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

13 GOOD MORNING TO YOU  
PRODUCTIONS CORP.; et al.,

14 Plaintiffs,

15 v.

16 WARNER/CHAPPELL MUSIC, INC.,  
17 et al.,

18 Defendants.

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

**DECLARATION OF KELLY M.  
KLAUS IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION TO  
EXCLUDE EVIDENCE**

Hearing

Date: February 9, 2015

Time: 9:30 a.m.

Judge: Hon. George H. King,  
Chief Judge

Courtroom: 650

1 I, KELLY M. KLAUS, hereby declare:

2 1. I am a member of the firm Munger, Tolles & Olson LLP, counsel for  
3 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,  
4 “Warner/Chappell”). I am admitted to practice law in the State of California and  
5 before this Court. I submit this declaration in support of Warner/Chappell’s  
6 Opposition to Plaintiffs’ Motion to Exclude Evidence. Except where indicated, I  
7 have personal knowledge of the facts stated herein. As to those matters stated on  
8 information and belief, I am informed of the facts and believe them to be true. If  
9 called upon as a witness to testify as to the contents of this declaration, I could and  
10 would competently do so.

11 2. I am informed and believe that Plaintiffs first provided  
12 Warner/Chappell with the documents that Plaintiffs submitted as summary judgment  
13 Exhibits 44 and 48 when the parties met and conferred on October 30, 2014,  
14 regarding their respective summary judgment motions.<sup>1</sup>

15 3. The fact discovery cut-off in this matter was July 11, 2014. Dkt. No.  
16 106.

17 4. In March 2014, Warner/Chappell served Plaintiffs with a set of  
18 document requests that included a request for “[a]ll documents that refer or relate to  
19 any of the copyright registrations and renewals referenced in [Plaintiffs’ Third  
20 Amended Consolidated Complaint], including without limitation Registration Nos.  
21 E51988 and E51990 and the renewals of each of the registrations.” In April 2014,  
22 Plaintiffs agreed to produce such documents.

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25 <sup>1</sup> The summary judgment exhibits referenced in this declaration are contained in the  
26 amended joint evidentiary appendix that the parties filed on December 17, 2014  
27 (Dkts. 127-30, “Appendix”). Copies of these exhibits also are attached either to the  
28 Declaration of Betsy C. Manifold in Support of Plaintiffs’ Motion to Exclude  
Evidence (Dkt. 198, “Manifold Decl.”) or to this declaration. Each summary  
judgment exhibit attached to this declaration is identified by the same number as in  
the Appendix.

1           5.     The parties jointly filed their summary judgment papers on November  
2 25, 2014.

3           6.     On December 2, 2014, Plaintiffs sent Warner/Chappell a meet-and-  
4 confer letter regarding the matters raised in the instant motion to exclude evidence.

5           7.     Following receipt of Plaintiffs' letter, Warner/Chappell contacted the  
6 Copyright Office regarding the certificates of registration for copyright registrations  
7 E51990 and E51988. On January 5, 2015, I spoke by telephone with a  
8 representative of the Copyright Office. The representative told me that, under the  
9 Office's current regulations applicable to registrations originally made in 1935, the  
10 Office deems a copy of the original application for copyright to be the registration  
11 certificate. The representative further told me that the documents that the Office had  
12 sent Warner/Chappell in December 2013—*i.e.*, summary judgment Exhibits 101 and  
13 103—are documents from the Copyright Office's "Records Title Index Catalog  
14 Cards" ("Catalog Cards") for E51990 and E51988.

15           8.     Following the January 5, 2015 telephone conversation, the Copyright  
16 Office sent me certified copies of the Catalog Cards for E51990 and E51988.  
17 Attached hereto as **Exhibit A** is a true and correct copy of the certified copy of the  
18 Catalog Card for E51990. Attached hereto as **Exhibit B** is a true and correct copy  
19 of the certified copy of the Catalog Card for E51988.<sup>2</sup>

20           9.     At the same time that the Copyright Office sent me certified copies of  
21 the Catalog Cards, the Office sent me certified copies of pages from the 1935  
22 Catalog of Copyright Entries for Musical Compositions, which contain the entries  
23 for E51990 and E51988. Attached hereto as **Exhibit C** is a true and correct copy of  
24 certified copies of pages from the 1935 Catalog of Copyright Entries for Musical  
25 Compositions, which contain the entry for E51990. Attached hereto as **Exhibit D** is  
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27 <sup>2</sup> The original certified copies of the documents the Copyright Office sent to me are  
28 being manually lodged and filed with the Court

1 a true and correct copy of certified copies of pages from the 1935 Catalog of  
2 Copyright Entries for Musical Compositions, which contain the entry for E51988.<sup>3</sup>

3 10. I am informed and believe that Plaintiffs did not question the  
4 authenticity or admissibility of summary judgment Exhibit 106—a copy of the sheet  
5 music for *Happy Birthday to You!*—until November 2014, when the parties  
6 exchanged draft motions for summary judgment and draft statements of facts.

7 11. I am informed and believe that Plaintiffs raised new allegations  
8 regarding what they claimed to be specific gaps in Warner/Chappell’s chain of title  
9 throughout the exchange of drafts of the parties’ respective sections of the joint  
10 summary judgment submission. Warner/Chappell produced additional documents  
11 during the period of exchanging summary judgment drafts to address Plaintiffs’ new  
12 allegations.

13 12. In February 2014, Plaintiffs requested that Warner/Chappell produce  
14 “[t]he due diligence file and all other documents including without limitation,  
15 reports, opinion letters, audit documents and representations of warranty in  
16 connection with Warner/Chappell’s acquisition of Birchtree Limited in or around  
17 1988.”

18 13. In April 2014, in response to the document request described in  
19 Paragraph 12, Warner/Chappell produced to Plaintiffs the document from which  
20 summary judgment Exhibit 119 was excerpted (for confidentiality reasons)—a 33-  
21 page “Confidential Information Memorandum” dated October 1988.

22 14. Attached hereto as **Exhibit E** is a true and correct copy of eight pages  
23 from the “Confidential Information Memorandum” from which Exhibit 119 was  
24 excerpted. The redactions that appear in Exhibit E are privilege redactions that  
25

26  
27 <sup>3</sup> The original certified copies of the of pages from the 1935 Catalog of Copyright  
28 Entries for Musical Compositions that the Copyright Office sent me in January 2015  
will be manually lodged and filed with the Court.

1 Warner/Chappell made in April 2014 when it produced the “Confidential  
2 Information Memorandum” to Plaintiffs.

3 15. Attached hereto are true and correct copies of the following summary  
4 judgment exhibits, which were contained in the Appendix. Each of these exhibits is  
5 identified by the same number as it appears in the Appendix.

6 **Exhibit 43:** Copy of the sheet music deposited and registered as Reg. No.  
7 E51988 (WC0000413-414) (App’x at 3:623-24, Dkt. 189-3);

8 **Exhibit 94:** Plaintiffs’ Requests for Production of Documents to  
9 Defendants – Set No. One dated February 12, 2014 (App’x at 5:1072-82, Dkt.  
10 191-1);

11 **Exhibit 95:** Excerpts from Defendants’ Objections and Responses to  
12 Plaintiffs’ First Set of Requests for Production of Documents dated March 21,  
13 2014 (App’x at 5:1084-94, Dkt. 191-1);

14 **Exhibit 98:** Plaintiffs’ Receipt for Additional Certificates of Registration of a  
15 Claim to Copyright for E 51988 & 7 Others from the Records Research and  
16 Certification Section, Office of Public Records and Repositories, U.S.  
17 Copyright Office dated June 12, 2014 (P006370) (App’x at 5:1118, Dkt. 191-  
18 1);


19 **Exhibit 105:** Record of the Filing of Copyright Deposits under the Act  
20 of March 4, 1909 (P003299) (App’x at 6:1219, Dkt. 192-1);

21 **Exhibit 108:** Declaration of Thomas B. Marcotullio in Support of  
22 Defendants’ Motion for Summary Judgment (App’x at 7:1542-45, Dkt. 193-  
23 1);

24 **Exhibit 110:** (Excerpts only) Excerpts of Deposition Transcript of Plaintiffs’  
25 Expert Witness, Joel Sachs, Ph.D., taken on September 9, 2014 (App’x at  
26 7:1567-1622, Dkt. 193-1); and  
27  
28

**Exhibit 125:** Letter from United States Copyright Office to Lisa Minnerly (Warner/Chappell Music, Inc.) dated December 9, 2013 (WC0002098) (App’x at 8:1937, Dkt. 194-1).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 16th day of January 2015, at San Francisco, California.



Kelly M. Klaus