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

13	GOOD MORNING TO YOU	)	Lead Case No. CV 13-04460-GHK (MRWx)
14	PRODUCTIONS CORP., <i>et al.</i> ,	)	
15		)	<b>SUPPLEMENTAL DECLARATION OF</b>
16	Plaintiffs,	)	<b>BETSY C. MANIFOLD IN FURTHER</b>
17	v.	)	<b>SUPPORT OF PLAINTIFFS' <i>EX PARTE</i></b>
18		)	<b>APPLICATION TO HAVE THE COURT</b>
19	WARNER/CHAPPELL MUSIC,	)	<b>CONSIDER NEWLY DISCOVERED</b>
20	INC., <i>et al.</i> ,	)	<b>EVIDENCE "MISTAKENLY"</b>
21		)	<b>WITHHELD BY DEFENDANTS</b>
22	Defendants.	)	<b>DURING DISCOVERY AND ENTER</b>
23		)	<b>SUMMARY JUDGMENT IN</b>
24		)	<b>PLAINTIFFS' FAVOR</b>
25		)	
26		)	Judge: Hon. George H.
27		)	King, Chief Judge
28		)	Courtroom: 650
		)	
		)	Fact Discovery Cutoff: July 11, 2014
		)	MSJ Hearings March 23, 2015
		)	and July 29, 2015
		)	Pretrial Conference: N/A
		)	Trial: N/A
		)	

1 I, Betsy C. Manifold, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the States of California,  
3 New York, and Wisconsin, and before this Court. I am a partner with the law firm  
4 Wolf Haldenstein Adler Freeman & Herz LLP, interim lead class counsel for  
5 Plaintiffs and the class. I have personal knowledge of the following facts, and if  
6 called upon to do so, I could and would competently testify as to them.

7 2. I submit this supplemental declaration in further support of Plaintiffs’  
8 *Ex Parte* Application to have the Court Consider Newly Discovered Evidence  
9 “Mistakenly” Withheld by Defendants during Discovery and Enter Summary  
10 Judgment in Plaintiffs’ Favor. At the Hearing for Supplemental Briefing Re: Motion  
11 for Summary Judgment held on July 29, 2015, the Court directed Plaintiffs to file  
12 their reply within seven days thereof. Dkt. 229. This reply is submitted at the  
13 Court’s direction.

14 **NOTICE OF SUPPLEMENTAL EVIDENCE**

15 3. On August 3, 2015, I notified Defendants’ counsel, Kelly Klaus and  
16 Adam Kaplan, that Plaintiffs intended to provide additional documents in further  
17 support of their *ex parte* application asking the Court to consider newly discovered  
18 evidence mistakenly withheld by Defendants during discovery as well as evidence  
19 discovered by Plaintiffs directly related to Defendants’ newly discovered evidence  
20 and to enter summary judgment in Plaintiffs’ favor based on the applicable  
21 law. Scanned versions of the relevant pages to be submitted were sent by me to  
22 Defendants’ counsel at the same time. Defendants have consented to the inclusion of  
23 the attached relevant documents in the reply. The additional documents are  
24 admissible evidence and necessary to inform the Court’s review of the evidence and  
25 Defendants’ response to the *Ex Parte* Application.

26 **PROCEDURAL UPDATE**

27 4. On July 28, 2015, Defendants submitted their opposition to Plaintiffs *Ex*  
28 *Parte* Application with no declaration. Dkt. 226. Defendants’ assertion of work

1 product protection in their opposition (Dkt. 226 at 5:23-6:7) is not supported by the  
2 discovery record in this case. Fact discovery concluded on July 11, 2014. Dkt. 106.  
3 After a search of the privilege logs provided by Defendants, they never identified the  
4 documents withheld in their supplemental production and at issue here in any  
5 privilege log, which is inconsistent with their assertion that in 2013 they considered  
6 the documents in question to be work product.

7 **NEED FOR EXTRORDINARY RELIEF REMAINS**

8 5. Absent the relief Plaintiffs seek, the Court will waste judicial resources  
9 in determining the extensive cross-motions for summary judgment filed by the  
10 parties in November 2014 and supplemented in May 2015. Here, evidence withheld  
11 by Defendants during discovery and during the extensive briefing of the cross-  
12 motions and newly discovered evidence by Plaintiffs directly related to Defendants'  
13 supplemental production readily resolves the key issues in Plaintiffs' favor and  
14 should be considered in the interest of justice.

15 6. In their Opposition to Plaintiffs' *Ex Parte* Application, Defendants do  
16 not argue that Plaintiffs are in any way responsible or at fault in their need for this *ex*  
17 *parte* relief. Defendants do not claim any prejudice. As the Court noted at the July  
18 29, 2015 hearing, Defendants also fail to provide a declaration in support of their  
19 opposition. No declaration means that Defendants have not explained their alleged  
20 "mistake" in withholding this evidence and fail to justify their concurrent failure to  
21 identify these allegedly "privileged" documents on any privilege log.

22 7. Under L.R. 56-3, any party who opposes summary judgment based on  
23 disputes of material fact (whether Summy was authorized to permit the 1922  
24 publication) must convert such material facts "by declaration or other written  
25 evidence filed in opposition." No declaration or written evidence was submitted here.  
26 Furthermore, at the hearing on July 29, 2015, Defendants offered no declaration or  
27 written evidence relating to the disputed material fact, but relating only to the  
28 circumstances of their discovery in 2013 of the *Good Morning and Birthday Song* in  
the *Everyday Song Book* published by The Cable Co. ("Cable Co.") in 1927.

