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8	UNITED STAT	'ES DISTRICT COURT
9		RICT OF CALIFORNIA
10	WESTI	ERN DIVISION
11	GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
12	PRODUCTIONS CORP., et al.,	
13	Plaintiffs,	 (PROPOSED) ORDER GRANTING) PLAINTIFFS' MOTION TO EXCLUDE) EVIDENCE
14	V.	
15	WARNER/CHAPPELL MUSIC, INC., <i>et al.</i> ,	
16	Defendants.) Date: February 9, 2015) Time: 9:30 A.M.
17) Courtroom: 650
18) Judge: Hon. George H. King, Chief Judge
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HAVING FOUND GOOD CAUSE APPEARING in Plaintiffs Rupa Marya, 1 2 Robert Siegel, and Good Morning To You Productions Corp. and Majar 3 Productions, LLC ("Plaintiffs") will, and hereby do, move this Court for an order to exclude Defendants' Exhibits 101-104, 106, and 119 (collectively, "Defendants' 4 5 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 6 Dec. 5, 2014 Order, filed December 17, 2014 (Dkts. 187 (Vol. 1, Exs. 1-10, Pages 1-7 220); 188 (Vol. 2, Ex.11, Pages 221-486); 189 (Vol. 3, Exs. 12-54, Pages 487-706); 8 190 (Vol. 4, Exs. 55-81, Pages 707-974); 191 (Vol. 5, Exs. 82-99, Pages 975-1141); 9 192 (Vol. 6, Exs. 100-106, Pages 1200-1540); 193 (Vol. 7, Exs. 107-116, Pages 10 1541-1750); and 194 (Vol. 8, Exs. 117-126, Pages 1751-1947)) (collectively, the 11 "Appendix") from the Appendix and to strike all references to Defendants' Exhibits 12 as well as the arguments based upon them from the Cross-Motions for Summary 13 Judgment (as amended Nov. 26, 2014, Dkt. 182) ("Joint Brief") and the [Corrected] 14 Joint Statement of Uncontroverted Facts (as amended Dec. 1, 2014, Dkt. 183) 15 ("SOF"). The Court makes the following findings: 16

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Findings of Fact and Conclusions of Law

Defendants contend that Exhibits 101 and 103 are copies of the
 registration certificates for the copyrights to *Happy Birthday* registered on December
 9, 1935, as Registration Nos. E51988 and E51990.

21 2. Defendants also contend that Exhibits 102 and 104 are copies of the
22 registration certificates for the renewal copyrights to *Happy Birthday* registered on
23 December 6, 1962, as Registration Nos. R306185 and R306186.

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3. The four documents are *not* what Defendants claim they are.

4. The official additional registration certificates for the two copyrights,
which have been sealed, signed, and certified by the Register of Copyrights and
marked as Plaintiffs' Exhibits 44 and 48 (for E51988 and E51990) and the two

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renewals, marked as Plaintiffs' Exhibits 67 and 68 (for R306185 and R306186), are
 materially different than the copies of unofficial documents proffered by Defendants.

5. Defendants base their claim that Mildred Hill wrote the familiar *Happy Birthday* lyrics upon the "fact" that her name appears on the purported registration certificates for E51988 and E51990 and then argue they are entitled to a presumption that Mildred Hill wrote the Song based on the "fact" stated in those purported registration certificates.

8 6. After reviewing the official additional registration certificates, Mildred
9 Hill's name does not appear on the official registration certificates for the original
10 copyrights, which are marked as Plaintiffs' Exhibits 44 and 48.

The Court accepts Plaintiffs' Exhibits 44, 48, 67, and 68 as the official
sealed, signed, and certified additional registration certificates and strikes
Defendants' Exhibits 101-104, which are not registration certificates or additional
registration certificates.

15 8. Defendants also contend that Exhibit 106 is a copy of the work covered16 by E51990.

17 9. Based on the record before the Court, no one with personal knowledge
18 has identified Exhibit 106 as a copy of the work covered by E51990.

19 10. To conclude that Exhibit 106 represents the work covered by E51990 is
20 speculation because Defendants do not have a copy of the work deposited with the
21 1935 application filed with the U.S. Copyright Office for E51990 (the copyright for
22 a piano arrangement composed by Preston Ware Orem as an employee-for-hire of
23 the Clayton F. Summy Co.).

24 11. Defendants' speculative argument that Exhibit 106 "must have been"
25 the work covered by E51990 fails here.

26 12. Because Exhibit 106 has not been authenticated by anyone with
27 knowledge of what that work was and meets none of the other criteria for

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admissibility, it also should be stricken from the Appendix and all references to it
 stricken from the Joint Brief and the SOF.

3 13. Defendants rely upon Exhibit 119, an October 1988 "Confidential
4 Information Memorandum" ("CIM") regarding Birch Tree Group Ltd. ("BTG") to
5 support the chain of title to their claim of ownership of E51988 and E51990 and the
6 renewals thereof. Jt. Br. at 50:7-9 (*citing* App'x, Ex. 119 at 1761).

7 14. The only witness who claims to "recognize" Exhibit 119 is Defendants'
8 outside counsel, Adam Kaplan, an associate with Munger Tolles & Olson LLP. Mr.
9 Kaplan does not claim to have, and plainly lacks, personal knowledge of the CIM or
10 its creation.

11 15. The out-of-court statements from the unknown author in the CIM
12 regarding BTG, which Defendants offer to prove the truth of the matter asserted, are
13 inadmissible hearsay.

14 16. Furthermore, there is no foundation for the hearsay statements in the
15 CIM regarding Defendants' chain of title.

16 17. The CIM does not indicate that it was prepared by a person with
17 personal knowledge of BTG's ownership and does not identify any author – only
18 that it was prepared by Wertheim Schroder & Co. There is no indication that anyone
19 with personal knowledge of the purported facts stated in the CIM was competent to
20 testify as to those purported facts.

21 17. The CIM's out-of-court statements from the unknown author, which
22 Defendants proffer to prove the truth of the matter asserted, are inadmissible
23 hearsay.

24 18. Defendants' Exhibit 119 should be stricken from the Appendix and any
25 reference to it stricken from the Joint Brief and the SOF.

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THEREFORE, based upon the foregoing Findings of Fact and Conclusions
of Law, Plaintiffs' Motion To Exclude Evidence is hereby GRANTED, as follows:

ORDER

1	1.	Defendants' Exhibits 101-104 (App'x at 1204-1217), 106 (id. at 1220-	
2		1223), and 119 (id. at 1760) in the Amended Joint Evidentiary	
3		Appendix in Support of Notice of Cross-Motions and Cross-Motions	
4		for Summary Judgment Filed Pursuant to Court's Dec. 5, 2014 Order,	
5		filed December 17, 2014 (Dkts. 187 (Vol. 1, Exs. 1-10, Pages 1-220);	
6		188 (Vol. 2, Ex.11, Pages 221-486); 189 (Vol. 3, Exs. 12-54, Pages	
7		487-706); 190 (Vol. 4, Exs. 55-81, Pages 707-974); 191 (Vol. 5, Exs.	
8		82-99, Pages 975-1141); 192 (Vol. 6, Exs. 100-106, Pages 1200-	
9		1540); 193 (Vol. 7, Exs. 107-116, Pages 1541-1750); and 194 (Vol. 8,	
10		Exs. 117-126, Pages 1751-1947)) (collectively, the "Appendix") are	
11		excluded.	
12	2.	All references to those exhibits as well as the arguments based upon	
13		them are excluded from the Cross-Motions for Summary Judgment	
14		(as amended Nov. 26, 2014, Dkt. 182) ("Joint Brief") and the	
15		[Corrected] Joint Statement of Uncontroverted Facts (as amended	
16		Dec. 1, 2014, Dkt. 183) ("SOF").	
17	3.	The specific text to be stricken from the Joint Brief and from the SOF	
18		is set in the chart attached here as Exhibit A.	
19	IT IS SO ORDERED.		
20	Dated:		
21		HON. GEORGE H. KING, CHIEF JUDGE	
22		UNITED STATES DISTRICT COURT JUDGE	
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27			
28	WARNER/CHAPPELL:21433v2.ORDER		
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