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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)
15	PRODUCTIONS CORP., <i>et al.</i> ,)	
16		)	PLAINTIFFS' EX PARTE
17	Plaintiffs,	)	APPLICATION FOR LEAVE TO FILE
18		)	PLAINTIFF ROBERT SIEGEL'S
19	v.	)	DECLARATION IN FURTHER
20		)	SUPPORT OF REPLY TO MOTION
21	WARNER/CHAPPELL MUSIC,	)	FOR LEAVE TO AMEND AND FILE
22	INC., <i>et al.</i>	)	FIFTH AMENDED COMPLAINT
23)	
24	Defendants.	)	Judge: Hon. George H. King,
25		)	Chief Judge
26		)	Room: 650
27)	
28)	

1 **TO DEFENDANTS AND THEIR COUNSEL OF RECORD:**

2 Pursuant to Local Rule 7-19, Plaintiffs Good Morning To You Productions
3 Corp., Robert Siegel, Rupa Marya, and Majar Productions, LLC (together,
4 “Plaintiffs”) hereby submit this Ex Parte Application (“Application”) for Leave to
5 File Plaintiff Robert Siegel’s Declaration in Further Support of Reply to Plaintiffs’
6 Motion for Leave to Amend and File Fifth Amended Complaint (“Motion”). This Ex
7 Parte Application is based upon this Application, the Memorandum of Points and
8 Authorities in Support Thereof, and the supporting Declaration of Betsy C. Manifold
9 (“Manifold Decl.”) together with Exhibit A attached thereto.

10 Pursuant to Local Rule 7-19.1, Plaintiffs notified Defendants’ counsel on
11 November 19, 2015 at 7:39 a.m. about this ex parte application. Details are provided
12 both below and in the Manifold Declaration.

13 Ex parte relief is necessary because the parties have fully briefed the Motion
14 and are now waiting for a ruling from this Court, and Plaintiffs request that Mr.
15 Siegel’s declaration be considered in connection with their reply brief.

16 **I. CONTACT INFORMATION FOR OPPOSING COUNSEL**

17 Pursuant to Local Rule 7-19, Plaintiffs provide the following contact
18 information for opposing counsel:

19 Kelly M. Klaus	Glen Pomerantz
20 Adam I. Kaplan	Melinda E. LeMoine
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27 On November 18, 2015 at 1:08 p.m., Plaintiffs’ counsel requested Defendants’
28

1 counsel to stipulate to the late filing of Mr. Siegel’s declaration. Manifold Decl., ¶ 4.
2 At 10:26 p.m. on that same day, Defendants’ counsel advised that they would not
3 stipulate to the late filing and that they took no position as to whether the Court
4 should allow the late filing. *Id.* In response, pursuant to Local Rule 7-19.1, on
5 November 19, 2015 at 7:39 a.m., Plaintiffs’ counsel notified Defendants’ counsel
6 that Plaintiffs would be filing an ex parte application. *Id.* No hearing date is
7 requested, but, if the Court determines that a hearing would be helpful, Plaintiffs
8 could appear at any time convenient to the Court.

9 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

10 Plaintiffs filed a Motion for Leave to Amend and File a Fifth Amended
11 Complaint (“Motion”) on October 29, 2015 (Dkt. 258). On November 2, 2015, this
12 Court entered an order granting the parties’ joint stipulation expediting the briefing
13 schedule on Plaintiffs’ Motion. Under the expedited filing schedule, Defendants¹
14 opposed the Motion on November 9, 2015 (Dkt. 264), and Plaintiffs filed their Reply
15 in support of the Motion on November 12, 2015 (Dkt. 270).

16 Plaintiff Robert Siegel was unable to provide Plaintiffs’ counsel with his
17 declaration in support of the Reply until after November 12, 2015 because he was
18 unavailable. Manifold Decl., ¶ 3. On November 18, 2015, Plaintiffs’ counsel
19 requested Defendants’ counsel to stipulate to the filing of Mr. Siegel’s declaration.
20 *Id.*, ¶ 4. That same day, Defendants’ counsel advised Plaintiffs’ counsel that he
21 would not stipulate to the late filing, thus necessitating this Ex Parte Application. *Id.*
22 Additionally, Defendants’ counsel also advised that he took no position as to whether
23 the Court should allow the late filing. *Id.*

24 Good cause exists to allow the late filing because Plaintiff Robert Siegel was
25 unavailable prior to the filing of Plaintiffs’ Reply. *Id.*, ¶ 3; *See Connor v. California,*

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27 ¹ “Defendants” refers to Defendants Warner/Chappell Music, Inc. and Summy-
28 Birchard, Inc.

1 1:10-cv-01967-AWI-BAM, 2012 U.S. Dist. LEXIS 166596, at *3 (E.D. Cal. Nov.
2 20, 2012) (good cause existed to consider declaration submitted for first time in reply
3 to motion for summary judgment because declarant was unavailable at time motion
4 was due). Just as the other Plaintiffs declared, Mr. Siegel did not become aware of
5 copyright dispute until the filing of this lawsuit and prior to that time, he had no
6 reason to suspect that Defendants did not own a copyright to *Happy Birthday to You*.
7 Siegel Declaration, ¶¶ 3, 4 (attached as Ex. A to the Manifold Declaration). This
8 declaration provides further support to Plaintiffs' argument that the delayed
9 discovery rule should apply and therefore the amendment is not futile.

10 **III. CONCLUSION**

11 Based on the foregoing, Plaintiffs respectfully request that this Court enter an
12 order granting Plaintiffs' Ex Parte Application for Leave to File Robert Siegel's
13 Declaration.

14
15 Dated: November 19, 2015

Respectfully submitted,

**WOLF HALDENSTEIN ADLER
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17 By: /s/ Betsy C. Manifold
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