



1 competently to them. I submit this declaration in connection with approval of the  
2 proposed Settlement and the provision of the proposed Settlement awarding me  
3 incentive compensation in the amount of \$10,000.

4 3. On or about September 1, 2009, Big fan paid Defendant  
5 Warner/Chappell Music, Inc. (“Warner”) the sum of \$3,000 for a synchronization  
6 license to use *Happy Birthday to You*,

7 4. In 2009, Big Fan produced a movie called *Big Fan*. In one of the scenes  
8 in *Big Fan*, the actors sang the familiar *Happy Birthday to You* lyrics.

9 5. In the early summer of 2009, after filming was complete but before *Big*  
10 *Fan* was released, Big Fan hired a music supervisor to secure the rights to all the  
11 music that was used in the movie.

12 6. The music supervisor identified which music was copyrighted, and  
13 advised Big Fan that it would have to obtain a license from Warner and pay a fee to  
14 Warner to perform *Happy Birthday* in the movie because Warner claimed to own the  
15 copyright to the Song.

16 7. Relying upon the information provided by the music producer, Big Fan  
17 believed that Warner owned the *Happy Birthday* copyright, and that it would have to  
18 purchase a synchronization license from Warner to use the Song in the movie.

19 8. Accordingly, in July 2009, Big Fan asked the music supervisor to obtain  
20 a quote from Warner for a synchronization license to use *Happy Birthday* in *Big Fan*.  
21 On or about July 20, 2009, Warner demanded the sum of \$3,000 for a  
22 synchronization license.

23 9. Because Warner claimed to own copyright for *Happy Birthday*, Big Fan  
24 faced a statutory penalty of \$150,000 under the Copyright Act if it used the Song  
25 without Warner’s permission and Warner, in fact, owned the copyright as it claimed.

26 10. On July 20, 2009, as President of Big Fan, I executed the  
27 synchronization license with Warner and agreed to pay \$3,000 based upon *Big Fan’s*  
28 theatrical release, which Big Fan paid to Warner on or about September 1, 2009.

1           11. I read in the press about this action shortly after the first complaint was  
2 filed on June 13, 2013. Before then, Big Fan, the music producer it hired, and I did  
3 not know that Warner's copyright claim for *Happy Birthday* had been disputed by  
4 anyone or was in doubt.

5           12. Shortly thereafter, I contacted Mark C. Rifkin, Esquire, who represented  
6 the plaintiff in the first action and discussed the case with him. I then met with Mr.  
7 Rifkin and his colleague, Randall S. Newman, Esquire, to discuss the research he and  
8 they had done. Based upon their exhaustive research, I decided to become one of the  
9 plaintiffs in the litigation and I authorized Mr. Rifkin and Mr. Newman to draft the  
10 complaint, which I reviewed in detail and authorized them to file on my behalf in this  
11 Court on June 19, 2013.

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

16           14. Shortly after my complaint was filed, two more similar class action  
17 complaints were filed in this Court on June 20, 2013, and July 17, 2013, respectively.  
18 So that the action could be litigated most efficiently, the plaintiffs agreed to  
19 consolidate all four cases in this Court. I reviewed the Second Amended Complaint  
20 and authorized it to be filed on my behalf on September 4, 2013. I also reviewed and  
21 authorized all three subsequent consolidated complaints.

22           15. I have spent many hours of my time on this litigation to date. Among  
23 other things: (i) I provided relevant documents and other information to my counsel  
24 when requested by them; (ii) I diligently researched my rights; (iii) I have spoken  
25 many times with Mr. Rifkin, in person and by telephone, during the two and one-half  
26 years this action has been pending; (iv) I reviewing the many pleadings, briefs,  
27 exhibits, and declarations filed by the Plaintiffs in the action, both in draft before they  
28 were filed and after they were filed; (v) I reviewed the proposed settlement with Mr.

1 Rifkin during the settlement process; and (iv) I have overseen the settlement process  
2 together with Mr. Rifkin.

3 16. I am thoroughly familiar with the work performed Mr. Rifkin and his  
4 firm, as well as by the other Plaintiffs' counsel in prosecuting the action, and I have  
5 worked closely with my attorneys in prosecuting the action to achieve two primary  
6 objectives: a declaration that *Happy Birthday* is in the public domain and an award of  
7 damages for past royalty payments for the Song. The settlement achieves both of  
8 these primary objectives: a judicial determination that *Happy Birthday* is in the public  
9 domain to prevent future harm to members of the Settlement Class (and the rest of the  
10 world) and a substantial settlement payment to compensate members of the  
11 Settlement Class for their past injuries.

12 17. I am not aware of any conflicts that would prevent me from serving as a  
13 representative of the Settlement Class in this matter. I do not have any personal or  
14 business relationships with Plaintiffs' counsel (other than retaining them to represent  
15 it in this case).

16 **Typicality of Claims**

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

26 19. I decided to become involved in this case to accomplish two goals: *first*,  
27 to have a court declare that the Song is in the public domain, and *second*, to recover  
28 damages for myself and all others who were forced to pay Warner to use the Song. I

1 believe that Big Fan and everyone else who paid Warner to use the Song share the  
2 exact same interests in achieving those goals.

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

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

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

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

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

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

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

26         26. I understand that as part of the settlement of this action, I and the other  
27 members of the Settlement Class are required to give Defendants and certain others a  
28 full and complete release of all claims, known and unknown. I understand that this

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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 New York, New York on this 29th day of January 2016.

  
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Robert Siegel