

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

GOOD MORNING TO YOU
PRODUCTIONS CORP., et al.,

Plaintiffs,

v.

WARNER/CHAPPELL MUSIC, INC.,
et al.,

Defendants.

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

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. George H. King,
Chief Judge

Courtroom: 650

WHEREAS, a putative class action captioned *Good Morning to You Productions Corp., et al. v. Warner/Chappell Music, Inc., et al.*, Lead Case No. CV 13-04460-GHK (MRWx) is pending before the Court, and

WHEREAS, Good Morning to You Productions Corp., Robert Siegel, Rupa Marya d/b/a Rupa & The April Fishes, and Majar Productions, LLC (collectively, the “Plaintiffs” or “Class Representatives”), individually and on behalf of the Settlement Class (defined below); Defendants Warner/Chappell Music, Inc., and Summy-Birchard Inc. (jointly, “Defendants” or “Warner/Chappell”); and Intervenors the Association for Childhood Education International and the Hill

[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT
CASE NO. 13-CV-04303-LHK

1 Foundation, Inc. (jointly, “Intervenors”) (Plaintiffs, Defendants and Intervenors,
2 collectively, the “Parties”) have entered into a Settlement Agreement (“Settlement
3 Agreement”), which, together with the exhibits attached thereto, sets forth the terms
4 and conditions for a proposed settlement and dismissal of the Action with prejudice
5 as to Defendants for the claims of the Settlement Class upon the terms and
6 conditions set forth in the Settlement Agreement, and the Court having read and
7 considered the Settlement Agreement and exhibits attached thereto;

8 This matter coming before the Court upon the agreement of the Parties and
9 the motion of Plaintiffs seeking preliminary approval of the Settlement Agreement,
10 good cause being shown, and the Court being fully advised in the premises,

11 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS
12 FOLLOWS:

13 1. Terms and phrases in this Order shall have the same meaning as
14 ascribed to them in the Settlement Agreement attached hereto.

15 **Settlement Class Certification for Settlement Purposes Only**

16 2. A class (the “Settlement Class”) is certified for settlement purposes
17 only.

18 a. The Settlement Class is defined to mean:

19 (a) all Persons who, at any time since September 3, 1949, directly paid
20 Defendants, Intervenors, any of their predecessors-in-interest (or any of the
21 Affiliates of any of the foregoing) for each such Person’s use of the Song;

22 (b) all Persons who, at any time since September 3, 1949, directly paid HFA,
23 Alfred or Faber as agents for Defendants or their predecessors-in-interest for each
24 such Person’s use of the Song; or

25 (c) the American Society of Composers and Songwriters (ASCAP), foreign
26 collecting societies (such as, for example, SACEM and GEMA), and any other
27 Person who at any time since September 3, 1949 has issued blanket licenses
28 covering the Song, but only for the amounts allocated to the Song by such Persons

1 and directly paid to Defendants or their predecessors-in-interest (or either's
2 Affiliates) pursuant to such blanket licenses; or

3 (d)(i) digital rights aggregation services (such as, for example, Music Reports,
4 Inc.), (ii) foreign sub-publishers (such as, for example, EMI Music Publishing Ltd.),
5 and (iii) Persons not enumerated in sub-paragraph (b), (c), or items (i)-(ii) of this
6 sub-paragraph (d) who directly paid Defendants, Intervenor, any of their
7 predecessors-in-interest (or any of the Affiliates of any of the foregoing) on behalf
8 of other Persons for such other Persons' use of the Song at any time since
9 September 3, 1949, but only to the extent that the Persons listed in items (i)-(iii) of
10 this sub-paragraph (d) directly paid Defendants, Intervenor, any of their
11 predecessors-in-interest (or any of the Affiliates of any of the foregoing) amounts
12 that were comprised of payments by or on behalf of other Persons for such other
13 Persons' use of the Song.

14 In the case of payments referenced in sub-paragraphs (c) and (d), the Persons
15 enumerated in sub-paragraphs (c) and (d) who made the direct payments to
16 Defendants Intervenor, any of their predecessors-in-interest (or any of the Affiliates
17 of any of the foregoing) are part of the Settlement Class, whereas the Persons on
18 whose behalf such Persons obtained the rights to use the Song (whether through a
19 blanket license or otherwise) are *not* part of the Settlement Class.

20 For purposes of this definition, the term "directly paid" includes payments
21 made by a Person's accountant, attorney, business manager or similar agent acting
22 for such Person solely in the capacity of remitting payment and not for the purpose
23 of providing licensing services to other Persons. In the case of a direct payment by
24 a Person's accountant, attorney, business manager or similar agent as described in
25 the preceding sentence, said Person on whose behalf the payment is made is the
26 Person in the Settlement Class (subject to all other requirements of this definition),
27 and that Person's accountant, attorney, business manager or similar agent as
28 described in the preceding sentence is not in the Settlement Class by virtue of that

1 payment.

2 Excluded from the Settlement Class are the following: (I) Defendants, their
3 Affiliates, and HFA, and their respective officers, directors and employees; (II)
4 Intervenor, their subsidiaries, and Affiliates and their respective officers, directors,
5 employees; and (III) Class Counsel, Defendants' Counsel, and Intervenor's Counsel.
6 For the avoidance of doubt, Alfred and Faber are part of the Settlement Class under
7 sub-paragraph (a) with respect to their own direct licenses of the Song from
8 Defendants or their predecessors-in-interest (or either's Affiliates), but only the sub-
9 licensees of Alfred and Faber are part of the Settlement Class under sub-paragraph
10 (b).

11 b. The Settlement Class consists of thousands of persons or entities,
12 there are questions of law or fact common to the Settlement Class, Plaintiffs' claims
13 are typical of those of the Settlement Class, and Plaintiffs will fairly and adequately
14 protect the interests of the Settlement Class. Accordingly, the requirements for class
15 certification under Fed. R. Civ. P. 23(a) are satisfied.

16 c. In addition, the questions of law or fact common to the
17 Settlement Class predominate over any individual questions, and the class action
18 mechanism is superior to other available methods for the fair and efficient
19 adjudication of this controversy. Consequently, the Settlement Class satisfies the
20 requirements of Fed. R. Civ. P. 23(b)(3).

21 3. The Court hereby appoints Plaintiffs Good Morning to You
22 Productions Corp., Robert Siegel, Rupa Marya d/b/a Rupa & The April Fishes, and
23 Majar Productions, LLC as Class Representatives.

24 4. The Court hereby appoints Wolf Haldenstein Adler Freeman & Herz
25 LLP ("Wolf Haldenstein"); Randall S. Newman PC; Hunt, Ortmann, Palffy, Nieves,
26 Darling & Mah, Inc.; Donahue Fitzgerald, LLP; and Glancy Prongay & Murray,
27 LLP as Class Counsel and Wolf Haldenstein as Lead Class Counsel.

1 **Preliminary Approval**

2 5. Plaintiffs have moved the Court for an order approving the settlement
3 of the Action in accordance with the Settlement Agreement, which, together with
4 the documents incorporated therein, sets forth the terms and conditions for a
5 proposed settlement and dismissal of the Action with prejudice against Defendants,
6 and the Court having read and considered the Settlement Agreement and having
7 heard the Parties and being fully advised in the premises, hereby preliminarily
8 approves the Settlement Agreement in its entirety subject to the Final Approval
9 Hearing referred to in Paragraph 22 of this Order.

10 6. This Court finds that it has jurisdiction over the subject matter of this
11 action and over all Parties to the Action, including all members of the Settlement
12 Class.

13 7. The Court finds that, subject to the Final Approval Hearing, the
14 Settlement Agreement falls within the range of possible approval as fair, reasonable,
15 adequate, and in the best interests of the Settlement Class. The Court further finds
16 that the Settlement Agreement substantially fulfills the purposes and objectives of
17 the class action, and provides beneficial relief to the Settlement Class. The Court
18 also finds that the Settlement Agreement: (a) is the result of serious, informed, non-
19 collusive arm's length negotiations involving experienced counsel familiar with the
20 legal and factual issues of this case and made with the assistance of David Rotman,
21 Esq., of Gregorio, Haldeman & Rotman; (b) is sufficient to warrant notice of the
22 Settlement Agreement and the Final Approval Hearing to the Settlement Class; (c)
23 meets all applicable requirements of law, including Federal Rule of Civil Procedure
24 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a
25 finding or admission of liability by Defendants or Intervenor.

26 **Notice and Administration**

27 8. Rust Consulting, Inc., is hereby appointed as Settlement Administrator
28 and shall perform all the duties of the Settlement Administrator as set forth in the

1 Settlement Agreement and this Order.

2 9. The Court finds that the Notice and Notice Plan as set forth in the
3 Settlement Agreement are reasonably calculated to, under all circumstances, apprise
4 the members of the Settlement Class of the pendency of this action, certification of
5 the Settlement Class for settlement purposes only, the terms of the Settlement
6 Agreement, and their right to object to the Settlement or to exclude themselves from
7 the Settlement Class. The Notice and Notice Plan are consistent with the
8 requirements of Rule 23 and due process, and constitute the best notice practicable
9 under the circumstances.

10 10. The Court therefore approves the Notice and the Notice Plan, including
11 the Mail Notice and Publication Notice attached as Exhibits B and C, respectively,
12 to the Settlement Agreement. The Court also approves the Claim Form, attached as
13 Exhibit A to the Settlement Agreement, and claims administration procedures set
14 forth in the Settlement Agreement. The Parties may, by agreement, revise the Mail
15 Notice, Publication Notice, and/or Claim Form in ways that are not material, or in
16 ways that are appropriate to update those documents for purposes of accuracy or
17 formatting.

18 11. Pursuant to Section 5 of the Settlement Agreement, the Notice Plan
19 shall be implemented as follows: Within five (5) days of the entry of this Order,
20 Defendants shall provide the Settlement Class Member Address List to the
21 Settlement Administrator. Within twenty-one (21) days of the entry of this Order,
22 the Settlement Administrator shall mail the Mail Notice, substantially in the form
23 attached to the Settlement Agreement as Exhibit B, and the Claim Form,
24 substantially in the form attached to the Settlement Agreement as Exhibit A, to each
25 Settlement Class Member identified in the Settlement Class Member Address List.

26 12. Within five (5) days after mailing the Mail Notice, the Settlement
27 Administrator shall cause the Publication Notice, substantially in the form attached
28 to the Settlement Agreement as Exhibit C, to appear once each in *The Hollywood*

1 *Reporter* (in one-eighth page size), the U.S. edition of *Variety* (in one-eighth page
2 size), and *Billboard* (in one-eighth page size).

3 13. Within five(5) days after entry of this Order, the Settlement
4 Administrator shall publish the Website Notice, substantially in the form attached to
5 the Settlement Agreement as Exhibit B, through the Settlement Website. The
6 Settlement Website shall be developed, hosted, and maintained by the Settlement
7 Administrator through the Final Settlement Date.

8 14. The Defendants shall have complied with the requirements of 28
9 U.S.C. § 1715 and served notice of the proposed Settlement Agreement upon the
10 appropriate government officials within (10) days after the Settlement Agreement
11 was filed with the Court.

12 15. Settlement Class Members who wish to receive a payment under the
13 Settlement Agreement must complete and submit a timely and valid Period One
14 Claim Form and/or Period Two Claim Form. All Claims must be postmarked or
15 received by the Settlement Administrator on or before the Claims Deadline, which is
16 hereby set as fifty (50) days after the Notice Date.

17 **Exclusion**

18 16. Persons or entities who would otherwise be in the Settlement Class but
19 who wish to exclude themselves from the Settlement Class for purposes of this
20 Settlement may do so by submitting a request for exclusion to the Settlement
21 Administrator on or before the Objection/Exclusion Deadline, which is hereby set as
22 fourteen (14) days before the Final Approval Hearing referred to in Paragraph 22 of
23 this Order. The request for exclusion must comply with the exclusion procedures
24 set forth in the Settlement Agreement and include the case number of the Action;
25 such person or entity's name, address, email address (if applicable), phone number
26 and signature (or the signature of an authorized representative of such person or
27 entity); the date(s) of all direct payment(s) to Defendants or Defendants'
28 predecessors-in-interest or either's Affiliates or HFA, Alfred or Faber for use of the

1 Song, and the dollar amount(s) paid to Defendants or Defendants' predecessors-in-
2 interest or either's Affiliates or HFA, Alfred or Faber for use of the Song; and a
3 statement that such person or entity wishes to be excluded from the Settlement Class
4 for purposes of this Settlement. A request for exclusion may not request exclusion
5 of more than one Settlement Class Member.

6 17. Any member of the Settlement Class who timely requests exclusion
7 consistent with these procedures shall not: (i) be bound by the Final Order and
8 Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any
9 rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any
10 aspect of the Settlement Agreement. However, members of the Settlement Class
11 who fail to submit a valid and timely request for exclusion shall be bound by all
12 terms of the Settlement Agreement and the Final Order and Judgment, regardless of
13 whether they have otherwise requested exclusion from the Settlement Class.

14 **Objections**

15 18. Any member of the Settlement Class who has not filed a timely and
16 valid request for exclusion may object to the granting of final approval to the
17 Settlement Agreement. Settlement Class Members may object on their own, or may
18 do so through separate counsel at their own expense.

19 19. Any Settlement Class Member who intends to object to this Settlement
20 Agreement must present the objection in writing, which must be personally signed
21 by the objector and include: (a) the objector's name, address, email address, and
22 contact phone number; (b) an explanation of the basis upon which the objector
23 claims to be a Settlement Class Member; (c) all grounds for the objection, including
24 any supporting law or evidence, if any; (d) the name and contact information of any
25 and all attorneys representing, advising, or in any way assisting the objector in
26 connection with the preparation or submission of the objection or who may profit
27 from the pursuit of the objection (the "Objecting Attorneys"); and (e) a statement
28 indicating whether the objector intends to appear at the Final Approval Hearing

1 (either personally or through counsel who files an appearance with the Court in
2 accordance with the Court's Local Rules).

3 20. All objections and any papers submitted in support of such objections
4 must be submitted to the Court on or before the Objection/Exclusion Deadline either
5 by mailing them to the Class Action Clerk, or by filing them in person at any
6 location of the United States District Court for the Central District of California,
7 except that any objection made by a Settlement Class Member represented by
8 counsel must be filed through the Court's Case Management/Electronic Case Filing
9 (CM/ECF) system.

10 21. Any Settlement Class Member who fails to timely mail or file a written
11 objection with the Court and notice of intent to appear at the Final Approval Hearing
12 in accordance with the terms of this Settlement Agreement and as detailed in the
13 Notice shall not be permitted to object to the Settlement at the Final Approval
14 Hearing, and shall be foreclosed from seeking any review of the Settlement by
15 appeal or other means and shall be deemed to have waived his, her or its objections
16 and be forever barred from making any such objections in the Action or any other
17 action or proceeding.

18 **Final Approval Hearing**

19 22. A Final Approval Hearing shall be held before this Court on
20 _____, 2016 at 9:30 A.M. in Courtroom 650 of the United States District
21 Court for the Central District of California, located at 255 East Temple Street, Los
22 Angeles, CA 90012, to consider: (a) whether the proposed settlement of the Action
23 on the terms and conditions provided for in the Settlement Agreement is fair,
24 reasonable and adequate and should be given final approval by the Court; (b)
25 whether a final judgment should be entered; (c) whether to award payment of
26 attorneys' fees and expenses to Class Counsel and in what amount; and (d) whether
27 to award payment of incentive awards to the Class Representatives and in what
28 amount. The Court may adjourn the Final Approval Hearing without further notice

1 to Class Members.

2 23. The Court also sets the following dates and deadlines:

3 4 5	Deadline for Class Counsel to File Settlement and Fee Brief for Final Approval Hearing (Noticed for _____, 2016)	_____, 2016 [21 days before Final Approval Hearing]
6 7 8	Deadline for Settlement Members to Object to Settlement or Opt Out of Settlement Class	_____, 2016 [14 days before Final Approval Hearing]
9 10	Deadline for Defendants to Object to Class Counsel's Fee and Expense Petition	_____, 2016 [14 days before Final Approval Hearing]
11 12 13	Deadline for Settlement Class Members to Submit Claims	_____, 2016 [50 days after Notice Date]
14 15 16	Deadline for Class Counsel to File Reply in Support of Settlement and Fee Brief	_____, 2016 [7 days before Final Approval Hearing]

17 **Further Matters**

18 24. In order to protect its jurisdiction to consider the fairness of the
19 Settlement Agreement and to enter a Final Order and Judgment having binding
20 effect on all Settlement Class Members, the Court hereby enjoins all members of the
21 Settlement Class, and anyone who acts or purports to act on their behalf, from
22 pursuing any of the Released Claims.

23 25. Settlement Class Members shall be bound by all determinations and
24 judgments in the Action concerning the Action and/or Settlement Agreement,
25 whether favorable or unfavorable.

26 26. All discovery and pretrial proceedings and deadlines are stayed and
27 suspended until further notice from the Court, except for such actions as are
28 necessary to implement the Settlement Agreement and this Order.

1 27. In the event that the Settlement Agreement is terminated pursuant to the
2 provisions of the Settlement Agreement, then (a) the Settlement Agreement, this
3 Preliminary Approval Order, and the Final Order and Judgment (if applicable)
4 (including but not limited to the certification of the Settlement Class, the
5 appointment of Plaintiffs as Class Representatives, and the appointment of Class
6 Counsel) shall be vacated and shall be null and void, shall have no further force and
7 effect with respect to any Party in this Action, and shall not be used in this Action or
8 in any other proceeding for any purpose; (b) this action will revert to the status that
9 existed before the Settlement Agreement's execution date; (c)(i) no term or draft of
10 the Settlement Agreement, (ii) nor any part of the Parties' settlement discussions,
11 negotiations, or documentation (including any declaration or brief filed in support of
12 the motion for preliminary approval or motion for final approval), (iii) nor any
13 rulings regarding class certification for settlement purposes (including the
14 Preliminary Approval Order and, if applicable, the Final Order and Judgment), will
15 have any effect or be admissible into evidence for any purpose in the Action or any
16 other proceeding.

17 28. The Court may, for good cause, extend any of the deadlines set forth in
18 this Order without further notice to the Settlement Class Members. The Final
19 Approval Hearing may, from time to time and without further notice to the
20 Settlement Class Members, be continued by order of the Court.

21 **IT IS SO ORDERED.**

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23 Date: _____

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HON. GEORGE H. KING
CHIEF UNITED STATES DISTRICT JUDGE