

1 FRANCIS M. GREGOREK (144785)
 gregorek@whafh.com
 2 BETSY C. MANIFOLD (182450)
 manifold@whafh.com
 3 RACHELE R. RICKERT (190634)
 rickert@whafh.com
 4 MARISA C. LIVESAY (223247)
 livesay@whafh.com
 5 BRITTANY N. DEJONG (258766)
 dejong@whafh.com
 6 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
 7 750 B Street, Suite 2770
 San Diego, CA 92101
 8 Telephone: 619/239-4599
 9 Facsimile: 619/234-4599

10 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

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

14 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
 PRODUCTIONS CORP., *et al.*,)
 15) **DECLARATION OF MARK C. RIFKIN**
 Plaintiffs,) **IN SUPPORT OF OPPOSITION TO**
 16) **REQUEST OF NATIONAL MUSIC**
 v.) **PUBLISHERS' ASSOCIATION FOR**
 17) **LEAVE TO FILE AMICUS BRIEF;**
 18 WARNER/CHAPPELL MUSIC,) **MEMORANDUM OF POINTS AND**
 19 INC., *et al.*) **AUTHORITIES IN SUPPORT**
 20) **THEREOF**
 Defendants.)
 21) Date: November 16, 2015
 22) Time: 9:30 a.m.
 23) Room: 650
 24) Judge: Hon. George H. King,
) Chief Judge
 25)

26
 27
 28

1 I, Mark C. Rifkin, Esquire, hereby declare and state as follows:

2 1. I am an attorney duly licensed to practice law in the State of New
3 York, and I have been admitted to appear *pro hac vice* in this matter. I am a
4 partner with the law firm Wolf Haldenstein Adler Freeman & Herz LLP, interim
5 lead class counsel for plaintiffs and the class. I have personal knowledge of the
6 following facts, and if called upon to do so, I could and would competently testify
7 as to them.

8 2. On October 22, 2015, I received an email from Danielle Aguirre,
9 Esquire, General Counsel for the National Music Publishers' Association
10 ("NMPA"), requesting a "meet and confer" to discuss whether Plaintiffs would
11 consent to NMPA filing an amicus brief relating to Defendants' motion for
12 reconsideration or, in the alternative, to certify for immediate interlocutory appeal.
13 A true and correct copy of Ms. Aguirre's email is attached hereto as **Exhibit A**.

14 3. We arranged to meet and confer by telephone on that same date. As
15 agreed, the conference call took place between Ms. Aguirre, Randall S. Newman,
16 Esquire, one of my co-counsel, and me that afternoon.

17 4. During the call, Ms. Aguirre informed Mr. Newman and me that
18 NMRA intended to submit a brief in support of Defendants' motion. Ms. Aguirre
19 also confirmed that at least one member of NMRA's Board of Directors worked
20 for Defendant Warner/Chappell Music.

21 5. NMRA's website lists its current Board of Directors. NATIONAL
22 MUSIC PUBLISHERS' ASSOCIATION, <http://nmpa.org> (last visited Oct. 27, 2015).

23 (a) The Chairman of NMPA's Board is Irwin Robinson. From 1985
24 to 1987, Mr. Robinson was Senior Vice President Chappell and Company,
25 Inc. *See Board of Directors*, NMPA.ORG,
26 <http://www.ascap.com/about/board-intro/robinson-bio.aspx> (last visited
27 October 27, 2015).

28 (b) Cameron Strang, also a director of NMPA, is Chief Executive

1 Officer of Warner Bros. Records, which, like Defendant Warner, is a
2 subsidiary of Warner Music Group. *See Music Gateway,*
3 *MUSICBUSINESSWORLDWIDE.COM,*
4 <http://www.musicbusinessworldwide.com/cameron-strang-7-lessons-career/>
5 (last visited October 27, 2015).

6 (c) Neil Gillis, another director of NMPA, was Senior Vice President
7 of Defendant Warner. *See About,* NMPA.ORG, [http://nmpa.org/about/neil-](http://nmpa.org/about/neil-gillis/)
8 [gillis/](http://nmpa.org/about/neil-gillis/) (last visited October 27, 2015).

9 (d) Chip McLean, a fourth director of NMPA, was Vice President of
10 Business and Legal Affairs for Warner Bros. Records. *See About,*
11 NMPA.ORG, <http://nmpa.org/about/chip-mclean/> (last visited October 27,
12 2015

13 6. During the call, I asked Ms. Aguirre whether NMPA intended to offer
14 any new evidence into the record with its proposed amicus submission. Ms.
15 Aguirre informed us that NMPA had no new evidence to offer into the record. I
16 also asked Ms. Aguirre what new arguments NMPA intended to offer in its
17 proposed amicus brief. Ms. Aguirre informed us that NMPA intended to reargue
18 Defendants' own argument that the presumption under the 1935 copyright E51990
19 survived the purported "mistaken omission" of Patty Hill's name from the
20 registration certificate.

21 7. On the basis of the information provided to me, I informed Ms.
22 Aguirre of the requirements of Local Rule 7-18 of this Court, of which she was
23 unaware. I urged her to consider whether her proposed amicus brief would or
24 could meet the requirements of L.R. 7-18, and she acknowledged that she would
25 have to do so.

26 8. Later that same afternoon, I sent an email to Ms. Aguirre confirming
27 our discussion. A true and correct copy of my October 22, 2015, email to Ms.
28 Aguirre is attached hereto as **Exhibit B**. I received no response to my email from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ms. Aguirre or anyone else on behalf of NMPA.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of October, 2015, at New York, New York.


MARK C. RIFKIN