

1 Betsy C. Manifold (182450)
 manifold@whafh.com
 2 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
 3 750 B Street, Suite 2770
 San Diego, CA 92101
 4 Telephone: 619/239-4599
 Facsimile: 619/234-4599

5 *Interim Lead Class Counsel for Plaintiffs*

6 [Additional Counsel on Signature Page]

7
 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

10 GOOD MORNING TO YOU
 11 PRODUCTIONS CORP.;
 12 ROBERT SIEGEL;
 13 RUPA MARYA; and
 MAJAR PRODUCTIONS, LLC,
 14 On Behalf of Themselves and All
 15 Others Similarly Situated,

16 Plaintiffs,

17 v.

18
 19 WARNER/CHAPPELL MUSIC,
 INC.; and SUMMY-BIRCHARD,
 20 INC.,

21 Defendants.

) Lead Case No. CV 13-04460-GHK (MRWx)
) **FIFTH AMENDED CONSOLIDATED**
) **COMPLAINT FOR:**
) **(1) DECLARATORY JUDGMENT**
) **(28 U.S.C. § 2201);**
) **(2) DECLARATORY AND**
) **INJUNCTIVE RELIEF AND**
) **DAMAGES (28 U.S.C. § 2202);**
) **(3) VIOLATIONS OF CALIFORNIA’S**
) **UNFAIR COMPETITION LAWS**
) **(Bus. & Prof. Code §§ 17200 et seq.);**
) **(4) BREACH OF CONTRACT;**
) **(5) COMMON LAW MONEY HAD**
) **AND RECEIVED;**
) **(6) RESCISSION FOR FAILURE OF**
) **CONSIDERATION; and**
) **(7) VIOLATIONS OF CALIFORNIA’S**
) **FALSE ADVERTISING LAWS**
) **(Bus. & Prof. Code §§ 17500 et seq.)**
)
)
) **CLASS ACTION**
) **DEMAND FOR JURY TRIAL**

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1 Plaintiffs, Good Morning to You Productions Corp. (“GMTY”), Robert
2 Siegel (“Siegel”), Rupa Marya d/b/a/ Rupa Marya & The April Fishes (“Rupa”), and
3 Majar Productions, LLC (“Majar”) (collectively herein “Plaintiffs”), on behalf of
4 themselves and all others similarly situated, by their undersigned attorneys, as and
5 for their Fourth Amended Consolidated Complaint For: (1) Declaratory Judgment
6 (28 U.S.C. § 2201); (2) Declaratory and Injunctive Relief and Damages (28 U.S.C. §
7 2202); (3) Violations of California’s Unfair Competition Laws (Bus. & Prof. Code
8 §§ 17200 *et seq.*); (4) Breach of Contract; (5) Common Law Money Had and
9 Received; (6) Rescission for Failure of Consideration; and (7) Violations of
10 California’s False Advertising Laws (Bus. & Prof. Code §§ 17500 *et seq.*) against
11 defendants Warner/Chappell Music, Inc. (“Warner/Chappell”) and Summy-
12 Birchard, Inc. (“SBI”) (collectively “Defendants”), hereby allege as follows:

13 **JURISDICTION AND VENUE**

14 1. The Court has subject-matter jurisdiction over this action pursuant to
15 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory
16 and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant
17 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; pursuant to the Class
18 Action Fairness Act, 28 U.S.C. § 1332(d)(2); and supplemental jurisdiction pursuant
19 to 28 U.S.C. § 1367 over the entire case or controversy.

20 2. The Court has personal jurisdiction and venue is proper in this District
21 under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in
22 this Judicial District where both Defendants’ principal places of business are located
23 and where they regularly conduct business.

24 3. Paragraph 8 of the Film and Synchronization and Performance License
25 (“Synchronization License”) by and between assignee plaintiff Siegel and defendant
26 Warner/Chappell states: “this license has been entered into in, and shall be
27 interpreted in accordance with the laws of the state of California, and any action or
28

1 proceeding concerning the interpretation and/or enforcement of this license shall be
2 heard only in the state or federal courts situated in Los Angeles county. . . .”
3 Defendant Warner/Chappell requires any action or proceeding related thereto to be
4 brought in this District under the Synchronization License.

5 INTRODUCTION

6 4. This is an action to declare that Defendants do not own a copyright to
7 the world’s most popular song, *Happy Birthday to You* (the “Song”), that if
8 Defendants own any copyright to the Song, it is limited to four specific piano
9 arrangements or an obscure second verse that has no commercial value, that any
10 other copyright to the Song that Defendants may own or ever owned are invalid or
11 have expired, and that the Song is dedicated to public use and in the public domain;
12 and in turn to declare that Defendants must return millions of dollars of unlawful
13 licensing fees collected by defendant Warner/Chappell pursuant to its wrongful
14 assertion of copyright ownership of the Song.

15 5. According to the United States Copyright Office (“Copyright Office”),
16 a “*musical composition* consists of music, including any accompanying words, and
17 is normally registered as a work of the performing arts.” Copyright Office Circular
18 56A, “Copyright Registration of Musical Compositions and Sound Recordings,” at 1
19 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a
20 musical composition generally is the composer, and the lyricist (if a different
21 person). *Id.*

22 6. More than 120 years after the melody to which the simple lyrics of
23 *Happy Birthday to You* is set was first published, defendant Warner/Chappell
24 boldly, but wrongfully and unlawfully, insists that it owns the copyright to *Happy*
25 *Birthday to You*, and with that copyright the exclusive right to authorize the Song’s
26 reproduction, distribution, and public performances pursuant to federal copyright
27 law. At all relevant times, Warner/Chappell declared in the first two sentences on
28 the “About Us” page of its website that “Warner/Chappell Music is [Warner Music

1 Group]’s award-winning global music publishing company. The Warner/Chappell
2 Music catalog includes standards such as ‘Happy Birthday To You’ . . .” (*available*
3 *at* www.warnerchappell.com/about.jsp?currenttab=about_us as of June 18, 2013).
4 Defendant Warner/Chappell either has silenced those wishing to record or perform
5 *Happy Birthday to You*, or has extracted millions of dollars in unlawful licensing
6 fees from those unwilling or unable to challenge its ownership claims.

7 7. Irrefutable documentary evidence, some dating back to 1893, shows
8 that if defendant Warner/Chappell owned or owns any copyrights to *Happy Birthday*
9 *to You*, those rights were and are limited to the extremely narrow right to reproduce
10 and distribute specific piano arrangements for the Song, or an obscure second verse
11 that has no commercial value, which were published in 1935. That same evidence
12 also shows that if Warner/Chappell ever owned a copyright to any other part of the
13 Song, it was invalid or expired no later than 1921. Significantly, no court has ever
14 adjudicated either the scope or validity of the Defendants’ claimed interest in *Happy*
15 *Birthday to You*, nor in the Song’s melody or its familiar lyrics, which are,
16 themselves, independent works.

17 8. Various legal scholars and copyright and music industry experts agree
18 with the foregoing, questioning the validity of Defendants’ assertion of copyright in
19 the Song, and supporting the conclusion that *Happy Birthday* properly exists in the
20 public domain. For example, Professor Robert Brauneis, Professor of Law and Co-
21 Director of the Intellectual Property Law Program at George Washington
22 University, and a leading legal scholar in intellectual property law, has stated that it
23 is “doubtful” that *Happy Birthday* “is really still under copyright.”

24 9. Plaintiffs GMTY, Siegel, Rupa, and Majar, on behalf of themselves and
25 all others similarly situated, seek a declaration that *Happy Birthday to You* is
26 dedicated to public use and is in the public domain as well as monetary damages and
27 restitution of all the unlawful licensing fees that defendants have improperly
28 collected from Plaintiffs and all other Class members.

1 **PLAINTIFFS**

2 10. Plaintiff GMTY is a New York corporation with its principal place of
3 business located in New York County. Under a claim of copyright by defendant
4 Warner/Chappell, on or about March 26, 2013, GMTY paid defendant
5 Warner/Chappell the sum of \$1,500 for a synchronization license to use *Happy*
6 *Birthday to You* and on or about April 24, 2013, GMTY entered into a
7 synchronization license with Warner/Chappell, as alleged more fully herein.

8 11. Plaintiff Robert Siegel is the assignee of BIG FAN PRODUCTIONS,
9 INC. (“BIG FAN”), an inactive New York corporation and a resident of New York,
10 New York. Under a claim of copyright by defendant Warner/Chappell, on or about
11 September 1, 2009, BIG FAN paid to defendant Warner/Chappell the sum of \$3,000
12 for the Synchronization Licenses to use *Happy Birthday to You*, as alleged more
13 fully herein. Plaintiff Siegel, the then-President of BIG FAN, was assigned BIG
14 FAN’s rights and claims, including those pertaining to the Synchronization License
15 pursuant to Paragraph 7 thereof between defendant Warner/Chappell and BIG FAN,
16 entered into on or about July 20, 2009.

17 12. Plaintiff Rupa is a musician and leader of the band entitled “Rupa &
18 The April Fishes” (“RTAF”), and a member of the American Society of Composers,
19 Authors and Publishers (“ASCAP”). Plaintiff Rupa is a resident of Alameda
20 County, California. RTAF recorded *Happy Birthday to You* at a live show in San
21 Francisco, California, on April 27, 2013. Under a claim of copyright by defendant
22 Warner/Chappell, on or about June 17, 2013, plaintiff Rupa d/b/a RTAF paid to
23 defendant Warner/Chappell the sum of \$455 for a compulsory license pursuant to 17
24 U.S.C. § 115 (commonly known as a “mechanical license”) to use *Happy Birthday*
25 *to You*, as alleged more fully herein.

26 13. Plaintiff Majar is a Los Angeles-based film production company that
27 produced the award winning documentary film “*No Subtitles Necessary: László &*
28 *Vilmos*” (hereafter, “*No Subtitles Necessary*” or the “Film”). The Film follows the

1 lives of renowned cinematographers László Kovacs (“Kovacs”) and Vilmos
2 Zsigmond (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
3 present day. As film students in Hungary, Kovacs and Zsigmond shot footage of the
4 Russian invasion of Budapest and subsequently risked their lives to smuggle it out
5 of the country. They fled to America and settled in Hollywood, eventually saving
6 enough money to buy their own 16mm camera to begin shooting movies. Both rose
7 to prominence in the late 1960’s and 1970’s having shot films such as “Easy Rider,”
8 “Five Easy Pieces,” “McCabe and Mrs. Miller,” “Deliverance,” “Paper Moon,” and
9 “Close Encounters of the Third Kind.” *No Subtitles Necessary* tells the story of
10 their lives and careers.

11 **DEFENDANTS**

12 14. Defendant Warner/Chappell is a Delaware corporation with its
13 principal place of business located at 10585 Santa Monica Boulevard, Los Angeles,
14 California 90025 and regularly conducts business within this Judicial District.

15 15. Defendant SBI is a Wyoming corporation with its principal place of
16 business located at 10585 Santa Monica Boulevard, Los Angeles, California 90025.
17 SBI regularly conducts business within this Judicial District, where it may be found.
18 On information and belief, SBI is a subsidiary of Warner/Chappell, having been
19 acquired by Warner/Chappell in or around 1998.

20 **FACTUAL BACKGROUND**

21 ***Good Morning to All and the Popular Adoption of Happy Birthday to You***

22 16. Sometime prior to 1893, Mildred J. Hill (“Mildred Hill”) and her sister
23 Patty Smith Hill (“Patty Hill”) (Mildred and Patty Hill are collectively referred to as
24 the “Hill Sisters”) authored a written manuscript containing sheet music for 73
25 songs composed or arranged by Mildred Hill, with words written and adapted by
26 Patty Hill.

27 17. The manuscript included *Good Morning to All*, a song written by the
28 Hill Sisters.

1 18. On or about February 1, 1893, the Hill Sisters sold and assigned all
2 their right, title, and interest in the written manuscript to Clayton F. Summy
3 (“Summy”) in exchange for 10 percent of retail sales of the manuscript. The sale
4 included the song *Good Morning to All*.

5 19. In or around 1893, Summy published the Hill Sisters’ written
6 manuscript with an introduction by Anna E. Bryan (“Bryan”) in a songbook titled
7 *Song Stories for the Kindergarten*. *Song Stories for the Kindergarten* included the
8 song *Good Morning to All*.

9 20. On or about October 16, 1893, Summy filed a copyright application
10 (Reg. No. 45997) with the Copyright Office for *Song Stories for the Kindergarten*.

11 21. On the October 16, 1893, copyright application, Summy claimed to be
12 the copyright’s proprietor, but not the author of the copyrighted works.

13 22. *Song Stories for the Kindergarten* bears a copyright notice reading
14 “Copyright 1893, by Clayton F. Summy.”

15 23. As proprietor of the 1893 copyright in *Song Stories for the*
16 *Kindergarten*, Summy asserted copyright ownership in the compilation of songs, as
17 well as, the individual songs published therein, including *Good Morning to All*.

18 24. The lyrics to *Good Morning to All* are:

19 Good morning to you
20 Good morning to you
21 Good morning dear children
22 Good morning to all.

23 25. The lyrics to *Happy Birthday to You* are set to the melody from the
24 song *Good Morning to All*. As nearly everyone knows, the lyrics to *Happy Birthday*
25 *to You* are:

26 Happy Birthday to You
27 Happy Birthday to You
28 Happy Birthday dear [NAME]

1 Happy Birthday to You.

2 26. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
3 *for the Kindergarten*.

4 27. On or about January 14, 1895, Summy incorporated the Clayton F.
5 Summy Company (“Summy Co.”) under the laws of the State of Illinois for a
6 limited term of 25 years. On that same date, Summy purported to assign all his
7 right, title, and interest in *Song Stories for the Kindergarten* to Summy Co.

8 28. In 1896, Summy published a new, revised, illustrated, and enlarged
9 version of *Song Stories for the Kindergarten*, which contained eight previously
10 unpublished songs written by the Hill Sisters as well as illustrations by Margaret
11 Byers.

12 29. On or about June 18, 1896, Summy filed a copyright application (Reg.
13 No. 34260) with the Copyright Office for the 1896 publication of *Song Stories for*
14 *the Kindergarten*.

15 30. On its June 18, 1896, copyright application, Summy again claimed to
16 be the copyright’s proprietor, but (again) not the author of the copyrighted works.

17 31. The 1896 version of *Song Stories for the Kindergarten* bears a
18 copyright notice reading “Copyright 1896, by Clayton F. Summy.”

19 32. As proprietor of the 1896 copyright in the revised *Song Stories for the*
20 *Kindergarten*, Summy owned the rights to both the songbook as a compilation and
21 the individual songs published therein, including *Good Morning to All*.

22 33. The lyrics to *Happy Birthday to You* were **not** published in the 1896
23 version of *Song Stories for the Kindergarten*.

24 34. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
25 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday*
26 *School*. One of those songs included in *Song Stories for the Sunday School* was
27 *Good Morning to All*. And yet again, neither the song *Happy Birthday* nor the lyrics
28 to *Happy Birthday* were published in “*Song Stories for the Sunday School*.”

1 35. On or about March 20, 1899, Summy Co. filed a copyright application
2 (Reg. No. 20441) with the Copyright Office for *Song Stories for the Sunday School*.

3 36. On the 1899 copyright application, Summy Co. claimed to be the
4 copyright's proprietor, but not the author of the copyrighted works.

5 37. The title page to *Song Stories for the Sunday School* states:

6 This collection of songs has been published in response to earnest requests
7 from various sources. They are taken from the book, *Song Stories for the*
8 *Kindergarten* by the MISSES HILL, and ***are the copyright property of the***
9 ***publishers***. (Emphasis added).

10 38. *Song Stories for the Sunday School* bears a copyright notice reading
11 "Copyright 1899 by Clayton F. Summy Co."

12 39. As proprietor of the 1899 copyright in *Song Stories for the Sunday*
13 *School*, Summy Co. owned the rights to both the songbook as a compilation and the
14 individual songs published therein, including *Good Morning to All*.

15 40. The lyrics to *Happy Birthday to You* were ***not*** published in *Song Stories*
16 *for the Sunday School*.

17 41. Even though the lyrics to *Happy Birthday to You* and the song *Happy*
18 *Birthday to You* had not been fixed in a tangible medium of expression, the public
19 began singing *Happy Birthday to You* no later than the early 1900s.

20 42. For example, in the January 1901 edition of *Inland Educator and*
21 *Indiana School Journal*, the article entitled "First Grade Opening Exercises"
22 described children singing the words "happy birthday to you," but did not print the
23 Song's lyrics or melody.

24 43. In or about February, 1907, Summy Co. republished the song *Good*
25 *Morning to All* as an individual musical composition.

26 44. On or about February 7, 1907, Summy Co. filed a copyright application
27 (Reg. No. 142468) with the Copyright Office for the song *Good Morning to All*.

28 45. The lyrics to *Happy Birthday to You* do ***not*** appear in the 1907

1 publication of *Good Morning to All*.

2 46. In 1907, Fleming H. Revell Co. (“Revell”) published the book *Tell Me*
3 *a True Story*, arranged by Mary Stewart, which instructed readers to:

4 Sing: “Good-bye to you, good-bye to you, good-bye dear children, good-
5 bye to you.” Also: “Good-bye dear teacher.” (From “Song Stories for the
6 Sunday-School,” published by Summy & Co.)

7 Sing: “Happy Birthday to You.” (Music same as “Good-bye to You.”)

8 47. On or about May 18, 1909, Revell filed an application (Reg. No.
9 A239690) with the Copyright Office for *Tell Me a True Story*.

10 48. *Tell Me a True Story* did **not** include the lyrics to *Happy Birthday to*
11 *You*.

12 49. Upon information and belief, the lyrics to *Happy Birthday to You*
13 (without the sheet music for the melody) were first published in 1911 by the Board
14 of Sunday Schools of the Methodist Episcopal Church (“Board of Sunday Schools”)
15 in *The Elementary Worker and His Work*, by Alice Jacobs and Ermina Chester
16 Lincoln, as follows:

17 Happy birthday to you, Happy birthday to you, Happy birthday, dear John,
18 Happy birthday to you. (Sung to the same tune as the “Good Morning”)

19 [NOTE: The songs and exercises referred to in this program may be found in
20 these books:... “Song Stories for the Sunday School,” by Patty Hill.]

21 50. On or about January 6, 1912, the Board of Sunday Schools filed a
22 copyright application (Reg. No. A303752) with the Copyright Office for *The*
23 *Elementary Worker and His Work*.

24 51. *The Elementary Worker and His Work* attributed authorship or
25 identified the copyrights to many of the works included in the book. Significantly, it
26 did **not** attribute authorship or identify any copyright for the song *Happy Birthday to*
27 *You*.

28 52. On or about January 14, 1920, Summy Co. was dissolved in accordance

1 with its limited (not perpetual) 25-year term of incorporation. Summy Co. did not
2 extend or renew the 1893 (Reg. No. 45997) or 1907 (Reg. No. 142468) copyrights
3 prior to its dissolution.

4 53. Upon information and belief, by 1912, various companies (such as
5 Cable Company Chicago) had begun producing unauthorized printings of sheet
6 music which included the song known today as *Happy Birthday* (i.e., the melody of
7 Good Morning to You with the lyrics changed to those of *Happy Birthday*). On
8 information and belief, Cable Company Chicago never asserted copyright ownership
9 in *Happy Birthday*.

10 54. On information and belief, in or before 1922, pursuant to authority granted to
11 it by Patty or Jessica Hill, Summy Co. authorized The Cable Company
12 (Chicago) ("Cable Co.") to publish the music and lyrics to Happy Birthday to
13 You. In 1922, pursuant to that authority, Cable Co. published the revised
14 fourth edition of The Everyday Song Book with the music and lyrics to
15 Happy Birthday to You, including the following note: "Special permission
16 through courtesy of The Clayton F. Summy Co." The Cable Company
17 registered a copyright for the fourth edition of The Everyday Song Book in
18 1921, which it did not renew. The publication of The Everyday Song Book in
19 1922 was without a copyright notice.

20 55.

21 ***Copyright History of Good Morning to All***

22 56. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
23 to the original *Song Stories for the Kindergarten*, *Song Stories for the Sunday*
24 *School*, and *Good Morning to All* were vested solely in their proprietor, Summy Co.

25 57. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
26 to the revised *Song Stories for the Kindergarten* were vested solely in their
27 proprietor, Summy Co.

28 58. The copyright to the original *Song Stories for the Kindergarten* (Reg.

1 No. 45997) was not extended by Summy Co., and consequently expired on October
2 16, 1921. The original *Song Stories for the Kindergarten*, including the song *Good*
3 *Morning to All*, became dedicated to public use and fell into the public domain by
4 no later than that date.

5 59. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
6 No. 34260) was not extended by Summy, and consequently expired on June 18,
7 1924. The revised *Song Stories for the Kindergarten* became dedicated to public
8 use and fell into the public domain by no later than that date.

9 60. In or around March 1924, the sheet music (with accompanying lyrics)
10 to *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
11 compiled, and edited by Robert H. Coleman (“Coleman”). Upon information and
12 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*
13 *You* were published together.

14 61. Coleman did not claim authorship of the song entitled *Good Morning*
15 *to You* or the lyrics to *Happy Birthday to You*. Although *Harvest Hymns* attributed
16 authorship or identified the copyrights to many of the works included in the book, it
17 did **not** attribute authorship or identify any copyright for *Good Morning to You* or
18 *Happy Birthday to You*.

19 62. On or about March 4, 1924, Coleman filed a copyright application
20 (Reg. No. A777586) with the Copyright Office for *Harvest Hymns*. On or about
21 February 11, 1952, the copyright was renewed (Reg. No. R90447) by the Sunday
22 School Board of the Southern Baptist Convention.

23 63. On or about April 15, 1925, Summy incorporated a new Clayton F.
24 Summy Co. (“Summy Co. II”) under the laws of the State of Illinois. Upon
25 information and belief, Summy Co. II was not a successor to Summy Co.; rather, it
26 was incorporated as a new corporation.

27 64. The sheet music (with accompanying lyrics) to *Happy Birthday to You*
28 was again published in 1928 in the compilation *Children’s Praise and Worship*,

1 compiled and edited by A.L. Byers, Bessie L. Byrum, and Anna E. Koglin (“Byers,
2 Byrum & Koglin”). Upon information and belief, *Children’s Praise and Worship*
3 was the first time the song was published under the title *Happy Birthday to You*.

4 65. On or about April 7, 1928, Gospel Trumpet Co. (“Gospel”) filed a
5 copyright application (Reg. No. A1068883) with the Copyright Office for
6 *Children’s Praise and Worship*.

7 66. *Children’s Praise and Worship* attributed authorship or identified the
8 copyrights to many of the works included in the book. Significantly, it did *not*
9 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

10 67. *Children’s Praise and Worship* did not provide any copyright notice for
11 the combination of *Good Morning to All* with the lyrics to *Happy Birthday to You*,
12 nor did it include the names of Mildred Hill or Patty Hill and did not attribute any
13 authorship or ownership to the Hill Sisters.

14 68. Upon information and belief, the Hill Sisters had not fixed the lyrics to
15 *Happy Birthday to You* or the song *Happy Birthday to You* in a tangible medium of
16 expression, if ever, at any time before Gospel published *Children’s Praise and*
17 *Worship* in 1928.

18 69. Upon information and belief, Summy sold Summy Co. II to John F.
19 Sengstack (“Sengstack”) in or around 1930.

20 70. Upon information and belief, on or about August 31, 1931, Sengstack
21 incorporated a third Clayton F. Summy Co. (“Summy Co. III”) under the laws of the
22 State of Delaware. Upon information and belief, Summy Co. III was not a
23 successor to Summy Co. or Summy Co. II; rather, it was incorporated as a new
24 corporation.

25 71. On May 17, 1933, Summy Co. II was dissolved for failure to pay taxes.

26 72. On July 28, 1933, *Happy Birthday to You* was used in the world’s first
27 singing telegram.

28 73. On September 30, 1933, the Broadway show *As Thousands Cheer*,

1 produced by Sam Harris with music and lyrics written by Irving Berlin, began using
2 the song *Happy Birthday to You* in public performances.

3 74. On August 14, 1934, Jessica Hill, a sister of Mildred Hill and Patty
4 Hill, commenced an action against Sam Harris in the Southern District of New
5 York, captioned *Hill v. Harris*, Eq. No. 78-350, claiming that the performance of
6 *Happy to Birthday to You* in *As Thousands Cheer* infringed on the Hill Sisters' 1893
7 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no claim in that
8 action regarding *Happy Birthday to You*, alone or in combination with *Good*
9 *Morning to All*.

10 75. On January 21, 1935, Jessica Hill commenced an action against the
11 Federal Broadcasting Corp. in the Southern District of New York, captioned *Hill v.*
12 *Federal Broadcasting Corp.*, Eq. No. 79-312, claiming infringement on the Hill
13 Sisters' 1893 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no
14 claim in that action regarding *Happy Birthday to You*, alone or in combination with
15 *Good Morning to All*.

16 76. In 1934 and 1935, Jessica Hill sold and assigned to Summy Co. III
17 certain piano arrangements of *Good Morning to All*, including publishing, public
18 performance, and mechanical reproduction rights, copyright, and extension of
19 copyright in exchange for a percentage of the retail sales revenue from the sheet
20 music.

21 ***Applications for Copyright for New Musical Arrangement***

22 77. On or about December 29, 1934, Summy Co. III filed an Application
23 for Copyright for Republished Musical Composition with new Copyright Matter
24 (Reg. No. E45655) with the Copyright Office for the song *Happy Birthday*.

25 78. In that December 1934 Application for Copyright, Summy Co. III
26 claimed to be the proprietor of the copyright as a work for hire by Preston Ware
27 Orem ("Orem") and claimed the copyrighted new matter as "arrangement by piano
28 solo."

1 79. The lyrics to *Happy Birthday to You* were not included on the work
2 registered with the Copyright Office as Reg. No. E45655. The application did not
3 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
4 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
5 *to All*.

6 80. The work registered with the Copyright Office as Reg. No. E45655 was
7 not eligible for federal copyright protection in that it consisted entirely of
8 information that was common property and contained no original authorship, except
9 as to the arrangement itself.

10 81. On or about February 18, 1935, Summy Co. III filed an Application for
11 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
12 No. E46661) with the Copyright Office for the song *Happy Birthday*.

13 82. In that February 1935 Application for Copyright, Summy Co. III
14 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
15 the copyrighted new matter as “arrangement for four hands at one piano.”

16 83. The lyrics to *Happy Birthday to You* were not included on the work
17 registered with the Copyright Office as Reg. No. E46661. The application did not
18 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
19 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
20 *to All*.

21 84. The work registered with the Copyright Office as Reg. No. E46661 was
22 not eligible for federal copyright protection in that it consisted entirely of
23 information that was common property and contained no original authorship, except
24 as to the arrangement itself.

25 85. On or about April 5, 1935, Summy Co. III filed an Application for
26 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
27 No. E47439) with the Copyright Office for the song *Happy Birthday*.

28 86. In that April 1935 Application for Copyright, Summy Co. III claimed

1 to be the proprietor of the copyright as a work for hire by Orem and claimed the
2 copyrighted new matter as “arrangement of second piano part.”

3 87. The lyrics to *Happy Birthday to You* were not included on the work
4 registered with the Copyright Office as Reg. No. E47439. The application did not
5 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
6 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
7 *to All*.

8 88. The work registered with the Copyright Office as Reg. No. E47439 was
9 not eligible for federal copyright protection in that it consisted entirely of
10 information that was common property and contained no original authorship, except
11 as to the arrangement itself.

12 89. On or about April 5, 1935, Summy Co. III filed an Application for
13 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
14 No. E47440) with the Copyright Office for the song *Happy Birthday*.

15 90. In that additional April 1935 Application for Copyright, Summy Co. III
16 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
17 the copyrighted new matter as “arrangement for six hands at one piano.”

18 91. The lyrics to *Happy Birthday to You* were not included on the work
19 registered with the Copyright Office as Reg. No. E47440. The application did not
20 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
21 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
22 *to All*.

23 92. The work registered with the Copyright Office as Reg. No. E47440 was
24 not eligible for federal copyright protection in that it consisted entirely of
25 information that was common property and contained no original authorship, except
26 as to the arrangement itself.

27 93. On December 9, 1935, Summy Co. III filed an Application for
28 Copyright for Republished Musical Composition with new Copyright Matter (Reg.

1 No. E51988) with the Copyright Office for *Happy Birthday to You*.

2 94. In that December 1935 Application for Copyright, Summy Co. III
3 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
4 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
5 Chorus and revised text.” Upon information and belief, Plaintiffs allege that
6 Forman did not write the familiar first verse lyrics to *Happy Birthday to You*. The
7 sheet music deposited with the application credited Forman only for the
8 arrangement and for the obscure second verse lyrics that lack commercial value, not
9 for the familiar first verse lyrics, and did not credit the Hill Sisters with writing the
10 lyrics to *Happy Birthday to You*.

11 95. For the first time, the lyrics to *Happy Birthday to You*, including an
12 obscure second verse that lacks commercial value as the revised text, were included
13 on the work registered with the Copyright Office as Reg. No. E51988. However,
14 the December 1935 Application for Copyright did not attribute authorship of the
15 lyrics to either of the Hill Sisters and did not claim copyright in the familiar first
16 verse lyrics to *Happy Birthday to You* alone or in combination with the melody of
17 *Good Morning to All*.

18 96. The work registered with the Copyright Office as Reg. No. E51988 was
19 expressly limited in scope and neither claimed nor provided copyright protection to
20 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
21 with the Copyright Office as Reg. No. E51988 had claimed copyright protection to
22 those familiar lyrics, that work was not eligible for federal copyright protection in
23 that it consisted entirely of work that was common property and contained no
24 original authorship, except as to the sheet music arrangement itself.

25 97. Based upon information and belief, the work registered as Reg. No.
26 E51988 was not eligible for federal copyright protection because Summy Co. III did
27 not have authorization from the author to publish any part of that work except as to
28 the arrangement and the obscure second verse.

1 98. On December 9, 1935, Summy Co. III filed an Application for
2 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
3 No. E51990) with the Copyright Office for *Happy Birthday to You*.

4 99. In that additional December 1935 Application for Copyright, Summy
5 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
6 claimed the copyrighted new matter as “arrangement as easy piano solo, with text.”
7 Upon information and belief, Plaintiffs allege that Orem did not write the familiar
8 lyrics to *Happy Birthday to You*. Upon information and belief, Plaintiffs also allege
9 that the sheet music deposited with the application did not credit either Orem or the
10 Hill Sisters for writing the lyrics to *Happy Birthday to You*.

11 100. Some lyrics to *Happy Birthday to You* may have been included on the
12 work registered with the Copyright Office as Reg. No. E51990. However, the
13 additional December 1935 Application for Copyright did not attribute authorship of
14 the lyrics to either of the Hill Sisters, did not contain the names of either of the Hill
15 Sisters, and did not claim any copyright in the lyrics to *Happy Birthday to You* alone
16 or in combination with the melody of *Good Morning to All*.

17 101. The work registered with the Copyright Office as Reg. No. E51990 was
18 expressly limited in scope and neither claimed nor provided copyright protection to
19 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
20 with the Copyright Office as Reg. No. E51990 had claimed copyright protection to
21 those familiar lyrics, that work was not eligible for federal copyright protection in
22 that it consisted entirely of information that was common property and contained no
23 original authorship, except as to the sheet music arrangement itself.

24 102. Based upon information and belief, the work registered as Reg. No.
25 E51990 was not eligible for federal copyright protection because Summy Co. III did
26 not have authorization from the author to publish any part of that work except as to
27 the arrangement.

28 103. Based upon information and belief, in or about February, 1938, Summy

1 Co. III purported to grant to ASCAP the right to license *Happy Birthday to You* for
2 public performances and to collect fees for such use on behalf of Summy Co. III.
3 ASCAP thus began working as agent for Summy Co. III in collecting fees for
4 Summy Co. III for licensing *Happy Birthday to You*.

5 104. On or about June 8, 1942, Patty Hill and Jessica Hill assigned all of
6 their interest in the 1893, 1896, 1899 and 1907 copyrights to The Hill Foundation.

7 105. On October 15, 1942, The Hill Foundation commenced an action
8 against Summy Co. III in the Southern District of New York, captioned *The Hill*
9 *Foundation, Inc. v. Clayton F. Summy Co.*, Case No. 19-377, for an accounting of
10 the royalties received by Summy Co. III for the licensing of *Happy Birthday to You*.
11 The Hill Foundation asserted claims under the 1893, 1896, 1899, and 1907
12 copyrights for *Good Morning to All* and did **not** claim any copyright to the lyrics to
13 *Happy Birthday to You*, alone or in combination with the melody of *Good Morning*
14 *to All*.

15 106. On March 2, 1943, The Hill Foundation commenced an action against
16 the Postal Telegraph Cable Company in the Southern District of New York,
17 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
18 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
19 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
20 1896, and 1899 copyrights for *Good Morning to All* and did **not** claim any copyright
21 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
22 *Good Morning to All*.

23 107. Despite the filing of at least four prior cases in the Southern District of
24 New York asserting copyrights to *Good Morning to All*, there has been no judicial
25 determination of the validity or scope of any copyright related to *Good Morning to*
26 *All*.

27 108. In or about 1957, Summy Co. III changed its name to Summy-Birchard
28 Company.

1 109. In 1962, Summy Co. III (renamed as Summy-Birchard Company) filed
2 renewals for each of the six registrations it obtained in 1934 and 1935 (Reg. Nos.
3 E45655, E46661, E47439, E47440, E51988, and E51990), each renewal was
4 specifically and expressly confined to the musical arrangements.

5 110. In particular, on December 6, 1962, Summy Co. III filed a renewal
6 application for Reg. No. E51988, as employer for hire of Forman. Forman did not
7 write the familiar first verse lyrics to *Happy Birthday to You* or the combination of
8 those lyrics with the melody of *Good Morning to All*, and neither Summy Co. III nor
9 Defendants have claimed otherwise.

10 111. Also on December 6, 1962, Summy Co. III filed a renewal application
11 for Reg. No. E51990, as employer for hire of Orem. Orem did not write the lyrics to
12 *Happy Birthday to You* or the combination of those lyrics with the melody of *Good*
13 *Morning to All*, and neither Summy Co. III nor Defendants have claimed otherwise.

14 112. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
15 and was acquired by Warner/Chappell in or about 1998. On information and belief,
16 this entity now operates as “Summy Birchard, Inc.” – currently a subsidiary of
17 Warner/Chappell and Warner/Chappell’s co-defendant herein.

18 ***Happy Birthday to You – 100 Years Later***

19 113. According to a 1999 press release by ASCAP, *Happy Birthday to You*
20 was the most popular song of the 20th Century.

21 114. The 1998 edition of the *Guinness Book of World Records* identified
22 *Happy Birthday to You* as the most recognized song in the English language.

23 115. Defendant Warner/Chappell currently claims it owns the exclusive
24 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
25 Co. III published in 1935.

26 116. ASCAP provides non-dramatic public performance licenses to bars,
27 clubs, websites, and many other venues. ASCAP “blanket licenses” grant the
28 licensee the right to publicly perform any or all of the over 8.5 million songs in

1 ASCAP's repertory in exchange for an annual fee. The non-dramatic public
2 performance license royalties are distributed to ASCAP members based on surveys
3 of performances of each ASCAP repertory song across different media. As an
4 ASCAP member and assignee of the copyrights in *Happy Birthday to You*,
5 Defendant Warner/Chappell obtains a share of blanket license revenue that would
6 otherwise be paid to all other ASCAP members, in proportion to their songs' survey
7 shares.

8 ***Plaintiff GMTY's Use of Happy Birthday to You***

9 115. Plaintiff GMTY is producing a documentary movie, tentatively titled
10 *Happy Birthday*, about the song *Happy Birthday to You*.

11 116. In one of the proposed scenes to be included in *Happy Birthday*, the
12 song *Happy Birthday to You* is to be sung.

13 117. During the production process, plaintiff GMTY learned that defendant
14 Warner/Chappell claimed exclusive copyright ownership to *Happy Birthday to You*.

15 118. Accordingly, in September 2012, plaintiff requested a quote from
16 Warner/Chappell for a synchronization license to use *Happy Birthday to You* from
17 Warner/Chappell's website.

18 119. On or about September 18, 2012, defendant Warner/Chappell
19 responded to plaintiff GMTY's inquiry by demanding that GMTY pay it the sum of
20 \$1,500 and enter into a synchronization license agreement to use *Happy Birthday to*
21 *You*.

22 120. On or about March 12, 2013, defendant Warner/Chappell again
23 contacted plaintiff GMTY and insisted that GMTY was not authorized to use *Happy*
24 *Birthday to You* unless it paid the licensing fee of \$1,500 and entered into the
25 synchronization license that Warner/Chappell demanded.

26 121. Because defendant Warner/Chappell notified plaintiff GMTY that it
27 claimed exclusive copyright ownership of *Happy Birthday to You*, GMTY faced a
28 statutory penalty of up to \$150,000 under the Copyright Act if it used the song

1 without Warner/Chappell's permission if Warner/Chappell, in fact, owned the
2 copyright that it claimed.

3 122. Faced with a threat of substantial penalties for copyright infringement,
4 on or about March 26, 2013, plaintiff GMTY was forced to and did pay defendant
5 Warner/Chappell the sum of \$1,500 for a synchronization license and, on or about
6 April 24, 2013, GMTY was forced to and did enter into the synchronization license
7 agreement to use *Happy Birthday to You*.

8 ***Plaintiff Siegel's Use of Happy Birthday to You***

9 123. BIG FAN produced a movie titled *Big Fan*.

10 124. In one of the scenes in *Big Fan*, the familiar lyrics of the song *Happy*
11 *Birthday to You* was sung by the actors.

12 125. (a) In the early summer of 2009, after filming was complete but
13 before *Big Fan* was released, BIG FAN retained the services of a music
14 supervisor to secure the rights to all the music that was used in the movie.

15 (b) The music supervisor identified which music was copyrighted,
16 and advised BIG FAN that it would have to obtain a license from
17 Warner/Chappell and pay a fee to Warner/Chappell to perform *Happy*
18 *Birthday to You* in the movie because Warner/Chappell claimed to own
19 the exclusive copyright to the Song.

20 (c) Reasonably relying upon the information provided by the music
21 producer regarding the copyright claim by Warner/Chappell, BIG FAN
22 reasonably believed that Warner/Chappell owned the copyright to
23 *Happy Birthday to You*, and would have to obtain a synchronization
24 license from and pay a fee to Warner/Chappell to use the Song in the
25 movie.

26 126. Accordingly, in July 2009, BIG FAN requested that the music
27 supervisor obtain a quote from Warner/Chappell for a Synchronization License to
28 use *Happy Birthday to You* in *Big Fan*.

1 127. On or about July 20, 2009, Defendant Warner/Chappell responded to
2 the music supervisor by demanding that BIG FAN pay it the sum of \$3,000 and
3 enter into a synchronization license for use of *Happy Birthday to You*.

4 128. Because Defendant Warner/Chappell notified BIG FAN through the
5 music supervisor that it claimed exclusive copyright ownership of *Happy Birthday*
6 *to You*, BIG FAN faced a statutory penalty of \$150,000 under the Copyright Act if
7 BIG FAN used the Song without Warner/Chappell's permission and
8 Warner/Chappell, in fact, owned the copyright that it claimed.

9 129. On July 20, 2009, Plaintiff Siegel as President of BIG FAN executed
10 the synchronization license with Warner/Chappell and agreed to pay \$3,000 based
11 upon *Big Fan's* theatrical release.

12 130. (a) Faced with a threat of substantial penalties for copyright
13 infringement, on or about September 1, 2009, BIG FAN was forced to, and did, pay
14 defendant Warner/Chappell the sum of \$3,000 pursuant to the synchronization
15 license.

16 (b) BIG FAN, the music producer it hired, and Plaintiff Siegel did
17 not know, and had no reason to know, that Warner/Chappell did not own any
18 copyright to *Happy Birthday to You*, that the rights Warner/Chappell could
19 claim were limited just to the piano arrangements or the obscure second verse
20 of the Song (which was not performed in *Big Fan*), or that any copyright
21 other than that was invalid or expired.

22 (c) BIG FAN, the music producer it hired, and Plaintiff Siegel had
23 no reason to question Warner/Chappell's claim to own the copyright to the
24 Song.

25 (d) Warner/Chappell did not specify which registration(s) or
26 renewal(s) thereof under which it claimed a copyright to *Happy Birthday to*
27 *You*, and thus BIG FAN, the music producer it hired, and Plaintiff Siegel
28

1 could not investigate Warner/Chappell's claim to determine whether Warner
2 Chappell owned the copyright it claimed or whether that copyright was valid.

3 (e) The commencement of this action on or about June 13, 2013,
4 was widely reported in the press. Prior to the date when the press first
5 reported the claims asserted herein, no one in the position of BIG FAN, the
6 music producer hired by BIG FAN, or Plaintiff Siegel would know, or have
7 any reason to know, that Warner/Chappell's copyright claim for *Happy*
8 *Birthday to You* was in doubt.

9 (f) Plaintiff Siegel learned of the commencement of this action on or
10 about June 14, 2013, from the press reports. Before then, BIG FAN, the
11 music producer it hired, and Plaintiff Siegel did not know, and had no reason
12 to know, that Warner/Chappell's copyright claim for *Happy Birthday to You*
13 had been disputed by anyone or was in doubt.

14 (g) Shortly thereafter, on or about June 19, 2013, and significantly
15 less than three years after he knew or reasonably could or should have known
16 that Warner/Chappell does not own a copyright to the Song, or that its
17 copyright is not valid, plaintiff Siegel commenced a separate class action in
18 Los Angeles County pursuant to the terms of the Synchronization License.

19 ***Rupa's Performance of Happy Birthday to You***

20 131. Plaintiff Rupa d/b/a RTAF recorded the song *Happy Birthday to You* at
21 a live show in San Francisco, to be released as part of a "live" album. She learned
22 that defendant Warner/Chappell claimed exclusive copyright ownership to *Happy*
23 *Birthday to You*, including the right to issue mechanical licenses.

24 132. Section 115 of the Copyright Act provides for compulsory licenses for
25 the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, Web-based
26 "downloads") of musical compositions. Failure to obtain such a license prior to
27 distribution of a cover version of a song constitutes a copyright infringement subject
28 to the full remedies of the Copyright Act.

1 133. Accordingly, on June 17, 2013, Plaintiff Rupa provided a Notice of
2 Intention to Obtain Compulsory License to Warner/Chappell and paid
3 Warner/Chappell \$455 for a mechanical license for the reproduction and distribution
4 of 5,000 copies of the Song.

5 ***Plaintiff Majar Use of Happy Birthday to You***

6 134. (a) Plaintiff Majar produced the Film entitled “*No Subtitles Necessary:*
7 *László & Vilmos.*” The Film follows the lives of renowned cinematographers
8 László Kovacs (“Kovacs”) and Vilmos Zsigmond (“Zsigmond”) from
9 escaping the 1956 Soviet invasion of Hungary to the present day.

10 (b) Plaintiff Majar wished to use the *Happy Birthday to You* in the
11 opening scene of the Film, wherein Zsigmond and others sang the Song to
12 Kovacs in a celebration of Kovacs’ life and the friendship of the two, thereby
13 setting the tone for the Film.

14 (c) In or around the fall of 2008, during production of the Film,
15 Plaintiff Majar learned from the music clearance supervisor working on the
16 Film that defendant Warner/Chappell claimed exclusive copyright ownership
17 to *Happy Birthday to You*, including for purposes of issuing synchronization
18 licenses, and that if Majar wished to include the Song in the Film, a license
19 would have to be procured and a fee be paid to Warner/Chappell. The
20 director of the Film, James Chressanthis, spoke to experienced producers in
21 the industry, who confirmed that it was common knowledge within the
22 entertainment industry that Warner/Chappell widely claimed exclusive
23 copyright ownership of the Song.

24 (d) Accordingly, upon making the final determination to include use
25 of the Song in the Film, Plaintiff Majar proceeded to obtain a license for the
26 Song from Warner/Chappell. Indeed, Warner/Chappell held itself out to
27 Plaintiff Majar as the exclusive owner of the copyright in the Song (although
28 it did not specify which registration number(s) or renewal number(s) under

1 which it claimed to own a copyright). Thus, on or about October 29, 2009,
2 Plaintiff Majar paid to defendant Warner/Chappell the sum of \$5,000 for a
3 synchronization license to use *Happy Birthday* in the Film. At the time,
4 Plaintiff Majar did not question and had no reason to question
5 Warner/Chappell's claim of copyright ownership. Moreover, Plaintiff Majar
6 is informed and believes that Warner/Chappell continued to hold itself out as
7 the exclusive copyright owner of the Song for years after Majar licensed it.

8 (e) Because Defendant Warner/Chappell claimed exclusive
9 copyright ownership of *Happy Birthday to You*, Plaintiff Majar faced a
10 statutory penalty of \$150,000 under the Copyright Act, 17 U.S.C. § 101 *et*
11 *seq.*, if it used the Song without Warner/Chappell's permission and
12 Warner/Chappell, in fact, owned the copyright that it claimed.

13 (f) Plaintiff Majar did not question, and had no reason to question,
14 on October 29, 2009 (and continuing thereafter), Warner/Chappell's claim to
15 own the copyright to the Song. Moreover, Plaintiff Majar did not know, and
16 had no reason to know, on October 29, 2009 (and continuing thereafter), that
17 Warner/Chappell's copyright claim for *Happy Birthday to You* had been
18 disputed by anyone.

19 (g) Plaintiff Majar only first learned that Warner/Chappell's claim of
20 exclusive copyright ownership in the Song was subject to dispute when news
21 of the same was published in a *New York Times* article on June 13, 2013.
22 Plaintiff Majar contacted counsel and joined as a plaintiff in this action
23 promptly thereafter.

24 ***Delayed Discovery, Concealment of the Truth Regarding the Limited***
25 ***Copyright, and Equitable Tolling***

26 135. (a) In or about 2012, Plaintiff GMTY's principal learned of a
27 dispute regarding Defendants' claim to own the copyright to *Happy Birthday to You*.

28

1 (b) On March 12, 2013, however, Defendants informed Plaintiff
2 GMTY's principal in writing that Plaintiff GMTY was not authorized to use
3 the Song. Before licensing *Happy Birthday to You* from Defendants and
4 paying a synchronization license fee to Defendants, Plaintiff GMTY did not
5 know, and in the exercise of reasonable care, could not have known, that
6 Defendants' copyrights in fact did not cover the Song's familiar lyrics.

7 (c) Plaintiff GMTY thereafter discovered additional facts sufficient
8 to challenge whether Defendants' copyrights cover the Song's familiar lyrics.

9 136. (a) Before licensing *Happy Birthday to You* from Defendants and
10 paying fees for synchronization licenses to Defendants, Plaintiff Siegel and BIG
11 FAN did not know, and in the exercise of reasonable care, could not have known,
12 that Defendants' copyrights in fact did not cover the Song's familiar lyrics.

13 (b) After the commencement of this action in 2013, Plaintiff Siegel
14 and BIG FAN thereafter discovered additional facts sufficient to challenge
15 whether Defendants' copyrights cover the Song's familiar lyrics.

16 137. (a) Before licensing *Happy Birthday to You* from Defendants and
17 paying fees for a mechanical license to Defendants, Plaintiff Rupa did not know,
18 and in the exercise of reasonable care, could not have known, that Defendants'
19 copyrights in fact did not cover the Song's familiar lyrics.

20 (b) Plaintiff Rupa thereafter discovered additional facts sufficient to
21 challenge whether Defendants' copyrights cover the Song's familiar lyrics.

22 138. (a) Before licensing *Happy Birthday to You* from Defendants and
23 paying fees for synchronization licenses to Defendants, Plaintiff Majar did not
24 know, and in the exercise of reasonable care, could not have known, that
25 Defendants' copyrights in fact did not cover the Song's familiar lyrics.

26 (b) After the commencement of this action in 2013, Plaintiff Majar
27 thereafter discovered additional facts sufficient to challenge whether
28 Defendants' copyrights cover the Song's familiar lyrics.

1 139. At all times relevant hereto, Defendants and their predecessors-in-
2 interest consistently and uniformly insisted they were the owner of the copyright to
3 *Happy Birthday to You*.

4 140. At all times relevant hereto, Defendants and their predecessors-in-
5 interest consistently and uniformly demanded that all would-be users of *Happy*
6 *Birthday to You* obtain licenses or permission from them to use, perform, or publish
7 the Song.

8 141. At all times relevant hereto, Defendants and their predecessors-in-
9 interest consistently and uniformly demanded payment for the right to use, perform,
10 or publish *Happy Birthday to You* from all would-be users of the Song under and by
11 virtue of their claim of copyright ownership alleged herein.

12 142. At all times relevant hereto, Defendants or their predecessors-in-
13 interest have been in possession of, or have known the terms of: (a) the early 1890s
14 assignment from Patty Hill and Mildred Hill to Summy Co., which related only to
15 *Good Morning to All*; (b) the 1934 and 1935 assignment from Jessica Hill to Summy
16 Co. of only the rights to various piano arrangements to the musical composition
17 *Good Morning to All*; and (c) the 1944 assignment from Patty Hill and Jessica Hill
18 via the Hill Foundation to Summy Co. Those assignments allowed Defendants and
19 their predecessors-in-interest to know that they did not acquire any rights to the
20 *Happy Birthday to You* lyrics from Patty Hill, Jessica Hill, or the Hill Foundation.

21 143. For that reason, among others, knowing that the 1935 copyrights
22 E51988 and E51990 did not cover the Song's familiar lyrics, when Summy Co.
23 commenced three lawsuits alleging copyright infringement related to *Happy*
24 *Birthday to You* *after* acquiring whatever limited rights it ever obtained from the
25 Hill sisters and the Hill Foundation, it did not even mention either of the 1935
26 copyrights. Those assignments were not publicly disclosed at any time prior to the
27 commencement of this action.

28

1 144. At all times relevant hereto, Defendants and their predecessors-in-
2 interest were told repeatedly, and knew or should have known, that: (a) neither the
3 Hill sisters nor the Hill Foundation transferred to Summy Co. any rights to the
4 *Happy Birthday to You* lyrics; (b) at most, Summy Co. obtained from the Hill sisters
5 or the Hill Foundation only limited rights to various piano arrangements of the
6 *melody* shared by *Good Morning to All* and *Happy Birthday to You*; (c) the
7 copyrights to that common melody expired no later than September 3, 1949, by
8 which date the melody entered the public domain; (d) the 1935 work-for-hire
9 copyrights are limited to only the new work added by Summy Co.’s employees,
10 Forman and Orem; (e) Summy’s employees, Forman and Orem, did not write the
11 familiar *Happy Birthday to You* lyrics; and (f) the 1935 work-for-hire copyrights did
12 *not* cover the *Happy Birthday to You* lyrics.

13 145. For example, in or about 1934, in a motion to dismiss *Hill v. Harris*,
14 Eq. No. 78-350, defendants Irving Berlin and Sam Harris asserted that the original
15 copyright to *Good Morning to All* was not properly renewed and therefore had
16 lapsed in 1921. In the motion to dismiss, those defendants also asserted that the
17 complaint in that action failed to allege that Summy Co. was “the proprietor of the
18 composition in question,” and thus could not copyright it.

19 146. On or about April 18, 1945, the defendant answered the complaint in
20 *Clayton F. Summy Co. v. Louis Marx & Co.*, No. 30-285 (S.D.N.Y.), and asserted
21 that the original copyright to *Good Morning to All* was not properly renewed and
22 therefore had lapsed in 1921.

23 147. Upon information and belief, Defendants’ predecessor-in-interest
24 received an inter-office communication from Universal City Studios on or about
25 July 1, 1964, stating that the copyright asserted and relied upon by Defendants and
26 their predecessors “covers only the particular [piano] arrangement” and that “no one
27 could claim copyright in the new [*Happy Birthday*] lyrics.” The substance of that
28

1 communication was not publicly disclosed prior to the commencement of this
2 action.

3 148. Likewise, upon information and belief, beginning in 1963, in meetings
4 with Defendants' predecessor-in-interest and in correspondence with the Harry Fox
5 Agency ("Fox"), as agent for Defendants' predecessor-in-interest Summy Co.
6 (which is in the possession of Defendants and their predecessors but which was
7 never publicly disclosed), Walt Disney Productions ("Disney") disputed the scope
8 and ownership of the copyright to *Happy Birthday to You*.

9 149. In an October 18, 1963, letter, to Fox, as agent for Summy Co.,
10 Disney's Music Manager detailed their copyright research of *Happy Birthday to*
11 *You*, beginning with Mildred and Patty Hill's publication of *Good Morning to All* in
12 *Song Stories for the Kindergarten*, and noted that "no one knows who first changed
13 the words "good morning" to 'happy birthday.'" Disney's conclusion was that "the
14 song together with the lyrics are now in the public domain." [WC1411-
15 12/CONFIDENTIAL] The substance of that communication was not disclosed to
16 the public prior to the commencement of this action.

17 150. On or about May 12, 1964, in a letter to the Fox, as agent for Summy
18 Co., Disney's Music Manager asserted that "'HAPPY BIRTHDAY TO YOU' is
19 definitely in the public domain." [WC 1416/CONFIDENTIAL] The substance of
20 that communication was not disclosed to the public prior to the commencement of
21 this action.

22 151. In a letter to counsel for Defendants' predecessor Summy Co. dated
23 November 6, 1964, Disney offered \$1,000 for five uses of *Happy Birthday to You*
24 "not in acknowledgment that there is a protected right in [the Song] but to pass over
25 that question and get a whitewash from your client." [WC1414/CONFIDENTIAL]
26 The substance of that communication was not disclosed to the public prior to the
27 commencement of this action.

28 152. On December 13, 1971, Disney's counsel wrote to Fox, as agent for

1 Summy Co., and reiterated its prior offer to pay \$250 as a “tribute” for each use of
2 *Happy Birthday to You* for “the simple reason that although we firmly believe that
3 we would prevail in any litigation” that “business practices dictates that a small
4 payment is better than expensive litigation.” Disney’s counsel also noted that
5 having “recontacted various copyright experts,” Disney was “willing once and for
6 all to fight this matter in the event you are asking an amount greater than previously
7 paid by us.” [WC1415/CONFIDENTIAL] The substance of that communication
8 was not disclosed to the public prior to the commencement of this action.

9 153. In a letter to Fox and Defendants’ predecessor-in-interest Summy-
10 Birchard Music dated May 11, 1983, Disney’s Music Manager responded to a
11 request from Fox, on behalf of Summy-Birchard Music, for a \$5,000 fee for a ten-
12 year license of *Happy Birthday to You* for an exhibit at the Horizons Pavilion at
13 EPCOT by offering a “tribute payment” of just \$250 to use the Song for a decade.
14 Disney’s Music Manager stated that the original song *Good Morning to All* and the
15 “alleged adaptation,” *i.e.*, *Happy Birthday to You*, “are both in the public domain
16 around the world,” but offered the nominal sum “only to avoid litigation to prove
17 that they are free to use.” [WC1422-23/CONFIDENATIAL] The substance of that
18 communication was not disclosed to the public prior to the commencement of this
19 action.

20 154. At various times relevant hereto, Defendants and their predecessors-in-
21 interest claimed that Summy Co.’s employee Orem may have written the familiar
22 *Happy Birthday to You* lyrics, either alone, together, or with Mildred or Patty Hill.

23 155. At various times relevant hereto, Defendants and their predecessors-in-
24 interest claimed that Mildred Hill wrote the familiar *Happy Birthday to You* lyrics,
25 either alone or together with Patty Hill or with Summy Co.’s employee Orem.

26 156. At all times relevant hereto, Defendants and their predecessors-in-
27 interest concealed the fact that Summy Co.’s employees, Forman and Orem, did not
28

1 write the familiar *Happy Birthday to You* lyrics, either alone, together, or with
2 Mildred or Patty Hill.

3 157. At various times relevant hereto, Defendants and their predecessors-in-
4 interest encouraged others to conceal the fact that Summy Co.'s employees, Forman
5 and Orem, did not write the familiar *Happy Birthday to You* lyrics, either alone,
6 together, or with Mildred or Patty Hill.

7 158. At all times relevant hereto, Defendants and their predecessors-in-
8 interest concealed the fact that the 1935 copyrights covered only the piano
9 arrangements composed by Summy Co.'s employees-for-hire and did *not* cover the
10 *Happy Birthday to You* lyrics.

11 159. At various times relevant hereto, Defendants and their predecessors-in-
12 interest encouraged others to conceal the fact that the 1935 copyrights covered only
13 the piano arrangements composed by Summy Co.'s employees-for-hire and did *not*
14 cover the *Happy Birthday to You* lyrics.

15 160. In part as a result of the actions of Defendants and their predecessors-
16 in-interest alleged herein, Plaintiffs and all other users of *Happy Birthday to You* did
17 not know, had no reason to know, and in the exercise or reasonable care could not
18 know that Defendants and their predecessors-in-interest did not own a copyright to
19 the Song itself, but rather only to two piano arrangements composed by Summy
20 Co.'s employees for hire.

21 161. In part as a result of the misrepresentations and concealment of material
22 fact alleged above, and in part as a result of the complexity of the historical record
23 surrounding the song, in the exercise of reasonable care, Plaintiffs did not know, had
24 no reason to know, and in the exercise of reasonable care could not know that
25 Defendants did not own any copyright to the familiar *Happy Birthday to You* lyrics.

26 162. In part as a result of the misrepresentations and concealment of material
27 fact alleged above, and in part as a result of the complexity of the historical record
28 surrounding the song, users of the Song did not know, had no reason to know, and in

1 the exercise of reasonable care could not know that Defendants and their
2 predecessors-in-interest did not own any copyright to the familiar *Happy Birthday to*
3 *You* lyrics.

4 CLASS ALLEGATIONS

5 163. Plaintiffs GMTY, Siegel, Rupa, and Majar bring this action pursuant to
6 Rule 23(a)-(b) of the Federal Rules of Civil Procedure as a class action on behalf of
7 themselves and all others similarly situated for the purpose of asserting the claims
8 alleged in this Consolidated Fourth Amended Complaint on a common basis.

9 164. The proposed Class is comprised of:

10 **All persons or entities (excluding Defendants' directors, officers,**
11 **employees, and affiliates) who entered into a license with**
12 **Defendants or their predecessors-in-interest, or paid Defendants or**
13 **their predecessors-in-interest, directly or indirectly, a licensing fee**
14 **for the song *Happy Birthday to You* at any time since at least**
15 **September 3, 1949 (the latest date on which the copyright to *Good***
16 ***Morning to All* expired), until Defendants' conduct as alleged**
17 **herein has ceased.**

18 165. Although Plaintiffs GMTY, Siegel, Rupa, and Majar do not know the
19 exact size of the Class or the identities of all members of the Class, upon
20 information and belief that information can be readily obtained from the books and
21 records of defendant Warner/Chappell. Plaintiffs believe that the Class includes
22 thousands of persons or entities who are widely geographically disbursed. Thus, the
23 proposed Class is so numerous that joinder of all members is impracticable.

24 166. The claims of all members of the Class involve common questions of
25 law and fact including:

- 26 a. whether *Happy Birthday to You* is in the public domain and dedicated
27 to public use;
28 b. whether the 1935 copyrights claimed by Warner/Chappell cover the

- 1 popular lyrics to *Happy Birthday to You*;
- 2 c. whether Defendants and their predecessors-in-interest knew or should
- 3 have known that the 1935 copyrights did *not* cover the popular *Happy*
- 4 *Birthday to You* lyrics;
- 5 d. whether Defendants and their predecessors-in-interest misrepresented
- 6 that the 1935 copyrights covered the familiar *Happy Birthday to You*
- 7 lyrics;
- 8 e. Defendants and their predecessors-in-interest concealed the fact that the
- 9 1935 copyrights covered only the piano arrangements composed by
- 10 Summy Co.'s employees-for-hire, *not* the familiar *Happy Birthday to*
- 11 *You* lyrics;
- 12 f. whether, in the exercise of reasonable care, Plaintiffs and the other
- 13 members of the Class knew or could have known that Defendants did
- 14 not own any copyright to the familiar *Happy Birthday to You* lyrics;
- 15 g. whether the commencement of any applicable statute of limitations was
- 16 tolled and, if so, for how long;
- 17 h. whether the 1935 copyrights claimed by Warner/Chappell are valid;
- 18 i. whether Warner/Chappell is the exclusive owner of the copyright to
- 19 *Happy Birthday to You* and is thus entitled to all of the rights conferred
- 20 in 17 U.S.C. § 102;
- 21 j. whether Warner/Chappell has the right to collect fees for the use of
- 22 *Happy Birthday to You*;
- 23 k. whether Warner/Chappell has violated the law by demanding and
- 24 collecting fees for the use of *Happy Birthday to You* despite not having
- 25 a valid copyright to the song; and
- 26 l. whether Warner/Chappell is required to return unlawfully obtained
- 27 payments to plaintiffs GMTY, Siegel, Rupa and Majar and the other
- 28 members of the Class and, if so, what amount is to be returned.

1 175. Plaintiffs bring these claims individually on behalf of themselves and
2 on behalf of the proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of
3 Civil Procedure.

4 176. Plaintiffs seek adjudication of an actual controversy arising under the
5 Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants' purported
6 copyright claim to *Happy Birthday to You*. Plaintiffs seek the Court's declaration
7 that the Copyright Act does not bestow upon Warner/Chappell and/or SBI the rights
8 it has asserted and enforced against plaintiffs and the other members of the Class.
9 This is because *either*: (a) the 1935 registrations E51988 and E51990, under which
10 Warner/Chappell claims those copyrights, and the resulting copyrights do not
11 purport to cover and do not cover the familiar lyrics to *Happy Birthday to You*, but
12 instead are limited just to the particular arrangements written by Forman or Orem
13 (and, in the case of E51988, the obscure second verse which has no commercial
14 value); *or* (b) if and to the extent that those copyrights purport to cover the familiar
15 lyrics to *Happy Birthday to You*, the copyrights are invalid or have expired.

16 177. Defendants assert that they are entitled to mechanical and performance
17 royalties pursuant to 17 U.S.C. § 115 for the creation and distribution of
18 phonorecords and digital downloads of the composition *Happy Birthday to You*,
19 under threat of a claim of copyright infringement.

20 178. Defendant Warner/Chappell demanded that plaintiff GMTY enter into
21 a synchronization license agreement to use *Happy Birthday to You* and pay
22 Warner/Chappell the sum of \$1,500 for that synchronization license based upon its
23 claim of copyright ownership. Warner/Chappell's demand was coercive in nature,
24 and GMTY's entering into the license agreement and payment of \$1,500 was
25 involuntary.

26 179. Plaintiff GMTY's claim presents a justiciable controversy because
27 plaintiff GMTY's agreement to pay defendant Warner/Chappell and its actual
28 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film

1 was the involuntary result of Warner/Chappell's assertion of a copyright and the risk
2 that plaintiff GMTY would be exposed to substantial statutory penalties under the
3 Copyright Act had it failed to enter such an agreement and pay Warner/Chappell the
4 price it demanded.

5 180. Defendant Warner/Chappell demanded that BIG FAN as assignor of
6 plaintiff Siegel enter into the Synchronization License agreement to use *Happy*
7 *Birthday to You* and pay Warner/Chappell the sum of \$3,000 for that
8 Synchronization License based upon its claim of copyright
9 ownership. Warner/Chappell's demand was coercive in nature, and BIG FAN'S
10 entering into the Synchronization License and payment of \$3,000 was involuntary.

11 181. Plaintiff Siegel's claim presents a justiciable controversy because
12 plaintiff Siegel's agreement to pay defendant Warner/Chappell and its actual
13 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film
14 *Big Fan*, was the involuntary result of Warner/Chappell's assertion of a copyright
15 and the risk that plaintiff Siegel would be exposed to substantial statutory penalties
16 under the Copyright Act had it failed to enter such an agreement and pay
17 Warner/Chappell the price it demanded, but then used *Happy Birthday to You* in its
18 film anyway.

19 182. Plaintiff Rupa's claim presents a justiciable controversy because
20 plaintiff Rupa's agreement to pay defendant Warner/Chappell and its actual
21 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in her
22 album, was the involuntary result of Warner/Chappell's assertion of a copyright and
23 the risk that plaintiff Rupa would be exposed to substantial statutory penalties under
24 the Copyright Act had she failed to enter such an agreement and pay
25 Warner/Chappell standard mechanical license royalties it demanded, but then paid
26 for the mechanical license anyway.

27 183. Defendants demanded that Plaintiff Major pay to Defendants a
28 licensing fee in the sum of \$5,000 pursuant to Defendants' claim of copyright

1 ownership, in order for Plaintiff Majar to use *Happy Birthday* in the Film.
2 Defendants' demand was coercive in nature and Majar's agreement to pay the fee
3 was involuntary.

4 184. Plaintiff Majar's claim presents a justiciable controversy because its
5 actual payment of Defendants' demanded fee to use *Happy Birthday* in the Film was
6 the involuntary result of Defendants' assertion of a copyright and the risk that
7 Plaintiff Majar would be exposed to substantial statutory penalties under the
8 Copyright Act had it failed to seek Defendants' approval to use the Song and/or
9 failed to pay Defendants' demanded fee.

10 185. Plaintiffs seek the Court's determination as to whether Defendants are
11 entitled to assert ownership of the copyright to *Happy Birthday to You* against
12 Plaintiffs pursuant to the Copyright Act as Defendants claim, or whether Defendants
13 are wielding a false claim of ownership to inhibit Plaintiffs' use and enjoyment (and
14 the public's use and enjoyment) of intellectual property which is rightfully in the
15 public domain.

16 186. If and to the extent that Defendants rely upon the 1893, 1896, 1899, or
17 1907 copyrights for the melody for *Good Morning to All*, those copyrights expired
18 or were forfeited as alleged herein.

19 187. As alleged above, the 1893 and 1896 copyrights to the original and
20 revised versions of *Song Stories for the Kindergarten*, which contained the song
21 *Good Morning to All*, were not renewed by Summy Co. or Summy and accordingly
22 expired in 1921 and 1924, respectively.

23 188. As alleged above, the 1893 copyright to *Song Stories for the*
24 *Kindergarten* and the 1899 copyright to *Song Stories for the Sunday School*, which
25 contained *Good Morning to All*, and the 1907 copyright to *Good Morning to All*
26 were not renewed by Summy Co. before Summy Co. was dissolved in 1920 and
27 accordingly, those copyrights expired in 1927 and 1935, respectively.

28 189. The 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All*

1 were forfeited by the republication of *Good Morning to All* in 1921 without proper
2 notice of its original 1893 copyright.

3 190. The copyright to *Good Morning to All* expired in 1921 because the
4 1893 copyright to *Song Stories for the Kindergarten* was not properly renewed.

5 191. The piano arrangements for *Happy Birthday to You* published by
6 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990): (a) do not give
7 Warner/Chappell copyrights to the familiar lyrics to *Happy Birthday to You*, but
8 instead are limited just to the particular arrangements written by Forman or Orem
9 (and, in the case of E51988, the obscure second verse which has no commercial
10 value); and (b) were not eligible for federal copyright protection because those
11 works did not contain original works of authorship, except to the extent of the piano
12 arrangements themselves.

13 192. The 1934 and 1935 copyrights pertained only to the piano
14 arrangements or the obscure second verse, not to the melody or familiar first verse
15 lyrics of the song *Happy Birthday to You*.

16 193. The registration certificates for *The Elementary Worker and His Work*
17 in 1912, *Harvest Hymns* in 1924, and *Children's Praise and Worship* in 1928, which
18 did not attribute authorship of the lyrics to *Happy Birthday to You* to anyone, are
19 *prima facie* evidence that the lyrics were not authored by the Hill Sisters.

20 194. If declaratory relief is not granted, defendant Warner/Chappell will
21 continue wrongfully to assert the exclusive copyright to *Happy Birthday to You* at
22 least until 2030, when the current term of the copyright expires under existing
23 copyright law.

24 195. Plaintiffs therefore request a declaration that:

25 (a) defendant Warner/Chappell and defendant SBI do not own the
26 copyright to, or possess the exclusive right to reproduce, distribute, or
27 publicly perform, *Happy Birthday To You*;

28 (b) if defendant Warner/Chappell and defendant SBI own any

1 copyright to *Happy Birthday to You*, it is limited to four specific piano
2 arrangements or an obscure second verse that has no commercial value,
3 (c) any other copyright to *Happy Birthday to You* that defendant
4 Warner/Chappell and defendant SBI may own or ever owned are
5 invalid or have expired;
6 (d) defendant Warner/Chappell and defendant SBI do not own the
7 exclusive right to demand or grant a license for use of *Happy Birthday*
8 *To You*; and
9 (e) *Happy Birthday to You* is in the public domain and is dedicated
10 to the public use.

11 ///
12 ///
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14 ///
15 ///

16 **SECOND CLAIM FOR RELIEF**
17 **UPON ENTRY OF DECLARATORY JUDGMENT**
18 **DECLARATORY AND INJUNCTIVE RELIEF**
19 **PURSUANT TO 28 U.S.C § 2202**
20 **(On Behalf of Plaintiffs and the Class)**
21 **(Against All Defendants)**

22 196. Plaintiffs repeat and reallege paragraphs 1 through 195 set forth above
23 as though they were fully set forth herein.

24 197. Plaintiffs bring these claims individually on their own behalf and on
25 behalf of the Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil
26 Procedure.

27 198. Under 28 U.S.C. § 2202 empowers this Court to grant, “necessary or
28 proper relief based on a declaratory judgment or decree . . . after reasonable notice

1 and hearing, against any adverse party whose rights have been determined by such
2 judgment.”

3 199. Plaintiffs and the other proposed Class members have been harmed,
4 and Defendants have been unjustly enriched, by Defendant Warner/Chappell’s
5 takings.

6 200. Plaintiffs seek relief for themselves and the other members of the
7 proposed Class upon the entry of declaratory judgment upon Claim I, as follows:

8 (a) an injunction to prevent Defendants Warner/Chappell and SBI from
9 making further representations of ownership of the copyright to *Happy*
10 *Birthday To You*;

11 (b) restitution to Plaintiffs and the other Class members of license fees paid
12 to Defendants, directly or indirectly through its agents, in connection with the
13 purported licenses it granted to Plaintiffs GMTY, Siegel, Rupa and Majar and
14 the other Class members;

15 (c) an accounting for all monetary benefits obtained by Defendants,
16 directly or indirectly through its agents, from plaintiffs and the other Class
17 members in connection with its claim to ownership of the copyright to *Happy*
18 *Birthday to You*; and

19 (d) such other further and proper relief as this Court sees fit.

20 **THIRD CLAIM FOR RELIEF**

21 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF**
22 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

23 **(On Behalf of Plaintiffs and the Class)**

24 **(Against All Defendants)**

25 201. Plaintiffs repeat and reallege paragraphs 1 through 173 set forth above
26 as though they were fully set forth herein.

27 202. Plaintiffs GMTY, Siegel, Rupa, and Majar bring these claims
28 individually on their own behalf, and also on behalf of the Class pursuant to Rule

1 23(b)(3) of the Federal Rules of Civil Procedure.

2 203. As alleged herein, Plaintiffs GMTY, Siegel, Rupa and Majar and the
3 other Class members have paid licensing fees to defendants Warner/Chappell and/or
4 SBI and have therefore suffered injury in fact and have lost money or property as a
5 result of Defendants' conduct.

6 204. California's Unfair Competition Laws, Business & Professions Code
7 §§ 17200 *et seq.* ("UCL"), prohibit any unlawful or unfair business act or practice.

8 205. UCL § 17200 further prohibits any fraudulent business act or practice.

9 206. Defendants' actions, claims, nondisclosures, and misleading
10 statements, as alleged in this Complaint, were unfair, false, misleading, and likely to
11 deceive the consuming public within the meaning of UCL §§ 17200, 17500.

12 207. The conduct of Defendants in exerting control over exclusive copyright
13 ownership to *Happy Birthday to You* to extract licensing fees is deceptive and
14 misleading because neither Warner/Chappell nor SBI own the rights to *Happy*
15 *Birthday to You*.

16 208. Plaintiffs and the other members of the Class have, in fact, been
17 deceived as a result of their reasonable reliance upon Defendants' materially false
18 and misleading statements and omissions, as alleged above.

19 209. As a result of Defendants' unfair and fraudulent acts and practices as
20 alleged above, Plaintiffs and the other Class members have suffered substantial
21 monetary injuries.

22 210. Plaintiffs and the other Class members reserve the right to allege other
23 violations of law which constitute other unfair or deceptive business acts or
24 practices. Such conduct is ongoing and continues to this date.

25 211. As a result of its deception, Defendants Warner/Chappell and SBI have
26 been able to reap unjust revenue and profit.

27 212. Upon information and belief, Defendants have collected and continue
28 to collect at least \$2 million per year in licensing fees for *Happy Birthday to You*.

1 Therefore, the amount in controversy exceeds \$5 million in the aggregate.

2 213. Unless restrained and enjoined, Defendants will continue to engage in
3 the above-described conduct. Accordingly, injunctive relief is appropriate.

4 214. Plaintiffs, individually on their own behalf and on behalf of the other
5 members of the Class, seek restitution and disgorgement of all money obtained from
6 Plaintiffs and the other members of the Class, collected as a result of unfair
7 competition, and all other relief this Court deems appropriate, consistent with UCL
8 § 17203.

9 **FOURTH CLAIM FOR RELIEF**

10 **BREACH OF CONTRACT**

11 **(On Behalf of Plaintiffs and the Class)**

12 **(Against All Defendants)**

13 187. Plaintiffs repeat and reallege each and every foregoing allegation as
14 though fully set forth herein.

15 188. Plaintiffs entered into license agreements with Defendant
16 Warner/Chappell wherein Warner/Chappell represented and warranted that it and/or
17 its co-Defendant SBI owned the rights to *Happy Birthday* as licensed therein.

18 189. Plaintiffs are informed and believe that Defendants' licensing
19 agreements are the same or substantially similar as to all Class members,
20 particularly with respect to Defendants' claim of ownership of the copyright to
21 *Happy Birthday*.

22 190. Plaintiffs and the Class have satisfied their obligations under each such
23 licensing agreement with Warner/Chappell.

24 191. As alleged herein, Defendants do not own the copyright interests
25 claimed in *Happy Birthday* and, as a result of its unlawful and false assertions of the
26 same, Defendants have violated the representations and warranties made in the
27 licensing agreements, thereby materially breaching the licensing agreements.

28

1 though they were fully set forth herein.

2 199. On information and belief, Defendants Warner/Chappell and SBI
3 intended to induce the public to enter into an obligation related to its alleged
4 property, namely the composition *Happy Birthday to You*.

5 200. Defendants Warner/Chappell and/or SBI publicly disseminated
6 advertising which contained statements which were untrue and misleading and
7 which concerned the composition *Happy Birthday to You*, for which they
8 improperly sought and received licensing fees. Defendants knew, or in the exercise
9 of reasonable care should have known, that these statements were untrue and
10 misleading.

11 201. Plaintiffs and class members have suffered injury in fact and have lost
12 money as a result of such unfair competition.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs GMTY, Siegel, Rupa and Majar on behalf of
15 themselves and the other members of the Class, pray for judgment against
16 Defendants as follows:

17 A. certifying the Class as requested herein;

18 B. declaring that the song *Happy Birthday to You* is not protected by
19 federal copyright law, is dedicated to public use, and is in the public domain;

20 C. permanently enjoining Defendants Warner/Chappell and SBI from
21 asserting any copyright to the song *Happy Birthday to You*;

22 D. permanently enjoining Defendants Warner/Chappell and SBI from
23 charging or collecting any licensing or other fees for use of the song *Happy*
24 *Birthday to You*;

25 E. imposing a constructive trust upon the money Defendants
26 Warner/Chappell and SBI unlawfully collected from Plaintiffs, the other
27 members of the Class, and ASCAP for use of the song *Happy Birthday to*
28 *You*;

1 F. ordering Defendants Warner/Chappell and SBI to return to Plaintiffs
2 and the other members of the Class all the licensing or other fees they have
3 collected from them, directly or indirectly through its agents, for use of the
4 song *Happy Birthday to You*, together with interest thereon;

5 G. awarding Plaintiffs and the other members of the Class restitution for
6 defendant Warner/Chappell and SBI's prior acts and practices;

7 H. awarding Plaintiffs and the Class reasonable attorneys' fees and costs;
8 and

9 I. granting such other and further relief as the Court deems just and
10 proper.

11 Dated: December 9, 2015

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

12
13 By: /s/Betsy C. Manifold
BETSY C. MANIFOLD

14 FRANCIS M. GREGOREK (144785)
15 gregorek@whafh.com
16 BETSY C. MANIFOLD (182450)
manifold@whafh.com
17 RACHELE R. RICKERT (190634)
rickert@whafh.com
18 MARISA C. LIVESAY (223247)
livesay@whafh.com
19 750 B Street, Suite 2770
20 San Diego, CA 92101
Telephone: 619/239-4599
21 Facsimile: 619/234-4599

22 **WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

23 MARK C. RIFKIN (*pro hac vice*)
24 rifkin@whafh.com
25 JANINE POLLACK (*pro hac vice*)
pollack@whafh.com
26 270 Madison Avenue
New York, NY 10016
27 Telephone: 212/545-4600
28 Facsimile: 212-545-4753

Interim Lead Class Counsel for Plaintiffs

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RANDALL S. NEWMAN PC
RANDALL S. NEWMAN (190547)
rsn@randallnewman.net
37 Wall Street, Penthouse D
New York, NY 10005
Telephone: 212/797-3737
Facsimile: 212/797-3172

DONAHUE GALLAGHER WOODS LLP
WILLIAM R. HILL (114954)
rock@donahue.com
ANDREW S. MACKAY (197074)
andrew@donahue.com
DANIEL J. SCHACHT (259717)
daniel@donahue.com
1999 Harrison Street, 25th Floor
Oakland, CA 94612-3520
Telephone: 510/451-0544
Facsimile: 510/832-1486

GLANCY PRONGAY & MURRAY, LLP
LIONEL Z. GLANCY (134180)
lglancy@glancylaw.com
MARC L. GODINO (182689)
mgodino@glancylaw.com
KARA M. WOLKE (241521)
kwolke@glancylaw.com
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

**HUNT ORTMANN PALFFY NIEVES
DARLING & MAH, INC.**
ALISON C. GIBBS (257526)
gibbs@huntortmann.com
OMEL A. NIEVES (134444)
nieves@nieves-law.com
KATHLYNN E. SMITH (234541)
smith@huntortmann.com
301 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Telephone 626/440-5200
Facsimile 626/796-0107
Counsel for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs Good Morning To You Productions Corp. Robert Siegel, Rupa Marya and Majar Productions, LLC, hereby demand a trial by jury to the extent that the allegations contained herein are triable by jury under Rules 38-39 of the Federal Rules of Civil Procedure 38-39 and Civil L.R. 38-1.

Dated: December 9, 2015

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

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

FRANCIS M. GREGOREK (144785)
gregorek@whafh.com
BETSY C. MANIFOLD (182450)
manifold@whafh.com
RACHELE R. RICKERT (190634)
rickert@whafh.com
MARISA C. LIVESAY (223247)
livesay@whafh.com
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**
MARK C. RIFKIN (*pro hac vice*)
rifkin@whafh.com
JANINE POLLACK (*pro hac vice*)
pollack@whafh.com
270 Madison Avenue
New York, NY 10016
Telephone: 212/545-4600
Facsimile: 212-545-4753

Interim Lead Class Counsel for Plaintiffs

RANDALL S. NEWMAN PC
RANDALL S. NEWMAN (190547)
rsn@randallnewman.net
37 Wall Street, Penthouse D

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2
3
4
5
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19
20
21
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23
24
25
26
27
28

New York, NY 10005
Telephone: 212/797-3737
Facsimile: 212/797-3172

DONAHUE GALLAGHER WOODS LLP

WILLIAM R. HILL (114954)
rock@donahue.com
ANDREW S. MACKAY (197074)
andrew@donahue.com
DANIEL J. SCHACHT (259717)
daniel@donahue.com
1999 Harrison Street, 25th Floor
Oakland, CA 94612-3520
Telephone: 510/451-0544
Facsimile: 510/832-1486

GLANCY PRONGAY & MURRAY, LLP

LIONEL Z. GLANCY (134180)
lglancy@glancylaw.com
MARC L. GODINO (182689)
mgodino@glancylaw.com
KARA M. WOLKE (241521)
kwolke@glancylaw.com
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

HUNT ORTMANN PALFFY NIEVES

DARLING & MAH, INC.

ALISON C. GIBBS (257526)
gibbs@huntortmann.com
OMEL A. NIEVES (134444)
nieves@nieves-law.com
KATHLYNN E. SMITH (234541)
smith@huntortmann.com
301 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Telephone: 626/440-5200
Facsimile: 626/796-0107

Counsel for Plaintiffs