

1 FRANCIS M. GREGOREK (144785)
 gregorek@whafh.com
 2 BETSY C. MANIFOLD (182450)
 manifold@whafh.com
 3 RACHELE R. RICKERT (190634)
 rickert@whafh.com
 4 MARISA C. LIVESAY (223247)
 livesay@whafh.com
 5 BRITTANY N. DEJONG (258766)
 dejong@whafh.com
 6 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
 7 750 B Street, Suite 2770
 San Diego, CA 92101
 8 Telephone: 619/239-4599
 9 Facsimile: 619/234-4599

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

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA -**
 13 **WESTERN DIVISION**

14	GOOD MORNING TO YOU	)	Lead Case No. CV 13-04460-GHK (MRWx)
15	PRODUCTIONS CORP., <i>et al.</i> ,)	
16	Plaintiffs,	)	DECLARATION OF JENNIFER NELSON
17	v.	)	IN SUPPORT OF FINAL APPROVAL OF
18		)	CLASS ACTION SETTLEMENT AND
19	WARNER/CHAPPELL MUSIC,	)	REQUEST FOR INCENTIVE
20	INC., <i>et al.</i>	)	COMPENSATION AWARD
21	Defendants.	)	Room: 650
22		)	Judge: Hon. George H. King, Chief
23		)	Judge
		)	Date: June 27, 2016
		)	Time: 9:30 a.m.

24
 25
 26
 27
 28

1 1. The undersigned, Jennifer Nelson, under penalty of perjury, hereby
2 declares and states as follows:

3 2. I am the President of Good Morning to You Productions Corp.
4 (“GMTY”), one of the four Plaintiffs in this Action. I have personal knowledge of
5 the facts set forth herein and, if called upon, I could and would competently testify
6 thereto.

7 3. I submit this Declaration in support of Plaintiffs’ motions for final
8 approval of the Settlement and for an incentive compensation award to the Plaintiffs.
9 These motions and supporting memoranda of law are filed concurrently herewith.

10 4. GMTY is producing a documentary film about the history and origin of
11 the song *Happy Birthday to You* (“*Happy Birthday*” or the “*Song*”). In the course of
12 making the film, I researched the Song, including biographical research of Mildred
13 Hill and her sister Patty Hill, who wrote the original musical composition *Good*
14 *Morning to All* on which *Happy Birthday* is based. In the course of my research, I
15 discovered many facts that led me to believe Defendant Warner/Chappell Music, Inc.
16 (“Warner”) and its predecessors did not own a copyright to the Song. I also learned
17 of a scholarly article written by Robert Brauneis, Professor of Law at George
18 Washington School of Law, raising various technical issues with Warner’s copyright
19 claim.

20 5. I discussed these issues with my attorney, Randall S. Newman, Esquire,
21 and I provided all my research and relevant documents to him. Mr. Newman and I
22 met with Mr. Brauneis to speak with him about his legal theories as well as his own
23 historical research, and we conducted additional research of our own to confirm my
24 initial doubts about the scope of Warner’s copyright. Based upon our research, as
25 well as the scholarly article written by Prof. Brauneis, we concluded that Warner did
26 not own a copyright to the Song’s melody or its familiar lyrics, but at most only
27 owned a copyright to specific piano arrangements and a second verse of the Song,
28

1 written by R.R. Forman as an employee of the Clayton F. Summy Co., one of
2 Warner's predecessors.

3 6. At the time, I was aware of Warner's claim to own a copyright to the
4 Song, and at that time I understood GMTY could only use the Song safely in my
5 movie if it obtained a synchronization license to do so. I could not be certain that I
6 would prevail in a dispute with Warner over the copyright. Because I could not be
7 certain I would prevail and because I risked liability for a large damages award for
8 willful infringement, and because I could not release my movie without licensing the
9 Song from Warner, GMTY obtained a synchronization license from Defendant
10 Warner/Chappell Music, Inc. ("Warner") on or about March 26, 2013, for which it
11 paid Warner the sum of \$1,500.

12 7. After GMTY paid for a license for *Happy Birthday*, Mr. Newman
13 introduced me to Mark C. Rifkin, Esquire, another lawyer with whom he had worked
14 on other matters in the past. Mr. Newman and I met with Mr. Rifkin and his
15 colleagues and discussed the copyright dispute in detail with them. Mr. Newman and
16 I provided all of my documents and all the historical evidence we had gathered to
17 Mr. Rifkin and his colleagues, which we discussed at length.

18 8. I also helped Mr. Newman and Mr. Rifkin and his colleagues conduct
19 even more historical research. For example, we traveled to Louisville, Kentucky,
20 where the Hill Sisters lived, we examined the Hill Sisters' personal papers at the
21 Filson Historical Society in Louisville, we met with the curator of the Little Loom
22 House, where the Song was supposedly first sung, and we met with local historians
23 to discuss the Song's history.

24 9. After my complaint was filed, I communicated frequently with Mr.
25 Newman and Mr. Rifkin and his colleagues in person, by telephone, and by email,
26 both to continue our independent historical research and to discuss the status of the
27 Action. We constantly reviewed the ongoing investigation, as well as the progress of
28 the litigation, so that I could monitor the Action for myself and for the absent Class

1 members.

2 10. My attorneys have kept me extremely well-informed of the progress of
3 the litigation throughout the pendency of the Action so that I could oversee the
4 Action for the benefit of the Class. In addition, I documented the progress of the
5 action as part of my work on my documentary film.

6 11. In particular, my attorneys and I reviewed the consolidated and amended
7 complaints before they were filed, we reviewed the Defendants' motion to dismiss
8 and Plaintiffs' response to it, we reviewed the Court's decision denying Defendants'
9 motion to dismiss, we reviewed the exchange of discovery, we reviewed the cross-
10 motions for summary judgment and the Court's hearings on the cross-motions, we
11 reviewed the Court's decision granting partial summary judgment in favor of the
12 Plaintiffs, and we discussed the possible settlement of the Action.

13 12. I had extensive communication with my attorneys about the proposed
14 Settlement as it was being negotiated. Ultimately, after those communications, I
15 reviewed, approved, and executed the Settlement Agreement. Thereafter, I have
16 continued to review the settlement process.

17 13. Since the time of my early investigation of the Song, I have spent
18 several hundred hours investigating the origin of the Song and the scope of
19 Defendants' copyright. Since my first complaint was filed alone, I have spent at least
20 300 hours in performing my duties as Plaintiff in the Action. I have spent all that
21 time at my own expense, and without any compensation or promise of compensation
22 of any kind.

23 14. I believe my role in the Action was crucial in achieving the excellent
24 results we have obtained for the Class and for the public.

25 15. I hereby certify, under the penalty of perjury under the laws of the
26 United States, that the foregoing statements are true and correct to the best of my
27 knowledge, information, and belief.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Executed this 26th day of April, 2016, at New York, New York.


JENNIFER NELSON