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

7 [ADDITIONAL COUNSEL APPEAR  
 ON SIGNATURE PAGE]  
 8

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA -**  
 11 **WESTERN DIVISION**

12 GOOD MORNING TO YOU	}	Lead Case No. CV 13-04460-GHK (MRWx)
13 PRODUCTIONS CORP., <i>et al.</i> ,		
14 Plaintiffs,	}	<b>DECLARATION OF RUPA MARYA IN SUPPORT OF APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT</b>
15 v.		
16 WARNER/CHAPPELL MUSIC, INC., <i>et al.</i> ,		
17 Defendants.	}	Date: March 14, 2016
		Time: 9:30 a.m.
		Room: 650
		Judge: Hon. George H. King, Chief Judge
18	}	
19		
20	}	
21		

22 I, Rupa Marya, hereby state to the best of my personal knowledge and belief:

23 1. I am a resident of Contra Costa County, California. I am the leader of the  
 24 band “Rupa & The April Fishes” and a member of the American Society of  
 25 Composers, Authors and Publishers (ASCAP).

26 2. I am an individual over the age of 18. I have personal knowledge of the  
 27 following facts set forth below and if called to testify, I could and would testify  
 28 competently to them. I submit this declaration in connection with approval of the

1 proposed Settlement and the provisions of the proposed Settlement awarding me  
2 incentive compensation in the amount of Ten Thousand Dollars (\$10,000).

3         3.       On or about April 27, 2013, Rupa & The April Fishes recorded *Happy*  
4 *Birthday to You* (the “Song” or “*Happy Birthday*”) at a live show in San Francisco,  
5 California, that I recorded. The band played the Song for me on my birthday, with the  
6 audience singing along. On or about June 17, 2013, I paid Defendant  
7 Warner/Chappell Music, Inc. (“Warner”) the sum of \$455 for a compulsory license  
8 pursuant to 17 U.S.C. § 115 (commonly known as a “mechanical” license) to include  
9 my recording of *Happy Birthday* as a bonus track on an upcoming album.

10         4.       Based on information provided by my attorney, Daniel Schacht of  
11 Donahue Fitzgerald LLP, I believed that Warner claimed the *Happy Birthday*  
12 copyright, and that it would require me to pay it for a mechanical license to include  
13 the song on my album.

14         5.       Because Warner claimed to own the copyright for *Happy Birthday*, I  
15 faced a statutory penalty of up to \$150,000 and an award of attorneys’ fees and costs  
16 under the Copyright Act if I used the Song without Warner’s permission and Warner,  
17 in fact, owned the copyright as it claimed.

18         6.       After discussions with Mr. Schacht and based on the exhaustive research  
19 he had done, as well as his extensive experience in music and copyright law, I  
20 authorized him to file a class action lawsuit on my behalf against Warner to place the  
21 Song in the public domain and have Warner return the money it has collected by  
22 falsely claiming to own the Song. Before my discussions with Mr. Schacht, I did not  
23 know that Warner’s copyright claim for *Happy Birthday* had been disputed by anyone  
24 or was in doubt.

25         7.       I was informed by Mr. Schacht that a class action was filed by another  
26 plaintiff on June 13, 2013. Shortly thereafter, I spoke with Mr. Schacht and Mr. Mark  
27 C. Rifkin, Esquire, who represented the plaintiff in the first action, and discussed  
28 joining my case with that of the first plaintiff. Based upon Mr. Rifkin’s own

1 exhaustive research, his and his firm's expertise in class action lawsuits, and the  
2 exhaustive research Mr. Randall Newman, Esq. had undertaken, and to litigate this  
3 matter most efficiently, I decided to join my action with his. I authorized Mr. Rifkin,  
4 Mr. Newman, and Mr. Schacht to draft and file a class action complaint on my  
5 behalf, which I reviewed in detail and authorized them to file on my behalf in this  
6 Court on June 20, 2013.

7 8. Before I agreed to become a named Plaintiff, Mr. Schacht and Mr.  
8 Rifkin explained to me what was involved in serving as a class representative. Since  
9 agreeing on to serve as a class representative, I have diligently fulfilled my  
10 obligations, and I was instrumental in achieving the relief obtained for the proposed  
11 Settlement Class.

12 9. Shortly before and after my complaint was filed, other similar class  
13 action complaints were filed in this Court. So that the action could be litigated most  
14 efficiently, the plaintiffs agreed to consolidate all four cases in this Court. I reviewed  
15 the First Amended Complaint and authorized it to be filed on my behalf on July 26,  
16 2013. I also reviewed and authorized all four subsequent consolidated complaints.

17 10. I have spent many hours of my time on this litigation to date. Among  
18 other things: (i) I provided relevant documents and other information to my counsel  
19 when requested by them; (ii) I diligently researched my rights; (iii) I have spoken  
20 many times with Mr. Schacht, in person and by telephone, and exchanged a multitude  
21 of emails with him during the two and one-half years this action has been pending, as  
22 well as speaking regularly with Mr. Rifkin; (iv) I reviewed the many pleadings,  
23 briefs, exhibits, and declarations filed by the Plaintiffs in the action, both in draft  
24 before they were filed and after they were filed; (v) I reviewed the proposed  
25 settlement with Mr. Schacht during the settlement process; and (iv) I have overseen  
26 the settlement process together with Mr. Rifkin, Mr. Newman and Mr. Schacht.

27 11. I am thoroughly familiar with the work performed Mr. Schacht and his  
28 firm, as well as by the other Plaintiffs' counsel in prosecuting the action, and I have

1 worked closely with my attorneys in prosecuting the action to achieve two primary  
2 objectives: a declaration that *Happy Birthday* is in the public domain and an award of  
3 damages for past royalty payments for the Song. The settlement achieves both of  
4 these primary objectives: a judicial determination that *Happy Birthday* is in the public  
5 domain to prevent future harm to members of the Settlement Class (and the rest of the  
6 world) and a substantial settlement payment to compensate members of the  
7 Settlement Class for their past injuries.

8 12. I am not aware of any conflicts that would prevent me from serving as a  
9 representative of the Settlement Class in this matter. I do not have any personal or  
10 business relationships with Plaintiffs' counsel (other than retaining them to represent  
11 me in this case and, as to Mr. Schacht and his firm, to represent me in other legal  
12 matters).

13 **Typicality of Claims**

14 13. My experience of having to pay a fee to Warner to use *Happy Birthday*  
15 or risk substantial liability copyright infringement damages and penalties is just like  
16 the experiences of many others who also were compelled to pay a fee to Warner (or  
17 their predecessors) to use the Song since 1949. The Court has ruled that Warner and  
18 their predecessors never owned a copyright to the *Happy Birthday* lyrics, and their  
19 copyright to the melody ended by 1949. Therefore, I and all others who paid Warner  
20 to use the Song since 1949 basically paid them for nothing. Since Warner and their  
21 predecessors never a copyright to the Song, they had nothing to license to me or to  
22 anyone else who paid a fee to them.

23 14. I decided to become involved in this case to accomplish two goals: *first*,  
24 to have a court declare that the Song is in the public domain, and *second*, to recover  
25 damages for myself and all others who were forced to pay Warner to use the Song. I  
26 believe that I and everyone else who paid Warner to use the Song share the exact  
27 same interests in achieving those goals.

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1           15. To my knowledge, I share the same claims and interests as all other  
2 members of the Settlement Class who paid fees to Warner to use the Song since 1949.  
3 Therefore, my claims are substantially similar to those of other members of the  
4 Settlement Class because, by claiming to own a copyright they did not own, Warner  
5 collected fees they did not deserve from all of them.

6 **Involvement In the Litigation & Adequacy as Class Representative**

7           16. I have participated actively from the inception of this litigation through  
8 settlement discussions. I have had regular telephone communications with my  
9 attorneys during the course of this matter, I have reviewed all the pleading and other  
10 filings in the case, I have kept informed of all developments in the litigation, and I  
11 reviewed and approved the proposed settlement.

12           17. I made myself available to discuss developments in the case as part of  
13 my duty as the class representative. Also, I worked with my counsel to prepare this  
14 declaration in support of class certification and preliminary and final approval of the  
15 settlement.

16           18. I have provided documents and information to my counsel as requested  
17 to assist them in prosecuting the action on my behalf and on behalf of the class.

18           19. I have devoted significant time and attention to this case.

19           20. I have fairly represented the absent class and herein request that the  
20 Court approve this settlement and confirm me as a representative of the Settlement  
21 Class. I have maintained the best interests of the Settlement Class while performing  
22 my class representative duties. I am not aware of any conflicts of interest that prevent  
23 me from being confirmed as a class representative in this action.

24           21. I understand that as part of the settlement of this action, I and the other  
25 members of the Settlement Class are required to give Defendants and certain others a  
26 full and complete release of all claims, known and unknown. I understand that this  
27 means that we will be giving up any claims I may have against Warner. I have  
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1 agreed to this term as I believe this was in the best interests of the Settlement Class in  
2 order to achieve this settlement.

3         22. I believe that the Settlement obtained on behalf of the Settlement Class  
4 is excellent because it achieves both primary objectives despite the considerable  
5 issues and risks that remain with continuing the litigation, including the risk that the  
6 Song might not be declared to be in the public domain and the risk that the Settlement  
7 Class might not achieve as much in damages if this case were litigated to its  
8 conclusion. I strongly support the settlement in this matter. Throughout this case, I  
9 have always kept the best interests of the Class in mind over my own. I had no claim  
10 that was incompatible to the interests of other Class members.

11         23. As discussed above, I actively participated in the litigation of this action  
12 on behalf of myself and the class. As a class representative, I participated in all stages  
13 of the litigation, from the decision to file my complaint to the decision to settle the  
14 claims. I have spent at least 30 hours in performing my duties in this case.

15         24. In addition to time I spent participating in the prosecution of this case, I  
16 took a risk by coming forward and filing this class action. As a songwriter, I am  
17 aware that suing one of the largest publishing companies in the world may negatively  
18 impact my ability to secure a publishing contract in the future. I am also aware that I  
19 risked a very large award of attorneys' fees against me personally pursuant to 17  
20 U.S.C. § 505, due to my role as a plaintiff in this case. Nonetheless, I believed  
21 strongly in the merits of this claim and the importance of the issues raised in the  
22 litigation.

23         25. By serving as a plaintiff in this case, I undertook duties and obligations  
24 that other class members did not take. As a result of my stepping forward, several  
25 thousand class members will receive substantial settlement payments and benefits. I  
26 believe that \$10,000 is a fair amount for my service to the class.

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26. To my knowledge, no class member has expressed any disagreement to the terms of the settlement.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and was executed in Kensington, California on this 4<sup>th</sup> day of February 2016.



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Rupa Marya