

# **Exhibit B**

**UNREDACTED**

**FILED UNDER SEAL 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 Plaintiffs,

14 v.

15 WARNER/CHAPPELL MUSIC, INC.,  
16 et al.,

17 Defendants.  
18

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

**DEFENDANTS' [UNREDACTED]  
RESPONSE TO CLASS  
COUNSEL'S BILLING RECORDS**

**FILED UNDER SEAL PURSUANT  
TO JUNE 10, 2016 ORDER (DKT.  
334)**

Courtroom: 650  
Judge: Hon. George H. King,  
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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

- I. INTRODUCTION..... 1
- II. ARGUMENT ..... 2
  - A. Billing Practices That Cut Across The Time Records..... 2
    - 1. Block Billing..... 2
    - 2. Vague Descriptions Of Class Counsel’s Work ..... 5
    - 3. Billing In Whole And Half-Hour Increments..... 8
    - 4. The Billing Records Reflect Substantial Duplication Of Effort Throughout The Litigation..... 10
      - (a) Pre-Filing Investigation And Initial Complaint ..... 10
      - (b) Opposition To Motion To Dismiss..... 11
      - (c) Discovery..... 12
      - (d) Summary Judgment..... 13
  - B. Class Counsel Routinely Billed For Non-Compensable Tasks ..... 14
    - 1. Travel Time..... 14
    - 2. Media Time..... 15
  - C. The Court Should Disregard Hunt Ortmann’s Time Because It Was Not Timely Disclosed ..... 16
- III. CONCLUSION ..... 17

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**FEDERAL CASES**

*Alvarado v. FedEx Corp.*,  
2011 WL 4708133 (N.D. Cal. Sept. 30, 2011)..... 9, 11

*Banas v. Volcano Corp.*,  
47 F. Supp. 3d 957 ..... 4, 6

*Cotton v. City of Eureka, Cal.*,  
889 F. Supp. 2d 1154 (N.D. Cal. 2012)..... 9

*Dubose v. Cnty. of L.A.*,  
2012 WL 2135293 (C.D. Cal. June 11, 2012)..... 6, 7

*Gates v. Gomez*,  
60 F.3d 525 (9th Cir.1995) ..... 15

*Greater Los Angeles Council on Deafness v. Cmty. Television of S.  
Cal.*,  
813 F.2d 217 (9th Cir. 1987) ..... 15

*Gunderson v. Mauna Kea Properties, Inc.*,  
2011 WL 9754085 (D. Haw. May 9, 2011) ..... 2

*Hawaii Def. Found. v. City & Cty. of Honolulu*,  
2014 WL 2804448 (D. Haw. June 19, 2014) ..... 7, 8, 9

*Hensley v. Eckerhart*,  
461 U.S. 431 (1983) ..... 6

*Jankey v. Beach Hut*,  
2006 WL 4569361 (C.D. Cal. Dec. 19, 2006)..... 14

*Keith v. Volpe*,  
644 F. Supp. 1317 (C.D. Cal. 1986)..... 6

*In re KeySpan Corp. Sec. Litig.*,  
2005 WL 3093399 (E.D.N.Y. Sept. 30, 2005)..... 2

*L.H. v. Schwarzenegger*,  
645 F. Supp. 2d 888 (E.D. Cal. 2009) ..... 15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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19  
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21  
22  
23  
24  
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26  
27  
28

**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

*Lahiri v. Universal Music & Video Distrib. Corp.*,  
606 F.3d 1216 (9th Cir. 2010) ..... 2

*Lehr v. City of Sacramento*,  
2013 WL 1326546 (E.D. Cal. Apr. 2, 2013) ..... 15

*Loretz v. Regal Stone, Ltd.*,  
756 F. Supp. 2d 1203 (N.D. Cal. 2010)..... 15

*MacDonald v. Ford Motor Co.*,  
2016 WL 3055643 (N.D. Cal. May 31, 2016) ..... 8, 9

*Mayer v. RSB Equity Grp., LLC*,  
2011 WL 2650185 (C.D. Cal. July 5, 2011) ..... 2, 3

*United States v. One 2008 Toyota Rav 4 Sports Util. Vehicle, No.*,  
2012 WL 5272281 (C.D. Cal. Oct. 18, 2012) ..... 5, 6

*Welch v. Metro. Life Ins. Co.*,  
480 F.3d 942 (9th Cir. 2007) ..... 2

1 **I. INTRODUCTION**

2 Pursuant to the June 27, 2016 Order (Dkt. 347), Defendants respectfully  
3 respond to Class Counsel’s billing records, filed on June 17 (Dkt. 337). This  
4 response expands upon and replaces Defendants’ initial statement, filed on June 24  
5 (Dkt. 345).

6 The review of Class Counsel’s billing records is important to the pending fee  
7 motion for two reasons. First, the billing records are critical to performing a cross-  
8 check on the reasonableness of Class Counsel’s request for \$4.62 million in fees or  
9 33% of the \$14 million settlement fund—a significant boost (by nearly one-third)  
10 over the 25% benchmark, which benchmark would award Class Counsel \$3.5  
11 million in fees. Class Counsel insist that their enhanced fee request is reasonable  
12 because, even at 33% of the settlement fund, they will recover less than 100% of  
13 their claimed \$5,176,596.80 lodestar.<sup>1</sup> Second, Class Counsel argue that their  
14 enhanced fee request is justified by, among other things, their claim that the  
15 litigation required an extraordinary amount of work—namely, more than 9,000  
16 hours in the lodestar generated by 41 different timekeepers. Review of the billing  
17 records is important for testing the reasonableness of this claim.

18 Class Counsel’s billing records do not allow for a meaningful cross-check on  
19 the lodestar or support Class Counsel’s assertion that the case required the hours and  
20 timekeepers that make up Class Counsel’s lodestar. The billing records are replete  
21 with block billing, vague entries, duplication of effort across numerous attorneys

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22 <sup>1</sup> Class Counsel state in their fee motion that the declarations supporting the motion  
23 “document a cumulative lodestar” of \$5,329,372.80. Dkt. 323 at 9. Adding up the  
24 figures in the four declarations filed with the motion, however, results in a lodestar  
25 of \$5,176,596.80. Dkt. 324 Exs. B-I (Rifkin Decl.); Dkt. 323-1 Exs. B-I (Newman  
26 Decl.); Dkt. 323-2 at 2-6 (Schacht Decl.); Dkt. 323-3 at 2-6 (Wolke Decl.); Dkt.  
27 332-2 (compilation of figures in April 27, 2016, declarations). As discussed in  
28 Argument Section C, one law firm, Hunt Ortmann filed an untimely declaration  
claiming \$56,458.50 in fees. Dkt 339 ¶ 10 (Nieves Decl.). Including that amount in  
the lodestar results in a total of \$5,233,055.30. Response Exhibit 1, attached hereto,  
compares the amount of time Class Counsel included in the lodestar accompanying  
the April 27 motion for fees with the amount of time that Class Counsel’s attorneys  
and staff recorded in the billing records submitted on June 17.

1 (including multiple attorneys who never appeared in Court, in conferences of  
2 counsel, or at depositions), and extensive billing for noncompensable activities  
3 (such as travel time and numerous interactions with the media). “[A]ny lodestar  
4 cross check should be based on billings that have some semblance of  
5 reasonableness.” *In re KeySpan Corp. Sec. Litig.*, 2005 WL 3093399, at \*17-18  
6 (E.D.N.Y. Sept. 30, 2005). We respectfully submit that Class Counsel’s billing  
7 records fall short of this standard, and that the Court should reduce the lodestar  
8 substantially.

## 9 **II. ARGUMENT**

10 We divide our discussion of Class Counsel’s billing records into overarching  
11 issues that impede a meaningful cross-check or indicate excessive billing (Part A);  
12 specific entries covering noncompensable activities (Part B); and particular issues  
13 with the submission of one Class Counsel firm, Hunt Ortman (Part C).

### 14 **A. Billing Practices That Cut Across The Time Records**

#### 15 **1. Block Billing**

16 Where counsel “block bills” for their time—i.e., where the individual entries  
17 provide aggregated totals but do not indicate how much time counsel spent on each  
18 task within the aggregated totals—it “makes it more difficult to determine how  
19 much time was spent on particular activities.” *Welch v. Metro. Life Ins. Co.*, 480  
20 F.3d 942, 948 (9th Cir. 2007). Block billing “makes it impossible for the Court to  
21 determine whether specific entries are excessive or duplicative.” *Mayer v. RSB*  
22 *Equity Grp., LLC*, 2011 WL 2650185, at \*2 (C.D. Cal. July 5, 2011). Courts have  
23 reduced lodestar hours by 30% or more as a result of block billing. *Id.* (reducing  
24 total compensable hours by 30% due to block billing); *see also, e.g., Lahiri v.*  
25 *Universal Music & Video Distrib. Corp.*, 606 F.3d 1216, 1222-23 (9th Cir. 2010)  
26 (affirming 30% reduction on block billed hours); *Gunderson v. Mauna Kea*  
27 *Properties, Inc.*, 2011 WL 9754085, at \*10 & n.18 (D. Haw. May 9, 2011)

28

1 (applying “across the board” reduction because of excessive block billing), *aff’d*,  
2 567 F. App’x 538 (9th Cir. 2014).

3       Lead Counsel asserts that he reviewed his firm’s entries and “eliminat[ed] ...  
4 any inappropriate block billing.” Dkt. 324 (Rifkin Decl.) at ¶ 11. In fact, the billing  
5 records of Wolf Haldenstein’s attorneys and paralegals and support staff—as well as  
6 the records of other Class Counsel firms—are substantially comprised of block  
7 billed entries.

8       Lead Counsel, Mr. Rifkin, block billed almost all of his time entries.  
9 Dkt. 337 at 10-60; Response Ex. 1. Lead Counsel frequently recorded more than  
10 one time entry per day. But in most instances, even those sub-entries contained  
11 compilations of different tasks without any indication as to how much time Lead  
12 Counsel spent on each task within the block. For example, Lead Counsel recorded  
13 two separate entries for July 24, 2014. One entry block bills 8.5 hours (“Prep for  
14 hearing; travel to LA; meet w/BCM; email to and from J. Nelson”) and the other  
15 entry block bills 2.0 hours (“Finalize Sach Report; confer w/B. Landes re Sachs  
16 report; confer w/L.Greene re Sachs report; t/cs to and from RSN”). Dkt. 337 at 33.  
17 Numerous entries follow this practice. *See, e.g., id.* at 11 (8.5-hour entry on June  
18 14, 2013, for “[e]mail to and from K. Ragsdale re media; confer RSN, J. Nelson, J.  
19 Pollack, B. Landes, G. Baghban re status; email to and from R. Siegel re status; t/cs  
20 from media”; and 0.8-hour entry on same day for “T/cs to and from D. Schacht; re  
21 strategies; confer w/RSN and J. Pollack re strategies”), 51 (“9.5-hour entry on  
22 December 2, 2015, for “[c]onfer w/RSN and BCM; t/cs and emails to and from D.  
23 Rotman re mediation; travel to NYC; email to and from co-counsel re mediation”;  
24 and 2.0-hour entry on same day for “[d]raft and revise trial brief; t/cs to and from J.  
25 Nelson and co-counsel”).

26  
27  
28

1 Review of the remaining Wolf Haldenstein timekeepers reveals that, with one  
2 notable exception, they, too, largely block billed their time.<sup>2</sup> Ms. Pollack—a Wolf  
3 Haldenstein partner who made no visible appearance in the litigation—appears to  
4 have block billed around 80% of her 58.5 hours (or more than \$47,000 in fees).  
5 Dkt. 337 at 123-25; Dkt. 324 Exs. B-C. Ms. Landes, a Wolf Haldenstein associate,  
6 appears to have block billed entries spanning close to 90% of her 1,081.7 hours (or  
7 more than \$400,000 in fees). Dkt. 337 at 156-72; Dkt. 324 Exs. B-F. Other  
8 attorneys and staff at Wolf Haldenstein likewise block billed substantial amounts of  
9 time that are included in the lodestar.<sup>3</sup>

10 Mr. Newman, who billed 2,193 hours—for \$1,403,520 in fees—likewise  
11 block billed the substantial majority of his time entries. Dkt. 337 at 205-51. When  
12 Mr. Newman did not block bill, he listed only a single task for the day. However, as  
13 discussed below, many of Mr. Newman’s single-task-per-day descriptions are  
14 vague, are billed in round hour (or to the half-hour) increments, or are both. In  
15 addition, a number of the tasks that Mr. Newman listed alone on individual days  
16 also are listed on adjacent days where Mr. Newman did block bill. *See, e.g.*, Dkt.  
17 337 at 216 (four day-long entries billed only to “[r]eview[ing] and [r]evising” the  
18 complaint are adjacent to seven entries in which this task is block billed among  
19 other tasks). This practice makes it difficult if not impossible for the Court to  
20 “determine whether the total time spent on those tasks was reasonable.” *Banas v.*  
21 *Volcano Corp.*, 47 F. Supp. 3d 957, 968 n.13 (N.D. Cal. 2014).

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24 <sup>2</sup> The significant exception is Ms. Manifold, a Wolf Haldenstein partner. Ms.  
25 Manifold block billed her time for the first few months of the case, but as of October  
26 4, 2013, identified separately the amount of time she spent on each task. Dkt. 337 at  
26 61-123. Ms. Manifold’s example illustrates that the Class Counsel who block billed  
could have identified their time by task.

27 <sup>3</sup> *See, e.g.*, Dkt. 337 at 7-10 (timesheets for Mr. Gregorek, a partner), 131-134  
28 (timesheets for Ms. DeJong, an associate), 178-83, 187-90, 193, 200-01 (timesheets  
for Ms. D’Avanzo, a paralegal).

1 Attorneys at Donahue Fitzgerald and Glancy Prongay also routinely block  
2 billed when they reported working on more than one task in a day (which, typically,  
3 were the days where they billed significant amounts of time). *See, e.g.*, Dkt. 337 at  
4 274, 276, 279 (timesheets for Mr. MacKay, a partner at Donahue Fitzgerald); *id.* at  
5 284, 288, 292 (timesheets for Mr. Schacht, a partner at Donahue Fitzgerald); *id.* at  
6 307-11 (timesheets for Ms. Wolke, a partner at Glancy Prongay).

7 Class Counsel’s practice of block billing thus cuts across the vast majority of  
8 timekeepers. The practice makes a meaningful cross-check impossible. It is not  
9 possible to assess the reasonableness of time spent on particular tasks where the  
10 billing records do not allow analysis of how much time Class Counsel spent on  
11 particular tasks.

12 Finally, it must be noted that individual block bills in many cases are for  
13 substantial numbers of hours. As demonstrated in Exhibit 2, more than 80 different  
14 entries block bill 10 or more hours in a single day. Response Ex. 2. This amounts  
15 to 1,012.4 block billed hours, or \$575,330 in block billed fees, based on 10+ hour  
16 days alone. *Id.*

17 As a result of the enormous number of aggregate block billed hours, as well  
18 as the large number of long, block billed days, Class Counsel’s billing records  
19 simply do not allow for a meaningful cross-check on Class Counsel’s request for a  
20 significant fee enhancement. The case law supports an across-the-board reduction  
21 in Class Counsel’s lodestar because of the extensive block billing. Applying a 30%  
22 reduction, as cases have, itself lowers the lodestar from \$5,176,596.80 to  
23 \$3,623,618.

## 24 2. Vague Descriptions Of Class Counsel’s Work

25 “To meet the burden of proving that the hours billed were reasonably spent,  
26 ‘at least counsel should identify the general subject matter of his time  
27 expenditures.’” *United States v. One 2008 Toyota Rav 4 Sports Util. Vehicle, No.*,  
28 2012 WL 5272281, at \*10 (C.D. Cal. Oct. 18, 2012) (citation omitted). “Where the

1 documentation of hours is inadequate, the district court may reduce the award  
2 accordingly.” *Hensley v. Eckerhart*, 461 U.S. 431, 433 (1983). Courts have  
3 reduced hours by substantial amounts where vague billing entries—such as the  
4 failure to indicate the specific subject of meetings or research—make it difficult to  
5 assess whether claimed hours were reasonably billed. *See, e.g., Banas*, 47 F. Supp.  
6 3d at 969-70 (reducing hours by 20% for block billing and an additional 5% for  
7 vague entries such as “attention to discovery issues”); *One 2008 Toyota*, 2012 WL  
8 5272281, at \*11 (reducing hours by 35% in part due to vague time entries that did  
9 not identify the subject of communications); *Dubose v. Cnty. of L.A.*, 2012 WL  
10 2135293, at \*5 (C.D. Cal. June 11, 2012) (reducing billing by 20% in part due to  
11 vague entries and excessive entries for communications between counsel); *Keith v.*  
12 *Volpe*, 644 F. Supp. 1317, 1323 (C.D. Cal. 1986) (deducting fees for vague “legal  
13 research” entry).

14 Class Counsel’s billing records are replete with vague entries. For example,  
15 partners and associates routinely billed for communications, legal research, and  
16 advice without meaningfully identifying the subject matter:

- 17 • Mr. Rifkin had at least 50 time entries where a listed subject was simply  
18 “status and strategies”—including 30 entries for emails and conferences “re  
19 status and strategies” and 19 entries for “review status and strategies.” *See*  
20 Response Ex. 3. He also frequently described meetings and correspondence  
21 without identifying the subject matter. *E.g.*, Dkt. 337 at 15 (8/30/13: “email  
22 to BCM”; 9/14/13: “confer w/B. Landes”; 9/5/13: “email to K. Ragsdale”),  
23 21 (1/29/14: “t/cs to and from RSN”; 2/3/14 & 2/4/14: “email from BCM”;  
24 2/5/14 & 2/7/14 & 2/10/14: “confer w/BL”).
- 25 • Ms. Pollack (partner, Wolf Haldenstein) had numerous time entries for  
26 “emails” or “conference calls” or “reviewed materials” about unspecified  
27 topics. *See, e.g., id.* at 123 (5/24/13: 3.0 hours for “Happy Birthday – emails;  
28

- 1 reviewed research; conference call”), 125 (2/3/14: 1.0 hour for “Mtg. with  
2 team and case and discovery issues; reviewed materials”).
- 3 • Mr. Smith (partner, Wolf Haldenstein) billed most of his time to tasks such as  
4 “conf MCR” and “conf MCR & Randy” and “review email & articles,”  
5 without identifying the subject matter. *E.g., id.* at 6-7.
  - 6 • Ms. Landes (associate, Wolf Haldenstein) had scores of long, block billed  
7 days with vague entries. *E.g., id.* at 157 (5/30/13: 7.0 hours for “copyright  
8 research, and declaratory judgment again”), 159 (8/22/13: 6.0 hours  
9 “Analyzing the preemption cases; Reviewing for accuracy the contract claim  
10 cases that D.S. pulled up. Made correction.”), 162 (2/4/14: 11.0 hours for  
11 “[r]esearch question; copyright in works in public domain; and working on  
12 interrogatories”), 164 (4/23/14: 7.0 hours for “[r]esearch, meet with Mark,  
13 organize and get more unredacted sheet music from Randy and Brauneis,  
14 review more of WC’s production”; 4/24/14: 5.5 hours for “[r]esearch, meet  
15 with Mark, phone call with co counsel Kara in LA, reading Glancy law  
16 memo, reviewing”).
  - 17 • Mr. MacKay (partner, Donahue Fitzgerald) had a number of time entries for  
18 “advise regarding strategic issues” or “advise regarding discovery issues.” *Id.*  
19 at 273-278.

20 Class Counsel also billed large amounts of time to broad subjects, such as  
21 “[r]eview and revise abandonment brief,” “[r]eview and revise SJ papers,” and  
22 “[p]repare opposition to motion to dismiss,” without identifying what specifically  
23 they were working on. *E.g., id.* at 42-43, 241, 285. In *Hawaii Def. Found. v. City &*  
24 *Cty. of Honolulu*, 2014 WL 2804448 (D. Haw. June 19, 2014), the court reduced  
25 counsel’s claimed hours after highlighting that one entry billed six hours to “Draft  
26 memo re MSJ.” *Id.* at \*6. The court explained: “certainly [counsel] did not sit at  
27 his desk for six hours straight drafting a summary judgment motion, and he certainly  
28 could have described his work for this six-hour period with more specificity (e.g.,

1 Were there particular portions of the motion he worked on during this time? Did his  
2 work during this time period involve research?)." *Id.* Here, for example, Mr.  
3 Newman recorded 11.0 hours to "review and revise SJ papers" on November 22,  
4 2014. Dkt. 337 at 241. He then recorded 12.8 hours, 9.0 hours, 11.0 hours, and  
5 16.0 hours over the next five days with exactly the same entry. *Id.*

6 Class Counsel's vague descriptions of their work, like their block billing,  
7 precludes the Court from assessing the reasonableness of Class Counsel's time and  
8 relying on Class Counsel's lodestar as support for an enhanced fee award.

### 9 3. Billing In Whole And Half-Hour Increments

10 Courts have reduced fee requests where time entries are mainly in one or half-  
11 hour increments, because this indicates excessive billing and an overstatement of the  
12 amount of time actually worked. *See, e.g., MacDonald v. Ford Motor Co.*, 2016  
13 WL 3055643, at \*8 (N.D. Cal. May 31, 2016) (reducing fee request where "most" of  
14 an attorney's entries were "in either one or half-hour increments"); *Hawaii Def.*  
15 *Found.*, 2014 WL 2804448, at \*6 ("Counsels' time sheets indicate that they largely  
16 billed in hour or half-hour increments, which suggests that the hours billed are  
17 excessive."). Here, attorneys at three different firms routinely billed their time in  
18 whole or half-hour increments.

19 Mr. Newman (partner, Newman PC), who billed over \$1.4 million in fees,  
20 regularly recorded daily hours in perfectly round numbers or half-hour increments.<sup>4</sup>  
21 By way of example, between June 10 and June 14, 2013, Mr. Newman billed 9.0  
22 hours, 3.0 hours, 9.5 hours, 15.0 hours, and 16.0 hours. Dkt. 337 at 217. Even more  
23 strikingly, between November 15 and November 28, 2014, Mr. Newman billed the  
24 following daily hours over 14 *consecutive* days (12 of which were in hour-long  
25 increments): 16.0, 15.0, 14.0, 17.0, 15.0, 15.0, 13.0, 11.0, 12.8, 9.0, 11.0, 13.0,  
26 16.0, 6.2. *Id.* at 241.

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 Ms. Pollack (partner, Wolf Haldenstein), who billed \$57,155 in fees, recorded  
2 all of her daily time—39 days—in either whole or half-hour increments. *Id.* at 123-  
3 25 (39 out of 39 daily entries ended in “.0” or “.5”). Ms. Landes (associate, Wolf  
4 Haldenstein), who billed \$427,272 in fees, recorded the vast majority of her 243  
5 daily time entries in either whole or half-hour increments. *Id.* at 156-72 (212 of 243  
6 entries (87%) ended in “.0” or “.5”). For example, Ms. Landes’s 20 daily entries  
7 between May 29 and July 1, 2014, include 16 entries in round-number amounts; the  
8 remaining four entries end in “.5.” *Id.* at 165-67.

9 Mr. Godino (partner, Glancy Prongay), who billed \$70,789, also recorded  
10 most of his time in either whole or half-hour increments. *Id.* at 302-04 (64 of 74  
11 entries (86%) ended in “.0” or “.5”).

12 These and other round-number entries for large amounts of time indicate  
13 excessiveness and further render Class Counsel’s time records inappropriate for the  
14 required cross-check. *MacDonald*, 2016 WL 3055643, at \*8; *Hawaii Def. Found.*,  
15 2014 WL 2804448, at \*6.

16 Closely related to the practice of block billing round numbers (or numbers  
17 ending in .5) is Class Counsel’s practice of billing very large numbers of hours in  
18 single days. Courts have frequently reduced the lodestar where counsel bill large  
19 numbers of hours in single days. *See, e.g., Cotton v. City of Eureka, Cal.*, 889 F.  
20 Supp. 2d 1154, 1178 (N.D. Cal. 2012) (reducing hours due to high daily billing);  
21 *Alvarado v. FedEx Corp.*, 2011 WL 4708133, at \*17 (N.D. Cal. Sept. 30, 2011)  
22 (40% across-the-board reduction due to inflated hours, including “repeated billing  
23 for excessively long days”). For example, Mr. Rifkin billed two 18.5-hour days  
24 (Dkt. 337 at 36, 56), Ms. Manifold billed a 20.3-hour day (*id.* at 96), and Mr.  
25 Newman has 14 daily entries with 15.0 or more hours each (*id.* at 207, 213, 217,  
26 218, 240-41, 251). Ms. Landes also routinely billed large hours in single days. For  
27 example, of the 20 entries between May 29 and July 1, 2014 (discussed above), 13  
28 of the entries block billed 8.0 hours or more. *Id.* at 165-67.

1                                   **4. The Billing Records Reflect Substantial Duplication Of**  
2                                   **Effort Throughout The Litigation**

3                   Class Counsel declare that they broke out their work by category, but their  
4                   billing records do not contain task coding. As a result, it is not possible to determine  
5                   which time entries Class Counsel are allocating to which overall buckets of tasks  
6                   and to assess where there was inefficient duplication. Nonetheless, Defendants have  
7                   attempted to analyze the entries by time period that appear to roughly correspond to  
8                   distinct phases of the litigation. Class Counsel’s billing records confirm that they  
9                   spent excessive amounts of time at each stage of the litigation and that there was  
10                  substantial overlap among the five plaintiffs’ firms.

11                  Wolf Haldenstein ran the case, in close coordination with Newman PC.  
12                  Together, these two firms billed an enormous number of hours—time that itself is  
13                  excessive. Adding time from multiple lawyers at other law firms for what appears  
14                  to be substantially overlapping work was, at a minimum, extremely inefficient, and  
15                  in all events inflated Class Counsel’s claimed lodestar. Defendants have not even  
16                  seen most of these lawyers. They did not argue or appear in Court, for example, or  
17                  attend a deposition or participate in a meet-and-confer. Even allowing for the fact  
18                  that not all timekeepers in litigation will be visible, there were many people writing  
19                  down time without making any apparent contribution. Moreover, another law firm,  
20                  Hunt Ortmann, billed 102.7 hours (\$56,459 in fees) simply reviewing Class  
21                  Counsel’s filings for compliance with the Local Rules. Dkt. 339 ¶¶ 5, 10. This time  
22                  not only is excessive; it also appears to be completely unnecessary. The four Class  
23                  Counsel firms other than Newman PC each had multiple attorneys admitted in this  
24                  District, as well as paralegals, who each could have performed this task—and likely  
25                  did so as the firms prepared the filings.

26                                   **(a) Pre-Filing Investigation And Initial Complaint**

27                  Mr. Newman billed a large number of hours between September 2012 and  
28                  March 28, 2013, the day he first “beg[an] draft of initial complaint based on written

1 documents obtained from Prof. Brauneis and other sources.” Dkt. 337 at 205-213.  
2 He billed 535 hours over the course of six months, which is an average of 9.5 hours  
3 for each day that he billed to this matter. *Id.* This includes billing 9.3 hours on  
4 January 17, 2013, to research the history of the 1790 Copyright Act and 8.8 hours on  
5 January 18, 2013, to research the history of the 1909 Copyright Act; billing 13.2  
6 hours on January 22, 2013, to “[r]eview Copyright entry books from 1893 to 1935  
7 for references to Summy Co. and Happy Birthday”; and billing 16.5 on January 23,  
8 2013, to “[s]earch Google Books for references to HBTY from 1850 to 1935.” *Id.* at  
9 206-07.

10 Mr. Newman’s time before April 2013 was substantial. The remaining firms  
11 (and Mr. Newman) billed a large amount of additional time prior to May 2013.  
12 Class Counsel’s lodestar includes over 200 hours for Donahue Fitzgerald’s  
13 investigation prior to May 2013. *See id.* at 272-73, 281-84. Beyond this initial  
14 investigation by Donahue Fitzgerald and the time described above by Mr. Newman,  
15 Class Counsel still billed more than 830 additional hours on their pre-filing  
16 investigation and the drafting of the initial (substantially similar) complaints  
17 between April and mid-July 2013.<sup>5</sup>

18 **(b) Opposition To Motion To Dismiss**

19 Defendants filed their motion to dismiss on August 30, 2013. Between  
20 August 30 and September 9, 2013, six attorneys at four different firms each billed  
21 significant amounts of time drafting a single 25-page opposition brief to  
22 Defendants’ motion to dismiss.<sup>6</sup> Two more attorneys from one of these firms,  
23

24 \_\_\_\_\_  
25 <sup>5</sup> During this time period, Ms. Landes billed 8.0 hours researching Judge King, and  
26 block billed an additional 17.5 hours for researching Judge King and performing  
27 other tasks. Dkt. 337 at 158. Ms. D’Avanzo, a paralegal at Wolf Haldenstein, billed  
28 4.5 hours to researching Judge King. *Id.* at 179.

<sup>6</sup> At Wolf Haldenstein, Ms. Manifold billed roughly 40.0 hours and Mr. Rifkin  
billed roughly 36.0 hours; at Newman PC, Mr. Newman billed roughly 33 hours; at  
Glancy Prongay, Mr. Alexander billed roughly 33.0 hours and Mr. Godino billed  
(footnote continued on following page)

1 Donahue Fitzgerald, also recorded time to this effort. *Id.* at 272, 275. This  
2 amounted to nearly 175 cumulative hours preparing one standard-length and  
3 straightforward brief. That time, which does not include time preparing for and  
4 attending the hearing, is excessive. It also reveals inefficient duplication caused by  
5 having multiple timekeepers record time to the same opposition brief.

6 (c) **Discovery**

7 Between approximately February and September 2014, five partners, two  
8 associates, six paralegals and one technician at Wolf Haldenstein together with Mr.  
9 Newman collectively billed over 2,500 hours—the equivalent of more than 104 days  
10 of around-the-clock billing. That time is excessive, considering that discovery  
11 consisted of a limited amount of written discovery, two joint discovery motions, a  
12 relatively small number of documents, and four depositions.<sup>7</sup> As noted above, Class  
13 Counsel’s billing records are for the most part block billed and often vague, which  
14 make it difficult to assess the reasonableness of their claimed time. *See, e.g., id.* at  
15 164 (Ms. Landes block billed 17.5 hours over three days in May 2014 on tasks such  
16 as “[r]esearch and conf. call with Kara W. at Glancy,” “catching up Giti on status of  
17 research and discovery” and “[w]orking with copyright office to refine requests”);  
18 *id.* at 233, 235, 240 (Mr. Newman block billed for correspondence and meetings  
19 regarding “discovery issues,” among other tasks). On top of these hours between  
20 Wolf Haldenstein and Newman PC, multiple attorneys and a paralegal at two other  
21 firms billed an additional 240 hours between February and September 2014.<sup>8</sup>

22  
23 (footnote continued from previous page)  
24 roughly 15 hours; and at Donahue Fitzgerald, Mr. Schacht billed roughly 15 hours.  
Dkt. 337 at 15, 65-66, 221-22, 285, 300-02.

25 <sup>7</sup> To give just one example, Ms. Landes spent more than 50 hours in one week in  
26 early February 2014 drafting and editing discovery requests (Dkt 337 at 162) that  
she previously had worked on during days where she block billed an aggregate of  
roughly 60 more hours (*id.* at 160-162).

27 <sup>8</sup> Ms. Landes’s time entry for June 26, 2014, offers an example of Class Counsel’s  
28 inefficient work allocation. She described 11.0 hours of work as follows:  
“[r]eceived draft of 37:2 stip from Betsy, written by co-counsel, much back and  
(footnote continued on following page)

1 (d) Summary Judgment

2 The preparation of summary judgment briefing occurred roughly between  
3 October 2014 and July 2015. During this time, five partners, one associate and two  
4 paralegals at Wolf Haldenstein and Mr. Newman collectively billed over 2,000  
5 hours—the equivalent of 83 around-the-clock days of billing. That time, itself, is  
6 excessive for a single 50-page joint motion, a 24-page supplemental brief, two oral  
7 arguments, and a few ancillary briefs. Nevertheless, the records Plaintiffs have  
8 produced show that two partners, three associates and one law clerk at Donahue  
9 Fitzgerald billed 275 hours for summary judgment-related tasks (this excludes three  
10 attorneys who billed less than 5.0 hours during this period). *See, e.g., id.* at 42 (Mr.  
11 Rifkin billed multiple hours on May 21 and 22, 2015 researching “abandonment  
12 issues”), 103 (Ms. Manifold billed multiple hours during late May 2015 researching  
13 abandonment), 270 (Mr. Drake (a case clerk at Donahue Fitzgerald) billed nearly 20  
14 hours during this period researching or writing a memorandum about forfeiture or  
15 abandonment), 290 (Mr. Schacht (a partner at Donahue Fitzgerald) billed 7.2 hours  
16 during this period researching or writing a memorandum about forfeiture or  
17 abandonment), 297 (Mr. Williams (an associate at Donahue Fitzgerald) billed 9.3  
18 hours during this period researching or writing a memorandum about abandonment).  
19 Similarly, two partners and two associates at Glancy Prongay billed another 200  
20 hours to summary judgment-related tasks.<sup>9</sup> Sixteen plaintiffs’ lawyers working

21  
22 \_\_\_\_\_  
23 (footnote continued from previous page)  
24 forth with S.D. seeking background docs relating to the draft stip; need to totally re-  
25 draft became apparent, since Casey [presumably Mr. Williams, of Donahue  
26 Fitzgerald] was not aware of the ASCAP privilege issue; after speaking with Mark,  
27 learned that stip should take different tact altogether.” Dkt. 337 at 166-67. Ms.  
28 Landes billed 10.0 hours on June 27 and another 10.0 hours on June 29 for tasks  
including “[r]evising and research/drafting for 37:2 stip per Mark’s new  
instructions.” *Id.* at 167.

<sup>9</sup> An attorney at Glancy Prongay later billed 6.6 hours simply “research[ing] [the]  
summary judgment reversal rate in the Ninth Circuit in the last ten years” and  
drafting a memorandum on this topic. Dkt. 337 at 306.

1 nearly 2,000 hours on summary judgment plus two paralegals and a law clerk  
2 working 500 additional hours is excessive.

3 For example, between October 23 and 28, 2014, Ms. Landes spent  
4 approximately 35 hours drafting the statement of facts. Dkt. 337 at 170. Two  
5 weeks later, Ms. Manifold and Ms. Landes spent nearly 16 more hours revising this  
6 statement. *Id.* at 94-98 (Ms. Manifold’s timesheets), 171 (Ms. Landes’s timesheet).  
7 Between November 16 and 21, 2014, Mr. Newman appears to have billed over 90  
8 hours over six straight days “reviewing” and “revising” the same statement (one of  
9 the daily entries is block billed). *Id.* at 241 (Mr. Newman’s timesheet).

10 **B. Class Counsel Routinely Billed for Non-Compensable Tasks**

11 **1. Travel Time**

12 Billing for time spent traveling is not appropriate absent evidence that it is  
13 customary in the District and appropriate under the circumstances. *Jankey v. Beach*  
14 *Hut*, 2006 WL 4569361, at \*4-5 (C.D. Cal. Dec. 19, 2006). Class Counsel’s billing  
15 records reveal that they billed extensively for time spent traveling. Although Class  
16 Counsel’s block billing makes it impossible to tell precisely how much time they  
17 billed for travel, the figure appears to be substantial. For example, partners and  
18 associates at three law firms billed for their time traveling to hearings in Los  
19 Angeles, to meetings with clients or co-counsel, and to Louisville, Kentucky, and  
20 Washington, D.C., to perform research. Response Ex. 4. Mr. Rifkin even billed  
21 \$5,330 for traveling to Los Angeles on November 8, 2015 to speak about the  
22 Court’s summary judgment ruling at a Los Angeles Copyright Society meeting.  
23 Dkt. 337 at 50; *see* [http://www.copr.org/past-events/#year\\_2015](http://www.copr.org/past-events/#year_2015). (He appears to  
24 have billed thousands of more dollars for his time at that meeting. *Id.* at 50.) And  
25 Mr. Newman billed for his travel within New York City—to the library, for  
26 example, or to Wolf Haldenstein’s office. *E.g., id.* at 206 (1/15/13: 8.7 hours for  
27 “[t]ravel to NYPL and review newspapers and periodicals regarding HBTY”), 217  
28 (6/13/13: 15.0 hours for “[f]ile complaint; travel to WHAFH offices for same;

1 meeting with client concerning same; respond to media inquiries regarding  
2 lawsuit”).

3 Class counsel could have identified time traveling when they were actually  
4 working, but almost none of them did. Ms. Manifold, who traveled from San Diego  
5 to Los Angeles on multiple occasions, billed time working in transit, but not for the  
6 transit itself. Dkt. 337 at 91-92. And on two occasions, partners at Donahue  
7 Fitzgerald recorded travel time, but did not bill for it. *Id.* at 274, 280. Most Class  
8 Counsel, however, instead wrote down all of their time spent traveling.

## 9 2. Media Time

10 “Hours spent for media contacts and press conferences are generally not  
11 compensable.” *Lehr v. City of Sacramento*, 2013 WL 1326546, at \*12 (E.D. Cal.  
12 Apr. 2, 2013); *see, e.g., Gates v. Gomez*, 60 F.3d 525, 535 (9th Cir.1995) (time spent  
13 for media contacts and attending conferences “are the kinds of activities that  
14 attorneys generally do at their own expense.”); *Greater Los Angeles Council on*  
15 *Deafness v. Cmty. Television of S. Cal.*, 813 F.2d 217, 221 (9th Cir. 1987) (district  
16 court “reasonably disallowed time spent on publicity”); *Loretz v. Regal Stone, Ltd.*,  
17 756 F. Supp. 2d 1203, 1215 (N.D. Cal. 2010) (“The Court finds that Class Counsel  
18 should not be compensated for time spent interacting with the media. Such contacts  
19 serve to enhance Class Counsel’s reputation, and that is compensation enough.”).  
20 Although “non-litigation activities such as lobbying or working with the media may  
21 be compensable when ‘directly and intimately related to the successful  
22 representation of a client’ and when they ‘contribute, directly and substantially, to  
23 the attainment of [the] litigation goals,” media time is *not* compensable absent  
24 evidence of this showing. *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 900 (E.D.  
25 Cal. 2009) (citation omitted).

26 The billing records reveal that Class Counsel billed extensive time fielding  
27 media inquiries and reading news about this case. Class Counsel’s block billing  
28 makes it impossible to quantify how much time they recorded based on talking with

1 reporters. Nevertheless, even a conservative assemblage of some (though by no  
2 means all) of Class Counsel’s time entries that include media outreach shows that  
3 Class Counsel recorded a substantial amount of time for talking to reporters. *See*  
4 Response Ex. 5. To give just a few examples, Ms. Landes billed for being  
5 interviewed for a documentary—presumably the one that Plaintiff Good Morning to  
6 You Productions is making (Dkt. 337 at 157-58); Mr. Rifkin billed for being  
7 interviewed by a Russian television station (and Ms. Landes billed for “sitting in on  
8 [the] interview”) (*id.* at 13, 158 (7/9/13)); Mr. Rifkin billed for an email with his  
9 client about a clip from the Colbert Report (*id.* at 22); and Mr. Krasner billed for  
10 “review[ing] Hollywood Reporter article etc” (*id.* at 5).

11 It is possible that Class Counsel’s extensive media campaign resulted in some  
12 class members learning of the settlement, although Class Counsel’s billing records  
13 do not reflect any such result or any other way that the campaign directly  
14 contributed to the result in the case. It is apparent that at least some portion of Class  
15 Counsel’s press time was over and above what the cases indicate is compensable.

16 **C. The Court Should Disregard Hunt Ortmann’s Time Because It**  
17 **Was Not Timely Disclosed**

18 Finally, Class Counsel’s billing records unjustifiably include time entries for  
19 Hunt Ortmann. Hunt Ortmann’s services appear to have been unnecessary.  
20 Moreover, the firm submitted its time declaration 29 days late, on May 26, 2016.  
21 Dkt. 330. That was just a day before the objection/exclusion deadline and  
22 Defendants’ fee opposition deadline. Class Members did not have a meaningful  
23 opportunity to assess the reasonableness of Hunt Ortmann’s hours, and Defendants  
24 did not have time to assess and comment upon the same. Moreover, Hunt  
25 Ortmann’s declaration inexplicably requested fees of three times its purported  
26 lodestar, claiming that it typically would request a lodestar factor of three. *Id.* at  
27 ¶ 10. It was unclear how this request related to Class Counsel’s request for 33% of  
28 the common fund, as Class Counsel’s fee motion and supporting declarations said

1 nothing about Hunt Ortmann's hours or its request for three times its fees. Class  
2 Counsel's June 14 reply again was silent about Hunt Ortmann's hours and its role in  
3 the case.<sup>10</sup> The Court should ignore Hunt Ortmann's hours in conducting the  
4 lodestar cross-check not only because its work appears to have been unnecessary,  
5 but also due to that firm's untimely and confused filings.

6 **III. CONCLUSION**

7 For the reasons above, Class Counsel's billing records do not support the  
8 reasonableness of Class Counsel's request for \$4.62 million in fees (33% of the \$14  
9 million settlement fund). If the Court reduces Class Counsel's lodestar by 30% to  
10 account for the block billing and applies an additional reduction of 10% because of  
11 the other deficiencies discussed, the lodestar would be reduced to approximately  
12 \$3,261,256.

13  
14 DATED: July 5, 2016

MUNGER, TOLLES & OLSON LLP

15  
16 By:           /s/ Kelly M. Klaus            
17 KELLY M. KLAUS

18 Attorneys for Defendants  
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26 <sup>10</sup> Hunt Ortmann filed a revised declaration on June 17, which stated that it is not  
27 seeking fees of three times its claimed lodestar. Dkt. 339 ¶ 10. It is ironic that this  
28 firm filed an untimely fee request and then waited three more weeks to clarify that  
confusing request given that it supposedly was tasked with ensuring "conformance  
with the District Rules" and "quality assurance." *Id.* ¶¶ 5, 9.