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12						
13			TRICT COURT			
14			F CALIFORNIA -			
	WE	STERN DI	VISION			
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15						
16	GOOD MORNING TO YOU	) Lead Case	e No. CV 13-04460-GHK (MRWx)			
16	GOOD MORNING TO YOU PRODUCTIONS CORP., et al.,	)				
16 17	PRODUCTIONS CORP., et al.,	) ) PLAINT	IFFS' NOTICE OF MOTION			
16		) ) PLAINT! ) AND MO	IFFS' NOTICE OF MOTION OTION TO EXCLUDE			
16 17	PRODUCTIONS CORP., et al., Plaintiffs,	) ) PLAINT ) AND MO ) EVIDEN	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF			
16 17 18 19	PRODUCTIONS CORP., et al.,	) PLAINT! ) AND MO ) EVIDEN ) POINTS	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN			
16 17 18 19 20	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND			
16 17 18 19	PRODUCTIONS CORP., et al., Plaintiffs, v. WARNER/CHAPPELL MUSIC,	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND SED] ORDER GRANTING			
16 17 18 19 20	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND			
16 17 18 19 20 21 22	PRODUCTIONS CORP., et al., Plaintiffs, v. WARNER/CHAPPELL MUSIC,	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND SED] ORDER GRANTING			
16 17 18 19 20 21 22 23	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN T THEREOF; AND SED] ORDER GRANTING N TO EXCLUDE EVIDENCE			
16 17 18 19 20 21 22	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS ) MOTION )	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND SED] ORDER GRANTING			
16 17 18 19 20 21 22 23	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS ) MOTION ) ) Date:	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND SED] ORDER GRANTING N TO EXCLUDE EVIDENCE February 9, 2015			
16 17 18 19 20 21 22 23 24 25	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS ) MOTION ) ) Date: ) Time:	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN IT THEREOF; AND SED] ORDER GRANTING N TO EXCLUDE EVIDENCE  February 9, 2015 9:30 a.m.			
16 17 18 19 20 21 22 23 24 25 26	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS ) MOTION ) ) Date: ) Time: ) Room:	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN CT THEREOF; AND SED] ORDER GRANTING N TO EXCLUDE EVIDENCE  February 9, 2015 9:30 a.m. 650			
16 17 18 19 20 21 22 23 24 25	PRODUCTIONS CORP., et al.,  Plaintiffs,  v.  WARNER/CHAPPELL MUSIC, INC., et al.	) PLAINT! ) AND MO ) EVIDEN ) POINTS ) SUPPOR ) [PROPOS ) MOTION ) ) Date: ) Time: ) Room:	IFFS' NOTICE OF MOTION OTION TO EXCLUDE CE; MEMORANDUM OF AND AUTHORITIES IN IT THEREOF; AND SED] ORDER GRANTING N TO EXCLUDE EVIDENCE  February 9, 2015 9:30 a.m. 650 Hon. George H. King,			

## TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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**PLEASE TAKE NOTICE** that on or about February 9, 2015, at 9:30 a.m., or as soon thereafter as this matter may be heard before the Honorable George H. King, Chief Judge, in Courtroom 650 of the Edward R. Roybal Federal Building, located at 255 E. Temple Street, Los Angeles, CA 90012, Plaintiffs Rupa Marya, Robert Siegel, and Good Morning To You Productions Corp. and Majar Productions, LLC ("Plaintiffs") will, and hereby do, move this Court for an order to exclude Defendants' Exhibits 101-104, 106, and 119 (collectively, "Defendants' Exhibits") of the Amended Joint Evidentiary Appendix in Support of Notice of Cross-Motions and Cross-Motions for Summary Judgment Filed Pursuant to Court's Dec. 5, 2014 Order, filed December 17, 2014 (Dkts. 187 (Vol. 1, Exs. 1-10, Pages 1-220); 188 (Vol. 2, Ex.11, Pages 221-486); 189 (Vol. 3, Exs. 12-54, Pages 487-706); 190 (Vol. 4, Exs. 55-81, Pages 707-974); 191 (Vol. 5, Exs. 82-99, Pages 975-1141); 192 (Vol. 6, Exs. 100-106, Pages 1200-1540); 193 (Vol. 7, Exs. 107-116, Pages 1541-1750); and 194 (Vol. 8, Exs. 117-126, Pages 1751-1947)) (collectively, the "Appendix") from the Appendix and to strike all references to Defendants' Exhibits as well as the arguments based upon them from the Cross-Motions for Summary Judgment (as amended Nov. 26, 2014, Dkt. 182) ("Joint Brief") and the [Corrected] Joint Statement of Uncontroverted Facts (as amended Dec. 1, 2014, Dkt. 183) ("SOF").

Plaintiffs specifically seek to strike the following references from the Joint Brief Motion for Summary Judgment (Dkt. 182):

From Page:Line	To Page:Line	Text to be Deleted
2:13	2:15	"On December 9, 1935, Summy published two versions of <i>Happy Birthday to You</i> that included lyrics and obtained registration certificates E51988 and E51990. Exs. 101, 103."
2:19	2:20	" <i>Id.</i> Forman also arranged the music for the 51988 version. Ex. 103.

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2:19	2:20	"Forman also arranged the music for the 51988 version. Ex. 103."	
2:22	2:23	"The music for this version was arranged by Preston Ware	
		Orem, another Summy employee. Ex. 101."	
2:24	2:26	"On December 6, 1962, Summy-Birchard Co.—Summy's successor—renewed these copyrights. Exs. 120 [sic, should be 102], 104."	
6:11	6:13	Certificate E51990 establishes prima facie that Warner/Chappell has a copyright in <i>Happy Birthday to You</i> 's "words" and "text"—what the undisputed evidence shows to be the "familiar lyrics." Ex. 101."	
6:18	6:21	"If any further proof were needed—and it is not—it is supplied by certificate E51988, registered the exact same day by Clayton F. Summy, Warner/Chappell's predecessor, which refers to an "arrangement of unison chorus" and "revised text." Ex. 103."	
6:22	7:1	"The only 'revised text' therein is the 'second verse.' Thus, the <i>un</i> revised text is, and can only be, the 'familiar lyrics,' which were registered the same day in E51990. Plaintiffs, who bear the burden proof, have no admissible evidence rebutting the certificates."	
6:27	6:28	"Warner/Chappell has submitted admissible copies of the <i>registrations</i> from the Copyright Office. Exs. 101, 103, 107 at 109 at 1553-54, 1561 (Blietz Dep.), 125."	
15:7	15:10	"Certificates E51990 and E51988 each identify Mildred J. Hill as the author of <i>Happy Birthday to You</i> . Exs. 101, 103. This is prima facie evidence that Mildred authored the lyrics of <i>Happy Birthday to You</i> and that the lyrics were original to her."	
15:12	15:15	"Plaintiffs object to Warner/Chappell's registration certificates, which Warner/Chappell received from the Copyright Office and which include official Copyright Office cover pages that state 'Copy of Registration.'"	

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16:23	17:1	Warner/Chappell's copyright certificates constitute prima		
		facie evidence that Summy was authorized to copyright		
25.22	26.1	Happy Birthday to You."		
35:22	36:1	"Certificate E51990 describes the publication of <i>Happy</i>		
		Birthday to You as "pf., with words" and states that "© is		
		claimed on arrangement as easy piano solo with text."		
		Ex.101 (emphasis added). Certificate E51988 states, with		
		respect to that publication of <i>Happy Birthday to You</i> , that		
		"© is claimed on arrangement for unison chorus <i>and</i>		
		revised text." Ex. 103 (emphasis added). The plain		
		language of these certificates demonstrates that the		
		copyrights cover <i>the lyrics</i> to the songs, and not simply the		
26.14	26.21	arrangements."		
36:14	36:21	"Certificate E51990 covers "arrangement as easy piano		
		solo with text," while certificate E51988 covers		
		"arrangement for unison chorus" and 'revised text.' Exs.		
		101, 103. As discussed above, if the 'revised text' in		
		E51988 is the second verse of <i>Happy Birthday to You</i> , then		
		the 'text' claimed in E51990 (on the same day) must have		
		been the 'familiar,' first verse of <i>Happy Birthday to You</i> .		
		"Warner/Chappell's certificates are prima facie evidence		
20.4	20.6	that Summy had the right to copyright these lyrics."		
38:4	38:6	"It is the registration certificates—both of which identify		
		Mildred J. Hill as the author of the work—and not the		
		applications—that receive the statutory presumption. 17		
40.2	40.4	U.S.C. § 410(c); see Exs. 101, 103."		
40:3	40:4	"In 1935, Summy published only two versions of <i>Happy</i>		
40.7	40.0	Birthday to You with lyrics. Exs.101, 103 "		
40:7	40:8	"The other version contains only the familiar lyrics, and		
10.12	44.4	bears the publication number 3075. Ex. 106."		
40:13	41:1	Because there is no evidence that Summy published other		
		lyrical versions of <i>Happy Birthday to You</i> in 1935,		
		publication 3075, which was not submitted in connection		
		with E51988, must have been submitted in connection with		
		E51990.		
		"The information on publication 3075 also corresponds		
		with the Copyright Office's record of the work deposited		

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1	Page:Line	Page:Line	Text to be Deleted
2			for E51990. The cover of publication 3075 contains the title
3			'Piano Solo with words,' which is the exact same phrase
4			that appears in the Copyright Office deposit record for E51990, down to the capitalization of the first two words
5			only, and which is different from the description in the
6			application and the certificate (which include the phrases
7			'pf., with words' and 'Arrangement as easy piano solo,
			with text') 103 (certificate) 106 (3075
8	41:2	41:10	publication)." "in completing the deposit record for E51990, the
9	71.2	41.10	Copyright Office was actually looking at the deposit copy,
10			which was Summy publication 3075. Other information on
11			publication 3075 matches the description contained in the
12			deposit record for E51990. The title of publication 3075, as
			shown above the sheet music, is 'Happy Birthday to You!'—with an exclamation mark. Ex. 106.
13			The deposit record likewise lists an exclamation mark,
14			which was not at the end of the title on the application or
15			the title on the certificate. Exs. 48, 103, 105. The statement
16			'by Mildred J. Hill' also appears on both the cover of
17			publication 3075 and the deposit record for E51990. Exs. 105-06."
18	41:16	41:18	"(1) an original version, which was deposited for 51990,
19			that contains only the familiar lyrics to the song, and claims
			copyright in the entirety of those lyrics ('© is claimed on
20	43:7	43:9	arrangement on easy piano solo with text')"  As shown above, the evidence conclusively demonstrates
21	13.7	73.7	that the E51990 deposit copy contained the familiar lyrics
22			for Happy Birthday to You."
23	43:11	43:12	"Here, there is no suggestion of any defect with the deposit
24	40.12	40.15	copies submitted for E51990."
25	48:13	48:15	"On December 9, 1935, Summy Co. deposited in the Copyright Office two copies of each of the works published
			in connection with E51990 and E51988. Exs. 101, 103."
26	48:18	48:21	"the evidence shows that the only other 1935 publication of
27			Happy Birthday to You that contained words aside from the
28			E51988 deposit copy also contained the term "Copyright,"

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		the name of the proprietor, and the year in which copyright	
		was secured. Ex. 106 "	
50:7	50:9.	"The undisputed evidence demonstrates that, at the time of	
		the 1988 acquisition, Warner-Chappell's predecessor-in-	
		interest was "100% owned by its chairman, David K.	
		Sengstack." Ex 119. at 1761."	

Plaintiffs specifically seek to strike the following text (only) from the facts listed in the parties' [Corrected] Joint Statement of Uncontroverted Facts (Dkt. 183 at 21-22, 24-25, 49-51, 83-86, 87, 90-91, 95-99, 104-122, 124-129, 138-141, 143-147):

		Text to be D	Deleted	
Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
		<ul> <li>App'x Ex. 103 (E51988 registration certificate which states, "By Mildred J. Hill")</li> <li>App'x Ex. 101 (E51990 registration certificate which states, "By Mildred J. Hill")</li> <li> App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office</li> <li>App'x Ex. 106</li> </ul>		

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2 3 4 5		Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9 10 11 12 13 14 15 16 17 18 19	D	016.	On or about December 9, 1935, Clayton F. Summy Co. obtained copyright Registration Certificate E51990.	publication of "Happy Birthday to You!," which states "By Mildred J. Hill on the cover and "Mildred J. Hill" at the top of the sheet music)  • App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office		
20 21 22 23 24 25 26 27 28	D	018.	Registration Certificate 51990 states that it applies to a "published musical composition" entitled "Happy birthday to you."	<ul> <li>App'x Ex. 101 (E51990) registration certificate)</li> <li>App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell</li> </ul>		

1			Text to be D	Peleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6			by the Copyright Office		
7 8 9 10 11 12 13 14 15 16 17 18	D19.	The listing under the byline in Registration Certificate E51990 states: "By Mildred J. Hill, arr. by Preston Ware Orem;* pf., with words."	<ul> <li>App'x Ex. 101 (E51990) registration certificate)</li> <li>App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office</li> <li>App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9</li> </ul>		
19 20 21 22 23 24 25 26 27 28	D20.	Registration Certificate E51990 also states: "(© is claimed on arrangement as easy piano solo with text)."	<ul> <li>App'x Ex. 101 (E51990 registration certificate)</li> <li>App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office</li> </ul>		

1			Text to be D	eleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7			• App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9		
8 9 10 11 12 13 14 15 16 17 18	D21.	Registration Certificate E51990 lists the date of publication as December 6, 1935.	<ul> <li>App'x Ex. 101 (E51990) registration certificate)</li> <li>App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561: App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright Office</li> <li>App'x Ex. 100 (Kaplan Decl. at ¶¶ 2,9)</li> </ul>		
20 21 22 23 24 25 26 27 28	D22.	Registration Certificate E51990 states that two copies of the published musical composition were received and registered in the Copyright Office on December 9, 1935.	• App'x Ex. 101 (E51990 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1561 App'x Ex. 101 (Marcotullio Ex. 9) was provided to Warner/Chappell by the Copyright		

1			Text to be Deleted		
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7			Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 2, 9		
8 9 10 11 12	D23.		• App'x Ex. 106 (1935) publication of sheet music for Happy Birthday to You!).		
13 14 15 16	D25.		• App'x Ex.106 (1935) publication of sheet music for Happy Birthday to You!)		
17 18 19 20	D26.		• App'x Ex. 106 (1935) publication of sheet music for Happy Birthday to You!)		
21 22 23 24 25 26 27 28	D28.	The version of Happy Birthday to You with publication number 3075 identifies the title of the composition, on the sheet music, as "Happy Birthday"	• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) • App'x Ex. 100 (Kaplan Decl.) at ¶ 7		

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Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response	
	to You!"				
D31.		• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!)			
D33.		• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!)			
D36.		• App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!)			
D41.		<ul> <li>App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!)</li> <li>App'x Ex. 103 (E51988 registration certificate)</li> <li>App'x Ex. 101 (E51990 registration</li> </ul>			

1			Text to be D	Deleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6   7   8   9   10   11   12   13   14   15   16   17   18   19   20   21   22   23   24	D42.		certificate)  • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54, 1561: App'x Exs. 101 and 103 (Marcotullio Exs. 9 and 4) were provided to Warner/Chappell by the Copyright Office  • App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office		
<ul><li>25</li><li>26</li><li>27</li><li>28</li></ul>	D44.	Registration Certificate E51988 applies to a "published	• App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109		

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2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9 10 11 12 13		musical composition" entitled "Happy birthday to you; unison song."	(Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at		
14 15 16 17 18 19 20 21 22 23 24 25 26 27	D45.	The listing under the byline in Registration Certificate E51988 states: "By Mildred J. Hill, rev. text and arr. of music by Mrs. R. R. Forman* 4to."	• App'x Ex. 103 (E51988 registration certificate) • App'x Ex. 109 (Dep. Tr. of Jeremy Blietz) at 1553-54: App'x Ex. 103 (Marcotullio Ex. 4) was provided to Warner/Chappell by the Copyright Office • App'x Ex. 100 (Kaplan Decl.) at ¶¶ 4, 9		
28	D46.	Registration	• App'x Ex. 103 (E51988		

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2 3 4	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5		Certificate E51988	registration		
6		also states: "(© is	certificate)		
7		claimed on arrangement for	• App'x Ex. 109 (Dep. Tr. of		
8		unison chorus and	Jeremy Blietz) at		
9		revised text)."	1553-54: App'x		
10			Ex. 103		
11			(Marcotullio Ex. 4) was provided		
12			to		
13			Warner/Chappell		
14			by the Copyright Office		
			• App'x Ex. 100		
15			(Kaplan Decl.) at		
16	D 47		99 4, 9		
17	D47.	Registration	• App'x Ex. 103 (E51988		
18		Certificate E51988 lists the date of	registration		
19		publication as	certificate)		
20		December 6, 1935.	• App'x Ex. 109		
21			(Dep. Tr. of Jeremy Blietz) at		
22			1553-54: App'x		
23			Ex. 103		
			(Marcotullio Ex.		
24			4) was provided to		
25			Warner/Chappell		
26			by the Copyright		
27			Office		
28			• App'x Ex. 100 (Kaplan Decl.) at		

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2 3 4	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5			¶¶ 4, 9		•
6	D48.	Registration	• App'x Ex. 103		
7		Certificate E51988	(E51988		
8		states that two	registration certificate)		
9		copies of the published musical	• App'x Ex. 109		
10		composition were	(Dep. Tr. of		
11		received and	Jeremy Blietz) at 1553-54: App'x		
12		registered in the Copyright Office	Ex. 103		
13		on December 9, 1935.	(Marcotullio Ex. 4) was provided		
14			to		
15			Warner/Chappell		
16			by the Copyright Office		
17			• App'x Ex. 100		
18			(Kaplan Decl.) at		
19	D67.	0	¶¶ 4, 9 • App'x Ex. 102		
20		On or about December 6, 1962,	(certificate of		
21		Summy-Birchard	registration of a claim to renewal		
22		Co. obtained Registration	copyright,		
23		Certificate	306186)		
24		R306186, which			
25		was a renewal of Registration			
26		E51990.			
27	D68.	Registration	• App'x Ex. 102		
28		Certificate R306186 applies	(certificate of registration of a		

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2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9	D69.	to "HAPPY BIRTHDAY TO YOU! – easy piano solo with text."	claim to renewal copyright, 306186)		
10 11 12 13 14 15	D09.	Registration Certificate R306186 states that the "Renewable Matter" is "Arrangement as easy piano solo with text."	• App'x Ex. 102 (certificate of registration of a claim to renewal copyright, 306186)		
16 17 18 19 20 21	D70.	Registration Certificate R306186 states "By Mildred J. Hill" in the area designated for Copyright Office notations.	• App'x Ex. 102 (certificate of registration of a claim to renewal copyright, 306186)		
22 23 24 25 26 27 28	D71.	On or about December 6, 1962, Summy-Birchard Company obtained Registration Certificate R306185, which was a renewal of Registration	• App'x Ex. 104 (certificate of registration of a claim to renewal copyright, 306185)		

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2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5		E51988.			
6 7 8 9 10 11	D72.	Registration Certificate R306185 applies to "HAPPY BIRTHDAY TO YOU! – Unison Song."	• App'x Ex. 104 (certificate of registration of a claim to renewal copyright, 306185)		
12	D79.	As of October	• App'x Ex. 119		
13		1988, Birch Tree Group Ltd. Was 100% owned by	(Excerpt of October 1988		
14			"Confidential		
15		its then chairman, David K.	Information Memorandum"		
16		Sengstack.	regarding Birch		
17			Tree Group Ltd) • App'x Ex. 100		
18			(Kaplan Decl.) at		
19	D82.		¶ 17		
20	D62.		• App'x Ex. 119 (Excerpt of		
21			October 1988		
22			"Confidential Information		
23			Memorandum"		
24			regarding Birch		
25			Tree Group Ltd.) • App'x Ex. 100		
26			(Kaplan Decl.) at		
27	D92		¶¶ 16-17		
28	D83.	Between	• App'x Ex. 119 (Excerpt of		

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2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24		approximately September 1931 and January 1989, the Sengstack family continuously operated Warner/Chappell's predecessors-in- interest (in chronological order): Clayton F. Summy Co. (Delaware), Summy Publishing Co. (Delaware), Summy-Birchard Publishing Co. (Delaware), Summy-Birchard Co. (Delaware), Summy-Birchard Co. (Delaware), Summy-Birchard Co. (Illinois), Summy-Birchard Co. (Wyoming), Sumco Corp. (Wyoming),	October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17		Response
<ul><li>25</li><li>26</li><li>27</li><li>28</li></ul>		Summy-Birchard Co. (Wyoming), The Birch Tree Group Ltd. (Wyoming), Birch			

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2 3 4	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response
5 6 7 8		Tree Group Ltd. (Wyoming), Summy-Birchard, Inc. (Wyoming).		
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	P59			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.
25 26 27 28	P60			Disputed. Summy- Birchard Company has been operated

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t	Opposing Party's Response	Admissible Evidence Supporting Response
	Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul> <li>App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</li> <li>App'x Ex. 100 (Declaration of Adam I. Kaplan ("Kaplan Decl.") at ¶ 17</li> </ul>
	Disputed. Summy- Birchard Company has	• App'x Ex. 119 (Excerpt of October 1988 "Confidential

1			Text to be I	Deleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5 6 7 8 9 10 11 12 13 14 15 16 17 18				continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Information Memorandum'' regarding Birch Tree Group Ltd.)  • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
19 20 21 22 23 24 25 26 27 28	P61			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

1			Text to be I	Deleted	
2   3   4   5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9 10 11				successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	
12   13   14   15   16   17   18   19   20   21   22   23   24   25   26   27   28	P62			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	<ul> <li>App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</li> <li>App'x Ex. 100 (Kaplan Decl.) at ¶ 17</li> </ul>

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2 3	Fac No		Statement of Fact	Admissible Evidence	Opposing Party's	Admissible Evidence
4				Supporting Fact	Response	Supporting Response
5 6	P68	3			Disputed. Summy-	• App'x Ex. 119 (Excerpt of
7					Birchard Company has	October 1988 "Confidential
8 9					been operated continuously	Information Memorandum"
10					by the	regarding
11					Sengstack family since	Birch Tree Group Ltd.)
12					1931. As of October 1988,	• App'x Ex. 100 (Kaplan Decl.)
13 14					Summy- Birchard	at ¶ 17
15					Company's successor	
16					company,	
17					Birch Tree Group Ltd.,	
18 19					was 100% owned by its	
20					then chairman David K.	
21					Sengstack.	
22	P11	5				• App'x Ex. 106 (1935
23						publication of
24						sheet music for Happy
25						Birthday to
26						You!) at 1221-
27						23 • App'x Ex. 101
28						(E51990

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2	Fact	Statement of Fac
3	No.	
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9	7116	
10	P116	
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Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
				registration certificate, marked as Marcotullio Ex. 9) at 1205- 07
P116			Disputed. Defendants do possess copies of Happy Birthday to You that were published in 1935 as a "Piano Solo with words." Defendants do not possess a copy of the specific copy deposited with the Copyright Office.	App'x Ex. 106 (1935 publication of sheet music for Happy Birthday to You!) at 1220- 23 App'x Ex. 100 (Kaplan Decl.) at ¶ 7
P192			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100

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2 3 4	Fac No		Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5 6 7 8 9 10 11 12 13 14					October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	(Kaplan Decl.) at ¶ 17
15 16 17 18 19 20 21 22 23 24 25 26	P19	3			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
<ul><li>27</li><li>28</li></ul>					Group Ltd., was 100% owned by its	

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		Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
			then chairman David K. Sengstack.	
P196			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K.	<ul> <li>App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</li> <li>App'x Ex. 100 (Kaplan Decl.) at ¶ 17</li> </ul>
P197			Disputed. Summy- Birchard Company has been operated continuously	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding
	P196	P196 P197	Fact No.  Statement of Fact No.  Statement of Fact Admissible Evidence Supporting Fact	No.  Evidence Supporting Fact  then chairman David K. Sengstack.  Pl96  Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.  Pl97  Pl97  Disputed. Summy-Birchard Company has been operated Company has been operated

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1				Text to be I	Deleted	
2 3 4		Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5 6 7 8 9 10 11 12 13 14 15 16					Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
17 18 19 20 21 22 23 24 25 26 27 28		P198			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree	<ul> <li>App'x Ex.119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</li> <li>App'x Ex. 100 (Kaplan Decl.) at ¶ 17</li> </ul>

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1				Text to be I	Deleted	
2 3 4 5		Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9					Group Ltd., was 100% owned by its then chairman David K. Sengstack.	
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25		P202			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
<ul><li>26</li><li>27</li><li>28</li></ul>		P208			Disputed. Summy- Birchard Company has	• App'x Ex. 119 (Excerpt of October 1988 "Confidential

1			Text to be I	Deleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
3 6 7 8 9 10 11 12 13 14 15 16 17 18				been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Information Memorandum' regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
19 20 21 22 23 24 25 26 27 28	P209			Disputed. Unsupported by the evidence. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988,	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17

1			Text to be I	Deleted	
2   3   4   5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	P224			Summy-Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack. Disputed. Summy-Birchard Company has been operated continuously by the Sengstack family since 1931. As of	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100
21 22 23 24 25 26 27 28				October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its	(Kaplan Decl.) at ¶ 17

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2 3	Fac No		Admissible Evidence	Opposing Party's	Admissible Evidence
4	110		Supporting Fact	Response	Supporting
					Response
5				David K.	
6				Sengstack.	
7	P22:	5		Disputed.	• App'x Ex. 119
8				Summy-	(Excerpt of
9				Birchard	October 1988
				Company has been operated	"Confidential Information
10				continuously	Memorandum"
11				by the	regarding
12				Sengstack	Birch Tree
				family since	Group Ltd.)
13				1931. As of	• App'x Ex. 100
14				October 1988,	(Kaplan Decl.)
15				Summy-	at ¶ 17
16				Birchard	
				Company's successor	
17				company,	
18				Birch Tree	
19				Group Ltd.,	
				was 100%	
20				owned by its	
21				then chairman	
22				David K.	
23	Daa	-		Sengstack.	. A . 2 E . 110
	P220	)		Disputed. Summy-	• App'x Ex. 119
24				Birchard	(Excerpt of October 1988
25				Company has	"Confidential
26				been operated	Information
27				continuously	Memorandum"
				by the	regarding
28				Sengstack	Birch Tree

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2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9 10 11 12 13 14 15				family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
16 17 18 19 20 21 22 23 24 25 26 27 28	P227			Disputed. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree	<ul> <li>App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)</li> <li>App'x Ex. 100 (Kaplan Decl.) at ¶ 17</li> </ul>

1			Text to be I	Deleted	
2 3 4 5	Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8				was 100% owned by its then chairman David K.	
9 10 11	P228			Sengstack. Disputed. Summy- Birchard Company has	• App'x Ex. 119 (Excerpt of October 1988 "Confidential
12 13 14				been operated continuously by the Sengstack	Information Memorandum" regarding Birch Tree
15 16 17				family since 1931. As of October 1988, Summy-	Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
18 19				Birchard Company's successor company,	<u>n</u> - ·
<ul><li>20</li><li>21</li><li>22</li></ul>				Birch Tree Group Ltd., was 100% owned by its	
<ul><li>23</li><li>24</li><li>25</li></ul>				then chairman David K. Sengstack.	
26 27 28	P229			Disputed. Summy- Birchard Company has been operated	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information

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2 3 4 5	Fact No.	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response
6 7 8 9 10 11 12 13 14 15 16 17			continuously by the Sengstack family since 1931. As of October 1988, Summy- Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.	Memorandum" regarding Birch Tree Group Ltd.) • App'x Ex. 100 (Kaplan Decl.) at ¶ 17
18 19 20 21 22 23 24 25 26 27 28	P230		Disputed. Unsupported by the evidence. Summy- Birchard Company has been operated continuously by the Sengstack family since 1931. As of October 1988, Summy-	• App'x Ex. 119 (Excerpt of October 1988 "Confidential Information Memorandum" regarding Birch Tree Group Ltd.)

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Fact No.	Statement of Fact	Admissible Evidence Supporting Fact	Opposing Party's Response	Admissible Evidence Supporting Response		
			Birchard Company's successor company, Birch Tree Group Ltd., was 100% owned by its then chairman David K. Sengstack.			

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Betsy C. Manifold filed concurrently herewith, all the pleadings and documents on file herein, such other oral and documentary evidence as may be presented at or before the hearing on this motion, and all facts of which this Court may take judicial notice.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on December 12, 2014.

Dated: December 22, 2014 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

By: <u>/s/ Betsy C. Manifold</u>
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