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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

GOOD MORNING TO YOU
PRODUCTIONS CORP.;
ROBERT SIEGEL;
RUPA MARYA; and
MAJAR PRODUCTIONS, LLC;
On Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

WARNER/CHAPPELL MUSIC,
INC.; and SUMMY-BIRCHARD,
INC.,

Defendants.

) Lead Case No. CV 13-04460-GHK (MRWx)
) **THIRD AMENDED CONSOLIDATED**
) **COMPLAINT FOR:**
) **(1) DECLARATORY JUDGMENT**
) **(28 U.S.C. § 2201);**
) **(2) DECLARATORY AND**
) **INJUNCTIVE RELIEF AND**
) **DAMAGES (28 U.S.C. § 2202);**
) **(3) VIOLATIONS OF CALIFORNIA’S**
) **UNFAIR COMPETITION LAWS**
) **(Bus. & Prof. Code §§ 17200 et seq.);**
) **(4) BREACH OF CONTRACT;**
) **(5) COMMON LAW MONEY HAD**
) **AND RECEIVED;**
) **(6) RESCISSION FOR FAILURE OF**
) **CONSIDERATION; and**
) **(7) VIOLATIONS OF CALIFORNIA’S**
) **FALSE ADVERTISING LAWS**
) **(Bus. & Prof. Code §§ 17500 et seq.)**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs, Good Morning to You Productions Corp. (“GMTY”), Robert
2 Siegel (“Siegel”), Rupa Marya d/b/a/ Rupa Marya & The April Fishes (“Rupa”), and
3 Majar Productions, LLC (“Majar”) (collectively herein “Plaintiffs”), on behalf of
4 themselves and all others similarly situated, by their undersigned attorneys, as and
5 for their Third Amended Consolidated Complaint For: (1) Declaratory Judgment (28
6 U.S.C. § 2201); (2) Declaratory and Injunctive Relief and Damages (28 U.S.C. §
7 2202); (3) Violations of California’s Unfair Competition Laws (Bus. & Prof. Code
8 §§ 17200 *et seq.*); (4) Breach of Contract; (5) Common Law Money Had and
9 Received; (6) Rescission for Failure of Consideration; and (7) Violations of
10 California’s False Advertising Laws (Bus. & Prof. Code §§ 17500 *et seq.*) against
11 defendants Warner/Chappell Music, Inc. (“Warner/Chappell”) and Summy-
12 Birchard, Inc. (“SBI”) (collectively “Defendants”), hereby allege as follows:

13 **JURISDICTION AND VENUE**

14 1. The Court has subject-matter jurisdiction over this action pursuant to
15 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory
16 and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant
17 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; pursuant to the Class
18 Action Fairness Act, 28 U.S.C. § 1332(d)(2); and supplemental jurisdiction pursuant
19 to 28 U.S.C. § 1367 over the entire case or controversy.

20 2. The Court has personal jurisdiction and venue is proper in this District
21 under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in
22 this Judicial District where both Defendants’ principal places of business are located
23 and where they regularly conduct business.

24 3. Paragraph 8 of the Film and Synchronization and Performance License
25 (“Synchronization License”) by and between assignee Plaintiff Siegel and defendant
26 Warner/Chappell states: “this license has been entered into in, and shall be
27 interpreted in accordance with the laws of the state of California, and any action or
28

1 proceeding concerning the interpretation and/or enforcement of this license shall be
2 heard only in the state or federal courts situated in Los Angeles county. . . .”
3 Defendant Warner/Chappell requires any action or proceeding related thereto to be
4 brought in this District under the Synchronization License.

5 INTRODUCTION

6 4. This is an action to declare that Defendants do not own a copyright to
7 the world’s most popular song, *Happy Birthday to You* (the “Song”), that if
8 Defendants own any copyright to the Song, it is limited to four specific piano
9 arrangements or an obscure second verse that has no commercial value, that any
10 other copyright to the Song that Defendants may own or ever owned are invalid or
11 have expired, and that the Song is dedicated to public use and in the public domain;
12 and in turn to declare that Defendants must return millions of dollars of unlawful
13 licensing fees collected by defendant Warner/Chappell pursuant to its wrongful
14 assertion of copyright ownership of the Song.

15 5. According to the United States Copyright Office (“Copyright Office”),
16 a “*musical composition* consists of music, including any accompanying words, and
17 is normally registered as a work of the performing arts.” Copyright Office Circular
18 56A, “Copyright Registration of Musical Compositions and Sound Recordings,” at 1
19 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a
20 musical composition generally is the composer, and the lyricist (if a different
21 person). *Id.*

22 6. More than 120 years after the melody to which the simple lyrics of
23 *Happy Birthday to You* is set was first published, defendant Warner/Chappell
24 boldly, but wrongfully and unlawfully, insists that it owns the copyright to *Happy*
25 *Birthday to You*, and with that copyright the exclusive right to authorize the Song’s
26 reproduction, distribution, and public performances pursuant to federal copyright
27 law. At all relevant times, Warner/Chappell declared in the first two sentences on
28 the “About Us” page of its website that “Warner/Chappell Music is [Warner Music

1 Group]’s award-winning global music publishing company. The Warner/Chappell
2 Music catalog includes standards such as ‘Happy Birthday To You’ . . .” (*available*
3 *at* www.warnerchappell.com/about.jsp?currenttab=about_us as of June 18, 2013).
4 Defendant Warner/Chappell either has silenced those wishing to record or perform
5 *Happy Birthday to You*, or has extracted millions of dollars in unlawful licensing
6 fees from those unwilling or unable to challenge its ownership claims.

7 7. Irrefutable documentary evidence, some dating back to 1893, shows
8 that if defendant Warner/Chappell owned or owns any copyrights to *Happy Birthday*
9 *to You*, those rights were and are limited to the extremely narrow right to reproduce
10 and distribute specific piano arrangements for the Song, or an obscure second verse
11 that has no commercial value, which were published in 1935. That same evidence
12 also shows that if Warner/Chappell ever owned a copyright to any other part of the
13 Song, it was invalid or expired no later than 1921. Significantly, no court has ever
14 adjudicated either the scope or validity of the Defendants’ claimed interest in *Happy*
15 *Birthday to You*, nor in the Song’s melody or its familiar lyrics, which are,
16 themselves, independent works.

17 8. Various legal scholars and copyright and music industry experts agree
18 with the foregoing, questioning the validity of Defendants’ assertion of copyright in
19 the Song, and supporting the conclusion that *Happy Birthday* properly exists in the
20 public domain. For example, Professor Robert Brauneis, Professor of Law and Co-
21 Director of the Intellectual Property Law Program at George Washington
22 University, and a leading legal scholar in intellectual property law, has stated that it
23 is “doubtful” that *Happy Birthday* “is really still under copyright.”

24 9. Plaintiffs GMTY, Siegel, Rupa, and Majar on behalf of themselves and
25 all others similarly situated, seek a declaration that *Happy Birthday to You* is
26 dedicated to public use and is in the public domain as well as monetary damages and
27 restitution of all the unlawful licensing fees that defendants have improperly
28 collected from Plaintiffs and all other Class members.

1 **PLAINTIFFS**

2 10. Plaintiff GMTY is a New York corporation with its principal place of
3 business located in New York County. Under a claim of copyright by defendant
4 Warner/Chappell, on or about March 26, 2013, GMTY paid defendant
5 Warner/Chappell the sum of \$1,500 for a synchronization license to use *Happy*
6 *Birthday to You* and on or about April 24, 2013, GMTY entered into a
7 synchronization license with Warner/Chappell, as alleged more fully herein.

8 11. Plaintiff Robert Siegel is the assignee of BIG FAN PRODUCTIONS,
9 INC. (“BIG FAN”), an inactive New York corporation and a resident of New York,
10 New York. Under a claim of copyright by defendant Warner/Chappell, on or about
11 September 1, 2009, BIG FAN paid to defendant Warner/Chappell the sum of \$3,000
12 for the Synchronization Licenses to use *Happy Birthday to You*, as alleged more
13 fully herein. Plaintiff Siegel, the then-President of BIG FAN, was assigned BIG
14 FAN’s rights and claims, including those pertaining to the Synchronization License
15 pursuant to Paragraph 7 thereof between defendant Warner/Chappell and BIG FAN,
16 entered into on or about July 20, 2009.

17 12. Plaintiff Rupa is a musician and leader of the band entitled “Rupa &
18 The April Fishes” (“RTAF”), and a member of the American Society of Composers,
19 Authors and Publishers (“ASCAP”). Plaintiff Rupa is a resident of San Mateo
20 County, California. RTAF recorded *Happy Birthday to You* at a live show in San
21 Francisco, California, on April 27, 2013. Under a claim of copyright by defendant
22 Warner/Chappell, on or about June 17, 2013, Plaintiff Rupa d/b/a RTAF paid to
23 defendant Warner/Chappell the sum of \$455 for a compulsory license pursuant to 17
24 U.S.C. § 115 (commonly known as a “mechanical license”) to use *Happy Birthday*
25 *to You*, as alleged more fully herein.

26 13. Plaintiff Majar is a Los Angeles-based film production company that
27 produced the award winning documentary film “*No Subtitles Necessary: László &*
28 *Vilmos*” (hereafter, “*No Subtitles Necessary*” or the “Film”). The Film follows the

1 lives of renowned cinematographers László Kovacs (“Kovacs”) and Vilmos
2 Zsigmond (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
3 present day. As film students in Hungary, Kovacs and Zsigmond shot footage of the
4 Russian invasion of Budapest and subsequently risked their lives to smuggle it out
5 of the country. They fled to America and settled in Hollywood, eventually saving
6 enough money to buy their own 16mm camera to begin shooting movies. Both rose
7 to prominence in the late 1960’s and 1970’s having shot films such as “Easy Rider,”
8 “Five Easy Pieces,” “McCabe and Mrs. Miller,” “Deliverance,” “Paper Moon,” and
9 “Close Encounters of the Third Kind.” *No Subtitles Necessary* tells the story of
10 their lives and careers.

11 **DEFENDANTS**

12 14. Defendant Warner/Chappell is a Delaware corporation with its
13 principal place of business located at 10585 Santa Monica Boulevard, Los Angeles,
14 California 90025 and regularly conducts business within this Judicial District.

15 15. Defendant SBI is a Wyoming corporation with its principal place of
16 business located at 10585 Santa Monica Boulevard, Los Angeles, California 90025.
17 SBI regularly conducts business within this Judicial District, where it may be found.
18 On information and belief, SBI is a subsidiary of Warner/Chappell, having been
19 acquired by Warner/Chappell in or around 1998.

20 **FACTUAL BACKGROUND**

21 ***Good Morning to All and the Popular Adoption of Happy Birthday to You***

22 16. Sometime prior to 1893, Mildred J. Hill (“Mildred Hill”) and her sister
23 Patty Smith Hill (“Patty Hill”) (Mildred and Patty Hill are collectively referred to as
24 the “Hill Sisters”) authored a written manuscript containing sheet music for 73
25 songs composed or arranged by Mildred Hill, with words written and adapted by
26 Patty Hill.

27 17. The manuscript included *Good Morning to All*, a song written by the
28 Hill Sisters.

1 18. On or about February 1, 1893, the Hill Sisters sold and assigned all
2 their right, title, and interest in the written manuscript to Clayton F. Summy
3 (“Summy”) in exchange for 10 percent of retail sales of the manuscript. The sale
4 included the song *Good Morning to All*.

5 19. In or around 1893, Summy published the Hill Sisters’ written
6 manuscript with an introduction by Anna E. Bryan (“Bryan”) in a songbook titled
7 *Song Stories for the Kindergarten*. *Song Stories for the Kindergarten* included the
8 song *Good Morning to All*.

9 20. On or about October 16, 1893, Summy filed a copyright application
10 (Reg. No. 45997) with the Copyright Office for *Song Stories for the Kindergarten*.

11 21. On the October 16, 1893, copyright application, Summy claimed to be
12 the copyright’s proprietor, but not the author of the copyrighted works.

13 22. *Song Stories for the Kindergarten* bears a copyright notice reading
14 “Copyright 1893, by Clayton F. Summy.”

15 23. As proprietor of the 1893 copyright in *Song Stories for the*
16 *Kindergarten*, Summy asserted copyright ownership in the compilation of songs, as
17 well as, the individual songs published therein, including *Good Morning to All*.

18 24. The lyrics to *Good Morning to All* are:

19 Good morning to you

20 Good morning to you

21 Good morning dear children

22 Good morning to all.

23
24 25. The lyrics to *Happy Birthday to You* are set to the melody from the
25 song *Good Morning to All*. As nearly everyone knows, the lyrics to *Happy Birthday*
26 *to You* are:

27 Happy Birthday to You

28 Happy Birthday to You

1 Happy Birthday dear [NAME]

2 Happy Birthday to You.

3 26. The lyrics to *Happy Birthday to You* were **not** published in *Song Stories*
4 *for the Kindergarten*.

5 27. On or about January 14, 1895, Summy incorporated the Clayton F.
6 Summy Company (“Summy Co.”) under the laws of the State of Illinois for a
7 limited term of 25 years. On that same date, Summy purported to assign all his
8 right, title, and interest in *Song Stories for the Kindergarten* to Summy Co.

9 28. In 1896, Summy published a new, revised, illustrated, and enlarged
10 version of *Song Stories for the Kindergarten*, which contained eight previously
11 unpublished songs written by the Hill Sisters as well as illustrations by Margaret
12 Byers.

13 29. On or about June 18, 1896, Summy filed a copyright application (Reg.
14 No. 34260) with the Copyright Office for the 1896 publication of *Song Stories for*
15 *the Kindergarten*.

16 30. On its June 18, 1896, copyright application, Summy again claimed to
17 be the copyright’s proprietor, but (again) not the author of the copyrighted works.

18 31. The 1896 version of *Song Stories for the Kindergarten* bears a
19 copyright notice reading “Copyright 1896, by Clayton F. Summy.”

20 32. As proprietor of the 1896 copyright in the revised *Song Stories for the*
21 *Kindergarten*, Summy owned the rights to both the songbook as a compilation and
22 the individual songs published therein, including *Good Morning to All*.

23 33. The lyrics to *Happy Birthday to You* were **not** published in the 1896
24 version of *Song Stories for the Kindergarten*.

25 34. In 1899, Summy Co. published 17 songs from the 1893 version of *Song*
26 *Stories for the Kindergarten* in a songbook titled *Song Stories for the Sunday*
27 *School*. One of those songs included in *Song Stories for the Sunday School* was
28

1 *Good Morning to All*. And yet again, neither the song *Happy Birthday* nor the lyrics
2 to *Happy Birthday* were published in “*Song Stories for the Sunday School*.”

3 35. On or about March 20, 1899, Summy Co. filed a copyright application
4 (Reg. No. 20441) with the Copyright Office for *Song Stories for the Sunday School*.

5 36. On the 1899 copyright application, Summy Co. claimed to be the
6 copyright’s proprietor, but not the author of the copyrighted works.

7 37. The title page to *Song Stories for the Sunday School* states:

8 This collection of songs has been published in response to earnest requests
9 from various sources. They are taken from the book, *Song Stories for the*
10 *Kindergarten* by the MISSES HILL, and ***are the copyright property of the***
11 ***publishers***. (Emphasis added).

12 38. *Song Stories for the Sunday School* bears a copyright notice reading
13 “Copyright 1899 by Clayton F. Summy Co.”

14 39. As proprietor of the 1899 copyright in *Song Stories for the Sunday*
15 *School*, Summy Co. owned the rights to both the songbook as a compilation and the
16 individual songs published therein, including *Good Morning to All*.

17 40. The lyrics to *Happy Birthday to You* were ***not*** published in *Song Stories*
18 *for the Sunday School*.

19 41. Even though the lyrics to *Happy Birthday to You* and the song *Happy*
20 *Birthday to You* had not been fixed in a tangible medium of expression, the public
21 began singing *Happy Birthday to You* no later than the early 1900s.

22 42. For example, in the January 1901 edition of *Inland Educator and*
23 *Indiana School Journal*, the article entitled “First Grade Opening Exercises”
24 described children singing the words “happy birthday to you,” but did not print the
25 Song’s lyrics or melody.

26 43. In or about February, 1907, Summy Co. republished the song *Good*
27 *Morning to All* as an individual musical composition.

28 ///

1 44. On or about February 7, 1907, Summy Co. filed a copyright application
2 (Reg. No. 142468) with the Copyright Office for the song *Good Morning to All*.

3 45. The lyrics to *Happy Birthday to You* do **not** appear in the 1907
4 publication of *Good Morning to All*.

5 46. In 1907, Fleming H. Revell Co. (“Revell”) published the book *Tell Me*
6 *a True Story*, arranged by Mary Stewart, which instructed readers to:

7 Sing: “Good-bye to you, good-bye to you, good-bye dear children, good-
8 bye to you.” Also: “Good-bye dear teacher.” (From “Song Stories for the
9 Sunday-School,” published by Summy & Co.)

10 Sing: “Happy Birthday to You.” (Music same as “Good-bye to You.”)

11 47. On or about May 18, 1909, Revell filed an application (Reg. No.
12 A239690) with the Copyright Office for *Tell Me a True Story*.

13 48. *Tell Me a True Story* did **not** include the lyrics to *Happy Birthday to*
14 *You*.

15 49. Upon information and belief, the lyrics to *Happy Birthday to You*
16 (without the sheet music for the melody) were first published in 1911 by the Board
17 of Sunday Schools of the Methodist Episcopal Church (“Board of Sunday Schools”)
18 in *The Elementary Worker and His Work*, by Alice Jacobs and Ermina Chester
19 Lincoln, as follows:

20 Happy birthday to you, Happy birthday to you, Happy birthday, dear John,
21 Happy birthday to you. (Sung to the same tune as the “Good Morning”)

22 [NOTE: The songs and exercises referred to in this program may be found in
23 these books:... “Song Stories for the Sunday School,” by Patty Hill.]

24 50. On or about January 6, 1912, the Board of Sunday Schools filed a
25 copyright application (Reg. No. A303752) with the Copyright Office for *The*
26 *Elementary Worker and His Work*.

27 51. *The Elementary Worker and His Work* attributed authorship or
28 identified the copyrights to many of the works included in the book. Significantly, it

1 did *not* attribute authorship or identify any copyright for the song *Happy Birthday to*
2 *You*.

3 52. On or about January 14, 1920, Summy Co. was dissolved in accordance
4 with its limited (not perpetual) 25-year term of incorporation. Summy Co. did not
5 extend or renew the 1893 (Reg. No. 45997) or 1907 (Reg. No. 142468) copyrights
6 prior to its dissolution.

7 53. Upon information and belief, by 1912, various companies (such as
8 Cable Company Chicago) had begun producing unauthorized printings of sheet
9 music which included the song known today as *Happy Birthday* (*i.e.*, the melody of
10 *Good Morning to You* with the lyrics changed to those of *Happy Birthday*). On
11 information and belief, Cable Company Chicago never asserted copyright ownership
12 in *Happy Birthday*.

13 ***Copyright History of Good Morning to All***

14 54. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
15 to the original *Song Stories for the Kindergarten*, *Song Stories for the Sunday*
16 *School*, and *Good Morning to All* were vested solely in their proprietor, Summy Co.

17 55. Pursuant to Section 24 of the Copyright Act of 1909, the renewal rights
18 to the revised *Song Stories for the Kindergarten* were vested solely in their
19 proprietor, Summy Co.

20 56. The copyright to the original *Song Stories for the Kindergarten* (Reg.
21 No. 45997) was not extended by Summy Co., and consequently expired on October
22 16, 1921. The original *Song Stories for the Kindergarten*, including the song *Good*
23 *Morning to All*, became dedicated to public use and fell into the public domain by
24 no later than that date.

25 57. The copyright to the revised *Song Stories for the Kindergarten* (Reg.
26 No. 34260) was not extended by Summy, and consequently expired on June 18,
27 1924. The revised *Song Stories for the Kindergarten* became dedicated to public
28 use and fell into the public domain by no later than that date.

1 58. In or around March 1924, the sheet music (with accompanying lyrics)
2 to *Happy Birthday to You* was in a songbook titled *Harvest Hymns*, published,
3 compiled, and edited by Robert H. Coleman (“Coleman”). Upon information and
4 belief, *Harvest Hymns* was the first time the melody and lyrics of *Happy Birthday to*
5 *You* were published together.

6 59. Coleman did not claim authorship of the song entitled *Good Morning*
7 *to You* or the lyrics to *Happy Birthday to You*. Although *Harvest Hymns* attributed
8 authorship or identified the copyrights to many of the works included in the book, it
9 did **not** attribute authorship or identify any copyright for *Good Morning to You* or
10 *Happy Birthday to You*.

11 60. On or about March 4, 1924, Coleman filed a copyright application
12 (Reg. No. A777586) with the Copyright Office for *Harvest Hymns*. On or about
13 February 11, 1952, the copyright was renewed (Reg. No. R90447) by the Sunday
14 School Board of the Southern Baptist Convention.

15 61. On or about April 15, 1925, Summy incorporated a new Clayton F.
16 Summy Co. (“Summy Co. II”) under the laws of the State of Illinois. Upon
17 information and belief, Summy Co. II was not a successor to Summy Co.; rather, it
18 was incorporated as a new corporation.

19 62. The sheet music (with accompanying lyrics) to *Happy Birthday to You*
20 was again published in 1928 in the compilation *Children’s Praise and Worship*,
21 compiled and edited by A.L. Byers, Bessie L. Byrum, and Anna E. Koglin (“Byers,
22 Byrum & Koglin”). Upon information and belief, *Children’s Praise and Worship*
23 was the first time the song was published under the title *Happy Birthday to You*.

24 63. On or about April 7, 1928, Gospel Trumpet Co. (“Gospel”) filed a
25 copyright application (Reg. No. A1068883) with the Copyright Office for
26 *Children’s Praise and Worship*.

27 64. *Children’s Praise and Worship* attributed authorship or identified the
28 copyrights to many of the works included in the book. Significantly, it did **not**

1 attribute authorship or identify any copyright for the song *Happy Birthday to You*.

2 65. *Children's Praise and Worship* did not provide any copyright notice for
3 the combination of *Good Morning to All* with the lyrics to *Happy Birthday to You*,
4 nor did it include the names of Mildred Hill or Patty Hill and did not attribute any
5 authorship or ownership to the Hill Sisters.

6 66. Upon information and belief, the Hill Sisters had not fixed the lyrics to
7 *Happy Birthday to You* or the song *Happy Birthday to You* in a tangible medium of
8 expression, if ever, at any time before Gospel published *Children's Praise and*
9 *Worship* in 1928.

10 67. Upon information and belief, Summy sold Summy Co. II to John F.
11 Sengstack ("Sengstack") in or around 1930.

12 68. Upon information and belief, on or about August 31, 1931, Sengstack
13 incorporated a third Clayton F. Summy Co. ("Summy Co. III") under the laws of the
14 State of Delaware. Upon information and belief, Summy Co. III was not a
15 successor to Summy Co. or Summy Co. II; rather, it was incorporated as a new
16 corporation.

17 69. On May 17, 1933, Summy Co. II was dissolved for failure to pay taxes.

18 70. On July 28, 1933, *Happy Birthday to You* was used in the world's first
19 singing telegram.

20 71. On September 30, 1933, the Broadway show *As Thousands Cheer*,
21 produced by Sam Harris with music and lyrics written by Irving Berlin, began using
22 the song *Happy Birthday to You* in public performances.

23 72. On August 14, 1934, Jessica Hill, a sister of Mildred Hill and Patty
24 Hill, commenced an action against Sam Harris in the Southern District of New
25 York, captioned *Hill v. Harris*, Eq. No. 78-350, claiming that the performance of
26 *Happy to Birthday to You* in *As Thousands Cheer* infringed on the Hill Sisters' 1893
27 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no claim in that
28 action regarding *Happy Birthday to You*, alone or in combination with *Good*

1 *Morning to All.*

2 73. On January 21, 1935, Jessica Hill commenced an action against the
3 Federal Broadcasting Corp. in the Southern District of New York, captioned *Hill v.*
4 *Federal Broadcasting Corp.*, Eq. No. 79-312, claiming infringement on the Hill
5 Sisters' 1893 and 1896 copyrights to *Good Morning to All*. Jessica Hill asserted no
6 claim in that action regarding *Happy Birthday to You*, alone or in combination with
7 *Good Morning to All*.

8 74. In 1934 and 1935, Jessica Hill sold and assigned to Summy Co. III
9 certain piano arrangements of *Good Morning to All*, including publishing, public
10 performance, and mechanical reproduction rights, copyright, and extension of
11 copyright in exchange for a percentage of the retail sales revenue from the sheet
12 music.

13 ***Applications for Copyright for New Musical Arrangement***

14 75. On or about December 29, 1934, Summy Co. III filed an Application
15 for Copyright for Republished Musical Composition with new Copyright Matter
16 (Reg. No. E45655) with the Copyright Office for the song *Happy Birthday*.

17 76. In that December 1934 Application for Copyright, Summy Co. III
18 claimed to be the proprietor of the copyright as a work for hire by Preston Ware
19 Orem ("Orem") and claimed the copyrighted new matter as "arrangement by piano
20 solo."

21 77. The lyrics to *Happy Birthday to You* were not included on the work
22 registered with the Copyright Office as Reg. No. E45655. The application did not
23 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
24 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
25 *to All*.

26 78. The work registered with the Copyright Office as Reg. No. E45655 was
27 not eligible for federal copyright protection in that it consisted entirely of
28 information that was common property and contained no original authorship, except

1 as to the arrangement itself.

2 79. On or about February 18, 1935, Summy Co. III filed an Application for
3 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
4 No. E46661) with the Copyright Office for the song *Happy Birthday*.

5 80. In that February 1935 Application for Copyright, Summy Co. III
6 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
7 the copyrighted new matter as “arrangement for four hands at one piano.”

8 81. The lyrics to *Happy Birthday to You* were not included on the work
9 registered with the Copyright Office as Reg. No. E46661. The application did not
10 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
11 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
12 *to All*.

13 82. The work registered with the Copyright Office as Reg. No. E46661 was
14 not eligible for federal copyright protection in that it consisted entirely of
15 information that was common property and contained no original authorship, except
16 as to the arrangement itself.

17 83. On or about April 5, 1935, Summy Co. III filed an Application for
18 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
19 No. E47439) with the Copyright Office for the song *Happy Birthday*.

20 84. In that April 1935 Application for Copyright, Summy Co. III claimed
21 to be the proprietor of the copyright as a work for hire by Orem and claimed the
22 copyrighted new matter as “arrangement of second piano part.”

23 85. The lyrics to *Happy Birthday to You* were not included on the work
24 registered with the Copyright Office as Reg. No. E47439. The application did not
25 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
26 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
27 *to All*.

28 ///

1 86. The work registered with the Copyright Office as Reg. No. E47439 was
2 not eligible for federal copyright protection in that it consisted entirely of
3 information that was common property and contained no original authorship, except
4 as to the arrangement itself.

5 87. On or about April 5, 1935, Summy Co. III filed an Application for
6 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
7 No. E47440) with the Copyright Office for the song *Happy Birthday*.

8 88. In that additional April 1935 Application for Copyright, Summy Co. III
9 claimed to be the proprietor of the copyright as a work for hire by Orem and claimed
10 the copyrighted new matter as “arrangement for six hands at one piano.”

11 89. The lyrics to *Happy Birthday to You* were not included on the work
12 registered with the Copyright Office as Reg. No. E47440. The application did not
13 contain the names of the Hill Sisters and did not claim copyright in the lyrics to
14 *Happy Birthday to You* alone or in combination with the melody of *Good Morning*
15 *to All*.

16 90. The work registered with the Copyright Office as Reg. No. E47440 was
17 not eligible for federal copyright protection in that it consisted entirely of
18 information that was common property and contained no original authorship, except
19 as to the arrangement itself.

20 91. On December 9, 1935, Summy Co. III filed an Application for
21 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
22 No. E51988) with the Copyright Office for *Happy Birthday to You*.

23 92. In that December 1935 Application for Copyright, Summy Co. III
24 claimed to be the proprietor of the copyright as a work for hire by R.R. Forman
25 (“Forman”) and claimed the copyrighted new matter as “arrangement for Unison
26 Chorus and revised text.” Upon information and belief, Plaintiffs allege that
27 Forman did not write the familiar first verse lyrics to *Happy Birthday to You*. The
28 sheet music deposited with the application credited Forman only for the

1 arrangement and for the obscure second verse lyrics that lack commercial value, not
2 for the familiar first verse lyrics, and did not credit the Hill Sisters with writing the
3 lyrics to *Happy Birthday to You*.

4 93. For the first time, the lyrics to *Happy Birthday to You*, including an
5 obscure second verse that lacks commercial value as the revised text, were included
6 on the work registered with the Copyright Office as Reg. No. E51988. However,
7 the December 1935 Application for Copyright did not attribute authorship of the
8 lyrics to either of the Hill Sisters and did not claim copyright in the familiar first
9 verse lyrics to *Happy Birthday to You* alone or in combination with the melody of
10 *Good Morning to All*.

11 94. The work registered with the Copyright Office as Reg. No. E51988 was
12 expressly limited in scope and neither claimed nor provided copyright protection to
13 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
14 with the Copyright Office as Reg. No. E51988 had claimed copyright protection to
15 those familiar lyrics, that work was not eligible for federal copyright protection in
16 that it consisted entirely of work that was common property and contained no
17 original authorship, except as to the sheet music arrangement itself.

18 95. Based upon information and belief, the work registered as Reg. No.
19 E51988 was not eligible for federal copyright protection because Summy Co. III did
20 not have authorization from the author to publish any part of that work except as to
21 the arrangement and the obscure second verse.

22 96. On December 9, 1935, Summy Co. III filed an Application for
23 Copyright for Republished Musical Composition with new Copyright Matter (Reg.
24 No. E51990) with the Copyright Office for *Happy Birthday to You*.

25 97. In that additional December 1935 Application for Copyright, Summy
26 Co. III claimed to be the proprietor of the copyright as a work for hire by Orem and
27 claimed the copyrighted new matter as “arrangement as easy piano solo, with text.”
28 Upon information and belief, Plaintiffs allege that Orem did not write the familiar

1 lyrics to *Happy Birthday to You*. Upon information and belief, Plaintiffs also allege
2 that the sheet music deposited with the application did not credit either Orem or the
3 Hill Sisters for writing the lyrics to *Happy Birthday to You*.

4 98. The lyrics to *Happy Birthday to You* were included on the work
5 registered with the Copyright Office as Reg. No. E51990. However, the additional
6 December 1935 Application for Copyright did not attribute authorship of the lyrics
7 to either of the Hill Sisters, did not contain the names of either of the Hill Sisters,
8 and did not claim any copyright in the lyrics to *Happy Birthday to You* alone or in
9 combination with the melody of *Good Morning to All*.

10 99. The work registered with the Copyright Office as Reg. No. E51990 was
11 expressly limited in scope and neither claimed nor provided copyright protection to
12 the familiar lyrics to *Happy Birthday to You*. If and to the extent the work registered
13 with the Copyright Office as Reg. No. E51990 had claimed copyright protection to
14 those familiar lyrics, that work was not eligible for federal copyright protection in
15 that it consisted entirely of information that was common property and contained no
16 original authorship, except as to the sheet music arrangement itself.

17 100. Based upon information and belief, the work registered as Reg. No.
18 E51990 was not eligible for federal copyright protection because Summy Co. III did
19 not have authorization from the author to publish any part of that work except as to
20 the arrangement.

21 101. Based upon information and belief, in or about February, 1938, Summy
22 Co. III purported to grant to ASCAP the right to license *Happy Birthday to You* for
23 public performances and to collect fees for such use on behalf of Summy Co. III.
24 ASCAP thus began working as agent for Summy Co. III in collecting fees for
25 Summy Co. III for licensing *Happy Birthday to You*.

26 102. On or about June 8, 1942, Patty Hill and Jessica Hill assigned all of
27 their interest in the 1893, 1896, 1899 and 1907 copyrights to The Hill Foundation.

28 ///

1 103. On October 15, 1942, The Hill Foundation commenced an action
2 against Summy Co. III in the Southern District of New York, captioned *The Hill*
3 *Foundation, Inc. v. Clayton F. Summy Co.*, Case No. 19-377, for an accounting of
4 the royalties received by Summy Co. III for the licensing of *Happy Birthday to You*.
5 The Hill Foundation asserted claims under the 1893, 1896, 1899, and 1907
6 copyrights for *Good Morning to All* and did *not* claim any copyright to the lyrics to
7 *Happy Birthday to You*, alone or in combination with the melody of *Good Morning*
8 *to All*.

9 104. On March 2, 1943, The Hill Foundation commenced an action against
10 the Postal Telegraph Cable Company in the Southern District of New York,
11 captioned *The Hill Foundation, Inc. v. Postal Telegraph-Cable Co.*, Case No. 20-
12 439, for infringement of the Hill Sisters' purported 1893, 1896, and 1899 copyrights
13 to *Good Morning to All*. The Hill Foundation asserted claims only under the 1893,
14 1896, and 1899 copyrights for *Good Morning to All* and did *not* claim any copyright
15 to the lyrics to *Happy Birthday to You*, alone or in combination with the melody of
16 *Good Morning to All*.

17 105. Despite the filing of at least four prior cases in the Southern District of
18 New York asserting copyrights to *Good Morning to All*, there has been no judicial
19 determination of the validity or scope of any copyright related to *Good Morning to*
20 *All*.

21 106. In or about 1957, Summy Co. III changed its name to Summy-Birchard
22 Company.

23 107. In 1962, Summy Co. III (renamed as Summy-Birchard Company) filed
24 renewals for each of the six registrations it obtained in 1934 and 1935 (Reg. Nos.
25 E45655, E46661, E47439, E47440, E51988, and E51990), each renewal was
26 specifically and expressly confined to the musical arrangements.

27 108. In particular, on December 6, 1962, Summy Co. III filed a renewal
28 application for Reg. No. E51988, as employer for hire of Forman. Forman did not

1 write the familiar first verse lyrics to *Happy Birthday to You* or the combination of
2 those lyrics with the melody of *Good Morning to All*, and neither Summy Co. III nor
3 Defendants have claimed otherwise.

4 109. Also on December 6, 1962, Summy Co. III filed a renewal application
5 for Reg. No. E51990, as employer for hire of Orem. Orem did not write the lyrics to
6 *Happy Birthday to You* or the combination of those lyrics with the melody of *Good*
7 *Morning to All*, and neither Summy Co. III nor Defendants have claimed otherwise.

8 110. Summy-Birchard Company was renamed Birch Tree Ltd. in the 1970s
9 and was acquired by Warner/Chappell in or about 1998. On information and belief,
10 this entity now operates as “Summy Birchard, Inc.” – currently a subsidiary of
11 Warner/Chappell and Warner/Chappell’s co-defendant herein.

12 ***Happy Birthday to You – 100 Years Later***

13 111. According to a 1999 press release by ASCAP, *Happy Birthday to You*
14 was the most popular song of the 20th Century.

15 112. The 1998 edition of the *Guinness Book of World Records* identified
16 *Happy Birthday to You* as the most recognized song in the English language.

17 113. Defendant Warner/Chappell currently claims it owns the exclusive
18 copyright to *Happy Birthday to You* based on the piano arrangements that Summy
19 Co. III published in 1935.

20 114. ASCAP provides non-dramatic public performance licenses to bars,
21 clubs, websites, and many other venues. ASCAP “blanket licenses” grant the
22 licensee the right to publicly perform any or all of the over 8.5 million songs in
23 ASCAP’s repertory in exchange for an annual fee. The non-dramatic public
24 performance license royalties are distributed to ASCAP members based on surveys
25 of performances of each ASCAP repertory song across different media. As an
26 ASCAP member and assignee of the copyrights in *Happy Birthday to You*,
27 Defendant Warner/Chappell obtains a share of blanket license revenue that would
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1 otherwise be paid to all other ASCAP members, in proportion to their songs' survey
2 shares.

3 ***Plaintiff GMTY's Use of Happy Birthday to You***

4 115. Plaintiff GMTY is producing a documentary movie, tentatively titled
5 *Happy Birthday*, about the song *Happy Birthday to You*.

6 116. In one of the proposed scenes to be included in *Happy Birthday*, the
7 song *Happy Birthday to You* is to be sung.

8 117. During the production process, plaintiff GMTY learned that defendant
9 Warner/Chappell claimed exclusive copyright ownership to *Happy Birthday to You*.

10 118. Accordingly, in September 2012, plaintiff requested a quote from
11 Warner/Chappell for a synchronization license to use *Happy Birthday to You* from
12 Warner/Chappell's website.

13 119. On or about September 18, 2012, defendant Warner/Chappell
14 responded to plaintiff GMTY's inquiry by demanding that GMTY pay it the sum of
15 \$1,500 and enter into a synchronization license agreement to use *Happy Birthday to*
16 *You*.

17 120. On or about March 12, 2013, defendant Warner/Chappell again
18 contacted plaintiff GMTY and insisted that GMTY was not authorized to use *Happy*
19 *Birthday to You* unless it paid the licensing fee of \$1,500 and entered into the
20 synchronization license that Warner/Chappell demanded.

21 121. Because defendant Warner/Chappell notified plaintiff GMTY that it
22 claimed exclusive copyright ownership of *Happy Birthday to You*, GMTY faced a
23 statutory penalty of up to \$150,000 under the Copyright Act if it used the song
24 without Warner/Chappell's permission if Warner/Chappell, in fact, owned the
25 copyright that it claimed.

26 122. Faced with a threat of substantial penalties for copyright infringement,
27 on or about March 26, 2013, plaintiff GMTY was forced to and did pay defendant
28 Warner/Chappell the sum of \$1,500 for a synchronization license and, on or about

1 April 24, 2013, GMTY was forced to and did enter into the synchronization license
2 agreement to use *Happy Birthday to You*.

3 ***Plaintiff Siegel's Use of Happy Birthday to You***

4 123. BIG FAN produced a movie titled *Big Fan*.

5 124. In one of the scenes in *Big Fan*, the familiar lyrics of the song *Happy*
6 *Birthday to You* was sung by the actors.

7 125. (a) In the early summer of 2009, after filming was complete but
8 before *Big Fan* was released, BIG FAN retained the services of a music
9 supervisor to secure the rights to all the music that was used in the movie.

10 (b) The music supervisor identified which music was
11 copyrighted, and advised BIG FAN that it would have to obtain a license
12 from Warner/Chappell and pay a fee to Warner/Chappell to perform
13 *Happy Birthday to You* in the movie because Warner/Chappell
14 claimed to own the exclusive copyright to the Song.

15 (c) Reasonably relying upon the information provided by the
16 music producer regarding the copyright claim by Warner/Chappell, BIG
17 FAN reasonably believed that Warner/Chappell owned the copyright to
18 *Happy Birthday to You*, and would have to obtain a synchronization
19 license from and pay a fee to Warner/Chappell to use the Song in the
20 movie.

21 126. Accordingly, in July 2009, BIG FAN requested that the music
22 supervisor obtain a quote from Warner/Chappell for a Synchronization License to
23 use *Happy Birthday to You* in *Big Fan*.

24 127. On or about July 20, 2009, defendant Warner/Chappell responded to
25 the music supervisor by demanding that BIG FAN pay it the sum of \$3,000 and
26 enter into a synchronization license for use of *Happy Birthday to You*.

27 128. Because Defendant Warner/Chappell notified BIG FAN through the
28 music supervisor that it claimed exclusive copyright ownership of *Happy Birthday*

1 to *You*, BIG FAN faced a statutory penalty of \$150,000 under the Copyright Act if
2 BIG FAN used the Song without Warner/Chappell's permission and
3 Warner/Chappell, in fact, owned the copyright that it claimed.

4 129. On July 20, 2009, Plaintiff Siegel as President of BIG FAN executed
5 the synchronization license with Warner/Chappell and agreed to pay \$3,000 based
6 upon *Big Fan's* theatrical release.

7 130. (a) Faced with a threat of substantial penalties for copyright
8 infringement, on or about September 1, 2009, BIG FAN was forced to, and
9 did, pay defendant Warner/Chappell the sum of \$3,000 pursuant to the
10 synchronization license.

11 (b) BIG FAN, the music producer it hired, and Plaintiff Siegel
12 did not know, and had no reason to know, that Warner/Chappell did not
13 own any copyright to *Happy Birthday to You*, that the rights
14 Warner/Chappell could claim were limited just to the piano arrangements
15 or the obscure second verse of the Song (which was not performed in *Big*
16 *Fan*), or that any copyright other than that was invalid or expired.

17 (c) BIG FAN, the music producer it hired, and Plaintiff Siegel
18 had no reason to question Warner/Chappell's claim to own the copyright
19 to the Song.

20 (d) Warner/Chappell did not specify which registration(s) or
21 renewal(s) thereof under which it claimed a copyright to *Happy Birthday*
22 *to You*, and thus BIG FAN, the music producer it hired, and Plaintiff
23 Siegel could not investigate Warner/Chappell's claim to determine
24 whether Warner Chappell owned the copyright it claimed or whether that
25 copyright was valid.

26 (e) The commencement of this action on or about June 13, 2013,
27 was widely reported in the press. Prior to the date when the press first
28 reported the claims asserted herein, no one in the position of BIG FAN, the

1 music producer hired by BIG FAN, or Plaintiff Siegel would know, or
2 have any reason to know, that Warner/Chappell's copyright claim for
3 *Happy Birthday to You* was in doubt.

4 (f) Plaintiff Siegel learned of the commencement of this action
5 on or about June 14, 2013, from the press reports. Before then, BIG FAN,
6 the music producer it hired, and Plaintiff Siegel did not know, and had no
7 reason to know, that Warner/Chappell's copyright claim for *Happy*
8 *Birthday to You* had been disputed by anyone or was in doubt.

9 (g) Shortly thereafter, on or about June 19, 2013, and
10 significantly less than three years after he knew or reasonably could or
11 should have known that Warner/Chappell does not own a copyright to the
12 Song, or that its copyright is not valid, plaintiff Siegel commenced a
13 separate class action in Los Angeles County pursuant to the terms of the
14 Synchronization License.

15 ***Rupa's Performance of Happy Birthday to You***

16 131. Plaintiff Rupa d/b/a RTAF recorded the song *Happy Birthday to You* at
17 a live show in San Francisco, to be released as part of a "live" album. She learned
18 that defendant Warner/Chappell claimed exclusive copyright ownership to *Happy*
19 *Birthday to You*, including the right to issue mechanical licenses.

20 132. Section 115 of the Copyright Act provides for compulsory licenses for
21 the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, Web-based
22 "downloads") of musical compositions. Failure to obtain such a license prior to
23 distribution of a cover version of a song constitutes a copyright infringement subject
24 to the full remedies of the Copyright Act.

25 133. Accordingly, on June 17, 2013, Plaintiff Rupa provided a Notice of
26 Intention to Obtain Compulsory License to Warner/Chappell and paid
27 Warner/Chappell \$455 for a mechanical license for the reproduction and distribution
28 of 5,000 copies of the Song.

1 ***Plaintiff Majar Use of Happy Birthday to You***

2 134. (a) Plaintiff Majar produced the Film entitled “*No Subtitles*
3 *Necessary: László & Vilmos.*” The Film follows the lives of renowned
4 cinematographers László Kovacs (“Kovacs”) and Vilmos Zsigmond
5 (“Zsigmond”) from escaping the 1956 Soviet invasion of Hungary to the
6 present day.

7 (b) Plaintiff Majar wished to use the *Happy Birthday to You* in
8 the opening scene of the Film, wherein Zsigmond and others sang the
9 Song to Kovacs in a celebration of Kovacs’ life and the friendship of the
10 two, thereby setting the tone for the Film.

11 (c) In or around the fall of 2008, during production of the Film,
12 Plaintiff Majar learned from the music clearance supervisor working on
13 the Film that defendant Warner/Chappell claimed exclusive copyright
14 ownership to *Happy Birthday to You*, including for purposes of issuing
15 synchronization licenses, and that if Majar wished to include the Song in
16 the Film, a license would have to be procured and a fee be paid to
17 Warner/Chappell. The director of the Film, James Chressanthis, spoke to
18 experienced producers in the industry, who confirmed that it was common
19 knowledge within the entertainment industry that Warner/Chappell widely
20 claimed exclusive copyright ownership of the Song.

21 (d) Accordingly, upon making the final determination to include
22 use of the Song in the Film, Plaintiff Majar proceeded to obtain a license
23 for the Song from Warner/Chappell. Indeed, Warner/Chappell held itself
24 out to Plaintiff Majar as the exclusive owner of the copyright in the Song
25 (although it did not specify which registration number(s) or renewal
26 number(s) under which it claimed to own a copyright). Thus, on or about
27 October 29, 2009, Plaintiff Majar paid to defendant Warner/Chappell the
28 sum of \$5,000 for a synchronization license to use *Happy Birthday* in the

1 Film. At the time, Plaintiff Majar did not question and had no reason to
2 question Warner/Chappell's claim of copyright ownership. Moreover,
3 Plaintiff Majar is informed and believes that Warner/Chappell continued to
4 hold itself out as the exclusive copyright owner of the Song for years after
5 Majar licensed it.

6 (e) Because Defendant Warner/Chappell claimed exclusive
7 copyright ownership of *Happy Birthday to You*, Plaintiff Majar faced a
8 statutory penalty of \$150,000 under the Copyright Act, 17 U.S.C. § 101 *et*
9 *seq.*, if it used the Song without Warner/Chappell's permission and
10 Warner/Chappell, in fact, owned the copyright that it claimed.

11 (f) Plaintiff Majar did not question, and had no reason to
12 question, on October 29, 2009 (and continuing thereafter),
13 Warner/Chappell's claim to own the copyright to the Song. Moreover,
14 Plaintiff Majar did not know, and had no reason to know, on October 29,
15 2009 (and continuing thereafter), that Warner/Chappell's copyright claim
16 for *Happy Birthday to You* had been disputed by anyone.

17 (g) Plaintiff Majar only first learned that Warner/Chappell's
18 claim of exclusive copyright ownership in the Song was subject to dispute
19 when news of the same was published in a *New York Times* article on June
20 13, 2013. Plaintiff Majar contacted counsel and joined as a plaintiff in this
21 action promptly thereafter.

22 CLASS ALLEGATIONS

23 135. Plaintiffs GMTY, Siegel, Rupa, and Majar bring this action pursuant to
24 Rule 23(a)-(b) of the Federal Rules of Civil Procedure as a class action on behalf of
25 themselves and all others similarly situated for the purpose of asserting the claims
26 alleged in this Consolidated Third Amended Complaint on a common basis.

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1 136. The proposed Class is comprised of:

2 **All persons or entities (excluding Defendants' directors, officers,**
3 **employees, and affiliates) who entered into a license with**
4 **Warner/Chappell, or paid Warner/Chappell or SBI, directly or**
5 **indirectly through its agents, a licensing fee for the song *Happy***
6 ***Birthday to You* at any time from June 18, 2009, until Defendants'**
7 **conduct as alleged herein has ceased.**

8 137. Although Plaintiffs GMTY, Siegel, Rupa, and Majar do not know the
9 exact size of the Class or the identities of all members of the Class, upon
10 information and belief that information can be readily obtained from the books and
11 records of defendant Warner/Chappell. Plaintiffs believe that the Class includes
12 thousands of persons or entities who are widely geographically disbursed. Thus, the
13 proposed Class is so numerous that joinder of all members is impracticable.

14 138. The claims of all members of the Class involve common questions of
15 law and fact including:

- 16 a. whether *Happy Birthday to You* is in the public domain and dedicated
17 to public use;
- 18 b. whether the 1935 copyrights claimed by Warner/Chappell cover the
19 popular lyrics to *Happy Birthday to You*;
- 20 c. whether the 1935 copyrights claimed by Warner/Chappell are valid;
- 21 d. whether Warner/Chappell is the exclusive owner of the copyright to
22 *Happy Birthday to You* and is thus entitled to all of the rights conferred
23 in 17 U.S.C. § 102;
- 24 e. whether Warner/Chappell has the right to collect fees for the use of
25 *Happy Birthday to You*;
- 26 f. whether Warner/Chappell has violated the law by demanding and
27 collecting fees for the use of *Happy Birthday to You* despite not having
28 a valid copyright to the song; and

1 g. whether Warner/Chappell is required to return unlawfully obtained
2 payments to plaintiffs GMTY, Siegel, Rupa and Majar and the other
3 members of the Class and, if so, what amount is to be returned.

4 139. With respect to Claims III and VII, the common questions of law and
5 fact predominate over any potential individual issues.

6 140. Plaintiffs GMTY, Siegel, Rupa and Majar's claims are typical of the
7 claims of all other members of the Class and plaintiffs GMTY, Siegel, Rupa and
8 Majar's interests do not conflict with the interests of any other member of the Class,
9 in that plaintiffs and the other members of the Class were subjected to the same
10 unlawful conduct.

11 141. Plaintiffs GMTY, Siegel, Rupa and Majar are committed to the
12 vigorous prosecution of this action and have retained competent legal counsel
13 experienced in class action and complex litigation.

14 142. Plaintiffs are adequate representatives of the Class and, together with
15 their attorneys, are able to and will fairly and adequately protect the interests of the
16 Class and its members.

17 143. A class action is superior to other available methods for the fair, just,
18 and efficient adjudication of the claims asserted herein. Joinder of all members of
19 the Class is impracticable and, for financial and other reasons, it would be
20 impractical for individual members of the Class to pursue separate claims.

21 144. Moreover, the prosecution of separate actions by individual members
22 of the Class would create the risk of varying and inconsistent adjudications, and
23 would unduly burden the courts.

24 145. Plaintiffs GMTY, Siegel, Rupa and Majar anticipate no difficulty in the
25 management of this litigation as a class action.

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FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201
(On Behalf Of Plaintiffs And The Class)
(Against All Defendants)

146. Plaintiffs repeat and reallege paragraphs 1 through 145 set forth above as though they were fully set forth herein.

147. Plaintiffs bring these claims individually on behalf of themselves and on behalf of the proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

148. Plaintiffs seek adjudication of an actual controversy arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants' purported copyright claim to *Happy Birthday to You*. Plaintiffs seek the Court's declaration that the Copyright Act does not bestow upon Warner/Chappell and/or SBI the rights it has asserted and enforced against plaintiffs and the other members of the Class. This is because *either*: (a) the 1935 registrations E51988 and E51990, under which Warner/Chappell claims those copyrights, and the resulting copyrights do not purport to cover and do not cover the familiar lyrics to *Happy Birthday to You*, but instead are limited just to the particular arrangements written by Forman or Orem (and, in the case of E51988, the obscure second verse which has no commercial value); *or* (b) if and to the extent that those copyrights purport to cover the familiar lyrics to *Happy Birthday to You*, the copyrights are invalid or have expired.

149. Defendants assert that they are entitled to mechanical and performance royalties pursuant to 17 U.S.C. § 115 for the creation and distribution of phonorecords and digital downloads of the composition *Happy Birthday to You*, under threat of a claim of copyright infringement.

150. Defendant Warner/Chappell demanded that plaintiff GMTY enter into a synchronization license agreement to use *Happy Birthday to You* and pay Warner/Chappell the sum of \$1,500 for that synchronization license based upon its

1 claim of copyright ownership. Warner/Chappell's demand was coercive in nature,
2 and GMTY's entering into the license agreement and payment of \$1,500 was
3 involuntary.

4 151. Plaintiff GMTY's claim presents a justiciable controversy because
5 plaintiff GMTY's agreement to pay defendant Warner/Chappell and its actual
6 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film
7 was the involuntary result of Warner/Chappell's assertion of a copyright and the risk
8 that plaintiff GMTY would be exposed to substantial statutory penalties under the
9 Copyright Act had it failed to enter such an agreement and pay Warner/Chappell the
10 price it demanded.

11 152. Defendant Warner/Chappell demanded that BIG FAN as assignor of
12 plaintiff Siegel enter into the Synchronization License agreement to use *Happy*
13 *Birthday to You* and pay Warner/Chappell the sum of \$3,000 for that
14 Synchronization License based upon its claim of copyright ownership.
15 Warner/Chappell's demand was coercive in nature, and BIG FAN'S entering into
16 the Synchronization License and payment of \$3,000 was involuntary.

17 153. Plaintiff Siegel's claim presents a justiciable controversy because
18 plaintiff Siegel's agreement to pay defendant Warner/Chappell and its actual
19 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in its film
20 *Big Fan*, was the involuntary result of Warner/Chappell's assertion of a copyright
21 and the risk that plaintiff Siegel would be exposed to substantial statutory penalties
22 under the Copyright Act had it failed to enter such an agreement and pay
23 Warner/Chappell the price it demanded, but then used *Happy Birthday to You* in its
24 film anyway.

25 154. Plaintiff Rupa's claim presents a justiciable controversy because
26 plaintiff Rupa's agreement to pay defendant Warner/Chappell and its actual
27 **payment** to Warner/Chappell for use of the song *Happy Birthday to You* in her
28 album, was the involuntary result of Warner/Chappell's assertion of a copyright and

1 the risk that plaintiff Rupa would be exposed to substantial statutory penalties under
2 the Copyright Act had she failed to enter such an agreement and pay
3 Warner/Chappell standard mechanical license royalties it demanded, but then paid
4 for the mechanical license anyway.

5 155. Defendants demanded that Plaintiff Majar pay to Defendants a
6 licensing fee in the sum of \$5,000 pursuant to Defendants' claim of copyright
7 ownership, in order for Plaintiff Majar to use *Happy Birthday* in the Film.
8 Defendants' demand was coercive in nature and Majar's agreement to pay the fee
9 was involuntary.

10 156. Plaintiff Majar's claim presents a justiciable controversy because its
11 actual payment of Defendants' demanded fee to use *Happy Birthday* in the Film was
12 the involuntary result of Defendants' assertion of a copyright and the risk that
13 Plaintiff Majar would be exposed to substantial statutory penalties under the
14 Copyright Act had it failed to seek Defendants' approval to use the Song and/or
15 failed to pay Defendants' demanded fee.

16 157. Plaintiffs seek the Court's determination as to whether Defendants are
17 entitled to assert ownership of the copyright to *Happy Birthday to You* against
18 Plaintiffs pursuant to the Copyright Act as Defendants claim, or whether Defendants
19 are wielding a false claim of ownership to inhibit Plaintiffs' use and enjoyment (and
20 the public's use and enjoyment) of intellectual property which is rightfully in the
21 public domain.

22 158. If and to the extent that Defendants rely upon the 1893, 1896, 1899, or
23 1907 copyrights for the melody for *Good Morning to All*, those copyrights expired
24 or were forfeited as alleged herein.

25 159. As alleged above, the 1893 and 1896 copyrights to the original and
26 revised versions of *Song Stories for the Kindergarten*, which contained the song
27 *Good Morning to All*, were not renewed by Summy Co. or Summy and accordingly
28 expired in 1921 and 1924, respectively.

1 160. As alleged above, the 1893 copyright to *Song Stories for the*
2 *Kindergarten* and the 1899 copyright to *Song Stories for the Sunday School*, which
3 contained *Good Morning to All*, and the 1907 copyright to *Good Morning to All*
4 were not renewed by Summy Co. before Summy Co. was dissolved in 1920 and
5 accordingly, those copyrights expired in 1927 and 1935, respectively.

6 161. The 1893, 1896, 1899, and 1907 copyrights to *Good Morning to All*
7 were forfeited by the republication of *Good Morning to All* in 1921 without proper
8 notice of its original 1893 copyright.

9 162. The copyright to *Good Morning to All* expired in 1921 because the
10 1893 copyright to *Song Stories for the Kindergarten* was not properly renewed.

11 163. The piano arrangements for *Happy Birthday to You* published by
12 Summy Co. III in 1935 (Reg. Nos. E51988 and E51990): (a) do not give
13 Warner/Chappell copyrights to the familiar lyrics to *Happy Birthday to You*, but
14 instead are limited just to the particular arrangements written by Forman or Orem
15 (and, in the case of E51988, the obscure second verse which has no commercial
16 value); and (b) were not eligible for federal copyright protection because those
17 works did not contain original works of authorship, except to the extent of the piano
18 arrangements themselves.

19 164. The 1934 and 1935 copyrights pertained only to the piano
20 arrangements or the obscure second verse, not to the melody or familiar first verse
21 lyrics of the song *Happy Birthday to You*.

22 165. The registration certificates for *The Elementary Worker and His Work*
23 in 1912, *Harvest Hymns* in 1924, and *Children's Praise and Worship* in 1928, which
24 did not attribute authorship of the lyrics to *Happy Birthday to You* to anyone, are
25 *prima facie* evidence that the lyrics were not authored by the Hill Sisters.

26 166. If declaratory relief is not granted, defendant Warner/Chappell will
27 continue wrongfully to assert the exclusive copyright to *Happy Birthday to You* at
28 least until 2030, when the current term of the copyright expires under existing

1 copyright law.

2 167. Plaintiffs therefore request a declaration that:

3 (a) defendant Warner/Chappell and defendant SBI do not own the
4 copyright to, or possess the exclusive right to reproduce, distribute, or
5 publicly perform, *Happy Birthday To You*;

6 (b) if defendant Warner/Chappell and defendant SBI own any
7 copyright to *Happy Birthday to You*, it is limited to four specific piano
8 arrangements or an obscure second verse that has no commercial value,

9 (c) any other copyright to *Happy Birthday to You* that defendant
10 Warner/Chappell and defendant SBI may own or ever owned are
11 invalid or have expired;

12 (d) defendant Warner/Chappell and defendant SBI do not own the
13 exclusive right to demand or grant a license for use of *Happy Birthday*
14 *To You*; and

15 (e) *Happy Birthday to You* is in the public domain and is dedicated
16 to the public use.

17 **SECOND CLAIM FOR RELIEF**

18 **UPON ENTRY OF DECLARATORY JUDGMENT**

19 **DECLARATORY AND INJUNCTIVE RELIEF**

20 **PURSUANT TO 28 U.S.C § 2202**

21 **(On Behalf of Plaintiffs and the Class)**

22 **(Against All Defendants)**

23 168. Plaintiffs repeat and reallege paragraphs 1 through 167 set forth above
24 as though they were fully set forth herein.

25 169. Plaintiffs bring these claims individually on their own behalf and on
26 behalf of the Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil
27 Procedure.

28 ///

1 170. Under 28 U.S.C. § 2202 empowers this Court to grant, “necessary or
2 proper relief based on a declaratory judgment or decree . . . after reasonable notice
3 and hearing, against any adverse party whose rights have been determined by such
4 judgment.”

5 171. Plaintiffs and the other proposed Class members have been harmed,
6 and Defendants have been unjustly enriched, by Defendant Warner/Chappell’s
7 takings.

8 172. Plaintiffs seek relief for themselves and the other members of the
9 proposed Class upon the entry of declaratory judgment upon Claim I, as follows:

- 10 (a) an injunction to prevent Defendants Warner/Chappell and SBI
11 from making further representations of ownership of the copyright to
12 *Happy Birthday To You*;
- 13 (b) restitution to Plaintiffs and the other Class members of license
14 fees paid to Defendants, directly or indirectly through its agents, in
15 connection with the purported licenses it granted to Plaintiffs GMTY,
16 Siegel, Rupa and Majar and the other Class members;
- 17 (c) an accounting for all monetary benefits obtained by Defendants,
18 directly or indirectly through its agents, from plaintiffs and the other
19 Class members in connection with its claim to ownership of the
20 copyright to *Happy Birthday to You*; and
- 21 (d) such other further and proper relief as this Court sees fit.

22 **THIRD CLAIM FOR RELIEF**
23 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF**
24 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***
25 **(On Behalf of Plaintiffs and the Class)**
26 **(Against All Defendants)**

27 173. Plaintiffs repeat and reallege paragraphs 1 through 172 set forth above
28 as though they were fully set forth herein.

1 174. Plaintiffs GMTY, Siegel, Rupa, and Majar bring these claims
2 individually on their own behalf, and also on behalf of the Class pursuant to Rule
3 23(b)(3) of the Federal Rules of Civil Procedure.

4 175. As alleged herein, Plaintiffs GMTY, Siegel, Rupa and Majar and the
5 other Class members have paid licensing fees to defendants Warner/Chappell and/or
6 SBI and have therefore suffered injury in fact and have lost money or property as a
7 result of Defendants' conduct.

8 176. California's Unfair Competition Laws, Business & Professions Code
9 §§ 17200 *et seq.* ("UCL"), prohibit any unlawful or unfair business act or practice.

10 177. UCL § 17200 further prohibits any fraudulent business act or practice.

11 178. Defendants' actions, claims, nondisclosures, and misleading
12 statements, as alleged in this Complaint, were unfair, false, misleading, and likely to
13 deceive the consuming public within the meaning of UCL §§ 17200, 17500.

14 179. The conduct of Defendants in exerting control over exclusive copyright
15 ownership to *Happy Birthday to You* to extract licensing fees is deceptive and
16 misleading because neither Warner/Chappell nor SBI own the rights to *Happy*
17 *Birthday to You*.

18 180. Plaintiffs and the other members of the Class have, in fact, been
19 deceived as a result of their reasonable reliance upon Defendants' materially false
20 and misleading statements and omissions, as alleged above.

21 181. As a result of Defendants' unfair and fraudulent acts and practices as
22 alleged above, Plaintiffs and the other Class members have suffered substantial
23 monetary injuries.

24 182. Plaintiffs and the other Class members reserve the right to allege other
25 violations of law which constitute other unfair or deceptive business acts or
26 practices. Such conduct is ongoing and continues to this date.

27 183. As a result of its deception, Defendants Warner/Chappell and SBI have
28 been able to reap unjust revenue and profit.

1 184. Upon information and belief, Defendants have collected and continue
2 to collect at least \$2 million per year in licensing fees for *Happy Birthday to You*.
3 Therefore, the amount in controversy exceeds \$5 million in the aggregate.

4 185. Unless restrained and enjoined, Defendants will continue to engage in
5 the above-described conduct. Accordingly, injunctive relief is appropriate.

6 186. Plaintiffs, individually on their own behalf and on behalf of the other
7 members of the Class, seek restitution and disgorgement of all money obtained from
8 Plaintiffs and the other members of the Class, collected as a result of unfair
9 competition, and all other relief this Court deems appropriate, consistent with UCL
10 § 17203.

11 **FOURTH CLAIM FOR RELIEF**

12 **BREACH OF CONTRACT**

13 **(On Behalf of Plaintiffs and the Class)**

14 **(Against All Defendants)**

15 187. Plaintiffs repeat and reallege each and every foregoing allegation as
16 though fully set forth herein.

17 188. Plaintiffs entered into license agreements with Defendant
18 Warner/Chappell wherein Warner/Chappell represented and warranted that it and/or
19 its co-Defendant SBI owned the rights to *Happy Birthday* as licensed therein.

20 189. Plaintiffs are informed and believe that Defendants' licensing
21 agreements are the same or substantially similar as to all Class members,
22 particularly with respect to Defendants' claim of ownership of the copyright to
23 *Happy Birthday*.

24 190. Plaintiffs and the Class have satisfied their obligations under each such
25 licensing agreement with Warner/Chappell.

26 191. As alleged herein, Defendants do not own the copyright interests
27 claimed in *Happy Birthday* and, as a result of its unlawful and false assertions of the
28

1 same, Defendants have violated the representations and warranties made in the
2 licensing agreements, thereby materially breaching the licensing agreements.

3 192. By reason of the foregoing, Plaintiffs and the Class have been damaged
4 in an amount to be determined at trial.

5 **FIFTH CLAIM FOR RELIEF**
6 **COMMON LAW FOR MONEY HAD AND RECEIVED**
7 **(On Behalf of Plaintiffs and the Class)**
8 **(Against All Defendants)**

9 193. Plaintiffs repeat and reallege paragraphs 1 through 192 set forth above
10 as though they were fully set forth herein.

11 194. Within the last four years, Defendants Warner/Chappell and/or SBI
12 became indebted to Plaintiffs and all class members for money had and received by
13 Defendants for the use and benefit of Plaintiffs and class members. The money in
14 equity and good conscience belongs to Plaintiffs and class members.

15 **SIXTH CLAIM FOR RELIEF**
16 **RESCISSION FOR FAILURE OF CONSIDERATION**
17 **(On Behalf of Plaintiffs and the Class)**
18 **(Against All Defendants)**

19 195. Plaintiffs repeat and reallege paragraphs 1 through 194 set forth above
20 as though they were fully set forth herein.

21 196. Defendants' purported licenses were worthless and ineffective, and do
22 not constitute valid consideration.

23 197. The complete lack of consideration obviates any need for notice to
24 Defendants.

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SEVENTH CLAIM FOR RELIEF
FALSE ADVERTISING LAWS IN VIOLATION OF
CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *ET SEQ.*
(On Behalf of Plaintiffs and the Class)
(Against All Defendants)

198. Plaintiffs repeat and reallege paragraphs 1 through 197 set forth above as though they were fully set forth herein.

199. On information and belief, Defendants Warner/Chappell and SBI intended to induce the public to enter into an obligation related to its alleged property, namely the composition *Happy Birthday to You*.

200. Defendants Warner/Chappell and/or SBI publicly disseminated advertising which contained statements which were untrue and misleading and which concerned the composition *Happy Birthday to You*, for which they improperly sought and received licensing fees. Defendants knew, or in the exercise of reasonable care should have known, that these statements were untrue and misleading.

201. Plaintiffs and class members have suffered injury in fact and have lost money as a result of such unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs GMTY, Siegel, Rupa and Majar on behalf of themselves and the other members of the Class, pray for judgment against Defendants as follows:

- A. certifying the Class as requested herein;
- B. declaring that the song *Happy Birthday to You* is not protected by federal copyright law, is dedicated to public use, and is in the public domain;
- C. permanently enjoining Defendants Warner/Chappell and SBI from asserting any copyright to the song *Happy Birthday to You*;

1 D. permanently enjoining Defendants Warner/Chappell and SBI
2 from charging or collecting any licensing or other fees for use of the
3 song *Happy Birthday to You*;

4 E. imposing a constructive trust upon the money Defendants
5 Warner/Chappell and SBI unlawfully collected from Plaintiffs, the
6 other members of the Class, and ASCAP for use of the song *Happy*
7 *Birthday to You*;

8 F. ordering Defendants Warner/Chappell and SBI to return to
9 Plaintiffs and the other members of the Class all the licensing or other
10 fees they have collected from them, directly or indirectly through its
11 agents, for use of the song *Happy Birthday to You*, together with
12 interest thereon;

13 G. awarding Plaintiffs and the other members of the Class
14 restitution for defendant Warner/Chappell and SBI's prior acts and
15 practices;

16 H. awarding Plaintiffs and the Class reasonable attorneys' fees and
17 costs; and

18 I. granting such other and further relief as the Court deems just and
19 proper.

20 Dated: November 5, 2013

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10 *Counsel for Plaintiffs*

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs GMTY, Siegel, Rupa and Majar hereby demand a trial by jury to the
13 extent that the allegations contained herein are triable by jury under Rules 38-39 of
14 the Federal Rules of Civil Procedure 38-39 and Civil L.R. 38-1.

15 Dated: November 5, 2013

16 **WOLF HALDENSTEIN ADLER**
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DECLARATION REGARDING CONCURRENCE

1
2 I, Betsy C. Manifold, am the ECF User whose identification and password are
3 being used to file this **Third Amended Consolidated Complaint For: (1)**
4 **Declaratory Judgment (28 U.S.C. § 2201); (2) Declaratory and Injunctive Relief**
5 **and Damages (28 U.S.C. § 2202); (3) Violations of California’s Unfair**
6 **Competition Laws (Bus. & Prof. Code §§ 17200 *et seq.*); (4) Breach of Contract;**
7 **(5) Common Law Money Had and Received; (6) Rescission for Failure of**
8 **Consideration; and (7) Violations of California’s False Advertising Laws (Bus.**
9 **& Prof. Code §§ 17500 *et seq.*).** In compliance with L.R. 5-4.3.4(2)(i), I hereby
10 attest that all other Plaintiffs’ counsel have concurred in this filing’s content and
11 authorized its filing.

12 DATED: November 5, 2013 By: /s/ Betsy C. Manifold
13 BETSY C. MANIFOLD

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22 WARNER:20338.3rd.amd.compl.
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