

1 GLENN D. POMERANTZ (State Bar No. 112503)
glenn.pomerantz@mto.com
2 KELLY M. KLAUS (State Bar No. 161091)
kelly.klaus@mto.com
3 ADAM I. KAPLAN (State Bar No. 268182)
adam.kaplan@mto.com
4 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
5 Thirty-Fifth Floor
Los Angeles, California 90071-1560
6 Telephone: (213) 683-9100
Facsimile: (213) 687-3702

7 Attorneys for Defendants
8

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' [REDACTED]
RESPONSE TO CLASS
COUNSEL'S BILLING RECORDS**

**REDACTED PURSUANT TO JUNE
10, 2016 ORDER (DKT. 334)**

Courtroom: 650
Judge: Hon. George H. King,
20
21

22
23
24
25
26
27
28

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

		Page
1		
2		
3	FEDERAL CASES	
4	<i>Alvarado v. FedEx Corp.</i> ,	
5	2011 WL 4708133 (N.D. Cal. Sept. 30, 2011).....	9, 11
6	<i>Banas v. Volcano Corp.</i> ,	
7	47 F. Supp. 3d 957.....	4, 6
8	<i>Cotton v. City of Eureka, Cal.</i> ,	
9	889 F. Supp. 2d 1154 (N.D. Cal. 2012).....	9
10	<i>Dubose v. Cnty. of L.A.</i> ,	
11	2012 WL 2135293 (C.D. Cal. June 11, 2012).....	6, 7
12	<i>Gates v. Gomez</i> ,	
13	60 F.3d 525 (9th Cir.1995).....	15
14	<i>Greater Los Angeles Council on Deafness v. Cmty. Television of S.</i>	
15	<i>Cal.</i> ,	
16	813 F.2d 217 (9th Cir. 1987).....	15
17	<i>Gunderson v. Mauna Kea Properties, Inc.</i> ,	
18	2011 WL 9754085 (D. Haw. May 9, 2011).....	2
19	<i>Hawaii Def. Found. v. City & Cty. of Honolulu</i> ,	
20	2014 WL 2804448 (D. Haw. June 19, 2014).....	7, 8, 9
21	<i>Hensley v. Eckerhart</i> ,	
22	461 U.S. 431 (1983).....	6
23	<i>Jankey v. Beach Hut</i> ,	
24	2006 WL 4569361 (C.D. Cal. Dec. 19, 2006).....	14
25	<i>Keith v. Volpe</i> ,	
26	644 F. Supp. 1317 (C.D. Cal. 1986).....	6
27	<i>In re KeySpan Corp. Sec. Litig.</i> ,	
28	2005 WL 3093399 (E.D.N.Y. Sept. 30, 2005).....	2
	<i>L.H. v. Schwarzenegger</i> ,	
	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
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	Page
<i>Lahiri v. Universal Music & Video Distrib. Corp.</i> , 606 F.3d 1216 (9th Cir. 2010).....	2
<i>Lehr v. City of Sacramento</i> , 2013 WL 1326546 (E.D. Cal. Apr. 2, 2013).....	15
<i>Loretz v. Regal Stone, Ltd.</i> , 756 F. Supp. 2d 1203 (N.D. Cal. 2010).....	15
<i>MacDonald v. Ford Motor Co.</i> , 2016 WL 3055643 (N.D. Cal. May 31, 2016)	8, 9
<i>Mayer v. RSB Equity Grp., LLC</i> , 2011 WL 2650185 (C.D. Cal. July 5, 2011)	2, 3
<i>United States v. One 2008 Toyota Rav 4 Sports Util. Vehicle, No.</i> , 2012 WL 5272281 (C.D. Cal. Oct. 18, 2012)	5, 6
<i>Welch v. Metro. Life Ins. Co.</i> , 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.¹ 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

22
23 ¹ Class Counsel state in their fee motion that the declarations supporting the motion
24 “document a cumulative lodestar” of \$5,329,372.80. Dkt. 323 at 9. Adding up the
25 figures in the four declarations filed with the motion, however, results in a lodestar
26 of \$5,176,596.80. Dkt. 324 Exs. B-1 (Rifkin Decl.); Dkt. 323-1 Exs. B-1 (Newman
27 Decl.); Dkt. 323-2 at 2-6 (Schacht Decl.); Dkt. 323-3 at 2-6 (Wolke Decl.); Dkt.
28 332-2 (compilation of figures in April 27, 2016, declarations). As discussed in
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 Ortmann (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 [REDACTED]
9 Dkt. 337 at 10-60; Response Ex. 1. Lead Counsel [REDACTED]
10 [REDACTED] But in most instances, [REDACTED]
11 [REDACTED]
12 [REDACTED]. For example, Lead Counsel recorded
13 two separate entries for July 24, 2014. One entry block bills [REDACTED] (“[REDACTED]
14 [REDACTED]”) and the other
15 entry block bills [REDACTED] (“[REDACTED]
16 [REDACTED]”). Dkt. 337 at 33.
17 Numerous entries follow this practice. *See, e.g., id.* at 11 [REDACTED] entry on June
18 14, 2013, for [REDACTED]
19 [REDACTED]
20 [REDACTED]”; and [REDACTED] entry on same day for “[REDACTED]
21 [REDACTED]”), 51 [REDACTED] entry on
22 December 2, 2015, for “[REDACTED]
23 [REDACTED]”;
24 [REDACTED] entry on same day for “[REDACTED]
25 [REDACTED]”).

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.² Ms. Pollack—a Wolf
3 Haldenstein partner who made no visible appearance in the litigation [REDACTED]
4 [REDACTED]
5 Dkt. 337 at 123-25; Dkt. 324 Exs. B-C. Ms. Landes, a Wolf Haldenstein associate,
6 [REDACTED]
7 [REDACTED] 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.³

10 Mr. Newman, who billed 2,193 hours—for \$1,403,520 in fees [REDACTED]
11 [REDACTED] Dkt. 337 at 205-51. When
12 Mr. Newman did not block bill, [REDACTED] However, as
13 discussed below, [REDACTED]
14 [REDACTED] In
15 addition, [REDACTED]
16 [REDACTED] See, e.g., Dkt.
17 337 at 216 (four day-long entries billed only to “[REDACTED]” 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).

22
23
24 ² The significant exception is Ms. Manifold, a Wolf Haldenstein partner. Ms.
25 Manifold [REDACTED] but as of October
26 4, 2013, [REDACTED] Dkt. 337 at
27 61-123. Ms. Manifold’s example illustrates that the Class Counsel who block billed
28 could have identified their time by task.

³ See, e.g., Dkt. 337 at 7-10 (timesheets for Mr. Gregorek, a partner), 131-134
(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 [REDACTED]
2 [REDACTED]
3 [REDACTED] 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, [REDACTED]
14 [REDACTED] Response Ex. 2. This amounts
15 to [REDACTED]
16 [REDACTED] *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 “██████████”—including 30 entries for emails and conferences “██████████”
19 “██████████” and 19 entries for “██████████.” *See*
20 Response Ex. 3. He also frequently ██████████
21 ██████████ *E.g.*, Dkt. 337 at 15 (8/30/13: “██████████”
22 “██████████”; 9/14/13: “██████████”; 9/5/13: “██████████”),
23 21 (1/29/14: “██████████”; 2/3/14 & 2/4/14: “██████████”;
24 2/5/14 & 2/7/14 & 2/10/14: “██████████”).
- 25 • Ms. Pollack (partner, Wolf Haldenstein) had numerous time entries for
26 “██████████” or “██████████” or “██████████” about unspecified
27 topics. *See, e.g., id.* at 123 (5/24/13: 3.0 hours for “██████████”
28

1 [REDACTED]”), 125 (2/3/14: 1.0 hour for “[REDACTED]
2 [REDACTED]”).

- 3 • Mr. Smith (partner, Wolf Haldenstein) billed most of his time to tasks such as
4 “[REDACTED]” and “[REDACTED] andy” and “[REDACTED],”
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: [REDACTED] [REDACTED]
8 [REDACTED]”), 159 (8/22/13: [REDACTED]
9 “[REDACTED]
10 [REDACTED]”), 162 (2/4/14: [REDACTED]
11 [REDACTED]
12 [REDACTED]”), 164 (4/23/14: [REDACTED] “[REDACTED]
13 [REDACTED]
14 [REDACTED]”; 4/24/14: [REDACTED] [REDACTED]
15 [REDACTED]
16 [REDACTED]”).

- 17 • Mr. MacKay (partner, Donahue Fitzgerald) had a number of time entries for
18 “[REDACTED]” or “[REDACTED].” *Id.*
19 at 273-278.

20 Class Counsel also billed large amounts of time to broad subjects, such as
21 “[REDACTED],” “[REDACTED],” and
22 “[REDACTED],” 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 [REDACTED] "[REDACTED]
4 2014. Dkt. 337 at 241. [REDACTED]
5 [REDACTED] *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 [REDACTED]⁴

21 By way of example, [REDACTED]
22 [REDACTED] Dkt. 337 at 217. Even more
23 strikingly, [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] *Id.* at 241.

27 ⁴ *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 [REDACTED] *Id.* at 123-
3 25 [REDACTED] Ms. Landes (associate, Wolf
4 Haldenstein), who billed \$427,272 in fees, [REDACTED]
5 [REDACTED] *Id.* at 156-[REDACTED]
6 [REDACTED] For example, Ms. Landes's [REDACTED]
7 [REDACTED]
8 [REDACTED] *Id.* at 165-67.

9 Mr. Godino (partner, Glancy Prongay), who billed \$70,789, [REDACTED]
10 [REDACTED]. *Id.* at 302-[REDACTED]
11 [REDACTED]

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, [REDACTED]
24 (Dkt. 337 at 36, 56), [REDACTED] (*id.* at 96), and [REDACTED]
25 [REDACTED] (*id.* at 207, 213, 217,
26 218, 240-41, 251). [REDACTED] For
27 example, [REDACTED]
28 [REDACTED] *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 " [REDACTED]

1 [REDACTED]” 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 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] to “[REDACTED]
7 [REDACTED]”; [REDACTED]
8 [REDACTED].” *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 2013.⁵

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.⁶ Two more attorneys from one of these firms,
23

24 _____
25 ⁵ During this time period, Ms. Landes [REDACTED]
26 [REDACTED] Dkt. 337 at 158. Ms. D’Avanzo, a paralegal at Wolf Haldenstein, billed
27 [REDACTED] *Id.* at 179.

28 ⁶ At Wolf Haldenstein. [REDACTED]

(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.⁷ 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 [REDACTED]
16 [REDACTED],” “[REDACTED]
17 [REDACTED]” and [REDACTED]”);
18 *id.* at 233, 235, 240 (Mr. Newman block billed for correspondence and meetings
19 regarding “[REDACTED],” 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 2014.⁸
22

23 (footnote continued from previous page)

24 Dkt. 337 at 15, 65-66, 221-22, 285, 300-02.

25 ⁷ To give just one example, Ms. Landes [REDACTED]

[REDACTED] (Dkt. 337 at 162)

26 [REDACTED] (*id.* at 160-162).

27 ⁸ Ms. Landes’s time entry for June 26, 2014, offers an example of Class Counsel’s
28 in [REDACTED]

(1

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 [REDACTED]

9 [REDACTED]
10 [REDACTED] *See, e.g., id.* at 42 [REDACTED]
11 [REDACTED]
12 [REDACTED]”), 103 [REDACTED]
13 [REDACTED] 270 [REDACTED]
14 [REDACTED]
15 [REDACTED], 290 [REDACTED]
16 [REDACTED]
17 [REDACTED] 297 ([REDACTED]
18 [REDACTED]

19 Similarly, two partners and two associates at Glancy Prongay billed another 200
20 hours to summary judgment-related tasks.⁹ Sixteen plaintiffs’ lawyers working

21
22 _____
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] for tasks
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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, [REDACTED]
4 [REDACTED] Dkt. 337 at 170. Two
5 weeks later, [REDACTED]
6 [REDACTED] *Id.* at 94-98 (Ms. Manifold's timesheets), 171 (Ms. Landes's timesheet).
7 Between November 16 and 21, 2014, [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] *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. [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 Dkt. 337 at 50; [REDACTED]
24 [REDACTED] And
25 Mr. Newman billed [REDACTED]
26 [REDACTED] *E.g., id.* at 206 [REDACTED]
27 [REDACTED]”), 217
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]”).

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, [REDACTED]
6 [REDACTED] Dkt. 337 at 91-92. And on two occasions, [REDACTED]
7 [REDACTED] *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 assembling 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, [REDACTED]
5 [REDACTED]
6 [REDACTED] (Dkt. 337 at 157-58); [REDACTED]
7 [REDACTED] "[REDACTED]
8 [REDACTED]" (*id.* at 13, 158 (7/9/13)); [REDACTED]
9 [REDACTED] (*id.* at 22); [REDACTED]
10 "[REDACTED]" (*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.¹⁰ 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
19
20
21
22
23
24

25 _____
26 ¹⁰ 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 _____
_____ en that it _____ tasked with ensuring "_____
" and "_____." *Id.* ¶¶ 5, 9.

Exhibits 1-5

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