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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 DANIEL J. SCHACHT
17	v.)	IN FURTHER SUPPORT OF PLAINTIFFS'
18)	COUNSEL'S REQUEST FOR
19	WARNER/CHAPPELL MUSIC,)	ATTORNEYS' FEES AND EXPENSES
20	INC., <i>et al.</i>)	
21	Defendants.)	Room: 650
22)	Judge: Hon. George H. King, Chief
23)	Judge
)	Date: June 27, 2016
)	Time: 9:30 a.m.

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1 The undersigned, Daniel J. Schacht, under penalty of perjury, hereby declares
2 and states as follows:

3 1. I am an attorney duly licensed to practice law in the State of California
4 and I am admitted to practice in this Court. I am a partner of the law firm Donahue
5 Fitzgerald LLP (“Donahue Fitzgerald”), one of Plaintiffs’ Counsel in this litigation. I
6 have personal knowledge of the matters set forth herein and, if called upon, I could
7 and would competently testify thereto.

8 2. I submit this Reply Declaration in further support of Plaintiffs’ motion
9 for an award of attorneys’ fees and reimbursement of expenses.

10 3. This Declaration sets forth the nature of the work my firm performed
11 prior to filing suit and our coordination with Mark C. Rifkin, Esquire of Wolf
12 Haldenstein and other Plaintiffs’ Counsel.

13 4. My firm represented Plaintiff Rupa Marya (“Rupa”¹) prior to the filing
14 of this litigation and were prepared to file a class action complaint against
15 Defendants. We were unaware that Co-Counsel and the other Plaintiffs were
16 simultaneously working on a very similar class action complaint until June 13, 2013,
17 when they filed *Good Morning to You Productions Corp. v. Warner/Chappell Music,*
18 *Inc.*, No. 1:13-CV-4040 in the Southern District of New York.

19 5. The same day that I became aware of their complaint, I called Mr.
20 Rifkin. We agreed in that initial phone call to work together. Mr. Rifkin has done an
21 outstanding job as lead counsel coordinating co-counsel’s work efficiently and
22 effectively. He focused my firm’s work on music and copyright issues, where our
23 experience lies. Mr. Rifkin was an essential part of our success in this litigation.

24 6. Rupa’s role is unique in this litigation because she obtained a statutory
25 (“mechanical”) license pursuant to 17 U.S.C. Section 115 and she is a member of the
26 American Society of Composers, Authors and Publishers (ASCAP). As an ASCAP

27 ¹ Dr. Marya is professionally known as “Rupa” in her music endeavors.
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1 member with an active catalog of songs, she is entitled to a percentage of the revenue
2 ASCAP receives for blanket public performance licenses. The other named plaintiffs
3 in this action obtained synchronization licenses for use of the song *Happy Birthday*
4 *to You* (the “Song”).

5 7. Much of my firm’s pre-filing time focused on claims by mechanical
6 licensees and ASCAP members. Whereas synchronization licenses are essentially
7 individually negotiated contracts, mechanical licenses are governed by the Copyright
8 Act. In addition, a hybrid model arises when individuals enter into mechanical
9 licenses either directly with a publisher or with an agent such as the Harry Fox
10 Agency. Researching ASCAP member claims required considerable time reviewing
11 ASCAP’s contracts, its policies towards songs whose copyrights are disputed, and its
12 procedures for collecting, processing, and distributing public performance revenue
13 from its blanket licenses. In short, Rupa’s claims were legally novel and required
14 considerable research. This pre-litigation work was complementary to the work that
15 Co-Counsel performed.

16 8. Prior to June 20, 2013, my firm spent approximately 62 hours on factual
17 research, 124 hours on legal research, 55 hours on legal strategy, 32 hours on
18 preparing the complaint, and 17 hours on client meetings and communication with
19 Rupa and other potential plaintiffs.

20 9. I have used my reasonable billing discretion in this matter, as I do in
21 matters with clients who pay my firm’s hourly rates. In total, more than 20 hours of
22 Donahue Fitzgerald’s pre-litigation time was written off.

23 10. Through December 31, 2013, I was an associate attorney at Donahue
24 Fitzgerald (then “Donahue Gallagher Woods LLP”). Nearly 260 hours of my time
25 spent on this litigation was spent as an associate attorney.

26 11. During the entire litigation, I was the attorney with the lowest hourly
27 rate at my firm who had considerable experience with both pre-1978 copyright law,
28 including the 1909 Copyright Act, and copyright litigation.

1 12. Some of Donahue Fitzgerald’s pre-litigation work was necessarily
2 duplicative of Co-Counsel’s work because we were unaware of each other’s work. I
3 extensively reviewed Professor Brauneis’ 2008 article regarding the Song prior to
4 litigation, and spent considerable time reviewing Professor Brauneis’ factual and
5 legal assertions. His work was essential to the successful prosecution of this matter.
6 However, some of the topics raised by the article that I researched proved to be
7 unfruitful. For example, I spent thirteen hours in 2012 reviewing the estate
8 documents for the Hill sisters and their relatives, and the laws of inheritance of
9 various jurisdictions, none of which has yet proved helpful in this litigation.

10 13. My firm believed that the more than 62 hours it spent on factual
11 research prior to litigation was sufficient to determine, and assert, that the Song was
12 no longer under copyright. Co-Counsel’s factual research, however, and in particular
13 that conducted by Randall Newman, Esq., was much more extensive and uncovered
14 facts and documents unknown to us. During the litigation, this extensive research
15 was instrumental in focusing our attention on the right issues and obtaining a
16 favorable result. Had Donahue Fitzgerald litigated this case without Co-Counsel or
17 had Co-Counsel not engaged in such extensive pre-litigation research, we would
18 have had to spend several hundred additional hours researching and reviewing the
19 facts and documents in this matter.

20 14. Because the history of the Song traces back to the 19th century and the
21 origin of the lyrics is obscure, the factual research was often tedious, with many dead
22 ends. For example, it is documented that the Hill sisters presented their children’s
23 songs at the 1893 Chicago World’s Fair. I spent several hours, in vain, searching for
24 and reviewing reports of the 1893 World’s Fair in an attempt to determine whether
25 they publicly performed the Song (with its familiar “Happy Birthday” lyrics) at the
26 1893 World’s Fair.

27 15. Prior to filing this litigation, I contacted and/or met with professors at
28 UC Berkeley School of Law experienced in the areas of copyright and the public

1 domain; various musicians; a musicians' rights group; music publishers; and film
2 industry professionals regarding licensing of the Song and the possible claims in this
3 matter. I sought this help because of the novel claims in this matter and because,
4 despite the factual record and Professor Brauneis' article, no one had ever challenged
5 the copyright in the Song.

6 16. I hereby certify, under the penalty of perjury under the laws of the
7 United States, that the foregoing statements are true and correct to the best of my
8 knowledge, information, and belief.

9 Executed this 12th day of June, 2016, at Albany, California.

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12 _____
13 Daniel J. Schacht

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