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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA -
WESTERN DIVISION

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GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)

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PRODUCTIONS CORP., *et al.*,)

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Plaintiffs,

) **JOINT STATUS REPORT PURSUANT**

) **TO SEPTEMBER 29, 2015**

18

) **SCHEDULING ORDER (DKT. 245)**

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v.

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WARNER/CHAPPELL MUSIC,)

21

INC., *et al.*)

) Date: October 19, 2015

22

Defendants.

) Time: 9:30 a.m.

23

) Room: 650

24

) Judge: Hon. George H. King,

) Chief Judge

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1 Pursuant to the Court's September 29, 2015 Order re: Joint Status Report
2 and Status Conference (Dkt. 245), the parties met and conferred on October 6 and
3 8, 2015 regarding the most efficient manner for the action to proceed. The parties
4 file this Joint Status Report explaining their positions. The Parties briefly
5 summarize the litigation's procedural background before explaining their positions.
6 For the Court's convenience, the Parties attach a chart (as Exhibit A) to this Joint
7 Status Report which summarizes the Parties' agreement and disagreement as to
8 proposed Scheduling Dates.

9 **I. PROCEDURAL BACKGROUND**

10 **A. Bifurcation of Prior Proceedings**

11 At the October 7, 2013 hearing on Defendants' motion to dismiss, "the
12 Parties agreed that the most efficient way to proceed in this case would be to
13 bifurcate Claim One from the six other claims for the purposes of discovery and
14 summary judgment." Dkt. 71 at 3. On October 16, 2013, the Court issued an
15 Order re: Defendants' Motion to Dismiss Second Amended Consolidated Class
16 Action Complaint and/or Motion to Strike Plaintiffs' Proposed Class Definition
17 (Dkt. 52), which granted in part and denied in part Defendants' motions. *See* Dkt.
18 71. The October 16, 2013 Order *bifurcated* Claim One from all other claims
19 through Summary Judgment and *stayed* all other claims "including discovery
20 specific to such claims." Dkt. 71 at 3. Plaintiffs were also granted leave to re-
21 plead their "two-step theory for declaratory judgment" in an amended complaint.
22 Dkt. 71 at 3-4.

23 On November 6, 2013, Plaintiffs filed a Third Amended Complaint (Dkt.
24 74), which Defendants answered on December 11, 2013 as to Claim One only
25 (Dkt. 79). Thereafter, based on the Parties' Joint Stipulation (Dkt. 94), on April
26 29, 2014, the Court granted Plaintiffs leave to file a Fourth Amended Complaint
27 (Dkt. 95). *See* Dkt. 96. On May 6, 2014, Defendants answered the Fourth
28 Amended Complaint as to Claim One only.

1 **B. March 24, 2014 Scheduling Conference re: Claim One**

2 The Court conducted a scheduling conference with counsel on March 24,
3 2014. On the same date, the Court filed an Order Entering Schedule Dates. Dkt.
4 92. The Court agreed “to defer consideration of the statute of limitations defenses
5 and class certification at this time;” set scheduling dates for summary judgment
6 motions on Claim One; and stated that, “[i]f the summary judgment motions do not
7 dispose of this first phase of this action, we will set further scheduling dates as
8 needed.” Dkt. 92 at 1.

9 On September 22, 2015, the Court issued a Memorandum and Order Re: (1)
10 Cross-Motions for Summary Judgment (Dkt. 179); (2) Defendants’ Motion for
11 Leave to File Supplemental Evidence (Dkt. 223); and (3) Plaintiffs’ Ex Parte
12 Application to Supplement the Record (Dkt. 224) (“Summary Judgment Order”)
13 which denied Defendants’ Motion For Summary Judgment and granted in part
14 Plaintiffs’ Motion for Summary Judgment. *See* Dkt. 244. The Summary Judgment
15 Order determined that Defendants do not own a copyright to the *Happy Birthday*
16 lyrics. The Summary Judgment Order determined there are triable issues of fact on
17 Plaintiffs’ demand for a declaratory judgment that the *Happy Birthday* lyrics are in
18 the public domain.

19 **II. PARTIES’ POSITION RE: MOST EFFICIENT MANNER TO**
20 **PROCEED**

21 **A. Defendants’ Motion for Reconsideration or, in the**
22 **Alternative, for Certification of the Summary Judgment**
23 **Order**

24 Defendants intend to file a Motion for Reconsideration or, in the Alternative,
25 for Certification for Appeal Pursuant to 28 U.S.C. § 1292(b), of the Summary
26 Judgment Order. Defendants will file their motion on or before October 16, 2015,
27 and notice that motion for hearing on November 16, 2015. The parties agree that
28 briefing on that motion may proceed pursuant to the schedule provided by the
Local Rules.

1 Defendants’ Position Regarding Effect of Motion on Remaining
2 Proceedings:

3 Defendants believe the parties should be able to serve on each other written
4 discovery on remaining claims and issues not encompassed by Phase One
5 discovery as of the date of the Status Conference. Defendants believe the parties
6 should serve written objections to the same within the time set forth in the Federal
7 Rules, but that responsive documents and written responses to interrogatories or
8 requests for admission, as well as deposition notices and subpoenas to third parties,
9 should be stayed pending the Court’s resolution of Defendants’ Motion for
10 Reconsideration or Certification.

11 Plaintiffs’ Position Regarding Effect of Motion on Remaining Proceedings:

12 Plaintiffs believe that Defendants’ Motion is without merit and should not
13 delay or stay any further proceedings in this litigation.

14 **B. Trial of Remaining Issues Relevant to Claim One**

15 Plaintiffs’ Position: Plaintiffs believe the Court should determine whether
16 *Happy Birthday* is in the public domain together with its determination of Claims
17 II and III of the Complaint (as to which there is no right to a jury trial). Plaintiffs
18 believe that further proceedings on Claim One will not materially advance the
19 ultimate disposition of the litigation.

20 Defendants’ Position: Defendants believe that all of Plaintiffs’ claims,
21 except the claims for breach of contract and possibly for money had and received
22 (Claims IV and V), are equitable in nature and tried to the Court. Defendants
23 believe that all matters on Claim I as to which Plaintiffs’ motion were not granted
24 must be tried, and that the trial of such is not limited to the summary judgment
25 record. Defendants do not object to the Court trying all equitable claims in
26 advance of a jury trying the legal claims and the Court’s resolution of common
27 factual questions binding the trial of the legal claims.

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1 **C. Plaintiffs' Proposed Amended Complaint**

2 On October 8, 2015, Plaintiffs provided Defendants with a proposed Fifth
3 Amended Complaint. Plaintiffs have asked Defendants to stipulate to their having
4 leave to file the Fifth Amended Complaint without prejudice to Defendants' right
5 to move against that Complaint under Rule 12 of the Federal Rules of Civil
6 Procedure.

7 Defendants are considering Plaintiffs' request and expect to respond to it
8 before the Status Conference. If Defendants agree to Plaintiffs' request to stipulate
9 for leave to filing the proposed Fifth Amended Complaint, Defendants expect that
10 the parties will file before or very shortly after the Status Conference a proposed
11 stipulation setting forth (a) a stipulated agreement regarding the filing of the Fifth
12 Amended Complaint; (b) a stipulated time for Defendants to file a response to the
13 same with a reasonable extension beyond the 14 days provided by Rule 15(a)(3);
14 and (c) a stipulated proposed briefing schedule on such motion or an agreement
15 that briefing should be conducted in accordance with the Local Rules.

16 **D. Motion for Class Certification Deadlines**

17 Plaintiffs propose that:

18 Class certification and fact discovery begin immediately and to be
19 completed by April 15, 2016.

20 Plaintiffs will file their motion for class certification on or before May 16,
21 2016.

22 Plaintiffs request that a briefing schedule for the motion for class
23 certification be set as follows: Defendants' response and/or opposition to be filed
24 on or before June 30, 2016. Plaintiffs' reply to Defendants' response to be filed on
25 or before August 19, 2016. The hearing date shall be set for August 29, 2016 or at
26 the Court's convenience thereafter.

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1 Defendants propose that:

2 Class certification and fact discovery commence as of the Status Conference,
3 subject to the limitations set forth in Defendants' proposal in Section A, supra, and
4 that such discovery be completed by August 15, 2016.

5 Defendants propose that Plaintiffs file their motion for class certification on
6 or before September 15, 2016.

7 Defendants propose that their opposition be filed on or before October 31,
8 2016. Plaintiffs' reply to Defendants' response to be filed on or before December
9 15, 2016, and that the hearing date be set at the Court's convenience.

10 **E. Discovery**

11 As to remaining merits issues (i.e., issues that do not overlap with fact issues
12 relevant to Claim I) with respect to Claims II through VII of the Fifth Amended
13 Complaint:

14 (1) the following pre-trial discovery plan:

15 The Parties agree that Initial Disclosures under Rule 26(f) should be
16 completed within 30 days of the Status Conference.

17 Plaintiffs propose:

18 Discovery Motions Deadline: April 29, 2016.

19 Defendants propose:

20 Discovery Motions Deadline: July 1, 2016.

21 (2) the following dates for reports and/or disclosures from expert
22 witnesses as per Rule 26(a)(2) of the Federal Rules of Civil Procedure:

23 Plaintiffs propose:

24 a) Initial Expert Disclosures: May 27, 2016.

25 b) Rebuttal Expert Disclosures: July 15, 2016.

26 c) Expert Discovery Cut-Off: September 16, 2016.

27 d) Expert Discovery Motions Deadline: October 3, 2016.

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1 Defendants propose:

- 2 a) Initial Expert Disclosures: September 15, 2016.
3 b) Rebuttal Expert Disclosures: November 7, 2016.
4 c) Expert Discovery Cut-Off: December 19, 2016.
5 d) Expert Discovery Motions Deadline: November 21, 2016.

6 As previously agreed in the Parties' February 10, 2014 Joint Report on Parties'
7 Planning Meeting (Dkt. 89), electronically stored information will be produced in
8 accordance with Rule 34 of the Federal Rules of Civil Procedure. Each side
9 reserves the right to request that all electronically stored information be produced
10 in native form, if available, and searchable pdf, if not. Each side requests that all
11 meta-data in electronically stored information be preserved.

12 Procedures for asserting claims of privilege or work product protection,
13 including any claims made after production, shall be in accordance with Rule
14 26(b)(5) of the Federal Rules of Civil Procedure.

15 **F. Pre-Trial and Trial Dates**

16 Plaintiffs propose:

- 17 1. Dispositive Motion Cut-Off as to remaining merits issues (i.e.,
18 issues that do not overlap with fact issues relevant to Claim I) with
19 respect to Claims II through VII of the Fifth Amended Complaint:
20 December 15, 2016.
21 2. Final Pre-Trial Conference: January 16, 2017.
22 3. Trial as to Remaining Claims: five days following the Final
23 Pre-Trial Conference.

24 Defendants propose:

- 25 1. Dispositive Motion Cut-Off as to remaining merits issues (i.e.,
26 issues that do not overlap with fact issues relevant to Claim I) with
27 respect to Claims II through VII of the Fifth Amended Complaint:
28 April 10, 2017.

- 1 2. Final Pre-Trial Conference: May 15, 2017.
- 2 3. Trial as to Remaining Claims: five days following the Final
- 3 Pre-Trial Conference.

4 **G. Settlement Procedures**

5 On or before November 9, 2016, Counsel will meet and confer to select a

6 settlement procedure pursuant to Civil Local Rules 16-15 and 16-15.9.

7 **H. Length of Trial**

- 8 1. Plaintiffs' Case-in-Chief: seven days.
- 9 2. Defendants' Case-in-Chief: seven days.
- 10 3. The estimated time required for trial: two weeks.
- 11 4. The case should be ready for trial:

12 **I. Trial By Jury or Court**

13 Plaintiffs' Position: Plaintiffs reserve their jury demand. However,

14 Plaintiffs consent to the Court deciding any disputed facts necessary to enter

15 declaratory judgment on Counts I, II and III even though those facts may also be

16 relevant to Counts III through VII, as to which Plaintiffs have reserved their jury

17 demand.

18 Defendants' Position: Defendants believe that all of Plaintiffs' claims,

19 except the claims for breach of contract and possibly for money had and received

20 (Claims IV and V), are equitable in nature and tried to the Court. Defendants

21 believe that all matters on Claim I as to which Plaintiffs' motion were not granted

22 must be tried, and that the trial of such is not limited to the summary judgment

23 record. Defendants do not object to the Court trying all equitable claims in

24 advance of a jury trying the legal claims and the Court's resolution of common

25 factual questions binding the trial of the legal claims.

26 Dated: October 9, 2015

Respectfully Submitted,
**WOLF HALDENSTEIN ADLER
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By: /s/ Betsy C. Manifold
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Dated: October 9, 2015

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DECLARATION REGARDING CONCURRENCE

I, **BETSY C. MANIFOLD**, am the CM/ECF User whose identification login and password are being used to file this **JOINT STATUS REPORT PURSUANT TO SEPTEMBER 29, 2015 ORDER (DKT. 245)**. In compliance with L.R. 5-4.3.4(a)(2)(i), I hereby attest that **Kelly M. Klaus** has concurred in this filing's content and has authorized its filing.

DATED: October 9, 2015

By: /s/ Betsy C. Manifold
BETSY C. MANIFOLD