

# **Exhibit A**

**REDACTED**

**REDACTED PURSUANT TO ORDER OF THE  
COURT DATED JUNE 10, 2016 (DKT. 334)**

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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 GOOD MORNING TO YOU  
PRODUCTIONS CORP., et al.,  
13  
14 Plaintiffs,  
15 v.  
16 WARNER/CHAPPELL MUSIC, INC.,  
et al.,  
17 Defendants.

Lead Case No. CV 13-04460-GHK  
(MRWx)

**DEFENDANTS' [REDACTED]  
STATEMENT, PURSUANT TO  
DKT. 334, REGARDING CLASS  
COUNSEL'S BILLING RECORDS**

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

1 Pursuant to the Court's Order of June 10, 2016 (Dkt. 334), Defendants hereby  
2 submit the following statement regarding the billing records that Class Counsel filed  
3 under seal on June 17, 2016 (Dkt. 337).

4 Defendants previously explained that, even based on the summaries Class  
5 Counsel submitted with their fee motion, there appeared to be significant issues with  
6 Class Counsel's claimed hours and rates. These issues preclude the use of Class  
7 Counsel's purported lodestar as a meaningful cross-check on Class Counsel's  
8 request for \$1.12 million *more* in fees than the 25% benchmark award would  
9 provide (\$3.5 million). Class Counsel provided Defendants with a hard copy of  
10 more than 300 pages of partially redacted billing records last Friday afternoon.  
11 Defendants' review since that time confirms that Class Counsel's billing practices  
12 are deficient and disqualify the lodestar from providing a meaningful cross-check.<sup>1</sup>  
13 We discuss below the deficiencies across five different categories.

14 **I. Block Billing**

15 “[B]lock-billing’ makes it impossible for the Court to determine whether  
16 specific entries are excessive or duplicative.” *Mayer v. RSB Equity Grp., LLC*, 2011  
17 WL 2650185, at \*2 (C.D. Cal. July 5, 2011). Courts routinely reduce lodestar hours  
18 by 30% or more as a result of block billing. *Id.* (reducing total compensable hours  
19 by 30% due to block-billing); *see also, e.g., Lahiri v. Universal Music & Video*  
20 *Distrib. Corp.*, 606 F.3d 1216, 1222-23 (9th Cir. 2010) (affirming 30% reduction on  
21 block-billed hours).

22 Class Counsel's billing records reveal that almost all of Class Counsel's  
23 attorneys, paralegals and support staff “block billed” their time. *See* Dkt. 337 at 5-  
24 65, 123-83, 187-90, 193 (Wolf Haldenstein), 205-51 (Randall S. Newman PC), 269-  
25 98 (Donahue Fitzgerald), 300-11 (Glancy Prongay). For example, Mr. Rifkin, who  
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27 <sup>1</sup> Defendants would be pleased to provide a more thorough analysis of Class  
28 Counsel's billing records if the Court would like; this response provides only a high-  
level overview of some of the most troubling aspects of Class Counsel's records.

1 billed 1,700 hours and is Class Counsel's lead attorney, and Mr. Newman, who  
2 billed 2,193 hours, each block billed their time. Dkt. 337 at 10-60 (Mr. Rifkin's  
3 timesheets), 126-27 & 205-51 (Mr. Newman's timesheets).<sup>2</sup> Although Mr. Rifkin  
4 often broke his daily time into two or three entries, most of those entries *themselves*  
5 contained compilations of different tasks, with no indication as to how much time  
6 was spent on a given task. Mr. Rifkin has two entries for July 24, 2014, for  
7 example. But one entry block bills 8.5 hours (" [REDACTED]  
8 [REDACTED] ") and the other entry block bills 2.0 hours  
9 (" [REDACTED]  
10 [REDACTED] "). Dkt. 337 at 33. Messrs. Rifkin's and  
11 Newman's time alone, most of which is block-billed, amounts to \$2.8 million in  
12 fees—well over half of Class Counsel's *entire* claimed lodestar.

13 Class Counsel's block billing is particularly egregious—and makes the  
14 reasonableness of their claimed hours particularly difficult to assess—because 12  
15 attorneys or paralegals at three different firms collectively block billed 10 or more  
16 hours in a single day on more than 100 occasions.<sup>3</sup> Class Counsel's billing records  
17 simply do not allow the Court to conduct a meaningful cross-check on Class  
18 Counsel's request for \$4.62 million in fees.

19 **II. Round-Number Time Entries**

20 The deficiencies caused by Class Counsel's block billing are exacerbated by  
21 the fact that certain attorneys routinely block billed their daily entries in round  
22 numbers. This further calls into question the accuracy of Class Counsel's records.  
23 *See, e.g., MacDonald v. Ford Motor Co.*, 2016 WL 3055643, at \*8 (N.D. Cal. May  
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25 <sup>2</sup> Messrs. Rifkin's and Newman's aggregate hours are based on the figures in their  
26 declarations supporting Class Counsel's fee request. *See* Dkt. 323-1 Exs. B-I; Dkt.  
324 Exs. B-I.

27 <sup>3</sup> *See, e.g.,* Dkt. 337 at 47, 51, 133, 143, 147, 152, 157, 162, 166-67, 171-73, 188,  
28 194, 198, 205-06, 208-09, 212-14, 216-18, 222, 230, 234, 240-42, 247, 251, 279,  
288-90, 292.

1 31, 2016) (reducing fee request where “most” of an attorney’s entries were “in either  
2 one or half-hour increments”); *Hawaii Def. Found. v. City & Cty. of Honolulu*, 2014  
3 WL 2804448, at \*6 (D. Haw. June 19, 2014) (“Counsels’ time sheets indicate that  
4 they largely billed in hour or half-hour increments, which suggests that the hours  
5 billed are excessive.”).

6 An associate at Wolf Haldenstein, who billed over \$425,000 to this matter,  
7 recorded the vast majority of her daily time entries in either one hour or half-hour  
8 increments. *See* Dkt. 337 at 156-72 (only 31 of 243 entries (13%) did *not* end in  
9 “.0” or “.05”). Likewise, Mr. Newman, who billed \$1.4 million in fees, routinely  
10 recorded daily hours in perfectly round numbers.<sup>4</sup> By way of example, between  
11 November 15, 2014 and November 28, 2014, Mr. Newman billed the following  
12 daily hours over 14 *consecutive* days (12 of which were in hour-long increments):  
13 16.0, 15.0, 14.0, 17.0, 15.0, 15.0, 13.0, 11.0, 12.8, 9.0, 11.0, 13.0, 16.0, 6.2. Dkt.  
14 337 at 241. These and other round-number entries for large amounts of billing time  
15 indicate excessive billing. *MacDonald*, 2016 WL 3055643, at \*8; *Hawaii Def.*  
16 *Found.*, 2014 WL 2804448, at \*6. They also suggest that Class Counsel engaged in  
17 post hoc, inflated estimates as to the actual time they worked on billable tasks.

### 18 **III. Excessive Billing and Duplication of Efforts**

19 Class Counsel’s billing records confirm that they spent excessive amounts of  
20 time at each stage of the litigation, that there was substantial overlap among the five  
21 plaintiffs’ firms, and that tasks routinely were not delegated to lower billing  
22 attorneys and staff. Wolf Haldenstein ran the case, in close coordination with  
23 Newman PC. Together, these two firms billed an enormous number of hours—time  
24 that itself is excessive. Adding time from multiple lawyers at other law firms for  
25 what appears to be substantially overlapping work was, at a minimum, extremely  
26 inefficient, and in all events grossly inflated Class Counsel’s claimed lodestar.

27 <sup>4</sup> *See* Dkt. 337 at 126-27, 205-06, 208-09, 212-14, 216-18, 221-24, 230-32, 233-35,  
28 240-43, 245, 247.

1 To begin, Mr. Newman alone billed a staggering number of hours between  
2 September 2012 and March 28, 2013, the day he first “ [REDACTED]  
3 [REDACTED]  
4 [REDACTED]” Dkt. 337 at 205-213. He billed 535 hours over the course of six months,  
5 which is an average of 9.5 hours for each day that he billed to this matter. *Id.* Mr.  
6 Newman and the remaining firms billed 750 more hours on their pre-filing  
7 investigation and drafting of the initial (substantially similar) complaints between  
8 then and July 2013.

9 During the discovery phase (roughly February through September 2014), five  
10 partners, two associates, six paralegals and one technician at Wolf Haldenstein  
11 together with Mr. Newman collectively billed over 2,500 hours—the equivalent of  
12 more than 104 days of around-the-clock billing. That time is excessive for just a  
13 limited amount of written discovery, two joint discovery motions, a relatively small  
14 number of documents, and four depositions. Class Counsel’s billing records are  
15 often vague, which make it difficult to assess the reasonableness of their claimed  
16 time. *See, e.g., id.* at 164 (showing that Ms. Landes (an associate) billed 17.5 hours  
17 over three days in May 2014 on tasks such as [REDACTED]  
18 [REDACTED]

19 [REDACTED]”). On top of these already  
20 excessive hours between Wolf Haldenstein and Newman PC, multiple attorneys and  
21 a paralegal at two other firms billed an additional 240 hours on discovery.

22 During the summary judgment phase (roughly October 2014 through July  
23 2015), five partners, one associate and two paralegals at Wolf Haldenstein and Mr.  
24 Newman collectively billed over 2,000 hours—the equivalent of 83 straight days of  
25 billing. That time, itself, is excessive for a single 50-page joint motion, a 24-page  
26 supplemental brief, and two oral arguments. Nevertheless, the records Plaintiffs  
27 have produced show that two partners and two associates at Donahue Fitzgerald  
28 billed nearly 250 hours for the same motion. *See, e.g., Id.* at 42 (showing that Mr.

1 Rifkin billed multiple hours on May 21 and 22, 2015 researching “[REDACTED]  
2 [REDACTED]”), 103 (Ms. Manifold billed multiple hours during this period researching  
3 abandonment), 270 (Mr. Drake (a case clerk) billed 6.4 hours during this period  
4 researching abandonment), 290 (Mr. Schact (a partner) billed 5.2 hours during this  
5 period researching abandonment), 297 (Mr. Williams (an associate) billed 9.3 hours  
6 during this period researching abandonment). Similarly, two partners and two  
7 associates at Glancy Prongay billed another 200 hours to the same motion.<sup>5</sup> A  
8 dozen plaintiffs’ lawyers working on these summary judgment-related tasks is  
9 excessive.

10 Similarly, seven attorneys—none of whom was an associate—at four  
11 different firms each billed significant amounts of time, which amounted to hundreds  
12 of cumulative hours, drafting a single 25-page opposition brief to Defendants’  
13 motion to dismiss.

14 Another law firm, Hunt Ortmann, billed over 100 hours (\$56,000 in fees)  
15 simply reviewing Class Counsel’s filings for compliance with the Local Rules. This  
16 time not only is excessive; it also appears to be completely unnecessary. The four  
17 Class Counsel firms other than Newman PC each had multiple attorneys admitted in  
18 this District, as well as paralegals, who each could have performed this task—and  
19 likely did so as the firms prepared the filings.

20 To give one of many examples of excessive billing between Wolf Haldenstein  
21 and Newman PC, between October 23 and 28, 2014, Ms. Landes spent roughly  
22 35 hours drafting the statement of facts (Dkt. 337 at 170), yet about two weeks later,  
23 Ms. Manifold and Ms. Landes spent nearly 20 *more* hours revising this statement  
24 (*id.* at 94 (Ms. Manifold’s timesheet), 171 (Ms. Landes’s timesheet) at the same  
25 time that Mr. Newman billed nearly 90 hours over six straight days “reviewing” and  
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27 <sup>5</sup> An attorney at Glancy Prongay later billed 4 hours simply “[REDACTED]  
28 at 306. [REDACTED]” Dkt. 337

1 “revising” the same statement (*id.* at 241 (Mr. Newman’s timesheet)). Class  
2 Counsel also billed a number of exceedingly long days. For example, Mr. Rifkin  
3 billed two 18.5 hour days (*id.* at 36, 56), Ms. Manifold billed a 20.3 hour day (*id.* at  
4 96), and Mr. Newman has 14 daily entries with more than 15 hours each (*id.* at 207,  
5 213, 217, 218, 240-41, 251). Such high daily billing is evidence of inflation. *See,*  
6 *e.g., Cotton v. City of Eureka, Cal.*, 889 F. Supp. 2d 1154, 1178 (N.D. Cal. 2012)  
7 (reducing hours due to high daily billing); *Alvarado v. FedEx Corp.*, 2011 WL  
8 4708133, at \*17 (N.D. Cal. Sept. 30, 2011) (40% across-the-board reduction due to  
9 inflated hours, including “repeated billing for excessively long days”).

#### 10 **IV. Billing for Travel Time and “Media Inquiries”**

11 Class Counsel’s billing records also reveal extensive billing for time spent  
12 travelling. Although Class Counsel’s block billing makes it is impossible to tell  
13 precisely how much time they billed for travel, the figure appears to be substantial.  
14 Messrs. Rifkin and Newman, for example, appear to have written down large  
15 amounts of time for each of their multiple cross-country trips. *See, e.g.,* Dkt. 337 at  
16 16-18, 33, 36, 40-41, 45, 50-51, 56 (Mr. Rifkin’s timesheets); *id.* at 222-24, 240-42,  
17 247, 251 (Mr. Newman’s timesheets).<sup>6</sup> Mr. Rifkin even billed \$5,330 for traveling  
18 to Los Angeles on November 8, 2015 to speak about the Court’s summary judgment  
19 ruling at a Los Angeles Copyright Society meeting. *Id.* at 50; *see*  
20 [http://www.copr.org/past-events/#year\\_2015](http://www.copr.org/past-events/#year_2015). He appears to have billed thousands  
21 of more dollars for his time at that meeting. Dkt. 337 at 50.

22 The billing records also reveal extensive time billed for fielding media  
23 inquiries, particularly by Mr. Rifkin. Once again, it is impossible to quantify Class  
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25 <sup>6</sup> Other attorneys billed for lengthy plane trips as well. *See, e.g., id.* at 279, 288-90,  
26 292. Tellingly, not all attorneys billed for their travel time. Ms. Manifold, who  
27 traveled from San Diego to Los Angeles on multiple occasions, billed time *working*  
28 in transit, but not for the transit itself. *See, e.g., id.* at 91-92. And on at least one  
occasion, another attorney recorded travel time but did not bill for it. *Id.* at 274.  
Apparently some of Plaintiffs’ attorneys recognized the impropriety of writing down  
every minute spent traveling.



1 Counsel's time speaking with reporters, due to block billing, although it appears  
2 they billed a substantial amount of time to this unjustified effort throughout the  
3 litigation. *See, e.g., id.* at 11-12, 14, 33, 41-42, 45-50, 52, 55-57 (Mr. Rifkin's  
4 timesheets); *id.* at 102, 150-51, 158, 217, 242-43 (other attorneys' timesheets).

5 **V. Hunt Ortmann's Delayed Submissions**

6 Finally, Class Counsel's billing records unjustifiably include time entries for  
7 Hunt Ortmann. Aside from the fact that Hunt Ortmann's services appear to have  
8 been unnecessary, this firm submitted its time 29 days late, on May 26, 2016. Dkt.  
9 330. That was just a day before the objection/exclusion deadline and Defendants'  
10 fee opposition deadline, so Class Members did not have a meaningful opportunity to  
11 assess the reasonableness of Hunt Ortmann's hours, and Defendants did not have  
12 time to assess and comment upon the same. Moreover, Hunt Ortmann's declaration  
13 inexplicably requested fees of three times its purported lodestar, claiming that it  
14 typically would request a lodestar factor of three. *Id.* at 3. It was unclear how this  
15 request related to Class Counsel's request for 33% of the common fund, as Class  
16 Counsel's fee motion and supporting declarations said nothing about Hunt  
17 Ortmann's hours or its request for three times its fees. Class Counsel's June 14  
18 reply again was silent about Hunt Ortmann's hours and its role in the case.<sup>7</sup> The  
19 Court should ignore Hunt Ortmann's hours in conducting the lodestar cross-check  
20 not only because its work appears to have been unnecessary, but also due to that  
21 firm's untimely and confused filings.

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27 <sup>7</sup> Hunt Ortmann filed a revised declaration on June 17, which stated that it is not  
28 seeking fees of three times its claimed lodestar. Dkt. 339.

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DATED: June 24, 2016

MUNGER, TOLLES & OLSON LLP

By:           /s/ Kelly M. Klaus            
          KELLY M. KLAUS

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