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1 I. INTRODUCTION

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

The review of Class Counsel's billing records is important to the pending fee 6 7 motion for two reasons. First, the billing records are critical to performing a crosscheck on the reasonableness of Class Counsel's request for \$4.62 million in fees or 8 9 33% of the \$14 million settlement fund—a significant boost (by nearly one-third) over the 25% benchmark, which benchmark would award Class Counsel \$3.5 10 million in fees. Class Counsel insist that their enhanced fee request is reasonable 11 because, even at 33% of the settlement fund, they will recover less than 100% of 12 their claimed \$5,176,596.80 lodestar. Second, Class Counsel argue that their 13 14 enhanced fee request is justified by, among other things, their claim that the litigation required an extraordinary amount of work-namely, more than 9,000 15 hours in the lodestar generated by 41 different timekeepers. Review of the billing 16 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 the lodestar or support Class Counsel's assertion that the case required the hours and 19 20 timekeepers that make up Class Counsel's lodestar. The billing records are replete with block billing, vague entries, duplication of effort across numerous attorneys 21 22

²² ¹ Class Counsel state in their fee motion that the declarations supporting the motion
"document a cumulative lodestar" of \$5,329,372.80. Dkt. 323 at 9. Adding up the
figures in the four declarations filed with the motion, however, results in a lodestar
of \$5,176,596.80. Dkt. 324 Exs. B-I (Rifkin Decl.); Dkt. 323-1 Exs. B-I (Newman
Decl.); Dkt. 323-2 at 2-6 (Schacht Decl.); Dkt. 323-3 at 2-6 (Wolke Decl.); Dkt.
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.

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

9 II. ARGUMENT

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

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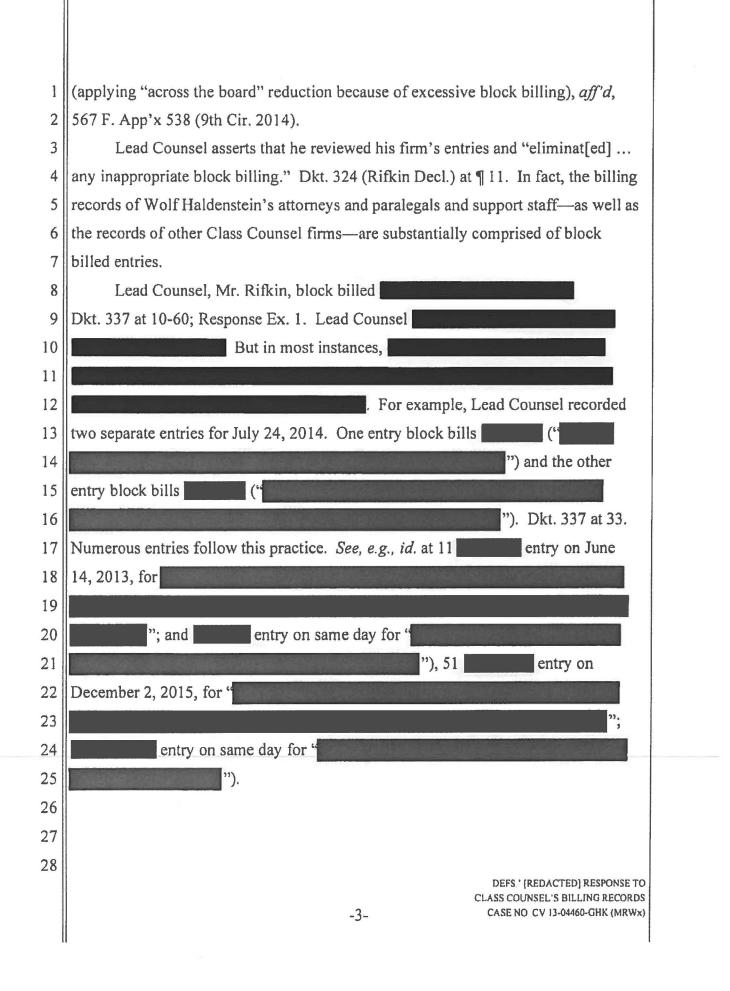
A. Billing Practices That Cut Across The Time Records

1. Block Billing

16 Where counsel "block bills" for their time—i.e., where the individual entries provide aggregated totals but do not indicate how much time counsel spent on each 17 task within the aggregated totals-it "makes it more difficult to determine how 18 much time was spent on particular activities." Welch v. Metro. Life Ins. Co., 480 19 F.3d 942, 948 (9th Cir. 2007). Block billing "makes it impossible for the Court to 20 determine whether specific entries are excessive or duplicative." Mayer v. RSB 21 Equity Grp., LLC, 2011 WL 2650185, at *2 (C.D. Cal. July 5, 2011). Courts have 22 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

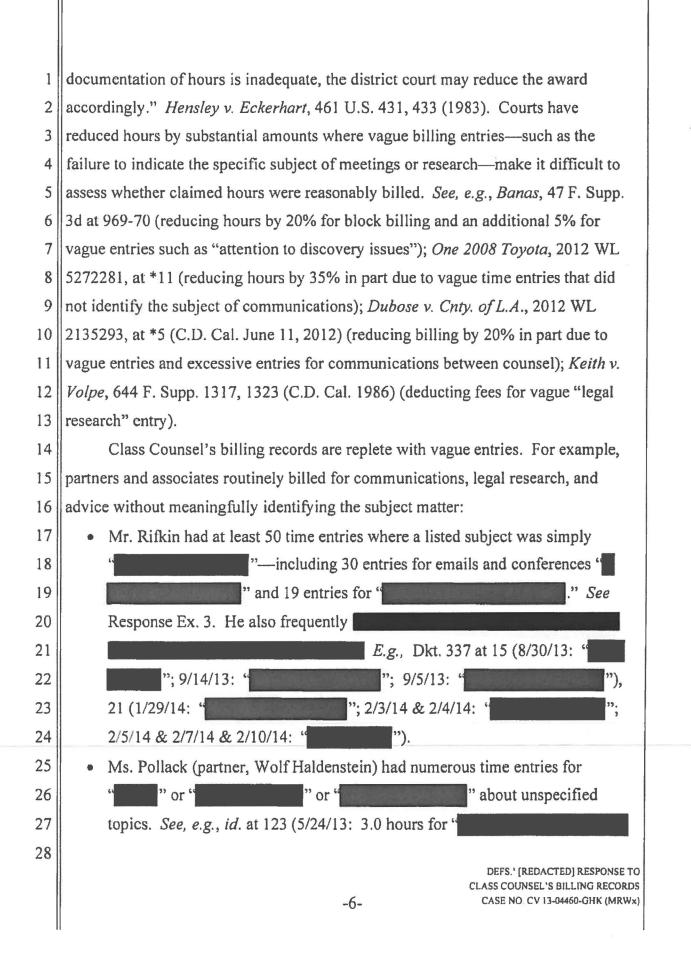
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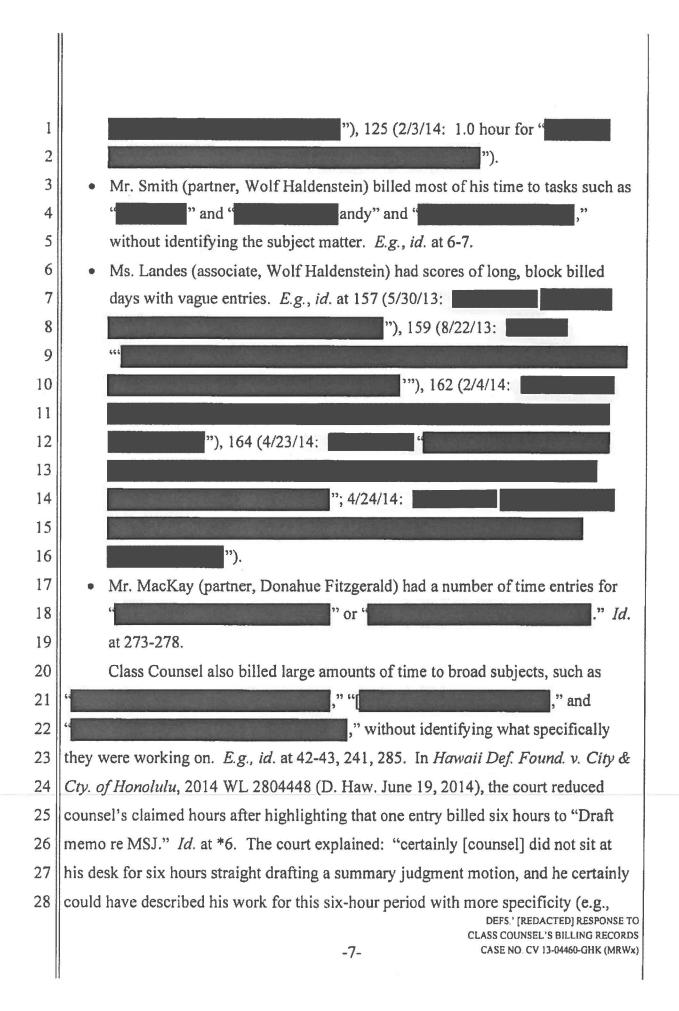
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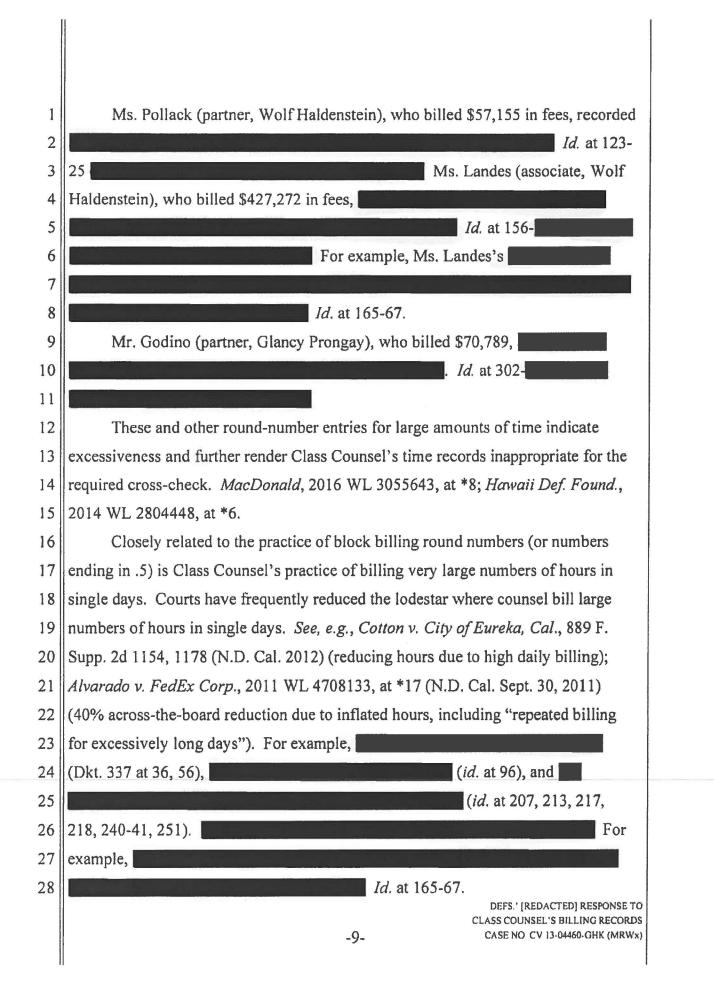
1	Review of the remaining Wolf Haldenstein timekeepers reveals that, with one
2	notable exception, they, too, largely block billed their time. ² Ms. Pollack—a Wolf
3	Haldenstein partner who made no visible appearance in the litigation
4	
5	Dkt. 337 at 123-25; Dkt. 324 Exs. B-C. Ms. Landes, a Wolf Haldenstein associate,
6	
7	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
11	Dkt. 337 at 205-51. When
12	Mr. Newman did not block bill, However, as
13	discussed below,
14	In
15	addition,
16	See, e.g., Dkt.
17	337 at 216 (four day-long entries billed only to "
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. Manifold but as of October
25	4, 2013, 61-123. Ms. Manifold's example illustrates that the Class Counsel who block billed
26	could have identified their time by task.
27	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
28	for Ms. D'Avanzo, a paralegal).
	-4- CLASS COUNSEL'S BILLING RECORDS CASE NO CV 13-04460-GHK (MRWx)

Attorneys at Donahue Fitzgerald and Glancy Prongay also 1 2 3 See, e.g., Dkt. 337 at 274, 276, 279 (timesheets for Mr. MacKay, a partner at Donahue Fitzgerald); id. at 4 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 billing records do not allow analysis of how much time Class Counsel spent on 10 11 particular tasks. Finally, it must be noted that individual block bills in many cases are for 12 substantial numbers of hours. As demonstrated in Exhibit 2. 13 14 Response Ex. 2. This amounts 15 to Id. 16 17 As a result of the enormous number of aggregate block billed hours, as well as the large number of long, block billed days, Class Counsel's billing records 18 simply do not allow for a meaningful cross-check on Class Counsel's request for a 19 significant fee enhancement. The case law supports an across-the-board reduction 20 in Class Counsel's lodestar because of the extensive block billing. Applying a 30% 21 22 reduction, as cases have, itself lowers the lodestar from \$5,176,596.80 to 23 \$3,623,618. 2. Vague Descriptions Of Class Counsel's Work 24 "To meet the burden of proving that the hours billed were reasonably spent, 25 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., 2012 WL 5272281, at *10 (C.D. Cal. Oct. 18, 2012) (citation omitted). "Where the 28 DEFS ' [REDACTED] RESPONSE TO CLASS COUNSEL'S BILLING RECORDS CASE NO. CV 13-04460-GHK (MRWx) -5-





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 2014. Dkt. 337 at 241. 4 5 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 relying on Class Counsel's lodestar as support for an enhanced fee award. 8 9 3. **Billing In Whole And Half-Hour Increments** 10 Courts have reduced fee requests where time entries are mainly in one or halfhour increments, because this indicates excessive billing and an overstatement of the 11 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. Found., 2014 WL 2804448, at *6 ("Counsels' time sheets indicate that they largely 15 billed in hour or half-hour increments, which suggests that the hours billed are 16 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 By way of example, 21 22 Dkt. 337 at 217. Even more strikingly, 23 24 25 26 Id. at 241. 27 See Dkt. 337 at 126-27, 205-06, 208-09, 212-14, 216-18, 221-24, 230-32, 233-35, 240-43, 245, 247. 28 DEFS.' [REDACTED] RESPONSE TO CLASS COUNSEL'S BILLING RECORDS CASE NO. CV 13-04460-GHK (MRWx) -8-



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

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

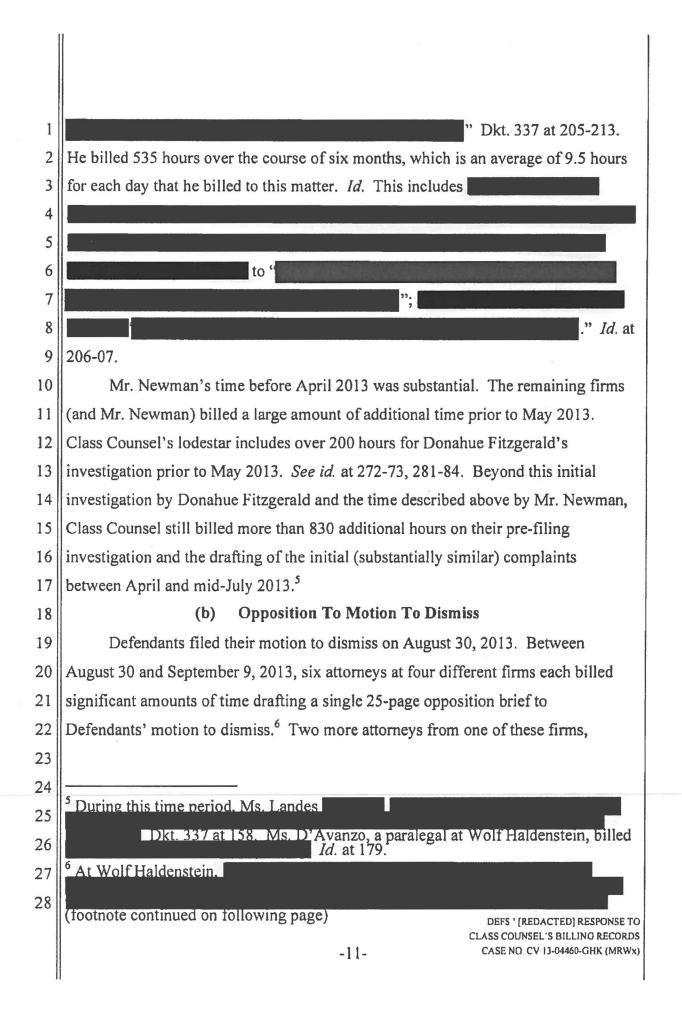
10 Wolf Haldenstein ran the case, in close coordination with Newman PC. 11 Together, these two firms billed an enormous number of hours—time that itself is 12 excessive. Adding time from multiple lawyers at other law firms for what appears 13 to be substantially overlapping work was, at a minimum, extremely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

(a) Pre-Filing Investigation And Initial Complaint Mr. Newman billed a large number of hours between September 2012 and March 28, 2013, the day he first "

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DEFS.' [REDACTED] RESPONSE TO CLASS COUNSEL'S BILLING RECORDS CASE NO. CV 13-04460-GHK (MRWx)



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

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(c) Discovery

7 Between approximately February and September 2014, five partners, two associates, six paralegals and one technician at Wolf Haldenstein together with Mr. 8 Newman collectively billed over 2,500 hours—the equivalent of more than 104 days 9 of around-the-clock billing. That time is excessive, considering that discovery 10 consisted of a limited amount of written discovery, two joint discovery motions, a 11 relatively small number of documents, and four depositions.⁷ As noted above, Class 12 Counsel's billing records are for the most part block billed and often vague, which 13 14 make it difficult to assess the reasonableness of their claimed time. See, e.g., id. at 15 164 16 " and "); 17 id. at 233, 235, 240 (Mr. Newman block billed for correspondence and meetings 18 " among other tasks). On top of these hours between 19 regarding ' Wolf Haldenstein and Newman PC, multiple attorneys and a paralegal at two other 20 firms billed an additional 240 hours between February and September 2014.8 21 22 (footnote continued from previous page) 23

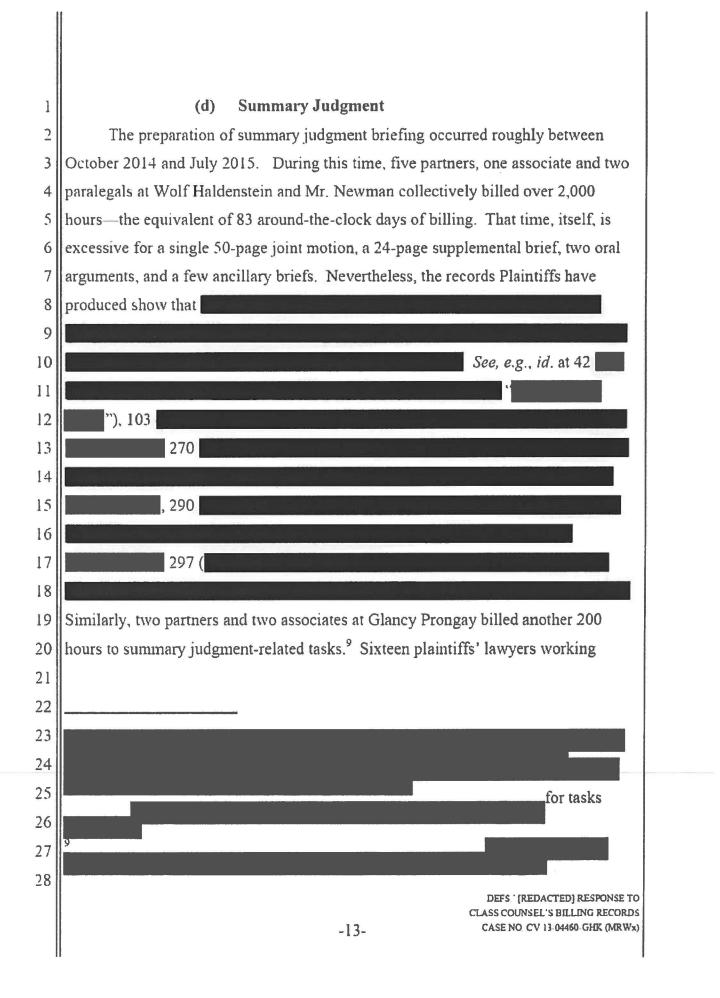
24 Dkt. 337 at 15, 65-66, 221-22, 285, 300-02. ⁷ To give just one example, Ms. Landes

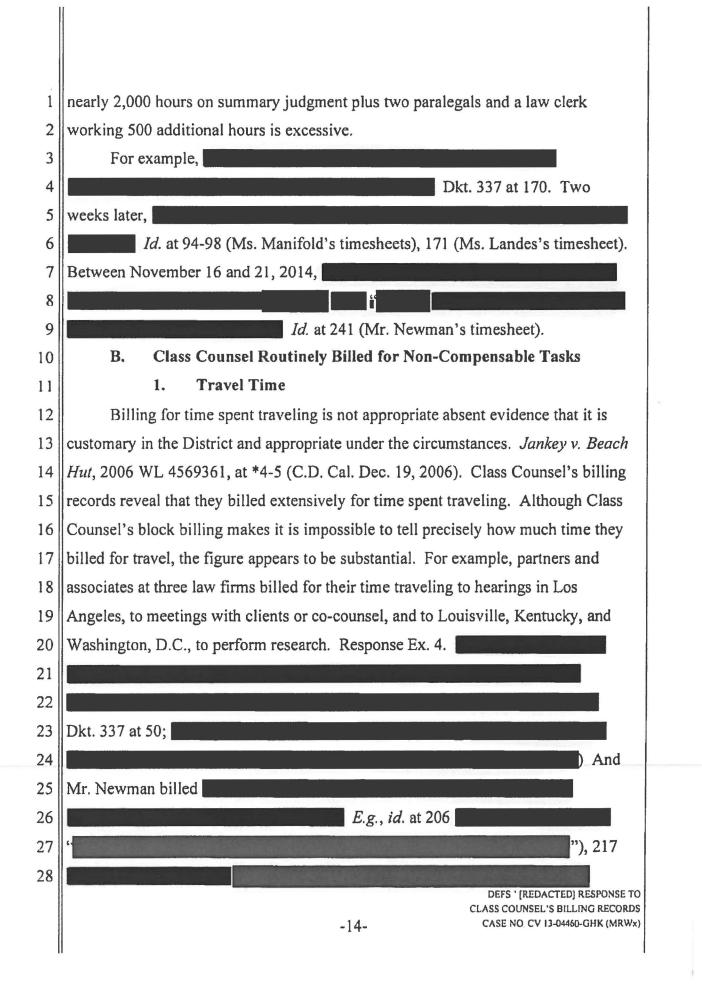
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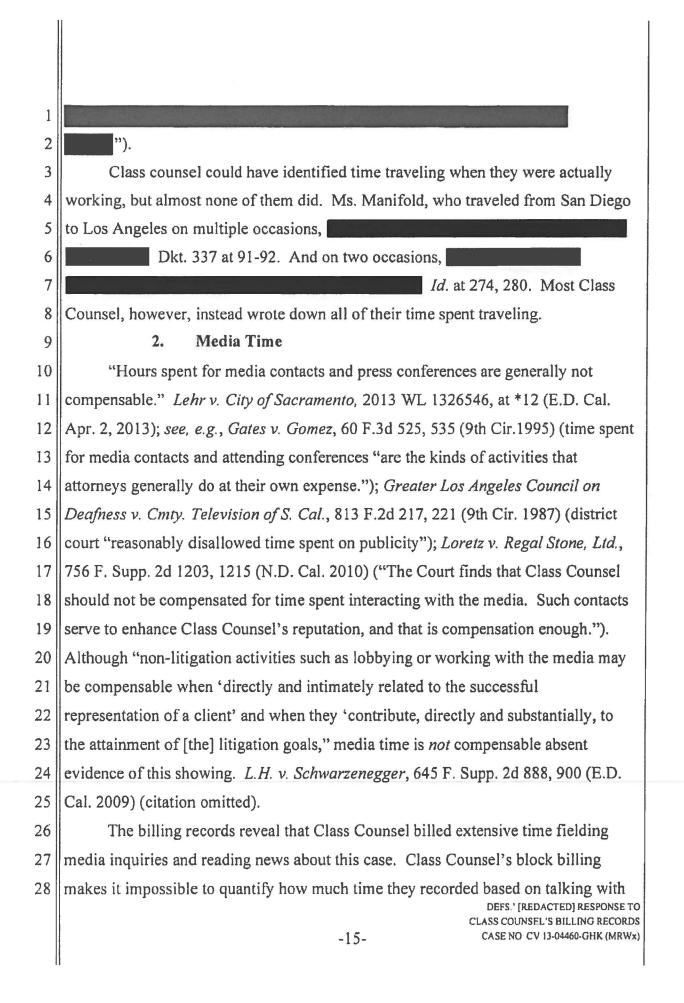
(*id.* at 160-162).

⁸ Ms. Landes's time entry for June 26, 2014, offers an example of Class Counsel's

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reporters. Nevertheless, even a conservative assembling of some (though by no 1 means all) of Class Counsel's time entries that include media outreach shows that 2 3 Class Counsel recorded a substantial amount of time for talking to reporters. See Response Ex. 5. To give just a few examples, 4 5 (Dkt. 337 at 157-58); 6 7 ") (*id.* at 13, 158 (7/9/13)); 8 9 (id. at 22); 10 " (id. at 5). It is possible that Class Counsel's extensive media campaign resulted in some 11 class members learning of the settlement, although Class Counsel's billing records 12 do not reflect any such result or any other way that the campaign directly 13 14 contributed to the result in the case. It is apparent that at least some portion of Class Counsel's press time was over and above what the cases indicate is compensable. 15 The Court Should Disregard Hunt Ortmann's Time Because It C. 16 Was Not Timely Disclosed 17 18 Finally, Class Counsel's billing records unjustifiably include time entries for 19 Hunt Ortmann. Hunt Ortmann's services appear to have been unnecessary. Moreover, the firm submitted its time declaration 29 days late, on May 26, 2016. 20 Dkt. 330. That was just a day before the objection/exclusion deadline and 21 22 Defendants' fee opposition deadline. Class Members did not have a meaningful opportunity to assess the reasonableness of Hunt Ortmann's hours, and Defendants 23 did not have time to assess and comment upon the same. Moreover, Hunt 24 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 DEFS ' [REDACTED] RESPONSE TO CLASS COUNSEL'S BILLING RECORDS CASE NO. CV 13-04460-GHK (MRWx) -16nothing about Hunt Ortmann's hours or its request for three times its fees. Class
 Counsel's June 14 reply again was silent about Hunt Ortmann's hours and its role in
 the case.¹⁰ The Court should ignore Hunt Ortmann's hours in conducting the
 lodestar cross-check not only because its work appears to have been unnecessary,
 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 reasonableness of Class Counsel's request for \$4.62 million in fees (33% of the \$14 8 9 million settlement fund). If the Court reduces Class Counsel's lodestar by 30% to account for the block billing and applies an additional reduction of 10% because of 10 the other deficiencies discussed, the lodestar would be reduced to approximately 11 \$3,261,256. 12 13 MUNGER, TOLLES & OLSON LLP DATED: July 5, 2016 14 15 By: /s/ Kelly M. Klaus 16 KELLY M. KLAUS 17 Attorneys for Defendants 18 19 20 21 22 23 24 25 ¹⁰ Hunt Ortmann filed a revised declaration on June 17, which stated that it is not seeking fees of three times its claimed lodestar. Dkt. 339 ¶ 10. It is ironic that this 26 firm filed an untimely fee request and then waited three more weeks to 27 tasked with ensuring en that it Id. ¶¶ 5, 9. 28 and DEFS.' [REDACTED] RESPONSE TO CLASS COUNSEL'S BILLING RECORDS CASE NO. CV 13-04460-GHK (MRWx) -17-

Exhibits 1-5

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