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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., *et al.*,)
16 Plaintiffs,) **DECLARATION OF ROBERT BRAUNEIS**
17 v.) **IN SUPPORT OF PLAINTIFFS' MOTION**
18) **FOR AWARD OF ATTORNEYS' FEES**
19 WARNER/CHAPPELL MUSIC,)
20 INC., *et al.*)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Room: 650
Judge: Hon. George H. King, Chief Judge
Date: June 27, 2016
Time: 9:30 a.m.

1 The undersigned, Robert Brauneis, Esquire, under penalty of perjury, hereby
2 declares and states as follows:

3 1. I am a Professor of Law and Co-Director of the Intellectual Property
4 Program at the George Washington University Law School. I have personal
5 knowledge of the matters set forth herein concerning all matters pertaining to this
6 Action and, if called upon, I could and would competently testify thereto.

7 2. I am the author of "Copyright and the World's Most Popular Song," 56
8 JOURNAL OF THE COPYRIGHT SOCIETY OF THE U.S.A. 335 (2009), the final version of
9 which was published on October 14, 2010 (the "Article"). My Article reviews the
10 history of *Happy Birthday to You* ("*Happy Birthday*" or the "Song") and challenges
11 the copyright in that Song on a number of grounds.

12 3. I began researching the disputed *Happy Birthday* copyright in 2007. I
13 spent hundreds of hours conducting detailed historical factual research, including an
14 extensive review of the copyright records on file at the Copyright Office, records on
15 file at the Library of Congress, litigation records available at the National Archive
16 and in the Surrogate's Court in New York City, probate records in Cook County,
17 Illinois, and original documents and manuscripts of Mildred and Patty Hill on file at
18 the Filson Historical Society in Louisville, Kentucky and at the University of Oregon
19 in Eugene, Oregon.

20 4. I also conducted an extensive review of relevant copyright law,
21 including law pertaining to the limited presumption a copyright owner is entitled to
22 under a registration.

23 5. I am aware that Defendants have opposed Plaintiffs' Counsel's request
24 for an award of attorneys' fees and reimbursement of expenses in part on the basis
25 that Plaintiffs' Counsel relied upon my work in commencing and litigating the
26 Action. While I consulted with Randall S. Newman, Esquire, before the Action was
27 commenced, and consulted with Plaintiffs' Counsel while the Action was pending, I
28 believe the results they achieved in the Action reflect their own independent research

1 and efforts rather than my own investigations, analyses, or conclusions.

2 6. I carefully reviewed Plaintiffs' initial complaint in this action. Many of
3 the facts alleged in the initial complaint were not part of my analysis.

4 7. I also read with great interest the Court's September 22, 2015, well-
5 reasoned summary judgment decision. Many of the facts supporting the Court's
6 decision were not part of my analysis, and some of the Court's decision ran directly
7 contrary to my own conclusions in my article, and have convinced me that I was
8 likely wrong.

9 8. For example, throughout my detailed research and investigation, I did
10 not discover, and was unaware of, three federal lawsuits filed by the Clayton F.
11 Summy Co. ("Summy") in the 1940s alleging copyright infringement over *Happy*
12 *Birthday*, none of which asserted any copyright under Reg. No. E51990, which had
13 been the basis for the claim of copyright ownership by Warner/Chappell Music, Inc.,
14 and its predecessors, including Summy. The National Archives had mistakenly failed
15 to index those lawsuits, and so my search there did not locate them. Mr. Newman's
16 diligent search of historical newspapers in the 1940s uncovered a mention of those
17 lawsuits, which was how he was able to locate them and bring them to my attention.

18 9. In my article, I came to the conclusion that the Hill Sisters eventually
19 assigned copyright in the Song's lyrics to Warner's predecessors. From my
20 conversations with Mr. Newman and Mark C. Rifkin, Esquire, I am aware that the
21 limited scope of these assignments was an integral part of their theory of the case;
22 from my reading of this Court's Memorandum and Order on Cross-Motions for
23 Summary Judgment of September 22, 2015, I am aware that the Court's view that the
24 assignments were limited in scope was essential to the Court's decision in favor of
25 the plaintiffs.

26 10. I did not know, and assumed otherwise, that Warner did not possess a
27 copy of the original registration certificate for Reg. No. E51990, nor did I know
28 whether Mildred Hill's name appeared on the registration certificate for that

1 copyright. I assumed that Mildred Hill's name appeared on the registration
2 certificate.

3 11. I did not know whether Warner possessed a deposit copy of the work
4 deposited with the registration for Reg. No. E51990. My legal analysis of the validity
5 of the copyright was not dependent upon whether Warner possessed a deposit copy
6 of the work, although Plaintiffs' Counsel later determined that Warner did not
7 possess a copy of the deposited work.

8 12. I did not know whether Warner would or did claim that Preston Ware
9 Orem wrote any of the Song's lyrics.

10 13. I did not discover, and was unaware of, the publication of sheet music
11 with the Song's words and melody in *The Everyday Song Book* by the Cable Co.
12 ("Cable") in the 1920s. My legal analysis of the validity of the copyright was not
13 dependent upon any of those publications.

14 14. After Warner produced an illegible copy of the 1927 publication of *The*
15 *Everyday Song Book*, I worked with counsel for the plaintiffs in this action to locate
16 additional, earlier copies of the work.

17 15. I read the cross-motions for summary judgment in this Action as well as
18 the Court's decision granting in part Plaintiffs' motion for summary judgment and
19 denying Defendants' cross-motion for summary judgment, *Marya v*
20 *Warner/Chappell Music, Inc.*, No. CV 13-4460 GHK (MRWx), 2015 U.S. Dist.
21 LEXIS 128755 (C.D. Cal. Sep. 22, 2015), in which the Court determined that
22 Defendants do not own, and their predecessors never owned, a copyright to the
23 Song's lyrics.

24 16. Based upon my review of the summary judgment record, I am aware
25 that Plaintiffs' Counsel did not raise any of my conclusions regarding the invalidity
26 of the copyright claim in presenting Plaintiffs' motion for summary judgment or in
27 opposing Defendants' cross-motion for summary judgment. Moreover, my
28 conclusions on the copyright's invalidity do not appear in the Court's decision on the

1 summary judgment cross-motions. Rather, my conclusions appear unrelated to the
2 Court's decision.

3 17. As I stated above, my article concluded that the Hill Sisters eventually
4 assigned any rights they may have had to the Song's lyrics to Warner's predecessors.
5 The Court's decision granting partial summary judgment in Plaintiffs' favor rests
6 upon its finding that the Hill Sisters never assigned any such rights to Warner's
7 predecessors. Plaintiffs' Counsel alone developed and argued the factual and legal
8 basis for the Court's determination.

9 18. I am not seeking a fee for myself in this Action, and I have no financial
10 interest in any fees or expenses awarded to Plaintiffs' Counsel in the Action.

11 19. I hereby declare, under the penalty of perjury under the laws of the
12 United States, that the foregoing statements are true and correct to the best of my
13 knowledge, information, and belief.

14 Executed this 11th day of June, 2016, in Munich, Germany.

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17 
18 ROBERT BRAUNEIS