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

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

 Plaintiffs,

 v.
 WARNER/CHAPPELL MUSIC, INC.,
 et al.,

 Defendants.

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

**DEFENDANTS' REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT
 OF DEFENDANTS' OPPOSITION
 TO PLAINTIFFS' MOTION FOR
 LEAVE TO AMEND AND FILE
 FIFTH AMENDED COMPLAINT**

Courtroom: 650
 Judge: Hon. George H. King,
 Chief Judge

1 Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,
2 “Warner/Chappell”) respectfully request that the Court take judicial notice of the
3 documents attached as Exhibits 4 through 11 to the concurrently filed Declaration of
4 Kelly M. Klaus in Support of Defendants’ Opposition to Plaintiffs’ Motion for
5 Leave to Amend and File Fifth Amended Complaint (“Klaus Declaration”).

6 Federal Rule of Evidence 201 authorizes federal courts to take judicial notice
7 of facts that are “not subject to reasonable dispute . . . [and] can be accurately and
8 readily determined from sources whose accuracy cannot reasonably be questioned.”
9 Fed. R. Evid. 201(b). Judicial notice of Exhibits 4 through 11 to the Klaus
10 Declaration is appropriate because (1) the contents of the documents are alleged and
11 relied upon by Plaintiffs’ in their proposed Fifth Amended Complaint (Exhibits 5, 9,
12 10 and 11); and/or (2) the documents are copies of publicly available news articles,
13 web pages or other publications that indicate information in the public realm at
14 particular times (Exhibits 4, 5, 6, 7 and 8).

15 **I. Documents Whose Contents Plaintiffs Allege In The Fifth Amended**
16 **Complaint**

17 Warner/Chappell requests judicial notice of Exhibits 5, 9, 10 and 11 to the
18 Klaus Declaration. These are documents “whose contents are alleged” in Plaintiffs’
19 proposed Fifth Amended Complaint and whose authenticity cannot be questioned.
20 *In re Silicon Graphics Inc. Secs. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (quoting
21 *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by*
22 *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002)).

23 **Exhibit 5** to the Klaus Declaration is a true and correct copy of an article
24 entitled “Copyright and the World’s Most Popular Song,” by Robert Brauneis, last
25 accessed on November 8, 2015 at
26 http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1111624_code329492.pdf?abstr
27 [actid=1111624&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1111624_code329492.pdf?abstr). Plaintiffs rely on and quote from this article in paragraph
28 8 of the operative Fourth Amended Complaint, as well as in paragraph 8 of the

1 proposed Fifth Amended Complaint. *See* Fourth Am. Compl. ¶ 8 (“Various legal
2 scholars and copyright and music industry experts agree with [Plaintiffs’ theory in
3 this lawsuit], questioning the validity of Defendants’ assertion of copyright in the
4 Song, and supporting the conclusion that Happy Birthday properly exists in the
5 public domain. For example, Professor Robert Brauneis, Professor of Law and Co-
6 Director of the Intellectual Property Law Program at George Washington
7 University, and a leading legal scholar in intellectual property law, has stated that it
8 is ‘doubtful’ that *Happy Birthday* ‘is really still under copyright.’”); Fifth Am.
9 Compl. ¶ 8 (same); Klaus Decl. Ex. 5 at 2 (“[I]t is doubtful that ‘Happy Birthday to
10 You,’ the famous offspring of ‘Good Morning to All,’ is really still under
11 copyright.”).

12 **Exhibit 9** to the Klaus Declaration is a true and correct copy of a letter, which
13 Warner/Chappell produced with the bates numbers WC0001047-48, from Joseph S.
14 Dubin, of Universal City Studios, to Harry Garfield, dated July 1, 1964. Plaintiffs
15 rely on and quote from this letter in paragraph 147 of their proposed Fifth Amended
16 Complaint, as well as paragraphs 144 and 160-62 of the proposed Fifth Amended
17 Complaint.

18 **Exhibit 10** to the Klaus Declaration is a true and correct copy of a letter,
19 which Warner/Chappell produced with the bates number WC0001415, from Robert
20 B. Rosene, from the Office of Counsel of Walt Disney Productions, to Marion
21 Mingle, of the Harry Fox Agency, Inc., dated December 13, 1971. Plaintiffs rely on
22 and quote from this letter in paragraph 152 of their proposed Fifth Amended
23 Complaint, as well as paragraphs 144 and 160-62 of the proposed Fifth Amended
24 Complaint.

25 **Exhibit 11** to the Klaus Declaration is a true and correct copy of a letter,
26 which Warner/Chappell produced with the bates numbers WC0001422-23, from Jay
27 L. Lawton, the Manager of the Music Department at Walt Disney Productions, to
28 Louise Mastromano, of the Harry Fox Agency, Inc., dated May 11, 1983. Plaintiffs

1 rely on and quote from this letter in paragraph 153 of their proposed Fifth Amended
2 Complaint, as well as paragraphs 144 and 160-62 of the proposed Fifth Amended
3 Complaint.

4 **II. Publicly Available News Articles, Web Pages, And Other Publications**

5 Warner/Chappell also requests judicial notice of Exhibits 4, 5, 6, 7, and 8 to
6 the Klaus Declaration. These documents are copies of publicly available news
7 articles, web pages or other publications that indicate information in the public
8 realm at particular times. “[A] court may take judicial notice of publicly available
9 newspaper and magazine articles and web pages that ‘indicate what was in the
10 public realm at the time, not whether the contents of those articles were in fact
11 true.’” *Tarantino v. Gawker Media, LLC*, No. CV 14-603-JFW FFMX, 2014 WL
12 2434647, at *1 n. 1 (C.D. Cal. Apr. 22, 2014) (quoting *Von Saher v. Norton Simon*
13 *Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010)).¹

14 **Exhibit 4** to the Klaus Declaration is a true and correct copy of a Social
15 Science Research Network webpage from which Prof. Brauneis’s article,
16 “Copyright and the World’s Most Popular Song,” is and has been available since
17 (according to the “Date posted”) March 21, 2008. This webpage was last accessed
18 on November 8, 2015 at
19 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1111624. From this webpage
20 the public can download, without charge, the full article “Copyright and the World’s
21 Most Popular Song,” by Robert Brauneis. Exhibit 4 indicates information that was
22 in the public realm as of March 21, 2008, more than five years before Plaintiffs
23 brought this lawsuit.

24 **Exhibit 5** to the Klaus Declaration is a true and correct copy of an article
25 entitled “Copyright and the World’s Most Popular Song,” by Robert Brauneis,
26 downloaded from the SSRN website referenced in the preceding paragraph. It was

27 ¹ As shown above, Exhibit 5 also is subject to notice because it is incorporated by
28 reference in the proposed Fifth Amended Complaint.

1 downloaded on November 8, 2015 at:
2 http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1111624_code329492.pdf?abstr
3 [actid=1111624&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1111624_code329492.pdf?abstr). Exhibit 5 indicates information that was in the public
4 realm as of March 21, 2008, when the article was made publicly available
5 (according to the “Date posted” on Exhibit 4), more than five years before Plaintiffs
6 brought this lawsuit.

7 **Exhibit 6** to the Klaus Declaration is a true and correct copy of the home
8 page of the online repository of documents relating to *Happy Birthday* that Prof.
9 Brauneis made publicly available in March 2008, according to Page 2 and footnote
10 10 of Exhibit 5 and in Robert Brauneis, Copyright and the World’s Most Popular
11 Song, 56 J. Copyright Soc’y U.S.A. 335, 338 n.10 (2009). Exhibit 6 indicates
12 information that was in the public realm as of March 21, 2008, more than five years
13 before Plaintiffs brought this lawsuit.

14 **Exhibit 7** to the Klaus Declaration is a true and correct copy of a transcript of
15 the July 18, 2008 broadcast of the ABC television news program “World News
16 Saturday,” as obtained by our office from the online transcript-ordering service for
17 ABC News (www.transcripts.tv) on November 8, 2015. Exhibit 7 indicates
18 information that was in the public realm as of July 18, 2008, nearly five years before
19 Plaintiffs brought this lawsuit.

20 **Exhibit 8** to the Klaus Declaration is a true and correct copy of an article
21 entitled “Sing ‘Happy Birthday’ and It’ll Cost You,” by Joel Siegel and John
22 Cochran, *ABC News*, dated July 21, 2008, last accessed on November 8, 2015 at
23 <http://abcnews.go.com/WN/story?id=5413561&page=1>. Exhibit 8 indicates
24 information that was in the public realm as of July 21, 2008, almost five years
25 before Plaintiffs brought this lawsuit.

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