNER/CHAPPELL MUSIC, INC.
---	--

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) BETSY C. MANIFOLD (SBN 182450) manifold@whafh.com WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP 750 B STREET, SUITE 2770 SAN DIEGO, CA 92101 (T: 619/239-4599)	(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
---	--

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES —For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 17 U.S.C. SECTION 101 et seq.; 28 U.S.C. 2201; 28 U.S.C. 1332(d)(2); Seeks Declaratory Judgment and Declaratory and Injunctive Relief based thereon; and monetary damages for invalidity of copyright and violations of California Unfair Competition Laws (Cal. Bus. & Prof. Code sections 17200 et seq.)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input checked="" type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	LABOR	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admn. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
			<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number: CV13-4460

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): CV 13-4418 GHK (MRWx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	SAN MATEO

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Betsy Manfred DATE: 06/19/2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

EXHIBIT 121

Ex. 121

—

ORIGINAL

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 2 BETSY C. MANIFOLD (182450)
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 3 RACHELE R. RICKERT (190634)
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 FREEMAN & HERZ LLP
 6 750 B Street, Suite 2770
 San Diego, CA 92101
 7 Tel.: 619/239-4599
 8 Fax: 619/234-4599

FILED
 CLERK, U.S. DISTRICT COURT
 JUL 26 2013
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

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 CLERK, U.S. DISTRICT COURT
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 DONAHUE GALLAGHER
 WOODS LLP
 1999 Harrison Street, 25th Floor
 Oakland, CA 94612-3520
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 Fax: 510/832-1486

RECEIVED BUT NOT FILED
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 JUL 26 2013
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

19 GOOD MORNING TO YOU
 PRODUCTIONS CORP.;
 20 ROBERT SIEGEL; and
 21 RUPA MARYA;
 22 On Behalf Of Themselves And
 23 All Others Similarly Situated,
 24 Plaintiffs,
 25 v.
 26 WARNER/CHAPPELL MUSIC, INC.,
 27 Defendant.

) Case No. CV 13-04460-GHK (MRWx)
)
) **CONSOLIDATED FIRST AMENDED**
) **COMPLAINT FOR DECLARATORY**
) **JUDGMENT; INJUNCTIVE AND**
) **DECLARATORY RELIEF; AND**
) **DAMAGES FOR: (1) INVALIDITY**
) **OF COPYRIGHT (Copyright Act, 17**
) **U.S.C. §§ 101 et seq.); and (2) UNFAIR**
) **COMPETITION LAWS (Cal. Bus. &**
) **Prof. Code §§ 17200 et seq.)**
) CLASS ACTION
)
) DEMAND FOR JURY TRIAL

1 Plaintiffs, Good Morning to You Productions Corp. ("GMTY"), Robert Siegel
2 ("Siegel"), and Rupa Marya d/b/a/ Rupa Marya & The April Fishes ("Rupa")
3 (collectively herein "Plaintiffs"), on behalf of themselves and all others similarly
4 situated, by their undersigned attorneys, as and for their Consolidated First Amended
5 Complaint For Declaratory Judgment; Injunctive And Declaratory Relief; And
6 Damages For: (1) Invalidity Of Copyright (Copyright Act, 17 U.S.C. §§ 101 *et seq.*);
7 and (2) Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200 *et seq.*) against
8 defendant Warner/Chappell Music, Inc. ("Warner/Chappell"), hereby allege as
9 follows:

10 **JURISDICTION AND VENUE**

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

17 2. The Court has personal jurisdiction and venue is proper in this District
18 under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in
19 this Judicial District where defendant Warner/Chappell's principal place of business
20 is located and where it regularly conducts business.

21 3. Paragraph 8 of the Film and Synchronization and Performance License
22 ("Synchronization License") by and between assignee Plaintiff Siegel and defendant
23 Warner/Chappell states: "this license has been entered into in, and shall be
24 interpreted in accordance with the laws of the state of California, and any action or
25 proceeding concerning the interpretation and/or enforcement of this license shall be
26 heard only in the state or federal courts situated in Los Angeles county"
27 Defendant Warner/Chappell requires any action or proceeding related thereto to be
28

1 brought in this District under the Synchronization License.

2 **INTRODUCTION**

3 4. This is an action to declare invalid the copyright that defendant
4 Warner/Chappell claims to own to the world's most popular song, *Happy Birthday to*
5 *You* (the "Song"), to declare that the Song is dedicated to public use and in the public
6 domain; and to return millions of dollars of unlawful licensing fees collected by
7 defendant Warner/Chappell pursuant to its wrongful assertion of copyright
8 ownership of the Song.

9 5. According to the United States Copyright Office ("Copyright Office"), a
10 "*musical composition* consists of music, including any accompanying words, and is
11 normally registered as a work of the performing arts." Copyright Office Circular
12 56A, "Copyright Registration of Musical Compositions and Sound Recordings," at 1
13 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a
14 musical composition generally is the composer, and the lyricist (if a different
15 person). *Id.*

16 6. More than 120 years after the melody to which the simple lyrics of
17 *Happy Birthday to You* is set was first published, defendant Warner/Chappell boldly,
18 but wrongfully and unlawfully, insists that it owns the copyright to *Happy Birthday*
19 *to You*, and with that copyright the exclusive right to authorize the Song's
20 reproduction, distribution, and public performances pursuant to federal copyright
21 law. Defendant Warner/Chappell either has silenced those wishing to record or
22 perform *Happy Birthday to You*, or has extracted millions of dollars in unlawful
23 licensing fees from those unwilling or unable to challenge its ownership claims.

24 7. Irrefutable documentary evidence, some dating back to 1893, shows that
25 the copyright to *Happy Birthday to You*, if there ever was a valid copyright to any
26 part of the Song, expired no later than 1921 and that if defendant Warner/Chappell
27 owns any rights to *Happy Birthday to You*, those rights are limited to the extremely
28 narrow right to reproduce and distribute specific piano arrangements for the song

1 published in 1935. Significantly, no court has ever adjudicated the validity or scope
2 of the defendant's claimed interest in *Happy Birthday to You*, nor in the Song's
3 melody or lyrics, which are themselves independent works.

4 8. Plaintiffs GMTY, Siegel, and Rupa, on behalf of themselves and all
5 others similarly situated, seek a declaration that *Happy Birthday to You* is dedicated
6 to public use and is in the public domain as well as monetary damages and restitution
7 of all the unlawful licensing fees that defendant Warner/Chappell improperly
8 collected from Plaintiffs and all other Class members.

9 **PARTIES**

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

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

25 11. Plaintiff Rupa is a musician and leader of the band entitled "Rupa & The
26 April Fishes" ("RTAF"), and a member of the American Society of Composers,
27 Authors and Publishers ("ASCAP"). Plaintiff Rupa is a resident of San Mateo
28 County, California. RTAF recorded *Happy Birthday to You* at a live show in San

1 Francisco, California, on April 27, 2013. Under a claim of copyright by defendant
2 Warner/Chappell, on or about June 17, 2013, Plaintiff Rupa d/b/a RTAF paid to
3 defendant Warner/Chappell the sum of \$455 for a compulsory license pursuant to 17
4 U.S.C. § 115 (commonly known as a “mechanical license”) to use *Happy Birthday*
5 *to You*, as alleged more fully herein.

6 12. Defendant Warner/Chappell is a Delaware corporation with its principal
7 place of business located at 10585 Santa Monica Boulevard, Los Angeles, California
8 90025 and regularly conducts business within this Judicial District.

9 **FACTUAL BACKGROUND**

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

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

15 14. The manuscript included *Good Morning to All*, a song written by the
16 Hill Sisters.

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

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

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

27 18. On the October 16, 1893, copyright application, Summy claimed to be
28 the copyright’s proprietor, but not the author of the copyrighted works.

1 19. *Song Stories for the Kindergarten* bears a copyright notice reading
2 “Copyright 1893, by Clayton F. Summy.”

3 20. As proprietor of the 1893 copyright in *Song Stories for the*
4 *Kindergarten*, Summy owned the rights to both the songbook as a compilation and
5 the individual songs published therein, including *Good Morning to All*.

6 21. The lyrics to *Good Morning to All* are:

7 Good morning to you
8 Good morning to you
9 Good morning dear children
10 Good morning to all.

11 22. The lyrics to *Happy Birthday to You* are set to the melody from the song
12 *Good Morning to All*. As nearly everyone knows, the lyrics to *Happy Birthday to*
13 *You* are:

14 Happy Birthday to You
15 Happy Birthday to You
16 Happy Birthday dear [NAME]
17 Happy Birthday to You.

18 23. The lyrics to *Happy Birthday to You* were *not* published in *Song Stories*
19 *for the Kindergarten*.

20 24. On or about January 14, 1895, Summy incorporated the Clayton F.
21 Summy Company (“Summy Co.”) under the laws of the State of Illinois for a limited
22 term of 25 years. On that same date, Summy purported to assign all his right, title,
23 and interest in *Song Stories for the Kindergarten* to Summy Co.
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1 25. In 1896, Summy published a new, revised, illustrated, and enlarged
2 version of *Song Stories for the Kindergarten*, which contained eight previously
3 unpublished songs written by the Hill Sisters as well as illustrations by Margaret
4 Byers.

5 26. On or about June 18, 1896, Summy filed a copyright application (Reg.
6 No. 34260) with the Copyright Office for the 1896 publication of *Song Stories for*
7 *the Kindergarten*.

8 27. On its June 18, 1896, copyright application, Summy again claimed to be
9 the copyright's proprietor, but (again) not the author of the copyrighted works.

10 28. The 1896 version of *Song Stories for the Kindergarten* bears a copyright
11 notice reading "Copyright 1896, by Clayton F. Summy."

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

15 30. The lyrics to *Happy Birthday to You* were *not* published in the 1896
16 version of *Song Stories for the Kindergarten*.

17 31. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
18 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday School*.
19 One of those songs included in *Song Stories for the Sunday School* was *Good*
20 *Morning to All*.

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

23 33. On the 1899 copyright application, Summy Co. claimed to be the
24 copyright's proprietor, but not the author of the copyrighted works.

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1 34. The title page to *Song Stories for the Sunday School* states:
2 This collection of songs has been published in response to earnest requests
3 from various sources. They are taken from the book, *Song Stories for the*
4 *Kindergarten* by the MISSES HILL, and **are the copyright property of the**
5 ***publishers***. (Emphasis added).

6 35. *Song Stories for the Sunday School* bears a copyright notice reading
7 “Copyright 1899 by Clayton F. Summy Co.”

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

11 37. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
12 *for the Sunday School*.

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

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

20 40. In or about February, 1907, Summy Co. republished the song *Good*
21 *Morning to All* as an individual musical composition.

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

24 42. The lyrics to *Happy Birthday to You* do **not** appear in the 1907
25 publication of *Good Morning to All*.

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

28 Sing: “Good-bye to you, good-bye to you, good-bye dear children, good-

1 bye to you.” Also: “Good-bye dear teacher.” (From “Song Stories for the
2 Sunday-School,” published by Summy & Co.)

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

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

6 45. *Tell Me a True Story* did **not** include the lyrics to *Happy Birthday to*
7 *You*.

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

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

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

20 48. *The Elementary Worker and His Work* attributed authorship or identified
21 the copyrights to many of the works included in the book. Significantly, it did **not**
22 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

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

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

4 51. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
5 to the revised *Song Stories for the Kindergarten* were vested solely in their
6 proprietor, Summy.

7 52. The copyright to the original *Song Stories for the Kindergarten* (Reg.
8 No. 45997) was not extended by Summy Co., and consequently expired on October
9 16, 1921. The original *Song Stories for the Kindergarten*, including the song *Good*
10 *Morning to All*, became dedicated to public use and fell into the public domain by no
11 later than that date.

12 53. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
13 No. 34260) was not extended by Summy, and consequently expired on June 18,
14 1924. The revised *Song Stories for the Kindergarten* became dedicated to public use
15 and fell into the public domain by no later than that date.

16 54. In or around March 1924, the sheet music (with accompanying lyrics) to
17 *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
18 compiled, and edited by Robert H. Coleman ("Coleman"). Upon information and
19 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*
20 *You* were published together.

21 55. Coleman did not claim authorship of the song entitled *Good Morning to*
22 *You* or the lyrics to *Happy Birthday to You*. Although *Harvest Hymns* attributed
23 authorship or identified the copyrights to many of the works included in the book, it
24 did *not* attribute authorship or identify any copyright for *Good Morning to You* or
25 *Happy Birthday to You*.

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1 56. On or about March 4, 1924, Coleman filed a copyright application (Reg.
2 No. A777586) with the Copyright Office for *Harvest Hymns*. On or about February
3 11, 1952, the copyright was renewed (Reg. No. R90447) by the Sunday School
4 Board of the Southern Baptist Convention.

5 57. On or about April 15, 1925, Summy incorporated a new Clayton F.
6 Summy Co. ("Summy Co. II") under the laws of the State of Illinois. Upon
7 information and belief, Summy Co. II was not a successor to Summy Co.; rather, it
8 was incorporated as a new corporation.

9 58. The sheet music (with accompanying lyrics) to *Happy Birthday to You*
10 was again published in 1928 in the compilation *Children's Praise and Worship*,
11 compiled and edited by A.L. Byers, Bessie L. Byrum, and Anna E. Koglin ("Byers,
12 Byrum & Koglin"). Upon information and belief, *Children's Praise and Worship*
13 was the first time the song was published under the title *Happy Birthday to You*.

14 59. On or about April 7, 1928, Gospel Trumpet Co. ("Gospel") filed a
15 copyright application (Reg. No. A1068883) with the Copyright Office for *Children's*
16 *Praise and Worship*.

17 60. *Children's Praise and Worship* attributed authorship or identified the
18 copyrights to many of the works included in the book. Significantly, it did *not*
19 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

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

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

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1 63. Upon information and belief, Summy sold Summy Co. II to John F.
2 Sengstack ("Sengstack") in or around 1930.

3 64. Upon information and belief, on or about August 31, 1931, Sengstack
4 incorporated a third Clayton F. Summy Co. ("Summy Co. III") under the laws of the
5 State of Delaware. Upon information and belief, Summy Co. III was not a successor
6 to Summy Co. or Summy Co. II; rather, it was incorporated as a new corporation.

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

8 66. On July 28, 1933, *Happy Birthday to You* was used in the world's first
9 singing telegram.

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

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

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

26 70. In 1934 and 1935, Jessica Hill sold and assigned to Summy Co. III
27 certain piano arrangements of *Good Morning to All*, including publishing, public
28 performance, and mechanical reproduction rights, copyright, and extension of

1 copyright in exchange for a percentage of the retail sales revenue from the sheet
2 music.

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

6 72. In that December 1934 Application for Copyright, Summy Co. III
7 claimed to be the proprietor of the copyright as a work for hire by Preston Ware
8 Orem ("Orem") and claimed the copyrighted new matter as "arrangement by piano
9 solo."

10 73. The lyrics to *Happy Birthday to You* were not included on the work
11 registered with the Copyright Office as Reg. No. E45655. The application did not
12 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
13 *Happy Birthday to You* alone or in combination with the melody of *Good Morning to*
14 *All*.

15 74. The work registered with the Copyright Office as Reg. No. E45655 was
16 not eligible for federal copyright protection in that it consisted entirely of information
17 that was common property and contained no original authorship, except as to the
18 arrangement itself.

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

22 76. In that February 1935 Application for Copyright, Summy Co. III
23 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
24 the copyrighted new matter as "arrangement for four hands at one piano."

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1 77. The lyrics to *Happy Birthday to You* were not included on the work
2 registered with the Copyright Office as Reg. No. E46661. The application did not
3 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
4 *Happy Birthday to You* alone or in combination with the melody of *Good Morning to*
5 *All*.

6 78. The work registered with the Copyright Office as Reg. No. E46661 was
7 not eligible for federal copyright protection in that it consisted entirely of information
8 that was common property and contained no original authorship, except as to the
9 arrangement itself.

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

13 80. In that April 1935 Application for Copyright, Summy Co. III claimed to
14 be the proprietor of the copyright as a work for hire by Orem and claimed the
15 copyrighted new matter as "arrangement of second piano part."

16 81. The lyrics to *Happy Birthday to You* were not included on the work
17 registered with the Copyright Office as Reg. No. E47439. The application did not
18 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
19 *Happy Birthday to You* alone or in combination with the melody of *Good Morning to*
20 *All*.

21 82. The work registered with the Copyright Office as Reg. No. E47439 was
22 not eligible for federal copyright protection in that it consisted entirely of information
23 that was common property and contained no original authorship, except as to the
24 arrangement itself.

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

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

4 85. The lyrics to *Happy Birthday to You* were not included on the work
5 registered with the Copyright Office as Reg. No. E47440. The application did not
6 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
7 *Happy Birthday to You* alone or in combination with the melody of *Good Morning to*
8 *All*.

9 86. The work registered with the Copyright Office as Reg. No. E47440 was
10 not eligible for federal copyright protection in that it consisted entirely of information
11 that was common property and contained no original authorship, except as to the
12 arrangement itself.

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

16 88. In that December 1935 Application for Copyright, Summy Co. III
17 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
18 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
19 Chorus and revised text.” The sheet music deposited with the application credited
20 Forman only for the arrangement, not for any lyrics, and did not credit the Hill
21 Sisters with writing the lyrics to *Happy Birthday to You*.

22 89. The lyrics to *Happy Birthday to You*, including a second verse as the
23 revised text, were included on the work registered with the Copyright Office as Reg.
24 No. E51988. However, the December 1935 Application for Copyright did not
25 attribute authorship of the lyrics to either of the Hill Sisters and did not claim
26 copyright in the lyrics to *Happy Birthday to You* alone or in combination with the
27 melody of *Good Morning to All*.

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1 90. The work registered with the Copyright Office as Reg. No. E51988 was
2 not eligible for federal copyright protection in that it consisted entirely of information
3 that was common property and contained no original authorship, except as to the
4 sheet music arrangement itself.

5 91. The work registered as Reg. No. E51988 was not eligible for federal
6 copyright protection because Summy Co. III did not have authorization from the
7 author to publish that work.

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

11 93. In that additional December 1935 Application for Copyright, Summy
12 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
13 claimed the copyrighted new matter as "arrangement as easy piano solo, with text."
14 The sheet music deposited with the application credited Orem only for the
15 arrangement, not for any lyrics, and did not credit the Hill Sisters with writing the
16 lyrics to *Happy Birthday to You*.

17 94. The lyrics to *Happy Birthday to You* were included on the work
18 registered with the Copyright Office as Reg. No. E51990. However, the additional
19 December 1935 Application for Copyright did not attribute authorship of the lyrics to
20 either of the Hill Sisters, did not contain the names of either of the Hill Sisters, and
21 did not claim any copyright in the lyrics to *Happy Birthday to You* alone or in
22 combination with the melody of *Good Morning to All*.

23 95. The work registered with the Copyright Office as Reg. No. E51990 was
24 not eligible for federal copyright protection in that it consisted entirely of information
25 that was common property and contained no original authorship, except as to the
26 sheet music arrangement itself.

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1 96. The work registered as Reg. No. E51990 was not eligible for federal
2 copyright protection because Summy Co. III did not have authorization from the
3 author to publish that work.

4 97. Based upon information and belief, in or about February, 1938, Summy
5 Co. III purported to grant to ASCAP the right to license *Happy Birthday to You* for
6 public performances and to collect fees for such use on behalf of Summy Co. III.
7 ASCAP thus began working as agent for Summy Co. III in collecting fees for
8 Summy Co. III for licensing *Happy Birthday to You*.

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

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

18 100. On March 2, 1943, The Hill Foundation commenced an action against
19 the Postal Telegraph Cable Company in the Southern District of New York,
20 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
21 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
22 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
23 1896, and 1899 copyrights for *Good Morning to All* and did *not* claim any copyright
24 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
25 *Good Morning to All*.

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1 101. Despite the filing of at least four prior cases in the Southern District of
2 New York asserting copyrights to *Good Morning to All*, there has been no judicial
3 determination of the validity or scope of any copyright related to *Good Morning to*
4 *All*.

5 102. In or about 1957, Summy Co. III changed its name to Summy-Birchard
6 Company.

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

11 104. In particular, on December 6, 1962, Summy Co. III filed a renewal
12 application for Reg. No. E51988, as employer for hire of Forman. Forman did not
13 write the lyrics to *Happy Birthday to You* or the combination of those lyrics with the
14 melody of *Good Morning to All*, and neither Summy Co. III nor defendant
15 Warner/Chappell has claimed otherwise.

16 105. Also on December 6, 1962, Summy Co. III filed a renewal application
17 for Reg. No. E51990, as employer for hire of Orem. Orem did not write the lyrics to
18 *Happy Birthday to You* or the combination of those lyrics with the melody of *Good*
19 *Morning to All*, and neither Summy Co. III nor defendant Warner/Chappell has
20 claimed otherwise.

21 106. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
22 and was acquired by Warner/Chappell in or about 1998.

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

24 107. According to a 1999 press release by ASCAP, *Happy Birthday to You*
25 was the most popular song of the 20th Century.

26 108. The 1998 edition of the *Guinness Book of World Records* identified
27 *Happy Birthday to You* as the most recognized song in the English language.

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1 109. Defendant Warner/Chappell currently claims it owns the exclusive
2 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
3 Co. III published in 1935.

4 110. ASCAP provides non-dramatic public performance licenses to bars,
5 clubs, websites, and many other venues. ASCAP "blanket licenses" grant the
6 licensee the right to publicly perform any or all of the over 8.5 million songs in
7 ASCAP's repertory in exchange for an annual fee. The non-dramatic public
8 performance license royalties are distributed to ASCAP members based on surveys
9 of performances of each ASCAP repertory song across different media. As an
10 ASCAP member and assignee of the copyrights in *Happy Birthday to You*,
11 Defendant Warner/Chappell obtains a share of blanket license revenue that would
12 otherwise be paid to all other ASCAP members, in proportion to their songs' survey
13 shares.

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

15 108. Plaintiff GMTY is producing a documentary movie, tentatively titled
16 *Happy Birthday*, about the song *Happy Birthday to You*.

17 109. In one of the proposed scenes to be included in *Happy Birthday*, the
18 song *Happy Birthday to You* is to be sung.

19 110. During the production process, plaintiff GMTY learned that defendant
20 Warner/Chappell claimed exclusive copyright ownership to *Happy Birthday to You*.

21 111. Accordingly, in September 2012, plaintiff requested a quote from
22 Warner/Chappell for a synchronization license to use *Happy Birthday to You* from
23 Warner/Chappell's website.

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

27 113. On or about March 12, 2013, defendant Warner/Chappell again
28 contacted plaintiff GMTY and insisted that GMTY was not authorized to use *Happy*

1 *Birthday to You* unless it paid the licensing fee of \$1,500 and entered into the
2 synchronization license that Warner/Chappell demanded.

3 114. Because defendant Warner/Chappell notified plaintiff GMTY that it
4 claimed exclusive copyright ownership of *Happy Birthday to You*, GMTY faced a
5 statutory penalty of up to \$150,000 under the Copyright Act if it used the song
6 without Warner/Chappell's permission if Warner/Chappell, in fact, owned the
7 copyright that it claimed.

8 115. Faced with a threat of substantial penalties for copyright infringement,
9 on or about March 26, 2013, plaintiff GMTY was forced to and did pay defendant
10 Warner/Chappell the sum of \$1,500 for a synchronization license and, on or about
11 April 24, 2013, GMTY was forced to and did enter into the synchronization license
12 agreement to use *Happy Birthday to You*.

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

14 116. BIG FAN produced a movie titled *Big Fan*.

15 117. In one of the scenes in *Big Fan*, the song *Happy Birthday to You* was
16 sung.

17 118. During the production process, Plaintiff Siegel learned that defendant
18 Warner/Chappell claimed exclusive copyright ownership to *Happy Birthday to You*.

19 119. Accordingly, in July 2009, Plaintiff Siegel requested a quote from
20 Warner/Chappell for a Synchronization License to use *Happy Birthday to You* in *Big*
21 *Fan*.

22 120. On or about July 20, 2009, defendant Warner/Chappell responded to
23 plaintiff Siegel's inquiry by demanding that BIG FAN pay it the sum of \$3,000 and
24 enter into a Synchronization License for use of *Happy Birthday to You*.

25 121. Because Defendant Warner/Chappell notified BIG FAN that it claimed
26 exclusive copyright ownership of *Happy Birthday to You*, BIG FAN faced a
27 statutory penalty of \$150,000 under the Copyright Act, 17 U.S.C. § 101 *et seq.* if
28

1 BIG FAN used the Song without Warner/Chappell's permission and
2 Warner/Chappell, in fact, owned the copyright that it claimed.

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

6 123. Faced with a threat of substantial penalties for copyright infringement,
7 on or about September 1, 2009, BIG FAN was forced to, and did, pay defendant
8 Warner/Chappell the sum of \$3,000 pursuant to the Synchronization License.

9 ***Rupa's Performance of Happy Birthday to You***

10 124. Plaintiff Rupa d/b/a RTAF recorded the song *Happy Birthday to You* at
11 a live show in San Francisco, to be released as part of a "live" album. She learned
12 that defendant Warner/Chappell claimed exclusive copyright ownership to *Happy*
13 *Birthday to You*, including the right to issue mechanical licenses.

14 125. Section 115 of the Copyright Act provides for compulsory licenses for
15 the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, Web-based
16 "downloads") of musical compositions. Failure to obtain such a license prior to
17 distribution of a cover version of a song constitutes a copyright infringement subject
18 to the full remedies of the Copyright Act.

19 126. Accordingly, on June 17, 2013, Plaintiff Rupa provided a Notice of
20 Intention to Obtain Compulsory License to Warner/Chappell and paid
21 Warner/Chappell \$455 for a mechanical license for the reproduction and distribution
22 of 5,000 copies of the Song.

23 **CLASS ALLEGATIONS**

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

28 ///

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

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

14 130. 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 to
17 public use;
- 18 b. whether Warner/Chappell is the exclusive owner of the copyright to
19 *Happy Birthday to You* and is thus entitled to all of the rights conferred
20 in 17 U.S.C. § 102;
- 21 c. whether Warner/Chappell has the right to collect fees for the use of
22 *Happy Birthday to You*;
- 23 d. whether Warner/Chappell has violated the law by demanding and
24 collecting fees for the use of *Happy Birthday to You* despite not having a
25 valid copyright to the song; and
- 26 e. whether Warner/Chappell is required to return unlawfully obtained
27 payments to plaintiffs GMTY, Siegel, and Rupa and the other members
28 of the Class and, if so, what amount is to be returned.

1 131. With respect to Claim III, the common questions of law and fact
2 predominate over any potential individual issues.

3 132. Plaintiffs GMTY, Siegel, and Rupa 's claims are typical of the claims of
4 all other members of the Class and plaintiffs GMTY, Siegel, and Rupa 's interests do
5 not conflict with the interests of any other member of the Class, in that plaintiffs and
6 the other members of the Class were subjected to the same unlawful conduct.

7 133. Plaintiffs GMTY, Siegel, and Rupa are committed to the vigorous
8 prosecution of this action and have retained competent legal counsel experienced in
9 class action and complex litigation.

10 134. Plaintiffs are adequate representatives of the Class and, together with
11 their attorneys, are able to and will fairly and adequately protect the interests of the
12 Class and its members.

13 135. A class action is superior to other available methods for the fair, just,
14 and efficient adjudication of the claims asserted herein. Joinder of all members of
15 the Class is impracticable and, for financial and other reasons, it would be
16 impractical for individual members of the Class to pursue separate claims.

17 136. Moreover, the prosecution of separate actions by individual members of
18 the Class would create the risk of varying and inconsistent adjudications, and would
19 unduly burden the courts.

20 137. Plaintiffs GMTY, Siegel, and Rupa anticipate no difficulty in the
21 management of this litigation as a class action.

22 **FIRST CLAIM FOR RELIEF**

23 **DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201**

24 **(On Behalf Of Plaintiffs And The Class)**

25 **(Against Defendant Warner/Chappell)**

26 138. Plaintiffs repeat and reallege paragraphs 1 through 137 set forth above
27 as though they were fully set forth herein.

28

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

4 140. Plaintiffs seek adjudication of an actual controversy arising under the
5 Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with defendant
6 Warner/Chappell's purported copyright claim to *Happy Birthday to You*. Plaintiffs
7 seek the Court's declaration that the Copyright Act does not bestow upon
8 Warner/Chappell the rights it has asserted and enforced against plaintiffs and the
9 other members of the Class.

10 141. Defendant Warner/Chappell asserts that it is entitled to royalties
11 pursuant to 17 U.S.C. § 115 for the creation and distribution of phonorecords and
12 digital downloads of the composition *Happy Birthday to You*, under threat of a claim
13 of copyright infringement.

14 142. Defendant Warner/Chappell demanded that plaintiff GMTY enter into a
15 synchronization license agreement to use *Happy Birthday to You* and pay
16 Warner/Chappell the sum of \$1,500 for that synchronization license based upon its
17 claim of copyright ownership. Warner/Chappell's demand was coercive in nature,
18 and GMTY's entering into the license agreement and payment of \$1,500 was
19 involuntary.

20 143. Plaintiff GMTY's claim presents a justiciable controversy because
21 plaintiff GMTY's agreement to pay defendant Warner/Chappell and its actual
22 *payment* to Warner/Chappell for use of the song *Happy Birthday to You* in its film
23 was the involuntary result of Warner/Chappell's assertion of a copyright and the risk
24 that plaintiff GMTY would be exposed to substantial statutory penalties under the
25 Copyright Act had it failed to enter such an agreement and pay Warner/Chappell the
26 price it demanded.

27 144. Defendant Warner/Chappell demanded that BIG FAN as assignor of
28 plaintiff Siegel enter into the Synchronization License agreement to use *Happy*

1 *Birthday to You* and pay Warner/Chappell the sum of \$3,000 for that
2 Synchronization License based upon its claim of copyright ownership.
3 Warner/Chappell's demand was coercive in nature, and BIG FAN'S entering into the
4 Synchronization License and payment of \$3,000 was involuntary.

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

12 146. Plaintiff Rupa's claim presents a justiciable controversy because
13 plaintiff Rupa's agreement to pay defendant Warner/Chappell and its actual *payment*
14 to Warner/Chappell for use of the song *Happy Birthday to You* in her album, was the
15 involuntary result of Warner/Chappell's assertion of a copyright and the risk that
16 plaintiff Rupa would be exposed to substantial statutory penalties under the
17 Copyright Act had she failed to enter such an agreement and pay Warner/Chappell
18 standard mechanical license royalties it demanded, but then paid for the mechanical
19 license anyway.

20 147. Plaintiffs seek the Court's determination as to whether defendant
21 Warner/Chappell is entitled to assert ownership of the copyright to *Happy Birthday*
22 *to You* against plaintiffs pursuant to the Copyright Act as Warner/Chappell claims, or
23 whether Warner/Chappell is wielding a false claim of ownership to inhibit Plaintiffs'
24 use and enjoyment (and the public's use and enjoyment) of intellectual property
25 which is rightfully in the public domain.

26 148. If and to the extent that defendant Warner/Chappell relies upon the
27 1893, 1896, 1899, or 1907 copyrights for the melody for *Good Morning to All*, those
28 copyrights expired or were forfeited as alleged herein.

1 149. As alleged above, the 1893 and 1896 copyrights to the original and
2 revised versions of *Song Stories for the Kindergarten*, which contained the song
3 *Good Morning to All*, were not renewed by Summy Co. or Summy and accordingly
4 expired in 1921 and 1924, respectively.

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

10 151. The 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All*
11 were forfeited by the republication of *Good Morning to All* in 1921 without proper
12 notice of its original 1893 copyright.

13 152. The copyright to *Good Morning to All* expired in 1921 because the 1893
14 copyright to *Song Stories for the Kindergarten* was not properly renewed.

15 153. The piano arrangements for *Happy Birthday to You* published by
16 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990) were not eligible for federal
17 copyright protection because those works did not contain original works of
18 authorship, except to the extent of the piano arrangements themselves.

19 154. The 1934 and 1935 copyrights pertained only to the piano arrangements,
20 not to the melody or lyrics of the song *Happy Birthday to You*.

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

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

- 1 157. Plaintiffs therefore request a declaration that:
2 (a) defendant Warner/Chappell does not own the copyright to, or possess
3 the exclusive right to reproduce, distribute, or publicly perform, *Happy*
4 *Birthday To You*;
5 (b) defendant Warner/Chappell does not own the exclusive right to demand
6 or grant a license for use of *Happy Birthday To You*; and
7 (c) *Happy Birthday to You* is in the public domain and is dedicated to the
8 public use.

9 **SECOND CLAIM FOR RELIEF**
10 **UPON ENTRY OF DECLARATORY JUDGMENT**
11 **DECLARATORY AND INJUNCTIVE RELIEF**
12 **PURSUANT TO 28 U.S.C § 2202**
13 **(On Behalf of Plaintiffs and the Class)**
14 **(Against Defendant Warner/Chappell)**

15 158. Plaintiffs repeat and reallege paragraphs 1 through 157 set forth above
16 as though they were fully set forth herein.

17 159. Plaintiffs bring these claims individually on their own behalf and on
18 behalf of the Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

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

23 161. Plaintiffs and the other proposed Class members have been harmed, and
24 defendant Warner/Chappell has been unjustly enriched, by Warner/Chappell’s
25 takings.

26 162. Plaintiffs seek relief for themselves and the other members of the
27 proposed Class upon the entry of declaratory judgment upon Claim I, as follows:

- 28 (a) an injunction to prevent defendant Warner/Chappell from making

1 further representations of ownership of the copyright to *Happy Birthday To*
2 *You*;

3 (b) restitution to plaintiffs and the other Class members of license fees paid
4 to defendant Warner/Chappell, directly or indirectly through its agents, in
5 connection with the purported licenses it granted to Plaintiffs GMTY, Siegel,
6 and Rupa and the other Class members;

7 (c) an accounting for all monetary benefits obtained by defendant
8 Warner/Chappell, directly or indirectly through its agents, from plaintiffs and
9 the other Class members in connection with its claim to ownership of the
10 copyright to *Happy Birthday to You*; and

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

12 **THIRD CLAIM FOR RELIEF**

13 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF**
14 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***

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

16 **(Against Defendant Warner/Chappell)**

17 163. Plaintiffs repeat and reallege paragraphs 1 through 162 set forth above
18 as though they were fully set forth herein.

19 164. Plaintiffs GMTY, Siegel, and Rupa, bring these claims individually on
20 their own behalf, and also on behalf of the Class pursuant to Rule 23(b)(3) of the
21 Federal Rules of Civil Procedure.

22 165. As alleged herein, Plaintiffs GMTY, Siegel, and Rupa and the other
23 Class members have paid licensing fees to defendant Warner/Chappell and have
24 therefore suffered injury in fact and have lost money or property as a result of
25 defendant Warner/Chappell's conduct.

26 166. California's Unfair Competition Laws, Business & Professions Code §§
27 17200 *et seq.* ("UCL"), prohibit any unlawful or unfair business act or practice.

28 ///

1 167. UCL § 17200 further prohibits any fraudulent business act or practice.

2 168. Defendant Warner/Chappell's actions, claims, nondisclosures, and
3 misleading statements, as alleged in this Complaint, were unfair, false, misleading,
4 and likely to deceive the consuming public within the meaning of UCL §§ 17200,
5 17500.

6 169. Defendant Warner/Chappell's conduct in exerting control over exclusive
7 copyright ownership to *Happy Birthday to You* to extract licensing fees is deceptive
8 and misleading because Warner/Chappell does not own the rights to *Happy Birthday*
9 *to You*.

10 170. Plaintiffs and the other members of the Class have, in fact, been
11 deceived as a result of their reasonable reliance upon defendant Warner/Chappell's
12 materially false and misleading statements and omissions, as alleged above.

13 171. As a result of defendant Warner/Chappell's unfair and fraudulent acts
14 and practices as alleged above, plaintiffs and the other Class members have suffered
15 substantial monetary injuries.

16 172. Plaintiffs and the other Class members reserve the right to allege other
17 violations of law which constitute other unfair or deceptive business acts or practices.
18 Such conduct is ongoing and continues to this date.

19 173. As a result of its deception, defendant Warner/Chappell has been able to
20 reap unjust revenue and profit.

21 174. Upon information and belief, defendant Warner/Chappell has collected
22 and continues to collect at least \$2 million per year in licensing fees for *Happy*
23 *Birthday to You*. Therefore, the amount in controversy exceeds \$5 million in the
24 aggregate.

25 175. Unless restrained and enjoined, defendant Warner/Chappell will
26 continue to engage in the above-described conduct. Accordingly, injunctive relief is
27 appropriate.

28 ///

1 176. Plaintiffs, individually on their own behalf and on behalf of the other
2 members of the Class, seek restitution and disgorgement of all money obtained from
3 plaintiffs and the other members of the Class, collected as a result of unfair
4 competition, and all other relief this Court deems appropriate, consistent with UCL §
5 17203.

6 **FOURTH CLAIM FOR RELIEF**
7 **COMMON COUNT FOR MONEY HAD AND RECEIVED**
8 **(On Behalf of Plaintiffs and the Class)**
9 **(Against Defendant Warner/Chappell)**

10 177. Plaintiffs repeat and reallege paragraphs 1 through 176 set forth above
11 as though they were fully set forth herein.

12 178. Within the last four years Defendant Warner/Chappell became indebted
13 to Plaintiffs and all class members for money had and received by Defendant
14 Warner/Chappell for the use and benefit of Plaintiffs and class members. The money
15 in equity and good conscience belongs to Plaintiffs and class members.

16 **FIFTH CLAIM FOR RELIEF**
17 **RECISSION FOR FAILURE OF CONSIDERATION,**
18 **(On Behalf of Plaintiffs and the Class)**
19 **(Against Defendant Warner/Chappell)**

20 179. Plaintiffs repeat and reallege paragraphs 1 through 178 set forth above
21 as though they were fully set forth herein.

22 180. Defendant's purported licenses were worthless and ineffective, and do
23 not constitute a valid consideration.

24 181. The complete lack of consideration obviates any need for notice to
25 Defendant.

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SIXTH CLAIM FOR RELIEF

FALSE ADVERTISING, CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

(On Behalf of Plaintiffs and the Class)

(Against Defendant Warner/Chappell)

182. Plaintiffs repeat and reallege paragraphs 1 through 181 set forth above as though they were fully set forth herein.

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

184. Defendant Warner/Chappell 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. Defendant knew, or in the exercise of reasonable care should have known, that these statements were untrue and misleading.

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

DEMAND FOR JURY TRIAL

Plaintiffs GMTY, Siegel, and Rupa hereby demand a trial by jury to the extent that the allegations contained herein are triable by jury under Federal Rules of Civil Procedure 38-39.

PRAYER RELIEF

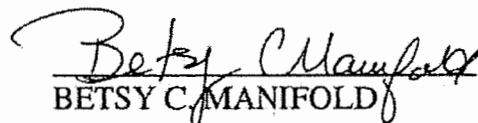
WHEREFORE, Plaintiffs GMTY, Siegel, and Rupa , on behalf of themselves and the other members of the Class, pray for judgment against defendant Warner/Chappell as follows:

- 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;

- 1 C. permanently enjoining defendant Warner/Chappell from asserting
- 2 any copyright to the song *Happy Birthday to You*;
- 3 D. permanently enjoining defendant Warner/Chappell from charging
- 4 or collecting any licensing or other fees for use of the song *Happy*
- 5 *Birthday to You*;
- 6 E. imposing a constructive trust upon the money defendant
- 7 Warner/Chappell unlawfully collected from plaintiffs, the other
- 8 members of the Class, and ASCAP for use of the song *Happy Birthday*
- 9 *to You*;
- 10 F. ordering defendant Warner/Chappell to return to Plaintiffs and the
- 11 other members of the Class all the licensing or other fees it has collected
- 12 from them, directly or indirectly through its agents, for use of the song
- 13 *Happy Birthday to You*, together with interest thereon;
- 14 G. awarding Plaintiffs and the other members of the Class restitution
- 15 for defendant Warner/Chappell's prior acts and practices;
- 16 H. awarding Plaintiffs and the Class reasonable attorneys' fees and
- 17 costs; and
- 18 I. granting such other and further relief as the Court deems just and
- 19 proper.

20 Dated: July 26, 2013

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

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24 Betsy C. MANIFOLD

25 FRANCIS M. GREGOREK
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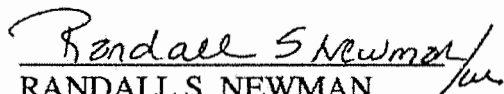
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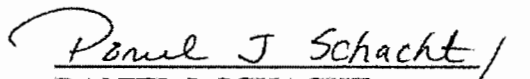
Dated: July 26, 2013

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Dated: July 26, 2013

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EXHIBIT 122

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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

Plaintiffs,

v.

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

Defendants.

) Lead Case No. CV 13-04460-GHK
) (MRWx)
) **SECOND AMENDED**
) **CONSOLIDATED COMPLAINT**
) **FOR (1) INVALIDITY OF**
) **COPYRIGHT UNDER THE**
) **COPYRIGHT ACT (17 U.S.C. §§ 101**
) **et seq.); (2) DECLARATORY AND**
) **INJUNCTIVE RELIEF; (3)**
) **VIOLATIONS OF CALIFORNIA**
) **UNFAIR COMPETITION LAWS**
) **(Cal. Bus. & Prof. Code §§ 17200 et**
) **seq.); (4) BREACH OF CONTRACT;**
) **(5) MONEY HAD AND RECEIVED;**
) **(6) RESCISSION FOR FAILURE OF**
) **CONSIDERATION; and (7)**
) **VIOLATIONS OF CALIFORNIA**
) **FALSE ADVERTISING LAWS (Cal.**
) **Bus. & Prof. Code § 17500 et seq.)**
) **CLASS ACTION**
) **DEMAND FOR JURY TRIAL**

) Room: 650 (Roybal)
) Judge: Hon. George H. King, Chief Judge

N/S

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 Consolidated Second Amended Complaint For Declaratory Judgment;
6 Injunctive And Declaratory Relief; And Damages For: (1) Invalidity Of Copyright
7 (Copyright Act, 17 U.S.C. §§ 101 *et seq.*); (2) Declaratory and Injunctive Relief
8 Upon Entry of Declaratory Judgment; (3) Unfair Competition Laws (Cal. Bus. &
9 Prof. Code §§ 17200 *et seq.*); (4) Breach of Contract; (5) Common Law Money Had
10 and Received; (6) Recission for Failure of Consideration; and (7) Violations of
11 California False Advertising Laws (Bus. & Prof. Code § 17500, *et seq.*) against
12 defendant Warner/Chappell Music, Inc. (“Warner/Chappell”) and Summy-Birchard,
13 Inc. (“SBI”) (collectively “Defendants”), hereby allege as follows:

14 **JURISDICTION AND VENUE**

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

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

25 3. Paragraph 8 of the Film and Synchronization and Performance License
26 (“Synchronization License”) by and between assignee Plaintiff Siegel and defendant
27 Warner/Chappell states: “this license has been entered into in, and shall be
28

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

6 **INTRODUCTION**

7 4. This is an action to declare invalid the copyright that Defendants claim
8 to own to the world’s most popular song, *Happy Birthday to You* (the “Song”), to
9 declare that the Song is dedicated to public use and in the public domain; and to
10 return millions of dollars of unlawful licensing fees collected by defendant
11 Warner/Chappell pursuant to its wrongful assertion of copyright ownership of the
12 Song.

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

20 6. More than 120 years after the melody to which the simple lyrics of
21 *Happy Birthday to You* is set was first published, defendant Warner/Chappell
22 boldly, but wrongfully and unlawfully, insists that it owns the copyright to *Happy*
23 *Birthday to You*, and with that copyright the exclusive right to authorize the Song’s
24 reproduction, distribution, and public performances pursuant to federal copyright
25 law. Warner/Chappell declares in the first two sentences on the “About Us” page of
26 its website that “Warner/Chappell Music is [Warner Music Group]’s award-winning
27 global music publishing company. The Warner/Chappell Music catalog includes
28 standards such as ‘Happy Birthday To You’....” Available

1 at: http://www.warnerchappell.com/about.jsp?currenttab=about_us.

2 Defendant Warner/Chappell either has silenced those wishing to record or perform
3 *Happy Birthday to You*, or has extracted millions of dollars in unlawful licensing
4 fees from those unwilling or unable to challenge its ownership claims.

5 7. Irrefutable documentary evidence, some dating back to 1893, shows
6 that the copyright to *Happy Birthday to You*, if there ever was a valid copyright to
7 any part of the Song, expired no later than 1921 and that if defendant
8 Warner/Chappell owns any rights to *Happy Birthday to You*, those rights are limited
9 to the extremely narrow right to reproduce and distribute specific piano
10 arrangements for the song published in 1935. Significantly, no court has ever
11 adjudicated the validity or scope of the Defendants' claimed interest in *Happy*
12 *Birthday to You*, nor in the Song's melody or lyrics, which are themselves
13 independent works.

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

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

26 **PLAINTIFFS**

27 10. Plaintiff GMTY is a New York corporation with its principal place of
28 business located in New York County. Under a claim of copyright by defendant

1 Warner/Chappell, on or about March 26, 2013, GMTY paid defendant
2 Warner/Chappell the sum of \$1,500 for a synchronization license to use *Happy*
3 *Birthday to You* and on or about April 24, 2013, GMTY entered into a
4 synchronization license with Warner/Chappell, as alleged more fully herein.

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

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

23 13. Plaintiff Majar is a Los Angeles-based film production company that
24 produced the award winning documentary film “*No Subtitles Necessary: László &*
25 *Vilmos*” (hereafter, “*No Subtitles Necessary*” or the “Film”). The Film follows the
26 lives of renowned cinematographers László Kovacs (“Kovacs”) and Vilmos
27 Zsigmond (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
28 present day. As film students in Hungary, Kovacs and Zsigmond shot footage of the

1 Russian invasion of Budapest and subsequently risked their lives to smuggle it out
2 of the country. They fled to America and settled in Hollywood, eventually saving
3 enough money to buy their own 16mm camera to begin shooting movies. Both rose
4 to prominence in the late 1960's and 1970's having shot films such as "Easy Rider,"
5 "Five Easy Pieces," "McCabe and Mrs. Miller," "Deliverance," "Paper Moon," and
6 "Close Encounters of the Third Kind." *No Subtitles Necessary* tells the story of
7 their lives and careers.

8 DEFENDANTS

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

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

17 FACTUAL BACKGROUND

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

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

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

26 18. On or about February 1, 1893, the Hill Sisters sold and assigned all
27 their right, title, and interest in the written manuscript to Clayton F. Summy
28 ("Summy") in exchange for 10 percent of retail sales of the manuscript. The sale

1 included the song *Good Morning to All*.

2 19. In or around 1893, Summy published the Hill Sisters' written
3 manuscript with an introduction by Anna E. Bryan ("Bryan") in a songbook titled
4 *Song Stories for the Kindergarten*. *Song Stories for the Kindergarten* included the
5 song *Good Morning to All*.

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

8 21. On the October 16, 1893, copyright application, Summy claimed to be
9 the copyright's proprietor, but not the author of the copyrighted works.

10 22. *Song Stories for the Kindergarten* bears a copyright notice reading
11 "Copyright 1893, by Clayton F. Summy."

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

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

16 Good morning to you
17 Good morning to you
18 Good morning dear children
19 Good morning to all.
20

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

24 Happy Birthday to You
25 Happy Birthday to You
26 Happy Birthday dear [NAME]
27 Happy Birthday to You.
28

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

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

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

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

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

16 31. The 1896 version of *Song Stories for the Kindergarten* bears a
17 copyright notice reading "Copyright 1896, by Clayton F. Summy."

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

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

23 34. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
24 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday*
25 *School*. One of those songs included in *Song Stories for the Sunday School* was
26 *Good Morning to All*. And yet again, neither the song *Happy Birthday* nor the lyrics
27 to *Happy Birthday* were published in "*Song Stories for the Sunday School*."

28 35. On or about March 20, 1899, Summy Co. filed a copyright application

1 (Reg. No. 20441) with the Copyright Office for *Song Stories for the Sunday School*.

2 36. On the 1899 copyright application, Summy Co. claimed to be the
3 copyright's proprietor, but not the author of the copyrighted works.

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

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

9 38. *Song Stories for the Sunday School* bears a copyright notice reading
10 "Copyright 1899 by Clayton F. Summy Co."

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

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

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

19 42. For example, in the January 1901 edition of *Inland Educator and*
20 *Indiana School Journal*, the article entitled "First Grade Opening Exercises"
21 described children singing the words "happy birthday to you," but did not print the
22 Song's lyrics or melody.

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

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

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

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

3 Sing: "Good-bye to you, good-bye to you, good-bye dear children, good-
4 bye to you." Also: "Good-bye dear teacher." (From "Song Stories for the
5 Sunday-School," published by Summy & Co.)

6 Sing: "Happy Birthday to You." (Music same as "Good-bye to You.")

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

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

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

16 Happy birthday to you, Happy birthday to you, Happy birthday, dear John,
17 Happy birthday to you. (Sung to the same tune as the "Good Morning")

18 [NOTE: The songs and exercises referred to in this program may be found in
19 these books:... "Song Stories for the Sunday School," by Patty Hill.]

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

23 51. *The Elementary Worker and His Work* attributed authorship or
24 identified the copyrights to many of the works included in the book. Significantly, it
25 did *not* attribute authorship or identify any copyright for the song *Happy Birthday to*
26 *You*.

27 52. On or about January 14, 1920, Summy Co. was dissolved in accordance
28 with its limited (not perpetual) 25-year term of incorporation. Summy Co. did not

1 extend or renew the 1893 (Reg. No. 45997) or 1907 (Reg. No. 142468) copyrights
2 prior to its dissolution.

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

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

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

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

16 56. The copyright to the original *Song Stories for the Kindergarten* (Reg.
17 No. 45997) was not extended by Summy Co., and consequently expired on October
18 16, 1921. The original *Song Stories for the Kindergarten*, including the song *Good*
19 *Morning to All*, became dedicated to public use and fell into the public domain by
20 no later than that date.

21 57. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
22 No. 34260) was not extended by Summy, and consequently expired on June 18,
23 1924. The revised *Song Stories for the Kindergarten* became dedicated to public
24 use and fell into the public domain by no later than that date.

25 58. In or around March 1924, the sheet music (with accompanying lyrics)
26 to *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
27 compiled, and edited by Robert H. Coleman ("Coleman"). Upon information and
28 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*

1 You were published together.

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

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

11 61. On or about April 15, 1925, Summy incorporated a new Clayton F.
12 Summy Co. ("Summy Co. II") under the laws of the State of Illinois. Upon
13 information and belief, Summy Co. II was not a successor to Summy Co.; rather, it
14 was incorporated as a new corporation.

15 62. The sheet music (with accompanying lyrics) to *Happy Birthday to You*
16 was again published in 1928 in the compilation *Children's Praise and Worship*,
17 compiled and edited by A.L. Byers, Bessie L. Byrum, and Anna E. Koglin ("Byers,
18 Byrum & Koglin"). Upon information and belief, *Children's Praise and Worship*
19 was the first time the song was published under the title *Happy Birthday to You*.

20 63. On or about April 7, 1928, Gospel Trumpet Co. ("Gospel") filed a
21 copyright application (Reg. No. A1068883) with the Copyright Office for
22 *Children's Praise and Worship*.

23 64. *Children's Praise and Worship* attributed authorship or identified the
24 copyrights to many of the works included in the book. Significantly, it did *not*
25 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

26 65. *Children's Praise and Worship* did not provide any copyright notice for
27 the combination of *Good Morning to All* with the lyrics to *Happy Birthday to You*,
28 nor did it include the names of Mildred Hill or Patty Hill and did not attribute any

1 authorship or ownership to the Hill Sisters.

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

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

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

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

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

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

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

26 73. On January 21, 1935, Jessica Hill commenced an action against the
27 Federal Broadcasting Corp. in the Southern District of New York, captioned *Hill v.*
28 *Federal Broadcasting Corp.*, Eq. No. 79-312, claiming infringement on the Hill

1 Sisters' 1893 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no
2 claim in that action regarding *Happy Birthday to You*, alone or in combination with
3 *Good Morning to All*.

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

9 ***Applications for Copyright for New Musical Arrangement***

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

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

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

22 78. The work registered with the Copyright Office as Reg. No. E45655 was
23 not eligible for federal copyright protection in that it consisted entirely of
24 information that was common property and contained no original authorship, except
25 as to the arrangement itself.

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

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

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

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

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

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

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

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

28 87. On or about April 5, 1935, Summy Co. III filed an Application for

1 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
2 No. E47440) with the Copyright Office for the song *Happy Birthday*.

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

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

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

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

18 92. In that December 1935 Application for Copyright, Summy Co. III
19 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
20 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
21 Chorus and revised text.” The sheet music deposited with the application credited
22 Forman only for the arrangement, not for any lyrics, and did not credit the Hill
23 Sisters with writing the lyrics to *Happy Birthday to You*.

24 93. For the first time, the lyrics to *Happy Birthday to You*, including a
25 second verse as the revised text, were included on the work registered with the
26 Copyright Office as Reg. No. E51988. However, the December 1935 Application
27 for Copyright did not attribute authorship of the lyrics to either of the Hill Sisters
28 and did not claim copyright in the lyrics to *Happy Birthday to You* alone or in

1 combination with the melody of *Good Morning to All*.

2 94. The work registered with the Copyright Office as Reg. No. E51988 was
3 not eligible for federal copyright protection in that it consisted entirely of
4 information that was common property and contained no original authorship, except
5 as to the sheet music arrangement itself.

6 95. The work registered as Reg. No. E51988 was not eligible for federal
7 copyright protection because Summy Co. III did not have authorization from the
8 author to publish that work.

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

12 97. In that additional December 1935 Application for Copyright, Summy
13 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
14 claimed the copyrighted new matter as "arrangement as easy piano solo, with text."
15 The sheet music deposited with the application credited Orem only for the
16 arrangement, not for any lyrics, and did not credit the Hill Sisters with writing the
17 lyrics to *Happy Birthday to You*.

18 98. The lyrics to *Happy Birthday to You* were included on the work
19 registered with the Copyright Office as Reg. No. E51990. However, the additional
20 December 1935 Application for Copyright did not attribute authorship of the lyrics
21 to either of the Hill Sisters, did not contain the names of either of the Hill Sisters,
22 and did not claim any copyright in the lyrics to *Happy Birthday to You* alone or in
23 combination with the melody of *Good Morning to All*.

24 99. The work registered with the Copyright Office as Reg. No. E51990 was
25 not eligible for federal copyright protection in that it consisted entirely of
26 information that was common property and contained no original authorship, except
27 as to the sheet music arrangement itself.

28

1 100. The work registered as Reg. No. E51990 was not eligible for federal
2 copyright protection because Summy Co. III did not have authorization from the
3 author to publish that work.

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

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

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

19 104. On March 2, 1943, The Hill Foundation commenced an action against
20 the Postal Telegraph Cable Company in the Southern District of New York,
21 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
22 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
23 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
24 1896, and 1899 copyrights for *Good Morning to All* and did *not* claim any copyright
25 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
26 *Good Morning to All*.

27 105. Despite the filing of at least four prior cases in the Southern District of
28 New York asserting copyrights to *Good Morning to All*, there has been no judicial

1 determination of the validity or scope of any copyright related to *Good Morning to*
2 *All*.

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

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

9 108. In particular, on December 6, 1962, Summy Co. III filed a renewal
10 application for Reg. No. E51988, as employer for hire of Forman. Forman did not
11 write the lyrics to *Happy Birthday to You* or the combination of those lyrics with the
12 melody of *Good Morning to All*, and neither Summy Co. III nor Defendants have
13 claimed otherwise.

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

18 110. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
19 and was acquired by Warner/Chappell in or about 1998. On information and belief,
20 this entity now operates as "Summy Birchard, Inc." – currently a subsidiary of
21 Warner/Chappell and Warner/Chappell's co-Defendant herein.

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

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

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

27
28 113. Defendant Warner/Chappell currently claims it owns the exclusive

1 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
2 Co. III published in 1935.

3 114. ASCAP provides non-dramatic public performance licenses to bars,
4 clubs, websites, and many other venues. ASCAP “blanket licenses” grant the
5 licensee the right to publicly perform any or all of the over 8.5 million songs in
6 ASCAP’s repertory in exchange for an annual fee. The non-dramatic public
7 performance license royalties are distributed to ASCAP members based on surveys
8 of performances of each ASCAP repertory song across different media. As an
9 ASCAP member and assignee of the copyrights in *Happy Birthday to You*,
10 Defendant Warner/Chappell obtains a share of blanket license revenue that would
11 otherwise be paid to all other ASCAP members, in proportion to their songs’ survey
12 shares.

13 ***Plaintiff GMTY’s Use of Happy Birthday to You***

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

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

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

20 118. Accordingly, in September 2012, plaintiff requested a quote from
21 Warner/Chappell for a synchronization license to use *Happy Birthday to You* from
22 Warner/Chappell’s website.

23 119. On or about September 18, 2012, defendant Warner/Chappell
24 responded to plaintiff GMTY’s inquiry by demanding that GMTY pay it the sum of
25 \$1,500 and enter into a synchronization license agreement to use *Happy Birthday to*
26 *You*.

27 120. On or about March 12, 2013, defendant Warner/Chappell again
28 contacted plaintiff GMTY and insisted that GMTY was not authorized to use *Happy*

1 *Birthday to You* unless it paid the licensing fee of \$1,500 and entered into the
2 synchronization license that Warner/Chappell demanded.

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

8 122. Faced with a threat of substantial penalties for copyright infringement,
9 on or about March 26, 2013, plaintiff GMTY was forced to and did pay defendant
10 Warner/Chappell the sum of \$1,500 for a synchronization license and, on or about
11 April 24, 2013, GMTY was forced to and did enter into the synchronization license
12 agreement to use *Happy Birthday to You*.

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

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

15 124. In one of the scenes in *Big Fan*, the song *Happy Birthday to You* was
16 sung.

17 125. During the production process, Plaintiff Siegel learned that defendant
18 Warner/Chappell claimed exclusive copyright ownership to *Happy Birthday to You*.

19 126. Accordingly, in July 2009, Plaintiff Siegel requested a quote from
20 Warner/Chappell for a Synchronization License to use *Happy Birthday to You* in *Big*
21 *Fan*.

22 127. On or about July 20, 2009, defendant Warner/Chappell responded to
23 plaintiff Siegel's inquiry by demanding that BIG FAN pay it the sum of \$3,000 and
24 enter into a Synchronization License for use of *Happy Birthday to You*.

25 128. Because Defendant Warner/Chappell notified BIG FAN that it claimed
26 exclusive copyright ownership of *Happy Birthday to You*, BIG FAN faced a
27 statutory penalty of \$150,000 under the Copyright Act, 17 U.S.C. § 101 *et seq.* if
28

1 BIG FAN used the Song without Warner/Chappell's permission and
2 Warner/Chappell, in fact, owned the copyright that it claimed.

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

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

9 ***Rupa's Performance of Happy Birthday to You***

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

14 132. Section 115 of the Copyright Act provides for compulsory licenses for
15 the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, Web-based
16 "downloads") of musical compositions. Failure to obtain such a license prior to
17 distribution of a cover version of a song constitutes a copyright infringement subject
18 to the full remedies of the Copyright Act.

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

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

24 134. Plaintiff Majar wished to use the *Happy Birthday* in the opening scene
25 of the Film, wherein Zsigmond and others sang the *Happy Birthday to You* to
26 Kovacs in a celebration of Kovacs' life and the friendship of the two, thereby setting
27 the tone for the Film. Plaintiff Majar learned that defendant Warner/Chappell
28 claimed exclusive copyright ownership to *Happy Birthday*, including for purposes

1 of issuing synchronization licenses. Accordingly, on or about October 29, 2009,
2 Plaintiff Majar paid to defendant Warner/Chappell the sum of \$5000 for a
3 synchronization license to use *Happy Birthday* in the Film.

4 **CLASS ALLEGATIONS**

5 135. Plaintiffs GMTY, Siegel, Rupa and Majar bring this action under
6 Federal Rules of Civil Procedure 23(a) and (b) as a class action on behalf of
7 themselves and all others similarly situated for the purpose of asserting the claims
8 alleged in this Consolidated First Amended Complaint on a common basis.

9 136. The proposed Class is comprised of:

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

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

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

- 24 a. whether *Happy Birthday to You* is in the public domain and dedicated
25 to public use;
- 26 b. whether Warner/Chappell is the exclusive owner of the copyright to
27 *Happy Birthday to You* and is thus entitled to all of the rights conferred
28 in 17 U.S.C. § 102;

- 1 c. whether Warner/Chappell has the right to collect fees for the use of
- 2 *Happy Birthday to You*;
- 3 d. whether Warner/Chappell has violated the law by demanding and
- 4 collecting fees for the use of *Happy Birthday to You* despite not having
- 5 a valid copyright to the song; and
- 6 e. whether Warner/Chappell is required to return unlawfully obtained
- 7 payments to plaintiffs GMTY, Siegel, Rupa and Majar and the other
- 8 members of the Class and, if so, what amount is to be returned.

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

11 140. Plaintiffs GMTY, Siegel, Rupa and Majar's claims are typical of the
12 claims of all other members of the Class and plaintiffs GMTY, Siegel, Rupa and
13 Majar's interests do not conflict with the interests of any other member of the Class,
14 in that plaintiffs and the other members of the Class were subjected to the same
15 unlawful conduct.

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

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

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

26 144. Moreover, the prosecution of separate actions by individual members
27 of the Class would create the risk of varying and inconsistent adjudications, and
28 would unduly burden the courts.

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

3 **FIRST CLAIM FOR RELIEF**

4 **DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201**

5 **(On Behalf Of Plaintiffs And The Class)**

6 **(Against Defendants)**

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

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

12 148. Plaintiffs seek adjudication of an actual controversy arising under the
13 Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants' purported
14 copyright claim to *Happy Birthday to You*. Plaintiffs seek the Court's declaration
15 that the Copyright Act does not bestow upon Warner/Chappell and/or SBI the rights
16 it has asserted and enforced against plaintiffs and the other members of the Class.

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

21 150. Defendant Warner/Chappell demanded that plaintiff GMTY enter into
22 a synchronization license agreement to use *Happy Birthday to You* and pay
23 Warner/Chappell the sum of \$1,500 for that synchronization license based upon its
24 claim of copyright ownership. Warner/Chappell's demand was coercive in nature,
25 and GMTY's entering into the license agreement and payment of \$1,500 was
26 involuntary.

27 151. Plaintiff GMTY's claim presents a justiciable controversy because
28 plaintiff GMTY's agreement to pay defendant Warner/Chappell and its actual

1 *payment* to Warner/Chappell for use of the song *Happy Birthday to You* in its film
2 was the involuntary result of Warner/Chappell's assertion of a copyright and the risk
3 that plaintiff GMTY would be exposed to substantial statutory penalties under the
4 Copyright Act had it failed to enter such an agreement and pay Warner/Chappell the
5 price it demanded.

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

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

20 154. Plaintiff Rupa's claim presents a justiciable controversy because
21 plaintiff Rupa's agreement to pay defendant Warner/Chappell and its actual
22 *payment* to Warner/Chappell for use of the song *Happy Birthday to You* in her
23 album, was the involuntary result of Warner/Chappell's assertion of a copyright and
24 the risk that plaintiff Rupa would be exposed to substantial statutory penalties under
25 the Copyright Act had she failed to enter such an agreement and pay
26 Warner/Chappell standard mechanical license royalties it demanded, but then paid
27 for the mechanical license anyway.

28

1 155. Defendants demanded that Plaintiff Majar pay to Defendants a
2 licensing fee in the sum of \$5000 pursuant to Defendants' claim of copyright
3 ownership, in order for Plaintiff Majar to use *Happy Birthday* in the Film.
4 Defendants' demand was coercive in nature and Majar's agreement to pay the fee
5 was involuntary.

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

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

18 158. If and to the extent that Defendants relies upon the 1893, 1896, 1899,
19 or 1907 copyrights for the melody for *Good Morning to All*, those copyrights
20 expired or were forfeited as alleged herein.

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

25 160. As alleged above, the 1893 copyright to *Song Stories for the*
26 *Kindergarten* and the 1899 copyright to *Song Stories for the Sunday School*, which
27 contained *Good Morning to All*, and the 1907 copyright to *Good Morning to All*
28 were not renewed by Summy Co. before Summy Co. was dissolved in 1920 and

1 accordingly, those copyrights expired in 1927 and 1935, respectively.

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

5 162. The copyright to *Good Morning to All* expired in 1921 because the
6 1893 copyright to *Song Stories for the Kindergarten* was not properly renewed.

7 163. The piano arrangements for *Happy Birthday to You* published by
8 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990) were not eligible for
9 federal copyright protection because those works did not contain original works of
10 authorship, except to the extent of the piano arrangements themselves.

11 164. The 1934 and 1935 copyrights pertained only to the piano
12 arrangements, not to the melody or lyrics of the song *Happy Birthday to You*.

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

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

21 167. Plaintiffs therefore request a declaration that:

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

25 (b) defendant Warner/Chappell and defendant SBI do not own the
26 exclusive right to demand or grant a license for use of *Happy Birthday To*
27 *You*; and
28

1 (c) *Happy Birthday to You* is in the public domain and is dedicated to the
2 public use.

3 **SECOND CLAIM FOR RELIEF**

4 **UPON ENTRY OF DECLARATORY JUDGMENT**

5 **DECLARATORY AND INJUNCTIVE RELIEF**

6 **PURSUANT TO 28 U.S.C § 2202**

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

8 **(Against Defendant Warner/Chappell)**

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

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

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

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

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

23 (a) an injunction to prevent Defendants Warner/Chappell and SBI from
24 making further representations of ownership of the copyright to *Happy*
25 *Birthday To You*;

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

- 1 the other Class members;
- 2 (c) an accounting for all monetary benefits obtained by Defendants,
- 3 directly or indirectly through its agents, from plaintiffs and the other Class
- 4 members in connection with its claim to ownership of the copyright to *Happy*
- 5 *Birthday to You*; and
- 6 (d) such other further and proper relief as this Court sees fit.

THIRD CLAIM FOR RELIEF

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

(On Behalf of Plaintiffs and the Class)

(Against Defendants)

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

14 174. Plaintiffs GMTY, Siegel, Rupa, and Majar bring these claims
15 individually on their own behalf, and also on behalf of the Class pursuant to Rule
16 23(b)(3) of the Federal Rules of Civil Procedure.

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

21 176. California's Unfair Competition Laws, Business & Professions Code
22 §§ 17200 *et seq.* ("UCL"), prohibit any unlawful or unfair business act or practice.

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

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

27 179. The conduct of Defendants in exerting control over exclusive copyright
28 ownership to *Happy Birthday to You* to extract licensing fees is deceptive and

1 misleading because neither Warner/Chappell nor SBI own the rights to *Happy*
2 *Birthday to You*.

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

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

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

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

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

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

19 186. Plaintiffs, individually on their own behalf and on behalf of the other
20 members of the Class, seek restitution and disgorgement of all money obtained from
21 Plaintiffs and the other members of the Class, collected as a result of unfair
22 competition, and all other relief this Court deems appropriate, consistent with UCL
23 § 17203.

24 **FOURTH CLAIM FOR RELIEF**

25 **BREACH OF CONTRACT**

26 **(On Behalf of Plaintiffs and the Class Against All Defendants)**

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

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

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

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

10 191. As alleged herein, Defendants do not own the copyright interests
11 claimed in *Happy Birthday* and, as a result of its unlawful and false assertions of the
12 same, Defendants have violated the representations and warranties made in the
13 licensing agreements, thereby materially breaching the licensing agreements.

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

16
17 **FIFTH CLAIM FOR RELIEF**
18 **COMMON COUNT FOR MONEY HAD AND RECEIVED**
19 **(On Behalf of Plaintiffs and the Class)**
20 **(Against Defendants)**

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

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

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SIXTH CLAIM FOR RELIEF
RESCISSION FOR FAILURE OF CONSIDERATION
(On Behalf of Plaintiffs and the Class)
(Against Defendants)

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

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

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

SEVENTH CLAIM FOR RELIEF
FALSE ADVERTISING, CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.
(On Behalf of Plaintiffs and the Class)
(Against 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.

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DEMAND FOR JURY TRIAL

Plaintiffs GMTY, Siegel, Rupa and Majar hereby demand a trial by jury to the extent that the allegations contained herein are triable by jury under Federal Rules of Civil Procedure 38-39.

PRAYER 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*;
- 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

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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: August 21, 2013

WOLF HALDENSTEIN ADLER
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Dated: August 21, 2013

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DECLARATION OF SERVICE

I, LaDonna Cothran, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California 92101.

2. That on September 4, 2013 declarant served the following:

SECOND AMENDED CONSOLIDATED COMPLAINT FOR (1) INVALIDITY OF COPYRIGHT UNDER THE COPYRIGHT ACT (17 U.S.C. §§ 101 *et seq.*); (2) DECLARATORY AND INJUNCTIVE RELIEF; (3) VIOLATIONS OF CALIFORNIA UNFAIR COMPETITION LAWS (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); (4) BREACH OF CONTRACT; (5) MONEY HAD AND RECEIVED; (6) RESCISSION FOR FAILURE OF CONSIDERATION; and (7) VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAWS (Cal. Bus. & Prof. Code § 17500 *et seq.*);

via U.S. Mail and E-mail to all parties as designated on the attached service list.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of September 2013, at San Diego, California.



LADONNA COTHRAN

WARNER:20094.POS

WARNER/CHAPPELL MUSIC, INC.
Service List – Aug. 5, 2013
Page 1

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*DENOTES SERVICE BY U.S. MAIL

EXHIBIT 123

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5 *Interim Lead Class Counsel for Plaintiffs*

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

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

24 **CLASS ACTION**

25 **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 Third Amended Consolidated Complaint For: (1) Declaratory Judgment (28
6 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

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

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

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

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

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

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

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.

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

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

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.

28 ///

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

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.

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**

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*

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

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

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

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. The lyrics to *Happy Birthday to You* were included on the work
5 registered with the Copyright Office as Reg. No. E51990. However, the additional
6 December 1935 Application for Copyright did not attribute authorship of the lyrics
7 to either of the Hill Sisters, did not contain the names of either of the Hill Sisters,
8 and did not claim any copyright in the lyrics to *Happy Birthday to You* alone or in
9 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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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

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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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

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*

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

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.

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

2 134. (a) Plaintiff Majar produced the Film entitled “*No Subtitles*
3 *Necessary: László & 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

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 Third 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

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

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

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.

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

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.

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

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

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

- (a) an injunction to prevent Defendants Warner/Chappell and SBI from making further representations of ownership of the copyright to *Happy Birthday To You*;
- (b) restitution to Plaintiffs and the other Class members of license fees paid to Defendants, directly or indirectly through its agents, in connection with the purported licenses it granted to Plaintiffs GMTY, Siegel, Rupa and Majar and the other Class members;
- (c) an accounting for all monetary benefits obtained by Defendants, directly or indirectly through its agents, from plaintiffs and the other Class members in connection with its claim to ownership of the copyright to *Happy Birthday to You*; and
- (d) such other further and proper relief as this Court sees fit.

THIRD CLAIM FOR RELIEF

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

(On Behalf of Plaintiffs and the Class)

(Against All Defendants)

173. Plaintiffs repeat and reallege paragraphs 1 through 172 set forth above 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.

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
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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: November 5, 2013

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Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs GMTY, Siegel, Rupa and Majar 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: November 5, 2013

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: s/ Betsy C. Manifold
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EXHIBIT 124

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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) **JOINT REPORT ON PARTIES'**
 Plaintiffs,) **PLANNING MEETING**
 17)
 18 v.)
 19)
 19 WARNER/CHAPPELL MUSIC,) Date: February 24, 2014
 20 INC., *et al.*) Time: 1:30 p.m.
) Room: 650
 21 Defendant.) Judge: Hon. George H. King, Chief Judge
 22)
 23)

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure (“FRCP”), Civil
2 Local Rule 26-1, and the Court’s Orders entered October 21, 2013 and December 13,
3 2013 (Dkts. 71, 80, respectively), plaintiffs Good Morning To You Productions
4 Corp. (“GMTY”), Robert Siegel (“Siegel”), Rupa Marya (“Marya”), and Majar
5 Productions, LLC (“Majar”) (collectively the “Plaintiffs”) and defendants
6 Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (together
7 “Warner/Chappell” or “Defendants”) (Plaintiffs and Defendants are jointly referred
8 to herein as the “Parties”) submit this Joint Report on Parties’ Planning Meeting,
9 through their respective counsel of record, which was jointly prepared subsequent to
10 the in-person meeting of counsel conducted on January 16, 2014 (hereafter the
11 “Parties’ Planning Meeting”).

12 **LIMITATION OF JOINT REPORT AS TO MERITS ISSUES WITH**
13 **RESPECT TO CLAIM ONE**

14 By Order entered October 21, 2013 (Dkt. 71), Claim One of Plaintiffs’
15 Operative Complaint was **BIFURCATED** from all other claims through summary
16 judgment, and all other claims, including any discovery specific to such claims, are
17 **STAYED** until further order by the Court. October 21, 2013 Order (Dkt. 71 at 4).
18 Defendants’ pending motion to dismiss with respect to the stayed claims was
19 **DENIED without prejudice** as premature with leave to refile such motions after the
20 stay is lifted. *Id.* The Court further dismissed the Operative Complaint on behalf of
21 Plaintiffs Siegel and Majar with leave to amend to plead delayed accrual or tolling of
22 the Copyright Act’s three-year statute of limitations.

23 On November 6, 2013, Plaintiffs filed their Third Amended Consolidated
24 Complaint (“TAC”). The TAC includes, among other things, amended claims on
25 behalf of Plaintiffs Siegel and Majar relating to their theories of delayed accrual or
26 tolling of the Copyright Act’s three-year statute of limitations. On December 11,
27 2013, Defendants’ answered Claim One of Plaintiffs’ TAC and did not respond to
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1 Plaintiffs' other claims for relief absent further order by this Court. *See* October 21,
2 2013 Order (Dkt. 71 at 4); Defs. Ans. to Pls. TAC (Dkt. 79) at 1 n.1.

3 Based on the Court's October 21, 2013 Order bifurcating Claim One from the
4 other claims in the TAC, the Parties' Planning Meeting was limited to Plaintiffs'
5 Claim One. In addition, to further the purposes of the bifurcation and to defer
6 potentially unnecessary discovery unless and until the action proceeds past a motion
7 for summary judgment, Warner/Chappell proposed, and Plaintiffs agreed, that the
8 Parties recommend that the first phase of the bifurcated action be limited to the
9 merits issues involved in Claim One, and need not include discovery or motion
10 practice directed to the allegations of Plaintiffs Siegel and Majar relating to their
11 theories of delayed accrual or tolling of the Copyright Act's three-year statute of
12 limitations. If Claim One proceeds past summary judgment on the merits issues,
13 Warner/Chappell would be permitted to take discovery and file motions relating to
14 such theories of delayed discovery or tolling, whether on behalf of Plaintiffs Siegel
15 and Majar or any other members of the putative class.

16 **I. ITEMS LISTED IN THE DECEMBER 13, 2013 ORDER**

17 **A. Basis For Subject Matter Jurisdiction**

18 The Court has subject-matter jurisdiction over Claim One of the action
19 pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to relief arising
20 under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; and pursuant to the Declaratory
21 Judgment Act, 28 U.S.C. §§ 2201 *et seq.* Plaintiffs also have alleged jurisdiction
22 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2); and supplemental
23 jurisdiction pursuant to 28 U.S.C. § 1367 over the non-federal claims in the TAC.
24 Warner/Chappell does not admit the latter bases for subject matter jurisdiction, but
25 that issue is irrelevant for purposes of Claim One, as to which the Court has
26 jurisdiction.

1 B. Statement of Factual and Legal Bases of Claims and Defenses

2 1. Plaintiffs' Statement

3 a. Plaintiffs' Statement Regarding Factual Basis

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

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

20 More than 120 years after the melody to which the simple lyrics of *Happy*
21 *Birthday to You* is set was first published, defendant Warner/Chappell, based on
22 Plaintiffs' allegations, wrongfully and unlawfully claims that it owns the copyright to
23 the Song, and with that copyright the exclusive right to authorize the Song's
24 reproduction, distribution, and public performances pursuant to federal copyright
25 law. Plaintiffs allege that Defendants have collected millions of dollars in unlawful
26 licensing fees from Plaintiffs as well as others unwilling or unable to challenge its
27 ownership claims.

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1 Plaintiffs allege that if Defendants owned or owns any copyrights to the Song,
2 those rights were and are limited to the extremely narrow right to reproduce and
3 distribute specific piano arrangements for the Song, or an obscure second verse that
4 has no commercial value, which were published in 1935, and that if the Defendants
5 ever owned a copyright to any other part of the Song itself, that copyright was invalid
6 or expired no later than 1921. No court has ever adjudicated either the scope or
7 validity of the Defendants' claimed interest in the Song, nor in the Song's melody or
8 its familiar lyrics, which are, themselves, independent works.

9 Plaintiffs GMTY, Siegel, Marya, and Majar on behalf of themselves and all
10 others similarly situated, seek a declaration that the Song is dedicated to public use
11 and is in the public domain as well as monetary damages and restitution of all the
12 unlawful licensing fees that Defendants have improperly collected from Plaintiffs
13 and all other Class members.

14 b. Plaintiffs' Legal Basis for Claim One

15 Plaintiffs' TAC alleges claims for: (1) Declaratory Judgment (28 U.S.C. §
16 2201); (2) Declaratory and Injunctive Relief and Damages (28 U.S.C. § 2202); (3)
17 Violations of California's Unfair Competition Laws (Bus. & Prof. Code §§ 17200 *et*
18 *seq.*); (4) Breach of Contract; (5) Common Law Money Had and Received; (6)
19 Rescission for Failure of Consideration; and (7) Violations of California's False
20 Advertising Laws (Bus. & Prof. Code §§ 17500 *et seq.*) against Defendants.

21 At the October 7, 2013, hearing on Defendants' Motion to Dismiss (Dkt. 52),
22 the Parties agreed that the most efficient way to proceed in this case would be to
23 bifurcate Claim One from the six other claims for the purposes of discovery and
24 summary judgment. *See* October 21, 2013 Order (Dkt. 71). The Court
25 **BIFURCATED** these proceedings as follows: (1) Claim One is bifurcated from all
26 other claims through judgment; and (2) all other claims, including discovery specific
27 to such claims, are **STAYED** until further order by the Court. *Id.* In compliance
28

1 with the stay set forth in the October 21, 2013 Order, Plaintiffs limit their legal
2 analysis herein to Claim One pending further order of the Court.

3 (a) Claim One – Declaratory Judgment Pursuant to 28 U.S.C. § 2201

4 Plaintiff brings Claim One individually on behalf of themselves and on behalf
5 of the proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil
6 Procedure. Plaintiffs seek adjudication of an actual controversy arising under the
7 Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants’ purported
8 copyright claim to the Song. Plaintiffs seek the Court’s declaration that the
9 Copyright Act does not bestow upon the Defendants the rights they have asserted and
10 enforced against Plaintiffs and the other members of the Class. This is because
11 *either*: (a) the 1935 registrations E51988 and E51990, under which the Defendants
12 claim those copyrights, and the resulting copyrights, do not purport to cover and do
13 not cover the familiar lyrics to the Song, but instead are limited just to the particular
14 arrangements written by Forman or Orem (and, in the case of E51988, the obscure
15 second verse which has no commercial value); *or* (b) if and to the extent that those
16 copyrights purport to cover the familiar lyrics to the Song, the copyrights are invalid
17 or have expired.

18 Defendants assert that they are entitled to mechanical and performance
19 royalties pursuant to 17 U.S.C. § 115 for the creation and distribution of
20 phonorecords and digital downloads of the Song, under threat of a claim of copyright
21 infringement.

22 Plaintiff GMTY entered into a Synchronization License agreement to use the
23 Song and paid Warner/Chappell the sum of \$1,500 for that Synchronization License
24 based upon its claim of copyright ownership. BIG FAN, assignor of plaintiff Siegel,
25 entered into the Synchronization License agreement to use the Song and paid
26 Warner/Chappell the sum of \$3,000 for that Synchronization License based upon its
27 claim of copyright ownership. Plaintiff Marya paid defendant Warner/Chappell the
28 sum of \$455 as a compulsory mechanical license royalty to use the Song in her

1 album based upon Warner/Chappell's claim of copyright ownership. Plaintiff Majar
2 paid Warner/Chappell a licensing fee in the sum of \$5,000 pursuant to its claim of
3 copyright ownership, in order for Plaintiff Majar to use the Song in an award
4 winning documentary film: *No Subtitles Necessary: Lázló & Vilmos*.
5 Warner/Chappell's demand to each plaintiff was coercive in nature, and each
6 individual plaintiff involuntarily entered into the respective license agreement.

7 Plaintiffs' claim presents a justiciable controversy because each plaintiff's
8 agreement to pay defendant Warner/Chappell and the actual *payment* to
9 Warner/Chappell for use of the Song was the involuntary result of
10 Warner/Chappell's assertion of a copyright and the risk that each individual plaintiff
11 would be exposed to substantial statutory penalties under the Copyright Act had it
12 failed to enter such an agreement and pay Warner/Chappell the price it demanded.

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

18 More specifically, the 1893 and 1896 copyrights to the original and revised
19 versions of *Song Stories for the Kindergarten*, which contained the song *Good*
20 *Morning to All*, were not renewed by Summy or Summy Co. and accordingly expired
21 in 1921 and 1924, respectively. Likewise, the 1893 copyright to *Song Stories for the*
22 *Kindergarten* and the 1899 copyright to *Song Stories for the Sunday School*, which
23 contained *Good Morning to All*, and the 1907 copyright to *Good Morning to All* were
24 not renewed by Summy Co. before Summy Co. was dissolved in 1920 and
25 accordingly, those copyrights expired in 1921, 1924, 1927 and 1935, respectively. In
26 addition, the 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All* were
27 forfeited by the republication of *Good Morning to All* in 1921 without proper notice
28 of its original 1893 copyright.

1 The registration certificates for *The Elementary Worker and His Work* in 1912,
2 *Harvest Hymns* in 1924, and *Children's Praise and Worship* in 1928, which did not
3 attribute authorship of the lyrics to *Happy Birthday to You* to anyone, are *prima facie*
4 evidence that the lyrics were not authored by either Patty or Mildred Hill.

5 The piano arrangements for *Happy Birthday to You* published by Summy Co.
6 in 1935 (Reg. Nos. E51988 and E51990): (a) do not give Warner/Chappell
7 copyrights to the familiar lyrics to the Song, but instead are limited just to the
8 particular musical arrangements written by Forman or Orem (and, in the case of
9 E51988, the obscure second verse which has no commercial value), who did not
10 write the popular lyrics to the Song; and (b) were not eligible for federal copyright
11 protection because those works did not contain original works of authorship, except
12 to the extent of the piano arrangements themselves.

13 The 1935 copyrights pertained only to the piano arrangements or the obscure
14 second verse, not to the melody or familiar first verse lyrics of the Song, which lyrics
15 were not written by Forman or Orem.

16 If declaratory relief is not granted, the Defendants will continue to wrongfully
17 assert the exclusive copyright to the Song at least until 2030, when the current term
18 of the copyright expires under existing copyright law.

19 Plaintiffs therefore request a declaration that:

20 (a) the Defendants do not own the copyright to, or possess the
21 exclusive right to reproduce, distribute, or publicly perform the Song;

22 (b) if the Defendants own any copyright to the Song, it is limited to
23 two specific piano arrangements or an obscure second verse that has no
24 commercial value,

25 (c) any other copyright to the Song that the Defendants may own or
26 ever owned are invalid or have expired;

27 (d) the Defendants do not own the exclusive right to demand or grant
28 a license for use of the Song; and

1 (e) the Song is in the public domain and is dedicated to the public
2 use.

3 2. Warner/Chappell’s Statement Regarding Plaintiffs’ Claim One

4 Warner/Chappell and its predecessors-in-interest own and have owned the
5 copyright to the lyrics to the musical composition entitled *Happy Birthday to You*.
6 The United States Copyright Office registered the copyright in December 1935.
7 Under the Copyright Act, Warner/Chappell’s copyright expires in December 2030.
8 17 U.S.C. § 304(b). While the Plaintiffs have each requested and obtained licenses
9 from Warner/Chappell for their respective commercial uses of the lyrics to *Happy*
10 *Birthday to You*, Plaintiffs now come to the Court challenging Warner/Chappell’s
11 longstanding and uninterrupted exercise of its copyright interests in this musical
12 composition.

13 Warner/Chappell is the owner of copyright registration certificate E51990,
14 “*Happy Birthday to You*,” issued in December 1935, to Warner/Chappell’s
15 predecessor-in-interest, Clayton F. Summy Co. Certificate E51990 covers the
16 familiar lyrics to *Happy Birthday to You*. The copyright registration raises a
17 presumption of ownership by Warner/Chappell. Contrary to how Plaintiffs would
18 like to proceed, the burden is on them to disprove the validity of Warner/Chappell’s
19 copyright and the facts stated in the registration certificate. This is not an issue of
20 Warner/Chappell’s affirmative defense, but rather a failure of proof that will be fatal
21 to Plaintiffs’ claim for declaratory relief (and, along with it, all other claims in
22 Plaintiffs’ Complaint).

23 Under the Copyright Act and Ninth Circuit precedent, Warner/Chappell’s
24 certificate E51990 “constitute[s] *prima facie* evidence of the validity of the copyright
25 and of the facts stated in the certificate.” 17 U.S.C. § 410(c). Warner/Chappell does
26 “not have to produce any evidence” to substantiate either the validity of the copyright
27 or the facts stated in the registration certificate. Warner/Chappell “is presumed to
28 own a valid copyright, 17 U.S.C. § 410(c), and the facts stated therein, including the

1 chain of title ... are entitled to the presumption of truth.” *United Fabrics Int’l, Inc. v.*
2 *C&J Wear Inc.*, 630 F.3d 1255, 1258 (9th Cir. 2011).

3 Certificate E51990 applies on its face to a “published musical composition”
4 entitled “*Happy Birthday to You*,” and the listing under the byline is as follows: “By
5 Mildred J. Hill, arr. by Preston Ware Orem;* pf., *with words*.” (Emphasis added.)
6 The certificate further states: “(© is claimed on arrangement as easy piano solo *with*
7 *text*).” (Emphasis added.) The registration certificate lists the date of publication as
8 December 6, 1935, and states that copies were received and registered in the
9 Copyright Office on December 9, 1935. All of this, as well as the validity of the
10 copyright, is *prima facie* presumed true in this litigation.

11 In response to the Court’s Order that Plaintiffs replead the bases for their
12 declaratory judgment claim, Plaintiffs have alleged that (1) certificate E51990 is
13 limited to a particular piano arrangement and does not cover the “popular” lyrics to
14 *Happy Birthday to You*, and (2) the work published under this copyright was not
15 original, except with respect to the piano arrangement. Plaintiffs have been, and
16 continue to be, less than clear about what evidence they believe they have that will
17 rebut the presumptions afforded by certificate E51990. Warner/Chappell believes
18 that Plaintiffs will not be able to rebut the presumptions.

19 First, Plaintiffs cannot show that the registration certificate was not intended to
20 cover the lyrics to *Happy Birthday to You*. As noted above, certificate E51990
21 expressly states that copyright is claimed on “arrangement as easy piano solo *with*
22 *text*” (emphasis added). The certificate also describes the copyrighted material as
23 “pf. [“pianoforte,” or piano], *with words*” (emphasis added). The references to “text”
24 and “words” can only mean the lyrics to *Happy Birthday to You*. There is no text or
25 words on which copyright could have been intended to be claimed other than those
26 lyrics.

27 Second, Plaintiffs cannot rebut the presumption that the lyrics are validly
28 copyrighted. To support their claim, Plaintiffs allege that these lyrics were published

1 on various occasions prior to the December 1935 registration. Even if true, this
2 would not show that the author of the lyrics copyrighted under certificate E51990
3 copied those lyrics from somewhere else. Copyright law requires originality, not
4 novelty. *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

5 Accordingly, Plaintiffs will not be able to satisfy their burden of overcoming
6 Warner/Chappell's ownership of a valid copyright to the lyrics to *Happy Birthday to*
7 *You*. Warner/Chappell will move for summary judgment on Claim One of Plaintiffs'
8 Third Amended Consolidated Complaint.

9 Warner/Chappell has a statute of limitations defense to the claims of any
10 Plaintiff who licensed *Happy Birthday to You* more than three years before their
11 complaint was filed. The Copyright Act's three-year statute of limitations, 17 U.S.C.
12 § 507(b), governs the declaratory relief claim. In the interest of minimizing the
13 needless expense of litigating Plaintiff Majar's and Plaintiff Siegel's allegations of
14 delayed accrual or tolling, Warner/Chappell proposes to reserve its challenges to
15 those allegations unless and until the litigation reaches a second phase.

16 C. Motion for Class Certification Deadlines

17 The Parties met and conferred and believe that the discovery and briefing
18 related to class certification should be deferred until after the Court decides the
19 Parties' joint summary judgment motion on Claim One of the TAC. The Parties are
20 prepared to discuss their position with the Court at the Scheduling Conference.

21 D. Discovery Completion

22 As to the merits issues with respect to Claim One only, and excluding
23 discovery and motion practice with respect to any theory of delayed accrual or tolling
24 (*see* Statement Re Limitation, pages 1-2, *supra*), the Parties have agreed to the
25 following pre-trial discovery plan:

- 26 1. Initial Rule 26(f) Disclosures: Completed on January 30, 2014, as
27 required.
- 28 2. Discovery on Claim One Cut-Off: June 27, 2014.

1 3. Discovery Motions Deadline: May 30, 2014.

2 As to the merits issues on Claim One only, reports and/or disclosures from expert
3 witnesses as provided under Rule 26(a)(2) of the Federal Rules of Civil Procedure
4 should be as follows:

- 5 1. Initial Expert Disclosures: July 25, 2014.
- 6 2. Rebuttal Expert Disclosures: August 25, 2014
- 7 3. Expert Discovery Cut-Off: September 26, 2014.
- 8 4. Expert Discovery Motions Deadline: September 15, 2014.

9 Electronically stored information will be produced in accordance with Rule 34 of the
10 Federal Rules of Civil Procedure. Plaintiffs reserve the right to request that all
11 electronically stored information be produced in native form, if available, and
12 searchable pdf, if not. Plaintiffs further request that all meta-data in electronically
13 stored information be preserved.

14 Procedures for asserting claims of privilege or work product protection, including
15 any claims made after production, shall be in accordance with Rule 26(b)(5) of the
16 Federal Rules of Civil Procedure.:

17 The Parties are discussing and will present for the Court's review a proposed
18 protective order.

19 E. Pre-Trial and Trial Dates

- 20 1. Motion Cut-Off as to Merits Issues on Claim One: November 7,
21 2014.
- 22 2. Final Pre-Trial Conference: Not applicable as to proceedings
23 during first phase of Bifurcated proceeding.
- 24 3. Trial as to Claim One: Not applicable as to proceedings during
25 first phase of Bifurcated proceeding.

26 F. Major Procedural Or Evidentiary Problems

27 This action involves historical information and documents and the Parties will
28 work cooperatively to resolve any authentication or admissibility issues.

1 G. Settlement Procedures

2 Counsel believes that a settlement conference is premature at this time. After
3 the Court rules on the motion for summary judgment as to the merits issues on Claim
4 One, if the action proceeds past summary judgment, counsel will meet and confer to
5 select a settlement procedure pursuant to Civil Local Rules 16-15 and 16-15.9.

6 H. Length of Trial

7 1. Plaintiffs' Case-in-Chief: Not applicable as to proceedings during first
8 phase of Bifurcated proceeding.

9 2. Defendants' Case-in-Chief: Not applicable as to proceedings during
10 first phase of Bifurcated proceeding.

11 3. The estimated time required for trial: Not applicable as to proceedings
12 during first phase of Bifurcated proceeding.

13 4. The case should be ready for trial: Not applicable as to proceedings
14 during first phase of Bifurcated proceeding.

15 I. Trial By Jury or Court

16 Not applicable as to proceedings during first phase of Bifurcated
17 proceeding. Plaintiffs reserve their jury demand if the action proceeds past
18 summary judgment at the end of the first phase of the Bifurcated proceeding.

19 J. Name of Trial Attorneys

20 Plaintiffs:

21 Mark C. Rifkin, Wolf Haldenstein Adler Freeman & Herz LLP

22 Betsy C. Manifold, Wolf Haldenstein Adler Freeman & Herz LLP

23 Randall S. Newman, Randall S. Newman P.C.

24 Defendants:

25 Glenn D. Pomerantz, Munger, Tolles & Olson LLP

26 Kelly M. Klaus, Munger, Tolles & Olson LLP

27 Adam I. Kaplan, Munger, Tolles & Olson LLP

28

1 K. Consent to Magistrate Judge for All Purposes

2 The Parties do not consent to a Magistrate Judge for all purposes.

3 **II. ITEMS LISTED IN FRCP 26(f)**

4 A. Initial Disclosures:

5 Initial disclosures as to the merits issues in Claim One were exchanged
6 on January 30, 2014, which was 14 days after the Parties' Planning Meeting.

7 B. Discovery:

8 The Parties will proceed to serve discovery in accordance with the Federal
9 Rules related to the merits issues concerning Claim One.

10 C. Changes to Limitations on Discovery:

11 The Parties do not contemplate any changes to the discovery limitations set
12 forth by Federal Rules of Civil Procedure at this time, but instead reserve the right to
13 request an appropriate extension by either stipulation or motion.

14 D. Other Orders:

15 The parties do not seek any additional orders at this time but reserve the right
16 to do so as the need arises.

17 **III. ITEMS LISTED IN CivL.R. 26-1**

18 To the extent that these elements are not addressed above:

19 A. Complex Case:

20 The complexity of this matter, including Plaintiffs' motion for class
21 certification, are not issues for the first phase of the Bifurcated proceeding.

22 B. Motion Schedule:

23 The Parties expect to file summary judgment papers as to merits issues
24 on Claim One by November 7, 2014. At the current time, the Parties do not
25 anticipate other merits-related motions prior to that motion.

26 C.-D. Trial and Final Pre-Trial Conference:

27 Not applicable to the first phase of the Bifurcated proceeding.
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E. Dispositive Motion Hearing Cut-Off:

The Parties jointly requested the following briefing schedule for the motion for summary judgment as to merits issues relating to Claim One:

Joint Motion for Summary Judgment filed by: November 7, 2014.

F.-G. Discovery Cutoff and Initial Expert Disclosures:

These issues are addressed in Section I.D., above.

H. Settlement:

This issue is addressed in Section I.G., above.

I. Trial Estimate:

Not applicable to the first phase of the Bifurcated proceeding.

J. Additional Parties:

No additional parties are contemplated by either party at this time.

K. Expert Witnesses:

The Parties contemplate retaining experts. The schedule for disclosure of experts and expert reports is set forth in Section I.D., above.

Respectfully Submitted,

Dated: February 10, 2014

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

By: /s/Betsy C. Manifold
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DECLARATION REGARDING CONCURRENCE

I, **BETSY C. MANIFOLD**, am the ECF/CM User whose identification login and password are being used to file this **JOINT REPORT ON PARTIES' PLANNING MEETING**. In compliance with L.R. 5-4.3.4(2)(i), I hereby attest that **Kelly M. Klaus** has concurred in this filing's content and has authorized its filing.

DATED: February 10, 2014

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

WARNER/CHAPPELL:20396v.3.jsr

EXHIBIT 125



Date: DECEMBER 9, 2013

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JUANITA P. FRAZIER

.....
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Documents: Registrations (45997, E 45655, E 46661, E 47439, E 47440, E 51988, &
E 51990)

EXHIBIT 126

AGREEMENT made this 16th day of October, 1944 between THE HILL FOUNDATION, INC., a corporation of the State of New York, having its principal place of business at No. 70 Pine Street, New York, N.Y. (hereinafter called "Hill"), PATTY S. HILL and JESSICA M. HILL residing at No. 21 Claremont Avenue, New York, N.Y. (hereinafter called "the Misses Hill"), and CLAYTON F. SUMMY CO., a corporation of the State of Delaware, having its principal place of business at No. 321 Wabash Avenue, Chicago, Illinois (hereinafter called "Summy"),

W_I_T_N_E_S_S_E_T_H :

WHEREAS

(a) Summy is the publisher of the following copyrighted books and musical compositions:

(1) "Song Stories for the Kindergarten" (original United States copyright registration, October 13, 1893, entry #45997 or #45997Y; renewal registration, September 3, 1921, renewal registration #19043);

(2) "Song Stories for the Kindergarten. New edition, revised, illustrated and enlarged." (Original United States copyright registration, June 8, 1896, entry #34260 or #34260B2; renewal registration, January 9, 1924, renewal registration #25771);

(3) "Song Stories for the Sunday School" (original United States copyright registration, March 20, 1899, entry #20441; renewal registration, January 3, 1927, renewal registration #36618);

(4) "Good Morning to All" (original United States copyright registration, February 7, 1907, entry #142468 or #Cl42468; renewal registration, January 2, 1935, renewal registration #34877 or #R34877),

(5) "Good Morning to All" (original United States copyright registration, July 28, 1921, entry #513745),

(6) "Happy Birthday", a March, Piano Solo (original United States copyright registration, December 27, 1934, entry #45655),

(7) "Happy Birthday", 1 Piano - 4 Hands, (original United States copyright registration, February 15, 1935, entry #46661),

(8) "Happy Birthday", 1 Piano - 6 Hands, (original United States copyright registration, April 3, 1935, entry #47440),

(9) "Happy Birthday", 2nd Piano Part, (original United States copyright registration, April 3, 1935, entry #47439),

(10) "Happy Birthday to You", Piano Solo with Words, (original United States copyright registration, December 6, 1935, entry #51990), and

(11) "Happy Birthday to You", Oct. #96 Unison, (original United States copyright registration, December 6, 1935, entry #51988).

(b) Hill is the assignee of all right, title and interest of the Misses Hill in and to said copyrighted books and musical compositions, and any and all assignments and agreements with respect thereto; and

(c) An action is now pending in the United States District Court for the Southern District of New York

3.

in which Hill is plaintiff and Summy is defendant, in which action Hill among other things demands of Summy an accounting of the royalty and other payments made to Summy by users of the said copyrights and of the copyrighted books and musical compositions, and a judgment directing rescission of existing relationships between the parties and cancellation of the registration of the assignment made September 2, 1939, and in which action Summy has denied Hill's right to any part of the relief demanded; and

(d) Summy has received royalty and other payments from users of the copyrighted books and musical compositions and of the copyrights and of the renewals and extensions of them, which payments, excluding payments received from the American Society of Composers, Authors & Publishers (hereinafter referred to as "Ascap"), it represents to amount on September 1, 1944 to \$27,425.65 after deduction of commissions paid to Music Publishers Protective Association (hereinafter called "M.P.P.A.") for services in collecting some of such revenues; and

(e) Another action is now pending in the same United States District Court in which Hill is plaintiff and Postal Telegraph-Cable is defendant, in which action Hill demands an accounting for infringement by said Postal Telegraph-Cable Company of certain of the copyrights and the

renewals and extensions of them; and

(f) The parties believe that there are or may be other infringers of the copyrights or the renewals and extensions of them who should be made to account for profits therefrom; and

(g) The parties desire to settle their differences, and Summy on the one hand and Hill and the Misses Hill on the other hand to release each other of all claims which either may have against the other excepting only such obligations as are defined in this Agreement, and to formulate terms for their future relations.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein set forth, the parties do hereby agree as follows:

1. Hill and the Misses Hill covenant and represent that the Misses Hill have by proper instruments and for due consideration assigned to Hill all of the right, title and interest of the Misses Hill in and to the said copyrighted books and musical compositions, and any and all assignments and agreements with respect thereto.

2. Hill will simultaneously with the execution of this Agreement execute an instrument of assignment in the form annexed hereto and marked "A", assigning all its right,

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title and interest in and to the aforementioned copyrights and renewals and extensions of them, and in and to the aforementioned books and musical compositions and arrangements thereof, and in and to any further or other arrangements or publications hereafter made by others than the Misses Hill, if any, of the words or musical compositions above enumerated or any new words or music or arrangements in conjunction therewith, and any copyrights or renewals of copyrights thereof, together with all rights, claims, demands and causes of action which it may have against any persons, firms or corporations, who may have infringed or who shall infringe the rights and privileges secured thereby; and Hill and the Misses Hill will, upon Summy's request, execute all such further assignments or other documents as may be necessary or desirable to effectuate the purposes of such assignment.

3. Summy will (subject to the provisions of paragraphs 4(a) and (b) of this Agreement, undertake the sole prosecution of the action brought by Hill against Postal Telegraph-Cable Company and Hill will consent that Summy intervene in the action or substitute itself therein as party plaintiff in place of Hill or pursue whatever method of appearing in the action or prosecuting the cause of action as Summy may deem appropriate.

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4(a). Summy is authorized but shall not be obligated to commence or maintain any action against any infringer including the action against Postal Telegraph-Cable Company; Summy reserves the right to discontinue any suit including the action against Postal Telegraph-Cable Company, and/or to settle any and all claims against any infringer including Postal Telegraph-Cable Company for such amounts and upon such terms as shall seem to it in the best interests of the parties hereto; and Hill will upon request of Summy execute and deliver to any infringer including Postal Telegraph-Cable Company any release or satisfaction in substantially the same form as may be executed and delivered by Summy.

(b). Summy will advise Hill when negotiations are undertaken for settlement of infringement claims or of litigation, and will promptly comply with any request by Hill for information as to the state of any negotiations;

(c). If Summy should bring action against any infringer then it will either

(i) join Hill as a party defendant, in which event Summy will set forth in substance the nature of Hill's interest in the copyrighted books and musical compositions, copyrights and renewals and extensions of them, and Hill will in its answer or other pleading disclaim any present interest (unless the contingencies

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stated in the annexed instrument of assignment have occurred), and will ask leave to appear or remain as a party, to receive notice of all further proceedings and service of all subsequent papers, and to participate in the proceedings at Hill's own cost and expense to the extent it deems appropriate for the protection of its interest; or

(ii) promptly notify Hill of its commencement of the action, in which event Summy will thereafter upon Hill's request furnish or make available to Hill copies of all documents in the cause, and will promptly comply with any request by Hill for information as to the status of the litigation.

(d). In the prosecution or the defense of any litigation respecting the said copyrighted books and musical compositions, and of the copyrights and any and all renewals and extensions of them, the Misses Hill will at the request of Summy appear as parties therein and/or testify therein either in court or by deposition.

5. Summy will pay to Hill

(a) simultaneously with the execution of this Agreement, the sum of \$10,970.26, which is computed by

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deducting from the sum of \$27,425.65, referred to in paragraph "(d)" of the recitals to this Agreement, an amount equal to 20% of that sum (which amount is understood to be compensation to Summy for its overhead and other expenses in connection with the copyrighted books and musical compositions), and by dividing the balance equally between the parties; and

(b) upon the receipt of the net proceeds hereafter referred to, thirty-three and one-third (33-1/3%) percent of the net proceeds of all recoveries which may hereafter be had and received by Summy as a result of negotiations with or suits against infringers of the copyrights or the renewals and extensions of them ("net proceeds" being defined as the amount actually paid to Summy or recovered by it less all costs and expenses properly incurred in bringing or prosecuting the claims against users or infringers, including attorney's fees); and

(c) upon the first day of January and the first day of July immediately following the receipt by Summy of such other payments, thirty-three and one-third (33-1/3%) percent of all other payments, except payments received from Ascapi, made to and received by Summy by users of the copyrighted books and musical compositions and of the copyrights or renewals and extensions of them, but after deduction of any commissions paid to M.P.P.A.

6(a). Beginning January 1, 1945 and on each first day of July and each first day of January thereafter, Summy will furnish Hill with a statement showing all moneys received by Summy, if any, during the preceding six months, except payments received from Ascaph, from users of the copyrighted books and musical compositions and from users or infringers of the copyrights or renewals or extensions of them, in sufficient detail to disclose the source of the moneys; and

(b). upon Hill's request, Summy will make available to Hill its records, documents or other data evidencing the source and extent of such payments.

7. The parties hereby state their understanding that

(a) none of Hill's rights as assignee of existing agreements between the Misses Hill and Summy with respect to payment of ten percent (10%) of Summy's list price as royalty on certain publications when published and sold by Summy, nor any of Hill's rights or the rights of the Misses Hill to continue memberships held by any of them in Ascaph and to receive and retain all royalties payable by Ascaph to them or any of them without liability or accountability therefor to Summy, shall be varied or affected by this Agreement; and

(b) Since Summy has heretofore assigned to Ascaph certain rights to performance of the above mentioned books and musical compositions which are secured by the above mentioned copyrights and by the extensions and renewals of them, nothing in this Agreement is to be construed as requiring Summy or Ascaph to account to Hill or the Misses Hill for the proceeds of any litigation or of any settlement with infringers where such litigation or settlement is carried on or effected by Ascaph, but that if any litigation or settlement is carried on or effected by Summy concerning public performance of the above mentioned books and musical compositions then any such recoveries shall be governed by the present Agreement.

"Ascaph" is understood to include any other person, firm, or corporation to which Summy, in return for substantially the same services now given and substantially the same consideration as now computed and paid by Ascaph, may in the future assign the rights now enjoyed by Ascaph to performance of the above mentioned books and musical compositions.

8. Hill will discontinue its pending action against Summy and Hill and Summy will simultaneously with the execution of this Agreement execute an appropriate stipulation for discontinuance of the action, without costs to either party.

9. Summy on the one hand and Hill and the

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Misses Hill on the other hand do hereby release each other of all claims which either one may have against the other, excepting only the mutual obligations set forth or referred to in this Agreement.

10. This Agreement and all of its terms enure to the benefit of the legal representatives, successors and assigns of the parties except to the extent stated in the instrument of assignment annexed hereto and marked "A".

IN WITNESS WHEREOF, THE HILL FOUNDATION, INC. and CLAYTON F. SUMMY CO. have caused this Agreement to be signed by their respective corporate officers thereunto duly authorized, and PATTY S. HILL and JESSICA M. HILL have hereunto set their hands, all as of the day and year first above written.

THE HILL FOUNDATION, INC.

ATTEST:

By Patty S. Hill
President. (Seal)

Samuel Mann
Secretary.

CLAYTON F. SUMMY CO.

WITNESS:

By John F. Sengstack
President.

Edward K. Hanlon

PATTY S. HILL

WITNESS:

Samuel Mann (2)

JESSICA M. HILL