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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 | |) | DECLARATION OF BETSY C. |
| 16 | Plaintiffs, |) | MANIFOLD IN SUPPORT OF |
| 17 | v. |) | PLAINTIFFS' EX PARTE |
| 18 | WARNER/CHAPPELL MUSIC, |) | APPLICATION SEEKING LEAVE TO |
| 19 | INC., <i>et al.</i> , |) | FILE RESPONSE UNDER L.R. 7-10 |
| 20 | |) | Judge: Hon. George H. |
| 21 | Defendants. |) | King, Chief Judge |
| 22 | |) | Courtroom: 650 |
| 23 | |) | Fact Discovery Cutoff: July 11, 2014 |
| 24 | |) | MSJ Hearings March 23, 2015 |
| 25 | |) | and July 29, 2015 |
| 26 | |) | Pretrial Conference: N/A |
| 27 | |) | Trial: N/A |
| 28 | |) | |

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 declaration in support of Plaintiffs' *Ex Parte* Application
8 seeking leave to file a response to Defendants' Reply Memorandum ("the Reply") in
9 Support of Motion for Leave to File Supplemental Evidence in Support of Motion for
10 Summary Judgment ("Defendants' Motion"). *See* Dkt. 237. A copy of Plaintiffs'
11 proposed response is attached hereto as Exhibit A. Defendants' Motion is currently
12 set for a hearing on August 31, 2015, prompting the need for *ex parte* relief so the
13 Court may consider the response before the hearing date.

14 **NOTICE OF EX PARTE APPLICATION PURSUANT TO L.R. 7-19.1**

15 3. Pursuant to Local Rule 7-19.1, on August 20, 2015 at 4:22 p.m.,
16 Plaintiffs informed counsel for Defendants (Adam Kaplan) by leaving a voice mail
17 message that they intended to file this *ex parte* application on August 21, 2015.
18 Shortly thereafter at 4:49 p.m. on the same day, Plaintiffs sent a detailed e-mail to all
19 Defendants' counsel identified on Defendants' Motion. A copy of the e-mail is
20 attached as Exhibit B to the Manifold Declaration.

21 4. In response to the e-mail, Plaintiffs received an automated message that
22 Mr. Klaus was out of the country until August 21st and Ms. LeMoine was traveling
23 with limited availability until September 8, 2015. At 5:32 p.m., I received an e-mail
24 from Glenn Pomerantz also advising me that Adam Kaplan was out of the office, that
25 Mr. Klaus was out of the country, and that Defendants would contact Plaintiffs'
26 counsel on August 21, 2015. On August 21, 2015, Defendants' counsel (Adam
27 Kaplan) contacted plaintiff's counsel via electronic mail and advised them that the
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1 Defendants would oppose this application. On the same day, I advised Mr. Kaplan
2 that Plaintiffs would serve and file their application on August 24, 2015.

3 5. On August 24, 2015, Plaintiffs electronically served a copy of this *ex*
4 *parte* application and supporting papers on Defendants' counsel *prior* to filing.

5 **PROCEDURAL BACKGROUND**

6 6. The Court initially set the fact discovery deadline for June 27,
7 2014. (Dkt. 92), which was extended by Magistrate Judge Wilner, in connection
8 with this Court and at the request of both parties, to July 11, 2014. (Dkt. 106).

9 **Summary Judgment Briefing**

10 7. On November 25, 2014, the parties filed Joint Cross-Motions for
11 Summary Judgment (Dkts. 179, 181, 182), a Joint Statement of Uncontroverted Facts
12 (Dkts. 180, 183), and an extensive Joint Evidentiary Appendix (Dkts. 167-178)
13 (which was amended by Court Order and re-filed). (Dkts. 185, 187-195). Oral
14 argument was held on March 23, 2015. (Dkt. 207).

15 8. On May 18, 2015, the Court ordered further briefing on the issue of
16 abandonment (Dkt. 215) which was submitted pursuant to Stipulation and Court
17 Order by the parties on June 15, 2015 (Dkt. 217, 219). In the May 18, 2015 Order,
18 the Court stated that “[t]he Parties shall *not* submit any new evidence.” Dkt. 215 at
19 1. Oral argument on the Supplemental Briefing was heard on July 29, 2015. (Dkt.
20 229).

21 **Supplemental Production by Defendants**

22 9. Nearly one year after the close of fact discovery, on July 9, 2015,
23 Defendants advised Plaintiffs that they were providing a supplemental production of
24 documents. Due to technical issues, Plaintiffs were unable to access the secure
25 production link until July 13, 2015.

26 10. On July 13, 2015, Plaintiffs were finally able to access the secure
27 database link of approximately 500 pages of documents.

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2 Defendants' Motion to Supplement the Record

3 11. On July 23, 2015, Defendants filed their Motion and asked the Court to
4 consider some British copyright records as support for their argument that Ex. 106 is
5 a copy of the work deposited with the registration for E51990. See Dkt. 223 at 3-
6 5. On August 10, 2015, Plaintiffs opposed Defendants' Motion. See Dkt. 236. In
7 Defendants' reply filed on August 17, 2015 (Dkt. 237), Defendants added a new
8 argument that the scope of the copyright covered by E51990 is **broader** than the
9 application or the registration certificate and covers work not done by Mr. Orem and
10 cited, for the first time, two cases that supposedly support their argument that the
11 copyright covers work not done by Mr. Orem. See Dkt. 237 at 4 (citing *Sylvestre v.*
12 *Oswald*, No. 91 Civ. 5060 (JSM), 1993 U.S. Dist. LEXIS 7002, at *3-6 (S.D.N.Y.
13 May 18, 1993) and *Williams v. Bridgeport Music, Inc.*, No. LA CV13-06004 JAK
14 (AGRx), 2014 U.S. Dist. LEXIS 182240, at *25 (C.D. Cal. Oct. 30, 2014)).

15 12. The hearing on Defendants' motion is set for August 31, 2015. It is
16 likely that the Court will take this motion under advisement and Plaintiffs will not
17 have an opportunity to address Defendants' new arguments.

18 12. Plaintiffs are not at fault in the need for this *ex parte* relief; any
19 prejudice to Defendants was created by their own conduct in raising new argument
20 and law in the Reply.

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EXHIBITS

13. Attached hereto are true and correct copies of the following documents:

Exhibit A: Plaintiffs’ Sur-Reply in Opposition to Defendants’ Motion for Leave to File Supplemental Evidence.

Exhibit B: Electronic Mail dated August 20, 2015 from Plaintiffs’ counsel (Betsy C. Manifold) to Defendants’ counsel (Kelly Klaus, Adam Kaplan, Glenn Pomerantz and Melinda LeMoine).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of August 2015, in the City of San Diego, State of California.

By: /s/ Betsy C. Manifold
 BETSY C. MANIFOLD