

1 WHEREAS, a putative class action captioned *Good Morning to You*
2 *Productions Corp., et al. v. Warner/Chappell Music, Inc., et al.*, Lead Case No. CV
3 13-04460-GHK (MRWx) is pending before the Court, and

4 WHEREAS, Good Morning to You Productions Corp., Robert Siegel, Rupa
5 Marya d/b/a Rupa & The April Fishes, and Majar Productions, LLC (collectively,
6 the “Plaintiffs” or “Class Representatives”), individually and on behalf of the
7 Settlement Class (defined below); Defendants Warner/Chappell Music, Inc., and
8 Summy-Birchard Inc. (jointly, “Defendants” or “Warner/Chappell”); and
9 Intervenors the Association for Childhood Education International and the Hill
10 Foundation, Inc. (jointly, “Intervenors”) (Plaintiffs, Defendants and Intervenors,
11 collectively, the “Parties”) have entered into a Settlement Agreement (“Settlement
12 Agreement”), which, together with the exhibits attached thereto, sets forth the terms
13 and conditions for a proposed settlement and dismissal of the Action with prejudice
14 as to Defendants for the claims of the Settlement Class upon the terms and
15 conditions set forth in the Settlement Agreement, and the Court having read and
16 considered the Settlement Agreement and exhibits attached thereto;

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

20 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS
21 FOLLOWS:

22 1. Terms and phrases in this Order shall have the same meaning as
23 ascribed to them in the Settlement Agreement.

24 **Settlement Class Certification for Settlement Purposes Only**

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

27 a. The Settlement Class is defined to mean:

28 (a) all Persons who, at any time since September 3, 1949, directly paid

1 Defendants, Intervenor, any of their predecessors-in-interest (or any of the
2 Affiliates of any of the foregoing) for each such Person's use of the Song;

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

6 (c) the American Society of Composers, Authors and Publishers (ASCAP),
7 foreign collecting societies (such as, for example, SACEM and GEMA), and any
8 other Person who at any time since September 3, 1949 has issued blanket licenses
9 covering the Song, but only for the amounts allocated to the Song by such Persons
10 and directly paid to Defendants or their predecessors-in-interest (or either's
11 Affiliates) pursuant to such blanket licenses; or

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

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

1 For purposes of this definition, the term “directly paid” includes payments
2 made by a Person’s accountant, attorney, business manager or similar agent acting
3 for such Person solely in the capacity of remitting payment and not for the purpose
4 of providing licensing services to other Persons. In the case of a direct payment by
5 a Person’s accountant, attorney, business manager or similar agent as described in
6 the preceding sentence, said Person on whose behalf the payment is made is the
7 Person in the Settlement Class (subject to all other requirements of this definition),
8 and that Person’s accountant, attorney, business manager or similar agent as
9 described in the preceding sentence is not in the Settlement Class by virtue of that
10 payment.

11 Excluded from the Settlement Class are the following: (I) Defendants, their
12 Affiliates, and HFA, and their respective officers, directors and employees; (II)
13 Intervenors, their subsidiaries, and Affiliates and their respective officers, directors,
14 employees; and (III) Class Counsel, Defendants’ Counsel, and Intervenors’ Counsel.
15 For the avoidance of doubt, Alfred and Faber are part of the Settlement Class under
16 sub-paragraph (a) with respect to their own direct licenses of the Song from
17 Defendants or their predecessors-in-interest (or either’s Affiliates), but only the sub-
18 licensees of Alfred and Faber are part of the Settlement Class under sub-paragraph
19 (b).

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

25 c. In addition, the questions of law or fact common to the
26 Settlement Class predominate over any individual questions, and the class action
27 mechanism is superior to other available methods for the fair and efficient
28 adjudication of this controversy. Consequently, the Settlement Class satisfies the

1 requirements of Fed. R. Civ. P. 23(b)(3).

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

5 4. The Court hereby appoints Wolf Haldenstein Adler Freeman & Herz
6 LLP (“Wolf Haldenstein”); Randall S. Newman PC; Hunt, Ortmann, Palffy, Nieves,
7 Darling & Mah, Inc.; Donahue Fitzgerald, LLP; and Glancy Prongay & Murray,
8 LLP as Class Counsel and Wolf Haldenstein as Lead Class Counsel.

9 **Preliminary Approval**

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

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

21 7. The Court finds that, subject to the Final Approval Hearing, the
22 Settlement Agreement falls within the range of possible approval as fair, reasonable,
23 adequate, and in the best interests of the Settlement Class. The Court further finds
24 that the Settlement Agreement substantially fulfills the purposes and objectives of
25 the class action, and provides beneficial relief to the Settlement Class. The Court
26 also finds that the Settlement Agreement: (a) is the result of serious, informed, non-
27 collusive arm’s length negotiations involving experienced counsel familiar with the
28 legal and factual issues of this case and made with the assistance of David Rotman,

1 Esq., of Gregorio, Haldeman & Rotman; (b) is sufficient to warrant notice of the
2 Settlement Agreement and the Final Approval Hearing to the Settlement Class; (c)
3 meets all applicable requirements of law, including Federal Rule of Civil Procedure
4 23, and the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715; and (d) is not a
5 finding or admission of liability by Defendants or Intervenors.

6 **Notice and Administration**

7 8. Rust Consulting, Inc., is hereby appointed as Settlement Administrator
8 and shall perform all the duties of the Settlement Administrator as set forth in the
9 Settlement Agreement and this Order.

10 9. The Court finds that the Notice and Notice Plan as set forth in the
11 Settlement Agreement are reasonably calculated to, under all circumstances, apprise
12 the members of the Settlement Class of the pendency of this action, certification of
13 the Settlement Class for settlement purposes only, the terms of the Settlement
14 Agreement, and their right to object to the Settlement or to exclude themselves from
15 the Settlement Class. The Notice and Notice Plan are consistent with the
16 requirements of Rule 23 and due process, and constitute the best notice practicable
17 under the circumstances.

18 10. The Court therefore approves the Notice and the Notice Plan, including
19 the Mail Notice and Publication Notice attached as Exhibits 1 and 2, respectively, to
20 this Order. The Court also approves the Claim Form, attached as Exhibit 3 to this
21 Order, and claims administration procedures set forth in the Settlement Agreement.
22 The Parties may, by agreement, revise the Mail Notice, Publication Notice, and/or
23 Claim Form in ways that are not material, or in ways that are appropriate to update
24 those documents for purposes of accuracy or formatting.

25 11. Pursuant to Section 5 of the Settlement Agreement, the Notice Plan
26 shall be implemented as follows: Within five (5) days of the entry of this Order,
27 Defendants shall provide the Settlement Class Member Address List to the
28 Settlement Administrator. Within twenty-one (21) days of the entry of this Order,

1 the Settlement Administrator shall mail the Mail Notice, substantially in the form of
2 Exhibit 1 to this Order, and the Claim Form, substantially in the form attached to
3 this Order as Exhibit 3, to each Settlement Class Member identified in the
4 Settlement Class Member Address List.

5 12. Within five (5) days after mailing the Mail Notice, the Settlement
6 Administrator shall cause the Publication Notice, substantially in the form attached
7 to this Order as Exhibit 2, to appear once each in *The Hollywood Reporter* (in one-
8 eighth page size), the U.S. edition of *Variety* (in one-eighth page size), and
9 *Billboard* (in one-eighth page size).

10 13. Within five (5) days after entry of this Order, the Settlement
11 Administrator shall publish the Website Notice, substantially in the form attached to
12 this Order as Exhibit 1, through the Settlement Website. The Settlement Website
13 shall be developed, hosted, and maintained by the Settlement Administrator through
14 the Final Settlement Date.

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

19 15. Settlement Class Members who wish to receive a payment under the
20 Settlement Agreement must complete and submit a timely and valid Period One
21 Claim Form and/or Period Two Claim Form. All Claims must be postmarked or
22 received by the Settlement Administrator on or before the Claims Deadline, which is
23 hereby set as sixty (60) days after the Notice Date.

24 **Exclusion**

25 16. Persons or entities who would otherwise be in the Settlement Class but
26 who wish to exclude themselves from the Settlement Class for purposes of this
27 Settlement may do so by submitting a request for exclusion to the Settlement
28 Administrator on or before the Objection/Exclusion Deadline, which is hereby set as

1 sixty (60) days after the Notice referred to in Paragraph 22 of this Order. The
2 request for exclusion must comply with the exclusion procedures set forth in the
3 Settlement Agreement and include the case number of the Action; such person or
4 entity's name, address, email address (if applicable), phone number and signature
5 (or the signature of an authorized representative of such person or entity); the date(s)
6 of all direct payment(s) to Defendants or Defendants' predecessors-in-interest or
7 either's Affiliates or HFA, Alfred or Faber for use of the Song, and the dollar
8 amount(s) paid to Defendants or Defendants' predecessors-in-interest or either's
9 Affiliates or HFA, Alfred or Faber for use of the Song; and a statement that such
10 person or entity wishes to be excluded from the Settlement Class for purposes of this
11 Settlement. A request for exclusion may not request exclusion of more than one
12 Settlement Class Member.

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

21 **Objections**

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

26 19. Any Settlement Class Member who intends to object to this Settlement
27 Agreement must present the objection in writing, which must be personally signed
28 by the objector and include: (a) the objector's name, address, email address, and

1 contact phone number; (b) an explanation of the basis upon which the objector
2 claims to be a Settlement Class Member; (c) all grounds for the objection, including
3 any supporting law or evidence, if any; (d) the name and contact information of any
4 and all attorneys representing the objector in connection with the preparation or
5 submission of the (the “Objecting Attorneys”); and (e) a statement indicating
6 whether the objector intends to appear at the Final Approval Hearing (either
7 personally or through counsel who files an appearance with the Court in accordance
8 with the Court’s Local Rules). An objector or the Objector’s counsel shall not be
9 permitted to speak at the Final Approval Hearing unless notice of such intent (as
10 described in (e) above) is either timely filed with or mailed to the Court.

11 20. All objections and any papers submitted in support of such objections
12 must be submitted to the Court on or before the Objection/Exclusion Deadline either
13 by mailing them to the Class Action Clerk, or by filing them in person at any
14 location of the United States District Court for the Central District of California,
15 except that any objection made by a Settlement Class Member represented by
16 counsel must be filed through the Court’s Case Management/Electronic Case Filing
17 (CM/ECF) system.

18 21. Any Settlement Class Member who fails to timely mail or file a written
19 objection with the Court in accordance with the terms of this Settlement Agreement
20 and as detailed in the Notice shall not be permitted to object to the Settlement at the
21 Final Approval Hearing, and shall be foreclosed from seeking any review of the
22 Settlement by appeal or other means and shall be deemed to have waived his, her or
23 its objections and be forever barred from making any such objections in the Action
24 or any other action or proceeding.

25 **Final Approval Hearing**

26 22. A Final Approval Hearing shall be held before this Court on June 27, ,
27 2016 at 9:30 A.M. in Courtroom 650 of the United States District Court for the
28 Central District of California, located at 255 East Temple Street, Los Angeles, CA

1 90012, to consider: (a) whether the proposed settlement of the Action on the terms
 2 and conditions provided for in the Settlement Agreement is fair, reasonable and
 3 adequate and should be given final approval by the Court; (b) whether a final
 4 judgment should be entered; (c) whether to award payment of attorneys' fees and
 5 expenses to Class Counsel and in what amount; and (d) whether to award payment
 6 of incentive awards to the Class Representatives and in what amount. The Court
 7 may adjourn the Final Approval Hearing without further notice to Class
 8 Members.23. The Court also sets the following dates and deadlines:

9	Deadline for Dissemination of Notice by Claims Administrator (21 Days after Preliminary Approval entered by Court) ("Notice Date")	March 28, 2016
10	Deadline for Class Counsel to File Settlement and Fee Brief for Final Approval	April 27, 2016
11	Deadline for Defendants to Object to Class Counsel's Fee and Expense Petition	May 27, 2016
12	Deadline for Settlement Class Members to Submit Claims	May 27, 2016
13	Deadline for Settlement Class Members to Object to Settlement or Opt Out of Settlement Class	May 27, 2016
14	Deadline for Class Counsel to File Reply Brief in further support of Settlement and Fee Brief for Final Approval Hearing	June 13, 2016
15	Deadline for Claims Administrator to File Declaration re: Claims Administrator	June 20, 2016
16	Final Approval Hearing	June 27, 2016 at 9:30am

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27 **Further Matters**

28 23. In order to protect its jurisdiction to consider the fairness of the

1 Settlement Agreement and to enter a Final Order and Judgment having binding
2 effect on all Settlement Class Members, the Court hereby enjoins all members of the
3 Settlement Class, and anyone who acts or purports to act on their behalf, from
4 pursuing any of the Released Claims.

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

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

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

27 27. The Court may, for good cause, extend any of the deadlines set forth in
28 this Order without further notice to the Settlement Class Members. The Final

1 Approval Hearing may, from time to time and without further notice to the
2 Settlement Class Members, be continued by order of the Court.

3 **IT IS SO ORDERED.**

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5 Date: _____

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HON. GEORGE H. KING
CHIEF UNITED STATES DISTRICT JUDGE

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