EXHIBIT A

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA -

WESTERN DIVISION

GOOD MORNING TO YOU PRODUCTIONS CORP., *et al.*, Plaintiffs, v. WARNER/CHAPPELL MUSIC, INC., *et al*. Defendants.	Lead Case No. CV 13-04460-GHK (MRWx) **[REDACTED] RESPONSE TO DEFENDANTS' STATEMENT REGARDING CLASS COUNSEL'S BILLING RECORDS** Room: 650 Judge: Hon. George H. King, Chief Judge Date: TBD Time: TBD

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I. INTRODUCTION

The Settlement, which has now received the Court's final approval, preserves the finality of the Court's summary judgment decision, ends Defendants' decades of wrongdoing, declares that *Happy Birthday* is in the public domain, saves approximately $15 million in future payments over the remaining 14 years of the copyright (had it covered the Song's melody and lyrics), and creates a fund of up to $14 million in compensation for past royalties demanded by Defendants for a song they never owned (an approximate 90% refund for Settlement Class Members).

For their hard work achieving this ***complete victory***, Plaintiffs' Counsel seek attorneys' fees of just ***15.9% of the $29 million value of the Settlement***, leaving apart the inestimable value of the judicial declaration that *Happy Birthday* is in the public domain. That percentage is well below the Ninth Circuit's 25% benchmark in common fund cases, notwithstanding Defendants' constant, misguided attempt to measure the fee request against just the cash portion of the Settlement, and is a negative multiplier of Plaintiffs' Counsel's combined lodestar of more than $5.1 million.[1] Even at 33% of the $14 million fund for past payments, ignoring the $15

[1] Plaintiffs file this response pursuant to the Court's June 27, 2016 Order (Dkt. 347). Defendants' Statement (Dkt. 354-1 ("Def. Br.") at 6 n.1) notes an inaccuracy in the lodestar total for Plaintiffs' Counsel set forth in the fee motion ($5,329,372.80) when compared with the total of the lodestar sums set forth in the four declarations submitted with the motion ($5,176,596.80) on April 27, 2016 (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.)). The higher amount (which appears only once in the briefing), based on an earlier calculation that did not include voluntary lodestar reductions, was included in error. However, the ***lower*** amount was used throughout the briefing. The small difference does ***not*** impact the relevant calculations provided to the Court. After April 27, 2016, Hunt Ortmann submitted another $56,458.50 in lodestar, which brought the total lodestar to $5,233,055.30.

In addition, since the fee application was submitted, Wolf Haldenstein has incurred approximately $338,000 in lodestar working to resolve various notice and administrative issues with the Settlement Administrator, communicating with (continued…)

million of future benefits, in light of the extraordinary success achieved in this case, the diligence of Plaintiffs' Counsel throughout the litigation, the complexity and risk of the Action, and the time Plaintiffs' Counsel devoted to the Action, that modest upward departure from the benchmark would be warranted.

The Court will review the detailed daily timesheets of Plaintiffs' Counsel as a lodestar cross-check on the reasonableness of the attorneys' fees they seek. *See In re CytRx Corp. Sec. Litig.*, No. CV 14-1956-GHK (JPWx), slip op., Dkt. 161 (C.D. Cal. May 18, 2016). As the Court noted in *CytRx*, the lodestar-cross check is ***not*** a full-blown lodestar analysis: "As we are conducting a cross-check, not a true lodestar analysis, ***we need not fix a precise lodestar amount***." *Id*. at 1 (emphasis added). In *CytRx*, the Court awarded a fee of $2,125,000, or approximately 1.5 times the ***reported*** lodestar of plaintiffs' counsel in that case, which the Court found was "fair, reasonable, and adequate." *Id*. at 2. After conducting a similar lodestar cross-check analysis here, the Court could cut Plaintiffs' Counsel's lodestar ***in half***, and the full $4.62 million fee still would be only slightly higher than 1.5 times their ***reduced*** lodestar.[2]

(…continued)
Defendants' counsel on notice and claim issues, preparing an emergency motion to enforce the Settlement Agreement when Defendants threatened not to permit them to provide material to Settlement Class Members, and reviewing periodic updates from and assisting Settlement Class Members in the preparation and submission of claims, all of which is included in the timesheets provided to the Court and Defendants' counsel. Defendants have not questioned any of that additional time.

[2] Even if the Court agreed with *all* of Defendants' arguments and thus reduced Class Counsel's lodestar by approximately $1.4 million to $3,261,256, as Defendants' suggest (Def. Br. at 21), such a reduction still does not change the reasonableness of the fee request. In this common fund recovery, where Plaintiffs achieved a complete victory, a lodestar multiplier is appropriate. *See, e.g.*, *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (lodestar multipliers fair in contingency cases "because of the equitable notion that those who benefit from the creation of the fund should share the wealth with the (continued…)

Defendants' Response to Class Counsel's Billing Records – their third brief opposing Plaintiffs' Counsel's fee request[3] – adds virtually nothing to the Court's consideration of the request as reasonable compensation for Plaintiffs' Counsel's diligent efforts in achieving a complete victory in this Action. Defendants merely repeat (with some minor added detail) the same broad-brush arguments they made in their first two briefs opposing the fee request; indeed, the tables of contents in the last two briefs are practically identical.[4] Their opposition is a losing party's lament that

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(…continued)

lawyers whose skill and effort helped create it."). Thus, even at Defendants' suggested $3.26 million lodestar, Class Counsel's fee request of $4.62 million represents an approximate 1.42 multiplier. *See also* 3 Herbert Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS, § 14.03 at 14-5 (3d ed. 1992) ("Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."). Notwithstanding the substantial extra time and resources both parties and this Court have expended as a result of Defendants' challenge to Class Counsel's fee request, the net result is unchanged: Class Counsel's fee request is reasonable and should be approved given the extraordinary results achieved (close to 90% compensation for Settlement Class Members and complete declaratory and injunctive relief).

[3] It is unclear whether the Response is intended to "expand[] upon" or "replace[]" their second opposition to the fee application, Dkt. 345. *See* Def. Br. at 5.

[4] At the Final Approval Hearing, the Court instructed Defendants to limit their submission to "a more robust opportunity for response to the [billing] records." Tr. June 27, 2016, at 8:7-10 (Dkt. 358). Defendants simply ignore the Court's specific instruction not "to go back to go back to anything that was already in the original motion which you have already commented on." *Id.*

Defendants' only new argument (Def. Br. at 20-21), that the Court should disregard Hunt Ortmann's time (just $56,000 out of more than $5 million in lodestar for all Plaintiffs' Counsel) because it was not timely produced, is wholly without merit. Defendants received Hunt Ortmann's billing records on May 26, 2016, nearly six weeks before they submitted their most recent fee objection. They had more than sufficient time to review the ***13 pages of billing records*** from Hunt Ortmann, and they will have another opportunity to comment on the time on July 19, 2016.

Plaintiffs' Counsel "worked too hard" in achieving complete victory here. "By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and ***might not have, had he been more of a slacker.***" *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

Nothing Defendants have said so far in any of their briefs opposing Plaintiffs' Counsel's modest fee request changes that in the least. Certainly, they have not said anything that would prompt the Court to cut Plaintiffs' Counsel's lodestar by 50% in any event. To avoid needless repetition, Plaintiffs' Counsel will respond only to the handful of new comments Defendants direct to Plaintiffs' Counsel's billing records.

II. ARGUMENT

A. Plaintiffs' Counsel's Billing Practices Allow a Meaningful Cross-Check On Lodestar

Plaintiffs' Counsel worked collaboratively to litigate this complex and novel class case against Defendants with highly skilled legal firepower. Plaintiffs' Counsel's time, which was demonstrably productive based on the truly exceptional result achieved, is adequately detailed in their billing records and serves as more than a sufficient "cross-check" on the reasonableness of the requested fee. Defendants' hindsight analysis in cherry picking a few limited entries in the over 300 pages of detailed records is unpersuasive and wasteful of the Court's time. For convenience, Plaintiffs address Defendants' billing record issues in the same order as Defendants raised them. Def. Br. at 5-6.

1. Block Billing

Defendants' first argument – which they make on nearly every page of their Response – repeats their prior argument that Plaintiffs' Counsel recorded their time in inappropriate "block billing." Defendants are wrong. What they call "block billing" is ***not*** block billing. "'Block billing' is 'the time-keeping method by which each lawyer and legal assistant enters the ***total daily time spent working on a case***,

rather than itemizing the time expended on specific tasks.'" *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007) (quoting *Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1554 n.15 (10th Cir. 1996)) (emphasis added). That did not happen here.

For example, Defendants argue that "Mr. Rifkin[] block billed almost all of his time entries." Def. Mem. at 7. They criticize six particular time entries (out of more than 500 separate time entries he made). A review of those six time entries shows Mr. Rifkin's billing practices. Mr. Rifkin did not enter single daily entries for the total time spent working on the Action that day; rather, he itemized the specific tasks performed:

[redacted]

[redacted]

[redacted]

As these pairs of time entries demonstrate, Mr. Rifkin did not simply enter the total time he spent working on the Action each day in a single block entry; rather, he itemized the specific details of a task performed, as well as the time expended on specific tasks in separate time entries. *Cf. Welch*, 480 F.3d at 945 n.2.

Defendants appear to believe that combining multiple related activities in a single time entry, without allocating specific portions of time to each activity, is block billing. It is not. Recently, in *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), 2015 U.S. Dist. LEXIS 54063 (C.D. Cal. Mar. 24, 2015), a fee-shifting case under the Copyright Act, in which the Court was required to conduct a strict lodestar analysis,[5] the Court discussed block billing at length. The Court explained that detailed time entries combining multiple tasks, each of which is identified but for which specific amounts of time are ***not*** set forth, do ***not*** constitute improper "block billing" and do ***not*** risk potential "bill padding." *Id*. at 80. By way of example, the Court found that the following single entry for 12.8 hours on a single day was ***not*** "block billing":

> Review emails from and confer with A. Bridges, J. Golinveaux, T. Kearney regarding Perfect 10's preliminary injunction motion, DMCA notices, and motion to seal; confer with J. Golinveaux concerning discovery; draft email to client concerning preliminary

[5] Even in that context, as the Court noted, "'[t]he essential goal in shifting fees (to either party) is to do rough justice, ***not to achieve auditing perfection***.'" *Id*. at 81 (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)) (emphasis added).

injunction motions; review exhibits, pleadings, and DMCA notices; review and revise draft letters to Perfect 10.

Id. at 80-81 (finding "such specific itemizations of counsels' tasks sufficient to evaluate the reasonableness of Defendants' request").[6] Mr. Rifkin's time entries were at least as detailed as (if not more so than) the particular time entry which the Court found was ***not*** "block billing" in *Perfect 10*.

Defendants also criticize Ms. Pollack's time for block billing. Ms. Pollack, a highly regarded practitioner with more than 20 years of experience, billed just 58.7 hours on the matter. Defendants do not identify a single time entry from Ms. Pollack which they believe is block billing. Like Mr. Rifkin's practice, Ms. Pollack's practice is to record time entries on a single task, even if the task involved multiple activities or steps. [redacted] Defendants do not deny that Ms. Pollack spent that time performing those tasks on those days, or that her work was reasonably related to the successful prosecution of the Action. Ms. Pollack's time entries are also more

[6] Even in the fee-shifting context, counsel "is not required to record in great detail how each minute of his time was expended." *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983). Instead, counsel meets his burden by simply listing his hours and "identify[ing] the general subject matter of his time expenditures." *Davis v. City of San Francisco*, 976 F.2d 1536, 1542 (9th Cir. 1992) (fee shifting under Civil Rights Act) (quoting *Hensley*, 461 U.S. at 437 n.12).

detailed than the time entry found adequate in *Perfect 10*.

Next, Defendants criticize Mr. Newman for block billing. Their criticism is completely unfounded, and demonstrates a profound misunderstanding of the work that Mr. Newman performed. They argue that many of Mr. Newman's time entries consist of a single time entry per day with a purportedly "vague" description of the work he did. Defendants criticize in particular four time entries by Mr. Newman for [redacted] *Id*. Defendants have no basis to complain about the time entries – which are completely accurate – merely because Mr. Newman did not specify how many minutes he spent on each paragraph of each draft. *See Perfect 10*, 2015 U.S. Dist. LEXIS 54063 at *81.

Finally, the cases Defendants cite on block billing are either readily distinguishable (fee shifting, not common fund, cases) or inapplicable. For example, in *Welch*, the Ninth Circuit vacated as improper an across-the-board reduction by the district court of plaintiffs' counsel fees by 20% in a successful ERISA challenge for the improper denial of benefits under a long term disability plan due to block billing. The Ninth Circuit noted that an across-the-board reduction of 20% effectively served as a 40% penalty on the half of the hours that were found to be block billed. *Welch*, 480 F.3d at 948. Defendants' own proffered authority contradicts their argument that all of Plaintiffs' Counsel's time should be reduced by 30% (or by $1.5 million) for block billing when Defendants identify only approximately 1,000 hours, or $575,000, as block billed, which Plaintiffs' Counsel dispute in any event. *See* Def. Br. at 9. Defendants even concede that a substantial portion of Plaintiffs' Counsel's time is

not block billed, making any across the board improper as a matter of law.[7] Def. Br. at 8 n.2.

2. Vague Descriptions of Class Counsel's Work

Defendants also complain that Plaintiffs' Counsel's timesheets are "replete with vague entries." Def. Br. at 10. Again, their argument is unwarranted. As Defendants' own case law notes, "plaintiff's counsel need not record in great detail how each minute of his time was expended" but simply identify the general subject of the time expenditure. *Dubose v. County of L.A.*, No. CV 09-7832 CAS (AJWx), 2012 U.S. Dist. LEXIS 81362, at *17 (C.D. Cal. June 11, 2012) (Section 1983 case from a traffic stop and arrest in which time was reduced based on failure to delineate time between successful and unsuccessful claims and vague entries of "legal research" without any context or detail). *See* Def. Br. at 10.[8] For example,

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[7] Defendants' concession also distinguishes *Gunderson v. Mauna Kea Props., Inc*., No. 08-cv-00533 KSC, 2011 U.S. Dist. LEXIS 155072, at *34 (D. Haw. May 9, 2011), in which the Court noted it would ordinarily "only reduce the hours billed in the block style" but since nearly all of the hours were block billed, an across-the-board reduction was appropriate. *See* Def. Br. at 6. *See also Lahiri v. Universal Music & Video Distrib. Corp*., 606 F.3d 1216, 1222-23 (9th Cir. 2010) (reduced specific block billing entries); *Mayer v. RSB Equity Group, LLC*, No. CV 10-9096 ODW (AJWx), 2011 U.S. Dist. LEXIS 71879 at *5 (C.D. Cal. July 5, 2011) (violation of the Fair Debt Collection Practices Act) (reduced fee from 21 hours to 14 hours after a review of the fee records).

[8] Defendants' other cases are also inapplicable. *See* Def. Br. at 10. In *United States v. One 2008 Toyota Rav 4 Sports Util. Vehicle,* No. 2:09-cv-05672-SVW-PJW, 2012 U.S. Dist. LEXIS 158417 (C.D. Cal. Oct. 18, 2012), described by the Court as a "simple forfeiture case involving a single vehicle," the Court found that the "complexity of legal issues and the breadth of factual evidence" may warrant more than one attorney, the duplication of efforts by multiple attorneys, and the presence of other senior counsel, but not in that case. *Id*. at *17-19. Unlike this Action, the Court observed that "nearly every other entry in counsel's declaration involves a phone call or email" with other attorneys, staff or clients and that the "sheer frequency" of such communications with a vague description (telephone call) (continued…)

Defendants criticize eight of Mr. Rifkin's time entries for referring to meetings and correspondence without identifying the subject matter of them. Their jaundiced criticism ignores the context of those time entries, which makes the subject matter of the meetings and correspondence entirely clear. [redacted]

(…continued)

without more context raised an issue of excessive billing. *Id.* at *28. The exact opposite is true here, where the case complexities (multiple clients and counsel, complex factual history) and the substantive work noted in the timesheets show that the phone calls and email were reasonably spent and created cost saving efficiencies among the litigation team. *See also Keith v. Volpe*, 644 F. Supp. 1317, 1322 (C.D. Cal. 1986) (vague entries lumped together as "a single claimed item of compensable time [with] all work performed in the same week on the same billable matter"). The issue in *Hensley*, 461 U.S. at 432, a prevailing party analysis under Section 1988, was "to clarify the proper relationship of the results obtained to an award of attorney's fees." As the Supreme Court noted, "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee" and in some cases of exceptional success, such as this, an enhanced award is justified. *Id.* at 435.

[redacted]

Defendants' pedantic, fly-specking review of a handful of Mr. Rifkin's time entries is nonsensical.[9] More detailed time records are unnecessary for the Court to conduct the requisite lodestar cross-check in this common fund fee application.

3. Billing Hours Recorded

Defendants review over 310 pages of detailed time records and then cherry pick various times records which ended in whole and half increments. For example, in Mr. Newman's time records, Defendants picked out 16 records out of 452 time entries and ending in half or whole increments. Defendants then note another $120,000 of total time billed by Ms. Pollack and Mr. Godino ending in whole or half increments.[10] *See* Def. Br. at 12-13. However, Defendants fails to correlate these

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[9] Defendants' argument that Ms. Landes' time entries are too vague is even more bizarre. [redacted] Far from being hopelessly vague, these time entries accurately reflect the work Ms. Landes performed each day and are sufficient to aid the Court in performing its lodestar cross-check.

[10] Defendants also note that Ms. Landes billed approximately 87% of her daily time entries in whole or half increments (also failing to provide any correlation to the actual tasks for which Ms. Landes billed). Def. Br. at 13. In *MacDonald v. Ford Motor Company Co.*, No. 13-cv-02988-JST, 2016 U.S. Dist. LEXIS 70809, at *24 (N.D. Cal. May 31, 2016) relied upon by Defendants, the district court reduced by 10% the time billed by two attorneys in half-hour increments. While Plaintiffs' (continued…)

randomly picked time entries with actual examples of over-billing as required by their own Ninth Circuit authority. *See Welch*, 480 F.3d at 949 (upholding reduction expressly correlated to actual overbilling for tasks such as drafting letters, telephone calls and interoffice conferences) (Def. Br. at 6); *Haw. Def. Found. v. City & County of Honolulu*, No. 12-cv-00469 JMS-RLP, 2014 U.S. Dist. LEXIS 83871, at *20-21 (D. Haw. June 19, 2014) (reduction of larger time if tasks more likely than not took only a portion of the time billed, resulting in excessive hours). (Def. Br. at 12). Addressing Plaintiffs' Counsel's time records for the second time now, Defendants still fail to explain how these entries are improper, other than ending in half or whole increments.

Next, in a summary fashion, Defendants argue that Class Counsel has a "practice" of billing "very large number of hours in single days." Def. Br. at 13. Not surprisingly, in a three-year litigation which settled on the eve of a bench trial, after fact and expert discovery was completed and a complex and exhaustive summary judgment motion was fully briefed, argued and decided, Class Counsel did work some very long hours in a single day. Here, Defendants point to ***one*** 20-hour day by Ms. Manifold, ***two*** 18.5-hour days by Mr. Rifkin, and over a dozen entries by Mr. Newman (a solo practitioner at the time) of 15 hours as warranting a substantial reduction in time simply because they worked a large number hours in one day. Def. Br. at 12. For example, Ms. Manifold's 20-hour day is detailed in a two page single-spaced time entry, references 62 specific tasks all completed in order to file the extensive and exhaustive summary judgment papers (over 120 exhibits, joint brief, over 400 detailed statements of facts referencing the factual record). *See* Dkts. 337 at

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(…continued)
Counsel dispute that any reduction is appropriate, at most, Defendants appear to suggest a 10% reduction or approximately $43,000, for the time billed by Ms. Landes ($427,272 in total), a trivial reduction of the $5.3 million in Plaintiffs' Counsel's combined lodestar. *See* Def. Br. at 14.

96-97, 167-184, 187-195, 197-198, 202, 203, 210-211, 219, 224-225, 232-233, 236, 239-240. The record includes 14 telephone calls with Defendants' counsel alone to finalize changes to the joint brief, filing certain records under seal and the copious joint appendix including the drafting, revision and exchange of 33 different drafts of the numerous documents required for a joint filing. There is no indication, as with the other time records identified, that this billing represents inflated hours or that this single entry by Ms. Manifold referenced by Defendants is part of a pattern of excessive or routine over billing.

Furthermore, Defendants' case law does not support their argument.[11] In *Alvarado v. Fed-Ex Corp.*, No. C 04-0098 SI, 2011 U.S. Dist. LEXIS 112997, at *58 (N.D. Cal. Sept. 30, 2011), which included a fee dispute between plaintiffs' counsel as well as objections by Defendants to the fee request, the facts were very different. A 40% reduction for "pervasive inflation" was imposed because of block billing with 10 to 40 hours in a single entry, repeated billing for excessively long days, and inflated excessive billing for e-filing (1.2 hours to file a case management report), letters (1.5 hours for a three line letter) and other routine or clerical tasks. No such pattern or practice exists here and not a single reference provided by Defendants supports an argument of "pervasive inflation" over the course of this three-year, hard-fought litigation. The bottom line is that Plaintiffs' Counsel worked tirelessly to achieve an exceptional result based on their efforts.

4. Reasonable Staffing of Attorneys throughout the Litigation Stages

The declarations of Plaintiffs' Counsel break down the key stages of the litigation addressed by Defendants' Statement (pre-filing investigation and initial complaint; opposition to motion to dismiss, discovery, summary judgment) and then

[11] *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154 (N.D. Cal. 2012) addresses whether counsel's hourly rates were reasonable within the district (which Defendants do not challenge here). *See* Def. Br. at 13.

further break down the time spent on each task by individual attorneys. *See* Dkts. 323-1 at 4-10, 16-22; 323-2 at 4-10; 323-3 at 4-8; 324 at 5-20, 78-92. Defendants do ***not*** challenge the total lodestar for the Amended Complaint Drafting ($305,027) Trial Preparation ($263,050), Settlement Negotiations ($304,266), or Settlement Approval and Administration ($245,082).[12] Def. Br. at 15-19.

As to the remaining time, Defendants argue that Wolf Haldenstein's coordination and staffing of these litigation stages was "inefficient," "duplicative," and "excessive."[13] Def. Br. at 14-18. In *MacDonald*, one of the few class action cases cited by Defendants, the district court rejected this exact argument that "inefficiencies resulting from this overstaffing renders Plaintiffs' attorneys' fees request unreasonable." *MacDonald*, 2016 U.S. Dist LEXIS 70809, at *8. The court recognized that "litigating complex statutory cases often requires a team structure and [courts] do not penalize attorneys for working collaboratively." *Id*. The court found plaintiffs' counsel's decisions reasonable as they were "litigating a putative class action against one of the world's largest automotive manufacturers" and declined to reduce the lodestar on this basis. *Id*. at *9. Similarly Plaintiffs here were litigating against one of the largest music and media companies in the world over one of the most well-recognized songs in the world.

In *MacDonald*, defendants also complained about the duplication of plaintiffs' counsel's efforts as Defendants do here. The Court found such duplication of efforts, to the extent it exists, to be appropriate in that it "will often result in a savings of

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[12] Plaintiffs' Counsel also have incurred an additional $338,783.50 in additional time in Settlement Administration. *See* Dkt. 337 at 203 (difference between Wolf Haldenstein's current lodestar ($3,552,904.50) and previously submitted lodestar ($3,164,121) (Dkt. 324 at 5), then subtracting $50,000 for fee-related time).

[13] Defendants' demand for 'task coding' in the time records is unsupported by any authority, and the descriptions and time references are sufficiently clear on their face to identify the stage in which the time was billed.

attorney time by ensuring that all attorneys on a team are kept apprised of important information." *Id*. at *12. *See also Probe v. State Teachers' Retirement Sys.*, 780 F.2d 776, 785 (9th Cir. 1986), *cert. denied*, 476 U.S. 1170 (1986) ("[I]n an important class action litigation such as this, the participation of more than one attorney does not constitute an unnecessary duplication of effort.").

In fact, as the Court recognized in *Lauderdale v. City of Long Beach*, No. CV 08-979 ABC (JWJx), 2010 U.S. Dist. LEXIS 146002, at *25 (C.D. Cal. Jan. 11, 2010) in which defense counsel sought to recover fees after prevailing in a class action, "having multiple attorneys attend depositions, meetings and settlement conferences [can allow] counsel to contribute creative solutions, reduce[] the need for inter-office communications after meetings, and ameliorate[] disagreements over what actually went on at meetings." *See also Thompson v. County of Santa Clara*, No. C-83-0700 JPV (JSB), 1990 U.S. Dist. LEXIS 11263, at *56 (N.D. Cal. Aug. 2, 1990) (appropriate for plaintiffs to send more than one attorney to appear at conferences and meetings given complex legal and factual nature of the case).

Defendants' repeat their criticism of the pre-filing investigation and initial complaint, describing it as "substantial" and then summarizing the detailed research conducted by Mr. Newman regarding the 1790 and 1909 Copyright Acts, historic references and other ancient source materials, *See* Def. Br. at 14-15. In light of the risks involved and complexity of the factual background, Plaintiffs' Counsel have a duty to make a reasonable pre-filing inquiry of the merits of their clients' claims prior to filing suit. *See* Fed. R. Civ. P. 11. And a complex class action requires extensive pre-litigation preparation. *Thompson*, 1990 U.S. Dist. LEXIS 11263, at *56 (citing *Burnett v. Gratton*, 468 U.S. 42, 50-51 (1984)). Plaintiffs' Counsel's

extensive research efforts were necessary and reasonable and undoubtedly contributed to their success.[14]

B. Compensation for Travel and Media Time is Customary and Appropriate

1. Travel Time

Defendants oppose Plaintiffs' Counsel's travel time not on the basis that the time records were inadequate or deficient in any respect, but rather on the basis that billing for travel is not customary or appropriate. Contrary to Defendants' argument, compensation for reasonable and necessary travel time has long been permitted under Ninth Circuit precedent. *See Davis*, 976 F.2d at 1543. The practice in Los Angeles is to bill for reasonable and necessary travel time. *See, e.g.*, Declarations of Dinah Perez and Marc L. Godino submitted herewith.

Travel time is routinely compensated in the Ninth Circuit. *See, e.g., Contreras v. City of L.A.*, No. 2:11-cv-1480-SVW-SH, 2013 U.S. Dist. LEXIS 49412, at *17 (C.D. Cal. Mar. 28, 2013) ("district courts have routinely awarded fees for time spent traveling"); *Banas*, 47 F. Supp. 3d at 971 (relied upon by Defendants at Def. Br. at 10) (fee request granted for travel time for multiple attorneys to attend depositions, hearings and mediations and found to be "not excessive"); *Thalheimer v. City of San Diego*, No. 09cv2862-IEG (BGS), 2012 U.S. Dist. LEXIS 59315, at *12-13 (S.D. Cal. Apr. 26, 2012) ("when a lawyer travels for one client he incurs an opportunity cost that is equal to the ***fee*** he would have charged that or another client if he had not been traveling").[15]

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[14] Defendants' own case law highlights the potential risk to an unsuccessful plaintiff in a complex case. In *Banas v. Volcano Corp.*, 47 F. Supp. 3d 957 (N.D. Cal. 2014), cited in Def. Br. at 10, Judge Orrick awarded $2.5 million to a successful corporate ***defendant*** based on the fee provision in a merger agreement challenged by two plaintiff shareholders.

[15] Generally, courts in this Circuit compensate travel time at the same hourly rate billed for other tasks, so long as the travel time is considered reasonable. *Defenbaugh* (continued…)

In *In re Energy Futures Corp.*, No. 14-10797 (CSS) (D. Del. Bankr.), Defendants' counsel here, Munger, Tolles & Olson – itself – requested (and received) compensation for "non-working travel" time. Munger Tolles billed 62.8 hours for "[n]on-[w]orking [t]ravel," for which it billed $64,330.50, which equals an average hourly rate of $1,024.37 for "[n]on-[w]orking [t]ravel" time. *In re Energy Futures Corp.*, No. 14-10797 (CSS), Dkt. 6477-2 at 31 (D. Del. Bankr. Oct. 15, 2015).

Plaintiffs' Counsel have billed for travel time: (1) to and from Los Angeles for appearances in Court or for meetings that Defendants' counsel insisted take place in Los Angeles; (2) to Louisville, Kentucky – the Hill Sisters' birthplace – where they conducted extensive factual investigations of the Song, including time spent at the Filson Historical Society, where the Hill Sisters' papers are stored;[16] (3) to the New York Public Library where Mr. Newman conducted important research on newspapers and periodicals in the library's extensive periodicals collection; and (4) within New York City for meetings at Wolf Haldenstein (while Mr. Newman was a

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(…continued)
v. JBC & Assocs., No. C-03-0651 JCS, 2004 U.S. Dist. LEXIS 16256, at *33 (N.D. Cal. Aug. 10, 2004); *Ilick v. Miller*, 68 F. Supp. 2d 1169, 1178 (D. Nev. 1999) (compensating travel time at the full professional rate because attorneys are entitled to bill for lost productivity during travel, but limiting billable travel time to six hours within any 24-hour period, for "in the court's experience, most attorneys would be satisfied with six hours of billable time at the end of any working day"); *Allen v. City of L.A.*, No. CV 91-2497 JGD (Tx), 1995 U.S. Dist. LEXIS 13929, at *27 (C.D. Cal. Jan. 13, 1995) ("The Court does not believe an arbitrary percentage reduction on all hours claimed for travel is appropriate. Rather, the Court has either allowed or disallowed travel time depending upon the purpose for the travel.") (emphasis added).

[16] Defendants cannot complain that Plaintiffs' Counsel needlessly visited the Filson Historical Society. Defendants also visited the Filson Historical Society to conduct similar research there.

solo practitioner at his own office in New York City).[17] With one exception, there is no dispute that any of this travel was reasonable and necessary.[18] Nor is there any dispute that Plaintiffs' Counsel billed accurately for their travel time.

Defendants do criticize Mr. Rifkin's travel to Los Angeles on November 8, 2015, to discuss the Action at a meeting of the Los Angeles Copyright Society. He accepted an invitation to do so primarily because, despite the Court's ruling that Defendants do not own a copyright to the Song's lyrics, ***Defendants continued to demand payments for use of the Song***. The most appropriate response to Defendants' unfounded demand was to disseminate information about the Court's ruling, and the meeting of the Los Angeles Copyright Society – to be attended by attorneys who represent many class members – was a particularly appropriate venue in which to do so. Plaintiffs' Counsel firmly believe that Mr. Rifkin's travel for that purpose was necessary and appropriate.

2. Media Time

Defendants oppose the time Plaintiffs' Counsel spent responding to media inquiries not on the basis that their time records were inadequate or deficient in any respect, but rather on Defendants' assessment that such time is "'***generally*** not compensable.'" Def. Br. at 19 (quoting *Lehr v. City of Sacramento*, No. 2:07-cv-01565-MCE-GGH, 2013 U.S. Dist. LEXIS 42014, at *36 (E.D. Cal. Mar. 22, 2013) (emphasis added). That case concerned a lodestar-based fee request under the Civil Rights Attorney's Fees Awards Act of 1976. The holding implicitly recognized that media time may be appropriate. Other courts have compensated media time. *See David C. v. Leavitt*, 900 F. Supp. 1547, 1557-58 (D. Utah 1995) (awarding fees for

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[17] Mr. Newman's travel time to the library and to Mr. Rifkin's office – short subway commutes of no more than 20 minutes each way – was trivial.

[18] Defendants withdrew their objection to Plaintiffs' Counsel's request for reimbursement for the costs associated with all that travel. Tr. June 27, 2016 at 11:16-12:13.

communications directed to class members via the media); *Keyes v. Sch. Dist. No. 1*, 439 F. Supp. 393, 408 (D. Colo. 1977) (awarding fees where news media provided valuable conduit for information between counsel and class members). Defendants admit that media time is compensable when, as here, it is "'directly and intimately related to the successful representation of a client' and when they 'contribute, directly and substantially, to the attainment of [the] litigation goals.'" Def. Br. at 19 (quoting *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 900 (E.D. Cal. 2009).

This Action has drawn extensive worldwide media attention since its inception. The media inquiries reflected the public's intense interest in the scope or validity of the *Happy Birthday* copyright. Media interest in the Action peaked after the Court granted partial summary judgment for Plaintiffs on September 22, 2015. As previously explained in the Declaration of Mark C. Rifkin in Support of Final Approval of Class Action Settlement and Request for Attorneys' Fees and Expenses (Dkt. 324), ¶ 32, Plaintiffs' Counsel, principally Mr. Rifkin, responded to those media inquiries not to draw publicity to themselves or their firms, but rather to provide important information to the public (many of whom were class members) on the status of the litigation and Defendants' claimed copyright.

The obligation to communicate the status of the litigation to the public was never greater than after the Court's summary judgment decision, not only because of the historic nature of the ruling, but also ***because Defendants insisted upon charging for the Song even after the Court ruled that they never owned the copyright***. Indeed, Defendants continue to insist on that right to this very day (and presumably will do so until the Order and Final Judgment becomes final on July 29, 2016). However, through Plaintiffs' Counsel's efforts to publicize the summary judgment decision and the settlement by responding to media inquiries, the number of people forced to pay for the Song declined dramatically after September 22, 2015.

The few hours that Plaintiffs' Counsel actually spent responding to media inquiries – only a handful of hours out of more than 10,000 hours they devoted to the

litigation[19] – are fully compensable because they were directly related to the successful representation of their clients' goals and contributed directly and substantially to the attainment of one of the principal goals of the Action: ending Defendants' baseless and unlawful demand for payment for *Happy Birthday*.

III. CONCLUSION

For all these additional reasons, the Court should grant Plaintiffs' Counsel's request for $4.62 million in attorneys' fees in full.

Respectfully submitted,

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[19] Defendants identified five time entries that they have characterized as "media time." Only two of those time entries, for a total of just two hours, were, in fact, "media contacts." [redacted]

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