

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

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
 PRODUCTIONS CORP., *et al.*,

13 Plaintiffs,

14 v.

15 WARNER/CHAPPELL MUSIC,
 16 INC., *et al.*,

17 Defendants.

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

) **DECLARATION OF JENNIFER
 NELSON IN SUPORT OF PLAINTIFFS'
 MOTION FOR APPROVAL OF
 PROPOSED CLASS ACTION
 SETTLEMENT**

) Date: March 14, 2016
) Time: 9:30 a.m.
) Room: 650
) Judge: Hon. George H. King,
 Chief Judge
)
)

21
 22 I, Jennifer Nelson, hereby state to the best of my personal knowledge and
 23 belief:

24 1. I am a resident of New York, New York. I am the sole shareholder of
 25 Good Morning to You Productions Corp. ("GMTY"), one of the named Plaintiffs in
 26 the above-captioned action.

27 2. I am an individual over the age of 18. I have personal knowledge of the
 28 following facts set forth below and if called to testify, I could and would testify

1 competently to them. I submit this declaration in connection with preliminary and
2 final approval of the proposed settlement and the provision of the proposed settlement
3 awarding me incentive compensation in the amount of \$15,000.

4 3. Before I agreed on behalf of GMTY to become a named Plaintiff, my
5 attorneys explained to me what was involved in serving as a class representative.
6 Since agreeing on behalf of GMTY to serve as a class representative, I have
7 diligently fulfilled my obligations, and I was instrumental in achieving the relief
8 obtained for the proposed Settlement Class.

9 4. I have spent hundreds of hours of my time on this litigation to date.
10 Among other things: (i) I helped my counsel, Randall S. Newman, Esquire, and Mark
11 C. Rifkin, Esquire, conduct detailed factual research on the history of *Happy Birthday*
12 *to You*; (ii) I provided relevant documents and other information to my counsel when
13 requested by them; (iii) I diligently researched my rights; (iv) I spoke many times
14 with Mr. Rifkin and Mr. Newman, in person and by telephone, during the two and
15 one-half years this action has been pending; (v) I met with experts and consultants
16 that were retained by Mr. Rifkin's firm to assist us in the litigation; (vi) I attended
17 hearings in Los Angeles in the action; (vii) I reviewing the many pleadings, briefs,
18 exhibits, and declarations filed by the Plaintiffs in the action, both in draft before they
19 were filed and after they were filed; (viii) I discussed the proposed settlement many
20 times with Mr. Rifkin and Mr. Newman throughout the settlement process; and (ix) I
21 have overseen the settlement process together with Mr. Rifkin and Mr. Newman.

22 5. I am thoroughly familiar with the work performed by Mr. Newman, Mr.
23 Rifkin, and the other Plaintiffs' counsel in prosecuting the action, and worked closely
24 with my attorneys in prosecuting the action to achieve two primary objectives: a
25 declaration that *Happy Birthday* is in the public domain and an award of damages for
26 past royalty payments for the Song. The settlement achieves both of these primary
27 objectives: a judicial determination that *Happy Birthday* is in the public domain to
28 prevent future harm to members of the Settlement Class (and the rest of the world)

1 and a substantial settlement payment to compensate members of the Settlement Class
2 for their past injuries.

3 6. I am not aware of any conflicts that would prevent GMTY from serving
4 as a representative of the Settlement Class in this matter. GMTY does not have any
5 personal or business relationships with Plaintiffs' counsel (other than retaining them
6 to represent it in this case).

7 7. I have been a documentary filmmaker for many years. I have worked on
8 many productions where *Happy Birthday* was performed. Occasionally, I could not
9 use a scene because the producer refused to pay a royalty for the Song.

10 8. My experience made me interested in the Song's history, and in 2012 or
11 2013, I decided to make a documentary film to tell the story of the world's most
12 famous song. In preparation for the documentary, I conducted extensive historical
13 research on the Song, and also learned a great deal about Mildred Hill and her sister,
14 Patty Hill.

15 9. Since my film would be about *Happy Birthday*, it was necessary for me
16 to include performances of the Song in the film. As a result, I learned I was required
17 to pay Defendants to license the Song or risk substantial liability of as much as
18 \$150,000 or more in damages and penalties for copyright infringement. I also was
19 aware there was dispute whether the words and melody for *Happy Birthday* were
20 subject to a valid and enforceable copyright. However, because of the risk to GMTY
21 of substantial liability for copyright infringement if it did not license the Song, I had
22 no choice but to cause GMTY pay the fee demanded by Defendants so that I could
23 continue to work on my film, even though I doubted that Defendants owned a
24 copyright to the Song's music and lyrics.

25 10. I described my early research to Mr. Newman, who undertook his own
26 investigation into the Song's elaborate history. Mr. Newman and I also discussed a
27 law review article written by Prof. Robert Brauneis of George Washington Law
28 School questioning the validity of the Song's copyright. Thereafter, using Prof.

1 Brauneis's article as a reference, Mr. Rifkin and Mr. Newman and Mr. Rifkin's firm
2 conducted exhaustive research on the history of the Song, the original musical
3 composition *Good Morning to All*, the Hill sisters, their publishers (Clayton F.
4 Summy and the Clayton F. Summy Co.), and the various entities that claimed to own
5 a copyright to the Song's words and melody over the decades.

6 11. Based upon their exhaustive research, which Mr. Rifkin and Mr.
7 Newman shared with me, I decided on behalf of GMTY to file the first class action
8 complaint challenging the *Happy Birthday* copyright. I authorized Mr. Rifkin and
9 Mr. Newman to draft the complaint, which I reviewed in detail and authorized them
10 to file on behalf of GMTY in the United States District Court for the Southern
11 District of New York on June 13, 2015.

12 12. Shortly after GMTY's initial complaint was filed in New York federal
13 court, Plaintiffs Siegel, Marya, and Major filed similar class action complaints in this
14 Court on June 19, 2013, June 20, 2013, and July 17, 2013, respectively. So that the
15 action could be litigated most efficiently, I agreed on behalf of GMTY to voluntarily
16 dismiss its original complaint and consolidate all four cases in this Court. I reviewed
17 the Second Amended Complaint and authorized it to be filed on behalf of GMTY on
18 September 4, 2013. I also reviewed and authorized all three subsequent consolidated
19 complaints on behalf of Plaintiff GMTY.

20 **Typicality of Claims**

21 13. GMTY's experience of having to pay a fee to Defendants to use *Happy*
22 *Birthday* or risk substantial liability copyright infringement damages and penalties is
23 just like the experiences of many others who also were compelled to pay a fee to
24 Defendants (or their predecessors) to use the Song since 1949. The Court has ruled
25 that Defendants and their predecessors never owned a copyright to the Happy
26 Birthday lyrics, and their copyright to the melody ended by 1949. Therefore, GMTY
27 and all others who paid Defendants to use the Song since 1949 basically paid them
28 for nothing. Since Defendants and their predecessors never a copyright to the Song,

1 they had nothing to license to GMTY or to anyone else who paid a fee to them.

2 14. I decided that GMTY would become involved in this case to accomplish
3 two goals: *first*, to have a court declare that the Song is in the public domain, and
4 *second*, to recover damages for GMTY and all others who were forced to pay
5 Defendants to use the Song. I believe that GMTY and everyone else who paid
6 Defendants to use the Song share the exact same interests in achieving those goals.

7 15. To my knowledge, GMTY shares the same claims and interests as all
8 other members of the Settlement Class who paid fees to Defendants to use the Song
9 since 1949. Therefore, GMTY's claims are substantially similar to those of other
10 members of the Settlement Class because, by claiming to own a copyright they did
11 not own, Defendants collected fees they did not deserve from all of them.

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

13 16. I have participated actively on behalf of GMTY from the inception of
14 this litigation through settlement discussions. On behalf of GMTY, I have had regular
15 meetings and telephone communications with my attorneys during the course of this
16 matter, I have met and spoken with the experts and consultants they worked with, I
17 have reviewed all the pleading and other filings in the case, I have spoken by
18 telephone with other Plaintiffs about the case, I have kept informed of all
19 developments in the litigation, I attended Court hearings, and I reviewed and
20 approved the proposed settlement.

21 17. As described in more detail above, I spent significant time working with
22 Mr. Rifkin and Mr. Newman to uncover the historical facts about the Song.

23 18. I made myself available to discuss developments in the case as part of
24 my duty as the class representative. Also, I worked with my counsel to prepare this
25 declaration in support of class certification and preliminary and final approval of the
26 settlement.

27 19. I have provided documents and information to my counsel as requested
28 to assist them in prosecuting the action on my behalf and on behalf of the class.

1 20. I have devoted significant time and attention to this case.

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

7 22. I understand that as part of the settlement of this action, I and the other
8 members of the Settlement Class are required to give Defendants and certain others a
9 full and complete release of all claims, known and unknown. I understand that this
10 means that we will be giving up any claims I may have against the Warner. I have
11 agreed to this term as I believe this was in the best interests of the Settlement Class in
12 order to achieve this settlement.

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

21 24. As discussed above, I actively participated in the litigation of this action
22 on behalf of myself and the rest of the class. As a class representative, I participated
23 in all stages of the litigation, from the decision to file my complaint to the decision to
24 settle the claims. As described above, I have spent hundreds of hours in performing
25 my duties in this case.

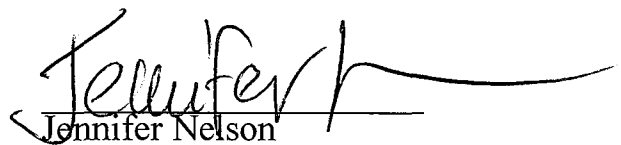
26 25. In addition to time I spent participating in the prosecution of this case, I
27 took a risk by coming forward and filing this class action. I am an active filmmaker,
28 and I expect to need synchronization licenses from Warner and other copyright

1 owners in the future. I am aware that my role as the first plaintiff in this case could
2 negatively impact my efforts to negotiate synchronization licenses in the future.
3 Nonetheless, I believed strongly in the merits of this claim and the importance of the
4 issues raised in the litigation. I undertook this case to protect artists' creative rights
5 and to prevent abusive conduct under the Copyright Act.

6 26. By serving as a plaintiff in this case, I undertook duties and obligations
7 that other class members did not take. As a result of my stepping forward, several
8 thousand class members will receive substantial settlement payments and the *Happy*
9 *Birthday* song will be declared to be in the public domain. I believe that \$15,000 is a
10 fair amount for my extensive service to the class.

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

13 I declare under penalty of perjury under the laws of the United States of
14 America that the above is true and correct and was executed in New York, New
15 York on this 29th day of January 2016.

16 
17 Jennifer Nelson
18
19
20
21
22
23
24
25
26
27
28