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

15 RUPA MARYA, <i>et al.</i> ,	)	Lead Case No. CV 13-04460-GHK
	)	(MRWx)
16 Plaintiffs,	)	
	)	<b>NOTICE OF MOTION AND MOTION</b>
17 v.	)	<b>FOR APPOINTMENT OF WOLF</b>
	)	<b>HALDENSTEIN ADLER FREEMAN</b>
18 WARNER/CHAPPELL MUSIC,	)	<b>&amp; HERZ LLP AS INTERIM LEAD</b>
19 INC.,	)	<b>CLASS COUNSEL; MEMORANDUM</b>
	)	<b>OF POINTS AND AUTHORITIES IN</b>
20 Defendant.	)	<b>SUPPORT THEREOF; AND</b>
	)	<b>[PROPOSED] ORDER THEREON</b>
	)	
	)	Date: September 9, 2013
	)	Time: 9:30 a.m.
	)	Room: 650
	)	Judge: Hon. George H. King,
	)	Chief Judge

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 28

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on or about September 9, 2013, at 9:30 a.m.,  
3 or as soon thereafter as this matter may be heard before the Honorable George H.  
4 King, Chief Judge, in Courtroom 650 of the Edward R. Roybal Federal Building,  
5 located at 255 E. Temple Street, Los Angeles, CA 90012, Plaintiffs Rupa Marya,  
6 Robert Siegel, and Good Morning To You Productions Corp. (“Plaintiffs”) will, and  
7 hereby do, move this Court for an order appointing Wolf Haldenstein Adler  
8 Freeman & Herz LLP as interim lead class counsel pursuant to Federal Rules of  
9 Civil Procedure 23(g)(1)(B). This consolidated action involves a justiciable  
10 controversy over the claim of copyright for the world’s most popular English song,  
11 *Happy Birthday To You*, purportedly held by Defendant Warner/Chappell Music,  
12 Inc., a division of the Warner Music Group.

13 This motion is based on this Notice of Motion and Motion, the accompanying  
14 Memorandum of Points and Authorities, the Declaration of Betsy C. Manifold filed  
15 concurrently herewith, all the pleadings and documents on file herein, such other  
16 oral and documentary evidence as may be presented at or before the hearing on this  
17 motion, and all facts of which this Court may take judicial notice.

18 This motion is made following the conference of counsel pursuant to L.R.  
19 7-3, which took place on July 8 & 11, 2013 and August 1, 2013.

20 Dated: August 5, 2013

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP

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22 By:           /s/ Rachele R. Rickert            
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a consolidated class action against defendant Warner/Chappell Music,  
4 Inc. (“Warner/Chappell”).<sup>1</sup> The Consolidated Complaint seeks to invalidate  
5 Warner/Chappell’s purported copyright of *Happy Birthday to You*, asserting claims  
6 for declaratory and corollary injunctive relief arising under the Copyright Act, 17  
7 U.S.C. §§ 101 *et seq.* (the “Copyright Act”) as well as a claim under California’s  
8 Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.* (“UCL”)  
9 (the “HBTY Action”). Specifically, the HBTY Action seeks, *inter alia*, (i) a  
10 declaration that *Happy Birthday to You* is in the public domain and dedicated to  
11 public use; (ii) an injunction to prevent Warner/Chappell from making additional  
12 representations of ownership of *Happy Birthday to You*; and (iii) an order requiring  
13 Warner/Chappell to return license fees unlawfully obtained from Plaintiffs and  
14 members of the proposed class as a result of Warner/Chappell’s wrongful assertion

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15  
16 <sup>1</sup> Pursuant to the parties’ stipulation and order issued by this Court on July 16,  
17 2013, *Siegel v. Warner/Chappell Music, Inc.*, No. 13-CV-04418 (GHK)(MRW) and  
18 *Marya v. Warner/Chappell Music, Inc.*, No. 13-CV-04460 (GHK)(MRW) were  
19 consolidated for all purposes and plaintiffs were directed to file a consolidated  
20 complaint on or before July 26, 2013. *See* Order on Stipulation, ECF No. 17, July  
21 16, 2013 (“Consolidation Order”). In accordance with this Court’s Consolidation  
22 Order, L.R. 15-1, and L.R. 3-2, on July 26, 2013, plaintiffs gave notice of manually  
23 filing their Consolidated First Amended Complaint for Declaratory Relief; Injunctive  
24 and Declaratory Relief; and Damages for (1) Invalidity of Copyright Act (17 U.S.C.  
25 §§ 101 *et seq.*); and (2) Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200  
26 *et seq.*) (the “Consolidated Complaint”). The Consolidated Complaint was manually  
27 filed because it added a new plaintiff and proposed class representative, Good  
28 Morning To You Productions Corp. *See* Not. Of Manual Filing, ECF No. 21. On  
July 26, 2013, the Clerk’s office issued a Notice of Document Deficiencies because  
the caption on the Consolidated Complaint did not match the caption on the docket  
due to the addition of the new party. As of the date of filing of this motion, the  
Consolidated Complaint has not been accepted as filed in this action.

1 of copyright ownership. Plaintiffs are also aware of a related action filed on or about  
2 July 17, 2013, *Majar Productions, LLC v. Warner/Chappell Music, Inc., et al.*, Case  
3 No. CV 13-05164-GHK (MRWx).

4 Plaintiffs in the HBTY Action now seek appointment of one of their counsel,  
5 Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”), as interim lead  
6 class counsel in accordance with the *Manual for Complex Litigation* (Fourth ed.  
7 2004) (the “MCL”) and Federal Rules of Civil Procedure 23(g).

8 **II. WOLF HALDENSTEIN SHOULD BE DESIGNATED INTERIM**  
9 **LEAD CLASS COUNSEL**

10 This action requires strong stewardship through experienced and well-  
11 capitalized counsel. In this regard, Rule 23(g)(2)(A) authorizes the Court to  
12 “designate . . . class counsel to act on behalf of the putative class before determining  
13 whether to certify the action as a class action.” As the Advisory Committee noted on  
14 the 2003 amendments to Rule 23, designation of interim lead class counsel prior to  
15 certification is appropriate because:

16 [I]t will usually be important for an attorney to take action  
17 to prepare for the certification decision. The amendment to  
18 Rule 23(c)(1) recognizes that some discovery is often  
19 necessary for that determination. It may also be important  
20 to make or respond to motions before certification. . . . Rule  
21 23(g)(2)(A) authorizes the court to designate interim  
22 counsel to act on behalf of the putative class before the  
23 class certification decision is made.

24 Rule 23(g) Adv. Comm. note.

25 Specifically, Rule 23(g)(1)(B) directs the Court to appoint interim class  
26 counsel who will “fairly and adequately represent the interests of the class.” In  
27 appointing class counsel, the rule directs the Court to consider “any other matter  
28 pertinent to counsel’s ability to fairly and adequately represent the interests of the

1 class,” including the following factors described in Rule 23(g):

- 2 • the work counsel has done in identifying or
- 3 investigating potential claims in the action;
- 4 • counsel’s experience in handling class actions, other
- 5 complex litigation, and claims of the type asserted in
- 6 the action;
- 7 • counsel’s knowledge of the applicable law; and
- 8 • the resources counsel will commit to representing the
- 9 class.

10 Rule 23(g)(1)(A)(i)-(iv). Rule 23(g)(1) additionally provides that the Court may  
11 “consider any other matter pertinent to counsel’s ability to fairly and adequately  
12 represent the interests of the class.” Rule 23(g)(1)(B).

13 As detailed below, Wolf Haldenstein amply satisfies the requirements of Rule  
14 23(g)(1) and Rule 23(g)(3) for appointment as interim lead class counsel.

15 **A. Wolf Haldenstein Has Performed Significant Work In This Case**

16 Working with its co-counsel, Randall S. Newman, Wolf Haldenstein has  
17 dedicated considerable time and resources and performed exhaustive research to  
18 independently investigate the claims asserted in this litigation. As a result of its  
19 considerable efforts, Wolf Haldenstein filed a highly-detailed complaint against  
20 Warner/Chappell after all the pertinent facts were uncovered. Among other things,  
21 Wolf Haldenstein met several times with a leading copyright scholar; parsed through  
22 scores of original copyright and assignment records; reviewed pleadings from  
23 decades-old, previously-filed actions; performed an exacting review of the Copyright  
24 Act of 1909 and its legislative history; visited the Library of Congress, the United  
25 States Copyright Office, as well as various university libraries to collect research;  
26 and reviewed hundreds of books and articles on the subject available in print and  
27 online. The original complaint that Wolf Haldenstein filed was meticulously  
28 researched and persuasively written. Declaration of Betsy C. Manifold In Support of

1 Motion For Appointment of Wolf Haldenstein As Interim Lead Class Counsel  
2 (“Manifold Decl.”) at 1, ¶¶ 2-3.

3 Furthermore, Wolf Haldenstein sought to coordinate the efforts of all  
4 plaintiffs’ counsel in the prosecution of this litigation by moving to consolidate and  
5 coordinate these actions to reduce duplication of efforts and streamline the  
6 prosecution of the actions on behalf of Plaintiffs. Wolf Haldenstein has sought to  
7 include other counsel in the organization of the litigation, and thus far has obtained  
8 the support of Donohue Gallagher Woods, which had independently researched the  
9 validity of Warner/Chappell’s copyright to Happy Birthday to You, to lead the  
10 prosecution for Plaintiffs. Manifold Decl. at 1-2, ¶ 4. Wolf Haldenstein proposes a  
11 streamlined organization for Plaintiffs’ counsel that will best ensure the efficient  
12 prosecution of the action.

13 Wolf Haldenstein has acted to efficiently and meaningfully advance this  
14 litigation, and its efforts have proven successful to date. There is no doubt that the  
15 substantial work Wolf Haldenstein has expended in this litigation demonstrates its  
16 qualification to serve as interim lead class counsel.

17 **B. Wolf Haldenstein Has Extensive Experience In Complex Class**  
18 **Actions And Extensive Resources To Prosecute This Action**

19 As reflected in its firm resume, attached as Exhibit A to the concurrently filed  
20 Manifold Declaration, Wolf Haldenstein is among the most experienced class action  
21 firms in the United States, having represented plaintiffs in nationwide class actions  
22 and other complex, large-scale litigations. The firm’s resume contains a  
23 representative list of the many cases Wolf Haldenstein prosecuted as lead or primary  
24 counsel. The resume also details the results achieved in those cases and numerous  
25 published decisions from the cases in which Wolf Haldenstein served as class  
26 counsel or in a significant role. Quite simply, Wolf Haldenstein’s achievements and  
27 reputation are superb.



1 Courts nationwide recognize Wolf Haldenstein's qualifications to serve as  
2 class counsel. See, e.g., *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*,  
3 2:06-13555 (E.D. Mich.) (praising Wolf Haldenstein at the June 7, 2010 final  
4 approval hearing for doing "an outstanding job of representing [its] clients," as lead  
5 counsel and further commenting that "the conduct of all counsel in this case and the  
6 result they have achieved for all of the parties confirms that they deserve the national  
7 recognition they enjoy."); *Parker Friedland v. Iridium World Communications, Ltd.*,  
8 99-1002 (D.D.C.) (where the Firm was co-lead counsel, Judge Laughrey noted (on  
9 October 16, 2008), "[a]ll of the attorneys in this case have done an outstanding job,  
10 and I really appreciate the quality of work that we had in our chambers as a result of  
11 this case."); *In re Luxottica Group, S.p.A. Sec. Litig.*, 2004 WL 2370650, at \*5  
12 (E.D.N.Y. Oct. 22, 2004) (selecting Wolf Haldenstein lead class counsel based on the  
13 firm's "experience and expertise"); *In re Comdisco Sec. Litig.*, 150 F. Supp. 2d 943,  
14 951 (N.D. Ill. 2001) (noting that Wolf Haldenstein's credentials "are impeccable");  
15 Manifold Decl., Ex. A at 7-8. Recently, in *In Re Dynamic Random Access Memory*  
16 *Antitrust Litigation*, MDL-02-1486 (N.D. Cal. filed Oct. 23, 2002), where the firm  
17 was co-lead counsel in a massive antitrust litigation involving many plaintiffs and  
18 many defendants, Judge Phyllis J. Hamilton stated (on August 15, 2007):

19 I thought that you all did an exceptionally good job of  
20 bringing to me only those matters that really required the  
21 Court's attention. You did an exceptionally good job at  
22 organizing and managing the case, assisting me in  
23 management of the case. There was excellent coordination  
24 between all the various different plaintiffs' counsel with  
25 your group and the other groups that are part of this  
26 litigation. . . . So my conclusion is the case was well  
27 litigated by both sides, well managed as well by both sides.

28 Manifold Decl., Ex. A at 7.

1           Moreover, at the completion of a very contentious and complicated litigation,  
2 Judge Milton Shadur paid the firm a great compliment:

3           It has to be said . . . that the efforts that have been extended  
4 [by Wolf Haldenstein] on behalf of the plaintiff class in the  
5 face of these obstacles have been exemplary. And in my  
6 view [Wolf Haldenstein] reflected the kind of  
7 professionalism that the critics of class actions . . . are  
8 never willing to recognize . . . . I really cannot speak too  
9 highly of the services rendered by class counsel in an  
10 extraordinary difficult situation.

11 *In re Comdisco Sec. Litig.*, No. 01 C 2110 (N.D. Ill. July 14, 2005); Manifold Decl.,  
12 Ex. A at 7-8.

13           In *In re TXU Corp. Derivative Litigation*, Consolidated Cause No. 07-1779  
14 (Dallas County, Tex. 44th Judicial Dist.), Judge Carlos Cortez of the 44th Judicial  
15 District in Dallas County, Texas, noted of Wolf Haldenstein and its co-lead counsel  
16 upon the successful conclusion of litigation:

17           You are exactly, the people in this room are exactly what I  
18 try to tell people week in and week out who come to this  
19 court to serve as jurors, that the profession of law is still  
20 noble, and all of you are a credit to the bar, and I'm  
21 humbled to be in your presence.

22 *In re TXU Corp. Derivative Litigation*, Consolidated Cause No. 07-1779 (Dallas  
23 Cnty., Tex. 44th Jud. Dist.) (April 18, 2008).

24           Presently, Wolf Haldenstein is serving as lead counsel in *Ardon v. City of Los*  
25 *Angeles*, Los Angeles Superior Court, Case No. BC363959, a massive, \$750 million  
26 class action which challenges the validity of the City of Los Angeles's telephone  
27 users tax on behalf of the City's taxpayers, and recently achieved the reversal in the  
28 California Supreme Court of the trial court's dismissal of the class claims. *See*

1 *Ardon*, 52 Cal. 4th 241 (2011). That case is strong evidence not only of the  
2 outstanding quality of Wolf Haldenstein’s work, but also the firm’s dogged  
3 perseverance and its ability to coordinate and lead the efforts of many plaintiffs’  
4 firms against a vigorous, no-holds-barred defense. *See* Manifold Decl., Ex. A at 25,  
5 40. *See also id.* (citing *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013), a  
6 similar class action where Wolf Haldenstein serves as lead counsel in an action  
7 challenging the City of Long Beach’s telephone users tax on behalf of Long Beach  
8 taxpayers).

9 **1. Wolf Haldenstein Will Commit The Resources Necessary To**  
10 **Represent The Class Properly**

11 As demonstrated by the firm’s long and distinguished record of success, Wolf  
12 Haldenstein possesses the ability and willingness to expend the financial and human  
13 resources necessary to prosecute this litigation on behalf of the proposed class.  
14 Indeed, throughout Wolf Haldenstein’s long and proud history, there has never been  
15 any question that the firm could and would devote *millions* of dollars (or more) of  
16 resources if necessary for the successful prosecution of a case.

17 Wolf Haldenstein is a venerable and well-respected full-service law firm,  
18 tracing its roots to 1888, with practice groups in corporate/tax, pension/benefits, real  
19 estate, trusts and estates, healthcare, bankruptcy, limited partnerships, and civil and  
20 commercial litigation, with a particular specialty in complex class action litigation  
21 under both federal and state law. Wolf Haldenstein has offices in New York, New  
22 York; San Diego, California; and Chicago, Illinois. There can be no question that the  
23 proposed class would benefit from the unique depth and breadth of Wolf  
24 Haldenstein’s knowledge and expertise in a number of related areas of the law.

25 The firm’s resources are not merely financial, but also include substantial  
26 expertise and work-product that it has developed in other class action cases that will  
27 be an obvious benefit to the Plaintiffs in this action. Wolf Haldenstein’s ability to  
28 draw from this well-developed bank of information in directing this litigation, and to

1 use the resources of other plaintiffs' counsel throughout the prosecution of the  
2 litigation, will allow it to streamline the litigation and create efficiency in the  
3 process. Moreover, the appointment of Wolf Haldenstein as interim lead class  
4 counsel to direct the litigation has the principal benefit of avoiding the unnecessary  
5 complication, duplication of effort, and waste which could result if no appointment  
6 of a lead counsel is made and all law firms present in the actions work collectively  
7 without leadership.

8 Accordingly, Plaintiffs respectfully ask this Court to appoint Wolf Haldenstein  
9 interim lead class counsel in this action and all subsequently-filed actions and then  
10 authorize Wolf Haldenstein to direct and supervise the activities of other firms that  
11 may represent plaintiffs in future related class actions. There can be no dispute that  
12 Wolf Haldenstein possesses more than sufficient capital and other resources to  
13 pursue this litigation vigorously on behalf of the class and it is committed to doing  
14 so.

15 **2. Lead Counsel Is Also Appropriate To Direct And Manage**  
16 **Complex Cases**

17 It is well-established that a court may appoint lead counsel to direct and  
18 manage complex cases. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 774-75  
19 (9th Cir. 1977); *accord In re Bendectin Litigation*, 857 F.2d 290, 297 (6th Cir. 1988).

20 Appointment of lead counsel eliminates

21 duplication and repetition and in effect the creation of a coordinator of  
22 diffuse plaintiffs through whom motions and discovery proceedings will  
23 be channeled, will most certainly redound to the benefit of all parties to  
24 the litigation. The advantages of this procedure should not be denied  
25 litigants in the federal courts because of misapplied notions concerning  
26 interference with a party's right to his own counsel.

27 *MacAlister v. Guterma*, 263 F.2d 65, 69 (2d Cir. 1958).

28

1 In addition, the *Manual for Complex Litigation* recognizes the benefits of  
2 appointing lead counsel in complex, multiparty litigation:

3 Complex litigation often involves numerous parties with  
4 common or similar interests but separate counsel.  
5 Traditional procedures in which all papers and documents  
6 are served on all attorneys, and each attorney files motions,  
7 presents arguments, and examines witnesses, may waste  
8 time and money, confuse and misdirect the litigation, and  
9 burden the court unnecessarily. Instituting special  
10 procedures for coordination of counsel early in the  
11 litigation will help to avoid these problems.

12 *MCL* § 10.22.

13 In appointing interim lead class counsel in this complex case, lead counsel  
14 should have the following duties and responsibilities: (1) authority to speak for the  
15 plaintiffs in matters regarding pretrial and trial procedure and settlement  
16 negotiations; (2) responsibility to make all work assignments in such manner as to  
17 facilitate the orderly and efficient prosecution of this litigation and to avoid  
18 duplicative or unproductive effort; (3) duty to coordinate all activities and  
19 appearances on behalf of plaintiffs and for the dissemination of notices and orders of  
20 this Court (*i.e.*, no motion, request for discovery or other pretrial proceedings shall be  
21 initiated or filed by plaintiffs except through lead counsel); and (4) responsibility for  
22 communications to and from this Court and for the creation and maintenance of a  
23 master service list of all parties and their respective counsel. Finally, defendant's  
24 counsel may rely upon all agreements made with interim lead class counsel, or other  
25 duly authorized representatives of plaintiffs, and such agreements shall be binding on  
26 all plaintiffs.

27 ///

28 ///

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that the Court appoint  
3 Wolf Haldenstein as interim lead class counsel and grant such other relief as the  
4 Court may deem to be just and proper.

5 Dated: August 5, 2013

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP

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