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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-4460-GHK (MRWx)	Date	August 16, 2016
Title	*Good Morning to You Productions Corp., et al. v. Warner/Chappell Music, Inc., et al.*		

Presiding: The Honorable	**GEORGE H. KING, U.S. DISTRICT JUDGE**	
Paul Songco	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers) Order re:** Award of Attorneys' Fees

This matter is before us on Plaintiffs Good Morning To You Productions Corp., Majar Productions, LLC, Rupa Marya, and Robert Siegel's ("Plaintiffs") motion for attorneys' fees. (Dkt. 323 ("Fee Mot.").) We have considered the papers filed in support of and in opposition to the Fee Motion and deem this matter appropriate for resolution without oral argument. L.R. 7-15. As the Parties are familiar with the facts, we will repeat them only as necessary. Accordingly, we rule as follows:

I. BACKGROUND

On April 27, 2016, Plaintiffs filed a motion for final settlement approval and a motion for attorneys' fees and expenses. (Dkts. 322, 323.) On June 30, 2016, we granted final approval of the settlement. (Dkt. 349.) In brief, the settlement results in a judicial declaration that the song *Happy Birthday To You* (the "Song" or "*Happy Birthday*") is in the public domain and provides a $14 million cash fund to reimburse class members for having paid to use *Happy Birthday*.[1] We resolved all pending matters at the final approval hearing except Plaintiffs' attorneys' fees request, which is presently before us.

Plaintiffs request attorneys' fees of 33% of the $14 million settlement fund, or $4.62 million, to compensate class counsel for their work in this action. (*See* Fee Mot. at 2.) Class counsel include Wolf Haldenstein Adler Freeman & Herz LLP, Randall S. Newman P.C., Donahue Fitzgerald LLP, Glancy

[1] More specifically, the settlement divides class members into two periods. Period One is from, and including, June 13, 2009 to the present. Period Two is between September 3, 1949 and June 13, 2009. Up to $6,250,000 will be made available to pay the claims of settlement class members who paid to use the Song in Period One and who submit claim forms. These members will be paid in full on their claims, unless such payment would exhaust the entire $6,250,000, in which case all Period One claims will be reduced on a *pro rata* basis. If all Period One settlement class members submit claim forms, they will receive approximately 57% of their Period One claims. Period Two Class Members who submit claim forms will receive up to 15% of their claims, unless such payment would exceed the remainder of the settlement fund, in which case their claims will be reduced on a *pro rata* basis as necessary.

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Prongay & Murray LLP, and Hunt Ortmann Palffy Nieves Darling & Mah, Inc. Defendants Warner/Chappell Music, Inc. ("Warner/Chappell") and Summy-Birchard, Inc. (collectively, "Defendants") oppose the request.[2] In their initial Opposition, Defendants primarily opposed the request because Plaintiffs did not submit detailed time records, preventing them from assessing the reasonableness of the time class counsel spent on this litigation. (*See* Dkt. 332 ("Opp'n").) On June 13, 2016, we ordered class counsel to submit their time records to the Court and Defendants. (Dkt. 334.) At the final approval hearing, we declined to rule on the attorneys' fees request until Defendants have had a meaningful opportunity to review and respond to the time records. Having considered both Parties' positions on this request, we now rule as follows:

II. DISCUSSION

Attorneys' fees may be awarded in a certified class action if "authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Where "the successful litigants have created a common fund for recovery or extended a substantial benefit to a class," an award of attorneys' fees is warranted. *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (internal quotation marks omitted). In the class settlement context, courts must "ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Id.*

When awarding attorneys' fees, we have "discretion to use either a percentage or lodestar method." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Here, Plaintiffs request that we apply the percentage method, which courts often use to calculate fees in common-fund cases. Defendants do not object.

Applying the percentage method, "courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *In re Bluetooth*, 654 F.3d at 942. Where courts apply the percentage method, they should use a rough calculation of the lodestar as a cross-check to assess the reasonableness of the percentage award. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002).

A. Percentage Method

Plaintiffs request an upward departure from the 25% benchmark. In considering this request, we consider all relevant circumstances, including: (1) the results obtained for the class, (2) effort expended by counsel, (3) counsel's experience, (4) counsel's skill, (5) the complexity of the issues, (6) the risks of non-payment assumed by counsel, and (7) the comparison of the benchmark with counsel's lodestar. *See id.* at 1048-50; *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 260 (N.D. Cal. 2015). Plaintiffs offer four primary reasons to depart from the benchmark. Defendants contest the merits of each.

[2] Intervenors Association for Childhood Education International and The Hill Foundation have taken no position on the requested attorneys' fees.

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1. Results Achieved

Plaintiffs assert that "the historic results achieved in the Action easily support an award that is slightly higher than the benchmark." (Fee Mot. at 6.) They contend that the settlement ends "a notorious and wrongful copyright claim," saves the public over $15 million in future licensing fees, results in a declaration that the Song is in the public domain, and provides the class with a substantial cash fund of $14 million. (*Id.*) Plaintiffs also note that because the settlement will save the public about $15 million in future licensing fees, the requested award is actually closer to 15.9% of $29 million, which is "the combined value of the Settlement Fund plus the present value of the waived fees." (*Id.* at 6-7.)

Defendants take issue with nearly every one of these points. They point out that neither the Settlement nor the court concluded that Summy Co.'s licensing of the Song was "wrongful." (Opp'n at 6.) Moreover, their motion for reconsideration remains unresolved as well as the question of whether the Intervenors have any right to the Song. (*Id.*) This argument mis-focuses the inquiry on questions essentially mooted by this settlement while ignoring what the Settlement achieves for the class. Pursuant to the Settlement, Defendants and Intervenors "relinquish their ownership claims to the Song and all their rights to the Song." (Dkt. 302, Settlement ¶ 2.2.1.) And, as of the Final Settlement Date, *Happy Birthday* "will be in the public domain." (*See* Dkt. 349, Final Order and Judgment ¶ 6.) This is a substantial victory for Plaintiffs. No class member will have to pay to use *Happy Birthday* again, and there is no lingering doubt that Defendants or Intervenors may have the rights to *Happy Birthday*.

Defendants contend that the purported $15 million is merely an estimate that is not necessarily "equivalent to would-be licensees' projected savings." (Opp'n at 7.) They assert that we must value the common fund based on monetary benefits to the class because class counsel have not provided us with a precise figure for the "savings" individual members of the class will realize. (*See id.* at 8.)

Only when the value of nonmonetary or injunctive relief "can be accurately ascertained may courts include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees." *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). When the value of such relief is not readily ascertainable, "courts should consider the value of the injunctive relief as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees, rather than as part of the fund itself." *Id.* Even assuming that we cannot ascertain the precise dollar amount that the settlement will save class members, we cannot ignore the settlement's prospective benefits when determining the reasonableness of the fee request. We consider it as a "relevant circumstance" in determining the propriety of the request, but we do not increase the settlement fund by the estimated future savings.

In any event, the settlement will result in significant savings to those who plan to use the Song in the future. Plaintiffs estimate that class members have spent $11 million to license the Song in the last seven years.[3] It is reasonable to conclude that class-wide savings over the remaining 14 years of the

[3] Defendants do not dispute the accuracy of this $11 million figure.

alleged copyright's life would be in the millions of dollars. While past costs may not be a perfect predictor of future savings, they are at least some indication of what class members and others would have paid for the Song. And, as Plaintiffs point out, even settlement class members who would not have paid to use the Song again—and members of the public who refrained from using the Song due to the cost—"will receive an indirect financial benefit, in that they will be encouraged to use the Song more often in the future because they will not be required to pay for it." (Dkt. 335 ("Reply") at 8); *see also Vizcaino*, 290 F.3d at 1049 (citing approvingly D.C. Circuit case that allowed an upward adjustment to the lodestar "to reflect the benefits to the public flowing from the litigation" (internal quotation marks and alteration omitted)). While we may not be able to precisely quantify the nonmonetary benefits that will flow from the settlement, those benefits are substantial. The settlement undoubtedly is worth more than $14 million.

Defendants also contend that class counsel have not shown why a $14 million recovery justifies an upward departure from the benchmark in light of the maximum potential recovery. (*See* Opp'n at 8.) Class counsel estimate that Period One Class Members paid $11 million in licensing fees, while Period Two Class Members paid approximately $35-40 million in licensing fees. (Dkt. 322 at 14.) The $14 million therefore represents 27.5-30% of the total potential recovery of $46-51 million. In support of their argument, Defendants cite *Hawthorne v. Umpqua Bank*, 2015 WL 1927342, at *5 (N.D. Cal. Apr. 28, 2015), in which the court awarded 25% of the common fund in fees, noting that the recovery of 37.7% of the maximum recoverable at trial was "deserving of approval," but "not an 'exceptional' or 'unusual' award."

Defendants' argument is unpersuasive. *Hawthorne* is factually distinguishable because the settlement there was only monetary in nature. Here, the settlement has substantial monetary and nonmonetary components. Defendants also gloss over the nuances of the distribution between Period One and Period Two Class Members. Period One Class Members will receive $6.25 million of the settlement fund, or 57% of their potential total recovery of $11 million, nearly 20% more than the percentage in *Hawthorne*. Period Two Class Members will receive up to 15% of what they paid to use the Song. While this may appear to be a relatively low recovery for Period Two Class Members, their claims were discounted to reflect the risk that their claims may be untimely. (*See* Dkt. 301 at 14 n.8.) Plaintiffs filed this action in 2013. The longest statute of limitations that applies to their claims is a four-year statute of limitations for their Unfair Competition Law and breach-of-contract claims. *See* Cal. Bus. & Prof. Code § 17208; Cal. Civ. Proc. Code § 337. Any pre-2009 claim would have been time-barred unless an exception applies. Although Plaintiffs alleged delayed discovery, concealment of the truth, and equitable tolling, Defendants vigorously contested the timeliness of these claims. (*See generally* Dkt. 264.) Although we never resolved these issues, Plaintiffs nevertheless faced the real risk of being foreclosed from pursuing pre-2009 claims. Given the unique risk associated with the Period Two claims, the discounted recovery for Period Two Class Members is still a strong result.

Overall, because Period One Class Members will receive at least 57% of their potential total recovery, Period Two Class Members will receive a recovery even though their claims may be untimely, no class member will ever have to pay to use the Song again, and the public will benefit from the Song

being in the public domain, we conclude that the settlement achieves an unusually positive result. This factor weighs heavily in favor of an upward departure from the benchmark.

2. Counsel's Skill

Plaintiffs argue that "the extraordinarily high level of skill of Plaintiffs' Counsel supports a fee slightly above the benchmark." (Fee Mot. at 7.) They contend that the work class counsel performed was "of the highest caliber" and that they measured up to one of the most skilled defense firms in the country. (*Id.*) Defendants do not deny that class counsel are skilled, but note that "it is not unusual for counsel to be skillful advocates" in complex class action lawsuits. (Opp'n at 13 (citing *Arnett v. Bank of Am., N.A.*, 2014 WL 4672458, at *13 (D. Or. Sept. 18, 2014) ("Class Counsel are all highly skilled, have significant class action experience, and expended significant effort pursuing the litigation. That is not unusual, however, in the context of complex, national class actions. This factor supports awarding the 'benchmark' 25 percent fee and does not support any departure.")).)

We expect high-caliber lawyering in any complex class action. Yet this was not the typical case. Plaintiffs challenged Defendants' long-running copyright claim to one of the best-known songs in history, largely prevailed on summary judgment, and achieved a highly favorable settlement. Not all, or perhaps even most, plaintiffs' class counsel could have litigated this case as successfully as did class counsel against such a fierce and exceptionally accomplished opponent. This factor weighs in favor of an upward adjustment from the benchmark. *See Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *28 (N.D. Cal. Apr. 1, 2011) (concluding counsel's skill justified upward departure where "Class Counsel successfully defended against RGIS's attempts to dismiss Plaintiffs' claims and to decertify the classes and pursued Plaintiffs' claims until the point of settlement").

3. Effort Expended

Plaintiffs contend that "the amount of work required from Plaintiffs' Counsel to withstand Defendants' extremely vigorous defense strongly supports a fee above the benchmark." (Fee Mot. at 7.) Among other things, class counsel "conducted painstakingly thorough legal and historical factual research before filing the first complaint," Defendants offered "shifting defenses" that made litigation more challenging, Defendants produced a "1922 publication of the Song . . . seven months after the cross-motions for summary judgment were filed," and class counsel had the difficult challenge of proving the existence of a negative fact—that Defendants did not own a copyright to the *Happy Birthday* lyrics. (*Id.* at 7-8.)

Defendants assert that the "amount of work involved in litigating this case was not unusual." (Opp'n at 8.) The "workload was significantly reduced by the lack of percipient witnesses and the limited documentary evidence." (*Id.*) We disagree. If anything, the lack of percipient witnesses and the limited documentary evidence made this case more challenging to litigate and spurred Plaintiffs to conduct extensive factual research into the historical record. As explained further below in our lodestar cross-check discussion, class counsel justifiably dedicated thousands of hours to litigating this case.

The need for extensive research on the origins of the Song and to fend off well-armed Defendants made this case particularly work-intensive. This factor also weighs in favor of an upward departure from the benchmark.

4. Novelty and Complexity of the Action

Finally, Plaintiffs argue that the "novelty and complexity of the Action support[] a fee slightly higher than the benchmark." (Fee Mot. at 8.) In particular, they note that no court had ever ruled on the scope of the *Happy Birthday* copyright and that their "inventive" use of the Declaratory Judgment Act and Rule 23 provided a "unique framework for the Court to declare the Song to be in the public domain." (*Id.*) Defendants contend that "[t]his case was neither exceptionally novel nor complex," but mostly "involved basic copyright principles." (Opp'n at 11.) Citing cases in which plaintiffs filed class actions and/or sought a declaratory judgment under the Copyright Act, Defendants believe that Plaintiffs' purportedly "inventive" strategy was not particularly impressive. (*See id.* at 12); *see, e.g.*, *Diagnostic Unit Inmate Council v. Films Inc.*, 88 F.3d 651, 652 (8th Cir. 1996); *MRC II Distrib. Co. v. Coelho*, 2012 WL 3810257, at *1 (C.D. Cal. Sept. 4, 2012).

Defendants unduly minimize the novelty and complexity of the case by characterizing it as a run-of-the-mill copyright suit. This is anything but a garden-variety infringement action. Although Plaintiffs may not have been the first to file a class action declaratory judgment suit in a copyright case, and while the case may have been grounded in basic principles of copyright law, it presented highly complex issues of proof. Plaintiffs embraced the challenge of contesting an alleged copyright to song lyrics written at the turn of the Twentieth Century. No relevant witnesses are alive today. Nearly all of the documentary evidence in the case is over sixty years old. Highly pertinent documents—particularly, two agreements between the Hill sisters and Summy Co. and the deposit copy to the copyright registration that Defendants claimed covered the lyrics—were never found. *See Marya v. Warner/Chappell Music, Inc.*, 131 F. Supp. 3d 975, 999 (C.D. Cal. 2015). The summary judgment record, comprised of eight volumes of exhibits, was extremely dense. (*See* Dkts. 187-94.) Yet Plaintiffs successfully worked with this aged, lengthy, and imperfect record to piece together their case and to prove that Defendants did not own a copyright to the *Happy Birthday* lyrics. Overall, the complexity of the action weighs in Plaintiffs' favor.

In light of the foregoing, the relevant circumstances support Plaintiffs' request for an upward departure from the benchmark. The highly favorable results achieved, counsel's skill and effort, and the unusual complexity of the action all support a fee award of 33% of the common fund.

B. Lodestar Cross-Check

We now turn to the lodestar cross-check. "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. The lodestar is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), and

"presumptively provides an accurate measure of reasonable fees," *see Harris v. Harhoefer*, 24 F.3d 16, 18 (9th Cir. 1994). If investment in the case has been "minimal, as in the case of an early settlement, the lodestar calculation may convince a court that a lower percentage is reasonable." *Vizcaino*, 290 F.3d at 1050. "Similarly, the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted." *Id.*

We make no specific rulings on class counsel's time records. Our analysis of the time records is for the purpose of a cross-check only and need not be as detailed as it would be were we conducting a full-blown lodestar analysis. It is "well established that the lodestar cross-check calculation need entail neither mathematical precision nor bean counting." *Bellinghausen*, 306 F.R.D. at 264 (internal quotation marks and alteration omitted). We are merely attempting to gauge if the lodestar supports the percent of the fund sought. *See id.*; *In re: CytRx Corp. Sec. Litig.*, 2016 U.S. Dist. LEXIS 70188, at *2 (C.D. Cal. May 18, 2016) ("As we are conducting a cross-check, not a true lodestar analysis, we need not fix a precise lodestar amount.").

Class counsel claim a total lodestar of $5,233,055.33,[4] (Pls.' Billing Response at 1 n.1), as follows:

- $3,164,121 for Wolf Haldenstein, (Dkt. 324, Rifkin Decl.);
- $1,403,520 for Newman P.C., (Dkt. 323-1, Newman Decl.)[5];
- $351,570.80 for Donahue Fitzgerald, (Dkt. 323-2, Schacht Decl.);
- $257,385 for Glancy Prongay, (Dkt. 323-3, Wolke Decl.); and
- $56,458.50 for Hunt Ortmann, (Dkt. 337, Billing Records at 267).

Class counsel claim an average partner hourly billing rate of $693.83 and average associate hourly billing rate of $383.76, with a blended hourly billing rate of $627.71. (Reply at 23.) Of the more than 9,000 billable hours, attorneys billed about 7,700 hours, and paralegals billed the remainder. (*See id.* at 22.)

1. Hourly Rate

[4] Class counsel variously claim a total lodestar of $5,178,000 and $5,329,372.80. (Fee Mot. at 2, 9.) They admit that the higher amount "was included in error" and was based on an earlier calculation that did not include "voluntary lodestar reductions." (Dkt. 364 ("Pls.' Billing Response") at 1.) They also note that one firm, Hunt Ortmann, submitted its lodestar calculation late. Including that firm's lodestar, class counsel now claim a total lodestar of $5,233,055.33. (*Id.* at 1 n.1.)

[5] Randall Newman of Newman P.C. joined Wolf Haldenstein as a partner toward the end of the litigation. For purposes of calculating the lodestar, all of his hours are separated from Wolf Haldenstein's hours.

To determine the reasonable hourly rate for class counsel's services, we look to prevailing rates in our district for lawyers of comparable skill and experience. *See Camacho v. Bridgeport Fin.*, 523 F.3d 973, 979 (9th Cir. 2008). A fee applicant may establish the reasonableness of the requested rates through affidavits regarding the prevailing fees in the community and through rate determinations in other cases. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). We may also consider our own knowledge and experience in determining a reasonable hourly rate. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011); *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1166-67 (N.D. Cal. 2012).

Class counsel seek reimbursement for over thirty attorneys who worked on this case with varying degrees of involvement.[6] Hourly rates for associates ranged from $190 (May A. Whitaker of Donahue Fitzgerald) to $525 (Casey Sadler and Thomas Kennedy of Glancy Prongay). (*See* Schacht Decl. ¶ 18; Wolke Decl. ¶ 16.) Hourly rates for partners ranged from $420 (Daniel J. Schacht of Donahue Fitzgerald) to $935 (Daniel W. Krasner of Wolf Haldenstein). (*See* Schacht Decl. ¶ 10; Rifkin Decl., Ex. B.) Five individuals billed the vast majority of hours:

- Randall Newman, J.D. 1997, Wolf Haldenstein partner/solo practitioner (2,193 hours at $640/hour);
- Mark C. Rifkin, J.D. 1985, Wolf Haldenstein partner (1,700.9 hours at $820/hour);
- Betsy C. Manifold, J.D. 1986, Wolf Haldenstein partner (1,053.4 hours at $770/hour);
- Daniel J. Schacht, J.D. 2008, Donahue Fitzgerald partner (491.94 hours at $420/hour); and
- Beth A. Landes, J.D. 2010, Wolf Haldenstein associate (1,081.7 hours at $395/hour).[7]

Defendants challenge the reasonableness of class counsel's hourly rates, arguing that counsel did not submit evidence showing that their hourly rates are reasonable for the Los Angeles area. (Opp'n at 19.) In their Reply, class counsel cite Central District opinions in which courts approved average partner and associate rates in complex class actions that compare favorably with the billing rates here. *See Roberti v. OSI Sys., Inc.*, 2015 WL 8329916, at *7 (C.D. Cal. Dec. 8, 2015) (approving hourly rates of $525 to $975 for attorneys with 15 or more years of experience in securities class action); *In re Am. Apparel S'holder Litig.*, 2014 U.S. Dist. LEXIS 184548, at *77-82 (C.D. Cal. July 28, 2014) (approving hourly partner rates of $675 to $735, associate rates of $395 to $475, and paralegal rates of $200 to

[6] Class counsel also request reimbursement for hours that paralegals spent working on this case. Paralegal rates ranged from $155 to $335 per hour. Defendants do not specifically contest the reasonableness of these rates. They are also in line with paralegal rates found reasonable in the Los Angeles area. *See Perfect 10, Inc. v. Giganews, Inc.*, 2015 WL 1746484, at *21 (C.D. Cal. Mar. 24, 2015) (noting that, as long ago as 2008, courts in this district found paralegal rates of $250 per hour reasonable and approving rates that ranged from $240 to $345 per hour). We conclude that the paralegal rates are reasonable.

[7] These figures are derived from class counsel's declarations in support of the Fee Motion.

$250). A court in this district recently approved similar rates in a complex copyright and trademark case. *See Perfect 10*, 2015 WL 1746484, at *19-20 (approving as reasonable hourly rates ranging from $350 for the lowest-paid associate to $930 for the highest-paid partner). Class counsel also cite a 2014 survey conducted by the National Law Journal that analyzes billing rates at the nation's 350 largest firms. (*See* Dkt. 335, Rifkin Decl., Ex. A.) The survey concluded that, in 2013, average partner rates were $665 per hour and average associate rates were $401 per hour. (*See id.*) These averages are in line with class counsel's average billing rates. Finally, class counsel note that their rates are comparable to or lower than those charged by opposing counsel, Munger, Tolles & Olson LLP ("MTO"). (*See* Reply at 23-24); *Bergstein v. Stroock & Stroock & Lavan*, 2013 Cal. Super. LEXIS 593, at *12 (L.A. Super. Ct. Feb. 14, 2013), *aff'd* 236 Cal. App. 4th 793 (2015) (approving as reasonable MTO's hourly billing rates ranging between $445 and $920); *see also Am. Apparel*, 2014 U.S. Dist. LEXIS 184548, at *81 ("[T]he fact that class counsel seek[] rates equal to or lower than those charged by their opposing counsel provides some support for their contention that the hourly rates they request are reasonable.").

Although some of the attorneys who worked on this case bill at relatively high hourly rates, given the cases cited, the National Law Journal survey, and our own experience, the rates are within the range of rates charged in this district by attorneys with comparable skill and experience. We conclude that the rates are reasonable.

2. Hours Expended

In calculating class counsel's lodestar, we may count only "the number of hours reasonably expended on the litigation" and should exclude "hours that are excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 434. Class counsel estimate that they spent over 9,000 hours prosecuting this action. In class counsel's declarations, they break down their hours into eight major categories: (1) pre-filing investigation and initial complaint drafting (1,568 hours); (2) amended complaint drafting (525.1 hours); (3) opposition to motion to dismiss (469.5 hours); (4) discovery (2,751.3 hours); (5) cross-motions for summary judgment (2,500.4 hours); (6) trial preparation (423.4 hours); (7) settlement negotiations (417.15 hours); and (8) settlement approval and administration (398 hours). Hunt Ortmann did not separate its time into specific categories. It claims to have spent an additional 102.7 hours in this case. It served as "local counsel" and was primarily responsible for reviewing documents to ensure compliance with the Local Rules. (Dkt. 339, Nieves Decl. ¶ 5.)

Defendants attack class counsel's hourly calculations on multiple fronts. First, they argue that there are "overarching issues that impede a meaningful cross-check or indicate excessive billing." (Dkt. 354 ("Defs.' Billing Response") at 2.) These include block billing, vague descriptions of the work, billing in whole and half-hour increments, and duplicated efforts. (*Id.* at 2-10.) Some time entries covered purportedly "noncompensable activities," such as time spent traveling and discussing the case with the media. (*Id.* at 2.) They also argue that we should entirely discount Hunt Ortmann's purported lodestar. (*Id.*) Overall, to account for these alleged deficiencies, Defendants request that we reduce the lodestar to, "at a maximum, $3,452,108." (Dkt. 366 ("Defs.' Billing Reply") at 12.) We address each argument in turn.

a. Block Billing

Defendants contend that the purported lodestar of approximately $5.23 million deserves substantial discounting because class counsel "block billed" much of their time. (*See* Defs.' Billing Response at 2.) 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) (internal quotation marks omitted); *see also Banas v. Volcano Corp.*, 47 F. Supp. 3d 957, 966 n.9 (N.D. Cal. 2014) ("Block[] billing is the practice of including various tasks within one time entry without specifying the time spent on each task within an entry."). We may reduce block-billed hours "because block billing makes it more difficult to determine how much time was spent on particular activities." *Welch*, 480 F.3d at 948. Courts often reduce such hours by 10% to 30%. *See id.* (noting that a State Bar fee report concluded that block billing may increase time by 10% to 30% and approving reduction of block-billed hours by 20%); *Lahiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216, 1222-23 (9th Cir. 2010) (affirming 30% reduction of block-billed hours); *Pierce v. County of Orange*, 905 F. Supp. 2d 1017, 1030 (C.D. Cal. 2012) (noting that it is not uncommon to impose a 5% to 20% reduction for block-billed hours). However, if block-billed entries are detailed enough for us to assess their reasonableness, no reduction is necessary. *See Pierce*, 905 F. Supp. 2d at 1030; *Campbell v. Nat'l Passenger R.R. Corp.*, 718 F. Supp. 2d 1093, 1103 (N.D. Cal. 2010).

Class counsel's time records reveal that many of the attorneys who worked on this case block billed some of their time entries. Defendants focus on a few attorneys in particular. They contend that Mark Rifkin of Wolf Haldenstein "block billed almost all of his time entries." (Defs.' Billing Response at 3.) As an example, they cite an 8.5-hour entry on June 14, 2013: "Email to and from K. Ragsdale re media; confer RSN, J. Nelson, J. Pollack, B. Landes, G. Baghban re status; email to and from R. Siegel re status; t/cs from media." (*See* Billing Records at 10.) Entries like these make it difficult to tell how much time was spent on each particular task. A review of Rifkin's 50 pages of time records confirms that he, indeed, block billed most of his time. (*See id.* at 10-60.)

However, many of Rifkin's block-billed entries are detailed enough for us to determine whether the time spent on each task was reasonable. For example, on December 1, 2015, Rifkin recorded 12 hours on the following: "Participate in mediation w/ D. Rotman; meet w/RSN and BCM to prep for mediation." (*Id.* at 51.) Defendants list this entry as an example of inappropriate block billing. (*See* Defs.' Billing Response, Ex. 2 at 25). We disagree. It is reasonable to infer that mediation and any same-day preparations would take upwards of 12 hours in a case as hard-fought and complex as this one. On December 2, 2015, Rifkin billed 9.5 hours for: "Confer w/RSN and BCM; t/cs and emails to and from D. Rotman re mediation; travel [back] to NYC [from mediation in California]; email to and from co-counsel re mediation." (Billing Records at 51.) Travel time alone could account for the entire entry. It is also reasonable to assume that conferring about mediation would take some additional time. Overall, 9.5 hours does not seem to be an unreasonable amount of time to spend on these tasks, even though they were not broken down into discrete entries. The fact that the entry is block billed does not make it impossible to assess. Courts in our circuit acknowledge that as long as block billing does not

obfuscate time entries, we need not apply a discount to those entries. *See Pierce*, 905 F. Supp. 2d at 1030.

Defendants also argue that Wolf Haldenstein's remaining timekeepers "largely block billed their time." (Defs.' Billing Response at 4.) They particularly single out associate Beth Landes, who they contend block billed "close to 90% of her 1,081.7 hours (or more than $400,000 in fees)." (*Id.*) A review of Landes's records confirms that she block billed much of her time. (*See* Billing Records at 156-72.) For the most part, however, Landes's records, like Rifkin's, are sufficiently detailed such that we can assess their reasonableness. A representative entry states that Landes spent 8.5 hours on the following: "Research and writing on renewals, presumption on renewals, whether renewal grant is distinct and 'new' versus original grant; filing third party subpoena affs." (*Id.* at 163.) This entry gives us a fairly specific idea of what Landes did during those 8.5 hours, allowing us to determine whether 8.5 hours was a reasonable amount of time to spend on these tasks. While breaking down tasks into separate entries might have been more helpful, the entry is not so unreasonable as to deserve Defendants' suggested *per se* 30% deduction.

Defendants next attack Newman's 2,193 hours. Newman also block billed much of his time. (*See id.* at 205-51.) Some of his entries are difficult to assess. For example, on September 23, 2015, he spent 12.4 hours on the following: "Meet with M. Rifkin and client regarding SJ opinion; Telephone conference with Brauneis; respond to media inquiries; emails regarding decision." (*Id.* at 242.) A combination of block billing, vague descriptions, and a large amount of time billed makes entries like these difficult to assess. However, many of Newman's other block-billed entries are reasonably specific. On April 22, 2013, for example, he spent 6.7 hours on the following: "Review assignment documents from Hill Foundation to Summy; research Samuel Mann, review estate documents from Hill family estate records; continue to prepare timeline of events related to Happy Birthday as well as all copyrights registered for Happy Birthday." (*Id.* at 215.) Our own familiarity with some of these documents and with the lengthy timeline of the case gives us a sense of how Newman spent these hours.

Finally, while attorneys at Donahue Fitzgerald and Glancy Prongay occasionally engaged in block billing, they often list a single task for each entry. (*See id.* at 274-311.) Defendants also concede that Wolf Haldenstein's Betsy Manifold stopped block billing after working on this case for about four months. Having reviewed her records, even her block-billed entries are specific enough for us to evaluate.

Although class counsel frequently engaged in block billing, this practice has not rendered every block-billed entry useless to our analysis. As explained, many of these entries are specific enough to evaluate. Accordingly, were we conducting a lodestar analysis, a 30% reduction of these entries, which is at the very high end of reductions for block billing, would not be appropriate. Because the reasonableness of some time entries is difficult to assess, we impose a 10% across-the-board reduction for block billing, excepting Manifold's hours.[8] *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112

[8] Given that virtually all of Manifold's entries avoid the perils of block billing, we can easily segregate her hours for purposes of conducting the 10% across-the-board reduction. That is not the case

(9th Cir. 2008) ("[T]he district court can impose a small reduction, no greater than 10 percent—a 'haircut'—based on its exercise of discretion and without a more specific explanation.").

b. Vague Descriptions

Next, Defendants argue that "Class Counsel's billing records are replete with vague entries." (Defs.' Billing Response at 6.) Courts routinely reduce lodestar figures if time sheets are littered with vague billing entries that make it difficult to assess the reasonableness of the hours expended in a case. *See Banas*, 47 F. Supp. 3d at 969 (reducing hours by 5% for vague entries like "attention to discovery issues; attention to draft expert reports" because these entries rendered it "difficult to determine what the timekeeper was actually doing").

Defendants identify numerous vague billing entries throughout the 300-plus pages of time records that class counsel submitted. (*See* Defs.' Billing Response at 6-8.) They identify 50 time entries in Rifkin's records that describe the subject matter as only "status and strategies," descriptions in numerous attorneys' records such as "confer w/B. Landes" and "reviewed materials" that lacked reference to the relevant topic, and broadly-stated subjects such as "review and revise abandonment brief" without further detail. (*See id.*, Ex. 3.)

Some of these criticisms are unwarranted. Counsel are "not required to record in great detail how each minute of [their] time was expended." *Hensley*, 461 U.S. at 437 n.12. An entry is not considered too vague if it identifies the general subject matter of time expenditures. *Perfect 10*, 2015 WL 1746484, at *26; *see also Dubose v. County of Los Angeles*, 2012 WL 2135293, at *5 (C.D. Cal. June 11, 2012) (plaintiff's counsel is required to "identify the general subject matter of his time expenditures" (internal quotation marks omitted)). The subject matter of some of these entries is clear—"review and revise abandonment brief" concerned just that, reviewing and revising the abandonment brief. And for other time entries that do not explicitly reference the subject matter, it is often easily discernable from context. For example, Defendants argue that Rifkin's August 30, 2013 entry, "email to BCM," is vague. (*See* Billing Records at 15.) However, that same entry makes clear that Manifold (i.e., BCM) had sent Rifkin an email "re MTD hearing." (*Id.*) The "email to BCM" obviously was in response to that email.

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for the other timekeepers who consistently block billed throughout their time on the case. If we were conducting a full lodestar analysis, we would only reduce these timekeepers' block-billed hours. *See Welch*, 480 F.3d at 948 (concluding that district court erred in applying a 20% reduction to all of the requested hours when only about half were block billed). Because block billing was pervasive throughout their entries, and because we are not conducting a true lodestar analysis, it would be "unreasonably burdensome" to "comb through the [thousands of] billed hours to segregate" the non-block-billed hours. *See Gunderson v. Mauna Kea Props., Inc.*, 2011 WL 9754085, at *10 n.18 (D. Haw. May 9, 2011) (conducting true lodestar analysis and yet imposing 20% across-the-board reduction where nearly all time entries were block billed and court would be burdened by having to comb through nearly 1,000 hours to find entries that were not block billed), *aff'd* 567 F. App'x 538 (9th Cir. 2011).

Nonetheless, some entries are too vague to evaluate. For example, nearly all 13.6 hours of Wolf Haldenstein partner Jeffrey Smith's entries are hopelessly vague as they contain descriptions such as "conf MCR," "conf KMcG," "review brief," and "review email and articles." (*See* Billing Records at 6-7.) Wolf Haldenstein partner Janine Pollack has numerous entries entitled "Worked on complaint," (*see id.* at 124), but it is not at all clear what her role was in that regard. Donahue Fitzgerald partner Adam MacKay billed multiple hours under the entry "advise regarding strategic issues," (*id.* at 273-74, 276), which tells us nothing about the work he conducted. For purposes of the cross-check, we conclude that an additional 5% reduction of the lodestar is warranted due to vague billing entries.

c. Billing in Whole and Half-Hour Increments

Defendants point out that "attorneys at three different firms routinely billed their time in whole or half-hour increments." (Defs.' Billing Response at 8.) Courts have reduced fee requests where counsel bill in mostly one or half-hour increments because "use of such billing likely overstated the number of hours actually worked." *MacDonald v. Ford Motor Co.*, 2016 WL 3055643, at *8 (N.D. Cal. May 31, 2016); *Haw. Defense Found. v. City & County of Honolulu*, 2014 WL 2804448, at *6 (D. Haw. June 19, 2014) ("The rationale for such reduction is that where counsel bills in larger time increments . . . tasks more likely than not took only a portion of the time billed, resulting in requests for excessive hours."); *Alvarado v. FedEx Corp.*, 2011 WL 4708133, at *17 (N.D. Cal. Sept. 30, 2011) (20% across-the-board reduction where 93% of time entries were billed in quarter-hour increments).

Defendants calculate that 87% of Landes's, 100% of Pollack's, and 86% of Glancy Prongay partner Marc Godino's entries were recorded in whole or half-hour increments. (*See* Defs.' Billing Response at 9.) The extreme frequency with which these timekeepers recorded their hours in such increments is evidence that they likely rounded their times up to the nearest hour or half-hour. This could result in substantial overbilling. A check of the tasks associated with these entries buttresses this inference. For example, Pollack billed .5 hours for "Emails re status/case issues," .5 hours for "emails re CA complaint," and another .5 hours for "Reviewed materials." (Billing Records at 124.) Besides being vague, these entries suggest that Pollack billed at least .5 hours regardless of the task. As another example, Godino billed precisely 4 hours each time he attended a hearing, even though each hearing he attended was a different length and far less than 4 hours. (*See* Billing Records at 302-04; Dkt. 68 (1-hour, 20-minute motion to dismiss hearing); Dkt. 229 (1-hour, 48-minute summary judgment hearing); Dkt. 311 (1-hour, 5-minute preliminary approval hearing).) In total, these three attorneys billed approximately $555,214. For the purposes of the cross-check, it is reasonable to reduce their lodestar by 25%.

Defendants also contend that on many of his highest-billing days, Newman billed in whole or half-hour increments. Defendants cite *Cotton* in support of their claim that this practice betrays excessive billing. There, the court reduced the fee award because the attorney had failed to keep records and had to reconstruct many of his hours. 889 F. Supp. 2d at 1178. His records were also inconsistent with those of another attorney who worked on the case, casting doubt on his calculations. *See id.* There is no indication that any of these factors are present here. Moreover, Newman's highest-billing days

were those preceding the filing deadline for summary judgment motions. It makes sense for an attorney to spend significantly more time on certain tasks the closer an important filing deadline approaches. While he spent a great deal of time reviewing and revising the statement of facts (about 77 hours) and "SJ papers" (about 73 hours) on the days approaching the filing deadline, the summary judgment motion was the most critical motion in this case. (*See* Billing Records at 241-42.) And Newman, having done the core factual and historical research, no doubt played a crucial role drafting the briefing. It is not reasonable to reduce his hours simply because he billed in whole or half-hour increments for some high-billing days approaching the summary judgment deadline.[9]

d. Excessive Effort/Duplication of Effort

Defendants contend that class counsel "spent excessive amounts of time at each stage of the litigation and that there was substantial overlap among the five plaintiffs' firms." (Defs.' Billing Response at 10.)

First, they argue that all of Hunt Ortmann's 102.7 hours ($56,495.50 in fees) are excessive. (*Id.*) Hunt Ortmann was "local counsel" and, by the firm's own admission, appears to primarily have been responsible for reviewing documents to ensure compliance with the Local Rules. (Dkt. 339, Nieves Decl. ¶ 5.) We question the extent of Hunt Ortmann's hours. All firms should be capable of ensuring compliance with the Local Rules. Inasmuch as Glancy Prongay has a Los Angeles office, it is unclear why an additional firm was needed to serve as "local counsel." Hunt Ortmann's rates are also unjustified for the simple work the firm seems to have performed. Four attorneys worked on the case; their hourly rates ranged from $420 to $575. (*Id.* ¶ 10.) For mostly non-substantive work geared toward Local Rule compliance, these rates appear excessive. Solely for the purposes of conducting a cross-check, we discount Hunt Ortmann's claimed lodestar by 75% given its limited role in this case.

Second, Defendants argue that the number of hours worked during the "pre-filing investigation and initial complaint drafting" phase of the litigation was excessive. (*See* Defs.' Billing Response at 10-11.) Class counsel billed approximately 1,570 hours during this phase. Defendants note that Newman billed 535 hours between September 2012, when he first began researching the case, and March 2013, when he began drafting the complaint. (*Id.*; Billing Records at 205-13.) Donahue Fitzgerald dedicated over 200 hours to investigation before May 2013, and class counsel on the whole spent an additional 830 hours during this phase of the litigation. (*See* Defs.' Billing Response at 10-11.) Class counsel argue that these hours were reasonable and necessary because complex class actions require extensive pre-litigation preparation. (Pls.' Billing Response at 16.)

[9] Defendants also cite *Alvarado*, in which the district court made a 40% across-the-board reduction due to inflated hours, including "repeated billing for excessively long days." *See* 2011 WL 4708133, at *17. But there, the attorney billed excessively for the simplest of tasks, such as reviewing paragraph-long letters and drafting documents that were less than a page. *See id.* at *17-18. The fact that Newman billed large numbers of hours in the days leading up to the filing of the summary judgment motion does not, in and of itself, constitute evidence of overbilling.

Given the factual complexity of this case due to *Happy Birthday*'s long history, it is reasonable for class counsel to dedicate a substantial number of hours to this initial phase of the litigation. We cannot say that Newman's pre-filing hours were unreasonable. In a fair amount of detail, he describes the many research avenues he pursued to learn about *Happy Birthday* and its ownership. He extensively reviewed and conducted follow-up research on an article Professor Robert Brauneis of George Washington University Law School wrote about the claimed copyright to the Song. He visited libraries and archives and conducted online research to track down primary source documents that might have been relevant to the case. (*See, e.g.*, Billing Records at 205 (visit to Columbia University archive), 206 (visit to New York Public Library).) Newman's initial factual investigation likely was indispensable to the effective prosecution of this action. But it is questionable whether someone at Newman's high billing rate needed to conduct all of this research. Some of this preliminary work, such as searching Google Books and compiling a binder for Wolf Haldenstein, (*see id.* at 206-07, 213), appears to be below Newman's $640 per hour pay grade.

The remaining 1,030 hours are more concerning. From Wolf Haldenstein and Donahue Fitzgerald, a total of ten partners (counting Newman), one associate, and five paralegals worked on pre-filing investigation and drafting. The initial complaint filed by Wolf Haldenstein and Donahue Fitzgerald in June 2013 was only 26 pages. (Dkt. 1.) While the complaint is fact-laden and inevitably took time to research and pare down, our experience suggests that it should not have taken this many highly experienced attorneys hundreds of hours to assemble. The imbalanced ten-to-one partner-to-associate ratio suggests that the case could have been more leanly and efficiently staffed in its initial phases. In addition, in July 2013, Glancy Prongay filed a separate complaint that is substantially similar to Wolf Haldenstein and Donahue Fitzgerald's complaint. (*Compare* Dkt. 1, *with Majar Prods., LLC v. Warner/Chappell Music, Inc.*, CV 13-5164-GHK, Dkt. 1.) It claims to have expended 39 hours (or $20,820) of mostly partner time on background research and complaint drafting. (*See* Wolke Decl. ¶ 10.) Glancy obviously benefitted from the work done by Wolf Haldenstein and Donahue Fitzgerald, and its drafting of this additional complaint largely constitutes duplicative work.

Third, Defendants argue that the time class counsel spent opposing the motion to dismiss was excessive. (Defs.' Billing Response at 11.) Defendants filed their motion on August 30, 2013. (Dkt. 52.) Plaintiffs filed their opposition on September 9, 2013. (Dkt. 61.) Counsel attended a hearing on October 7, 2013. (Dkt. 68.) Six attorneys from four firms billed a total of about 172 hours drafting the 25-page opposition between August 30 and September 9, 2013. (*See* Billing Records at 15, 65-66, 221-22, 285, 300-02.) From Wolf Haldenstein, Manifold billed about 40 hours and Rifkin billed about 36; from Newman P.C., Newman billed about 33 hours; from Glancy Prongay, Vahn Alexander billed about 33 hours and Godino billed about 15; and from Donahue Fitzgerald, Schacht billed about 15 hours. (*See id.*) That is about 21.5 days of billable work, assuming an 8-hour workday, if performed by one person. The time spent drafting the opposition is excessive, especially given that experienced practitioners like Rifkin, Manifold, and Newman did the majority of the work.

Fourth, Defendants contest the reasonableness of the 2,500-plus hours that Wolf Haldenstein and Newman P.C. billed on discovery matters over approximately eight months. (Defs.' Billing Response at

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-4460-GHK (MRWx)	Date	August 16, 2016
Title	*Good Morning to You Productions Corp., et al. v. Warner/Chappell Music, Inc., et al.*		

12.) During discovery, the Parties participated in a joint planning meeting pursuant to Rule 26, answered numerous interrogatories and requests for admissions, litigated two joint discovery motions, negotiated a court-approved protective order, produced over 15,000 pages of documents, and engaged in four depositions. (Dkt. 324, Rifkin Decl. ¶ 26; Dkt. 332, Klaus Decl. ¶¶ 15-17.) Plaintiffs also produced an expert report and subpoenaed various documents from ASCAP and The Hill Foundation. (Dkt. 324, Rifkin Decl. ¶ 26.) Class counsel do not contest that formal discovery was not abnormally extensive; rather, they argue that they "were required to conduct extensive *informal* discovery on their own," including "inventive historical research of obscure ancient documents." (Mot. at 16 (emphasis in original).) Rifkin notes that class counsel "inspected and reviewed more original source materials, including the Hill sisters' manuscripts and papers, documents at the U.S. Copyright Office and the Library of Congress, historical court records in New York and Illinois, estate and corporate records in various jurisdictions, as well as scores, manuscripts, and songbooks from a variety of sources." (Dkt. 324, Rifkin Decl. ¶ 27.)

We acknowledge that such informal discovery played an important role in this case, but the hours spent on discovery appear to be somewhat excessive. Wolf Haldenstein alone marshalled a team of 14 professionals, including five partners, two associates, six paralegals, and one member of technical support to work on discovery. (*See* Rifkin Decl., Ex. E.) A team of 14 is excessive, especially when formal discovery was fairly limited. Coordinating these individuals—and individuals at other firms—likely resulted in some inefficiencies. For example, as Defendants point out, Landes billed 11 hours of discovery work in the following way: "Received draft of 37:2 stip from Betsy, written by co-counsel, much back and forth with S.D. seeking background docs relating to the draft stip; need to totally re-draft became apparent, since Casey was not aware of the ASCAP privilege issue; after speaking with Mark, learned that stip should take different tact." (Billing Records at 166.) Over the next few days, Landes spent over 20 hours on tasks related to redrafting the stipulation. (*See id.* at 167.) If co-counsel had been on the same page as Wolf Haldenstein, the need to redraft the stipulation likely would have been avoided.

Finally, Defendants contend that class counsel billed excessively in the summary judgment phase. (Defs.' Billing Response at 13-14.) As noted, class counsel billed over 2,000 hours during this phase. The briefing consisted primarily of a 50-page joint motion and a 24-page supplemental brief on the abandonment issue. The Statement of Uncontroverted Facts included more than 300 facts and the Joint Appendix totaled eight volumes and contained 125 exhibits. (*See* Dkts. 183, 187-94.) Counsel appeared for two oral arguments, where Rifkin argued on Plaintiffs' behalf. Both Parties filed motions to supplement the record, and class counsel filed a motion to strike certain exhibits. (Dkts. 197, 223-24.) Given the extensive briefing and record, that class counsel expended considerable time during the summary judgment phase is to be expected. However, some duplication of effort seems to have occurred given the number of attorneys working on this case across four firms. As an example, in May 2015, Donahue Fitzgerald had two attorneys and a clerk write memos on abandonment, while Rifkin and Manifold were also researching abandonment at Wolf Haldenstein. (*See* Billing Records at 42, 103, 270, 290, 297.) It is unclear why four attorneys and a clerk across two firms were needed to research the same issue.

Given that Plaintiffs were largely successful in prosecuting this action through summary judgment, their judgment as to how much time was required to litigate this case is entitled to some deference. *See Moreno*, 534 F.3d at 1112 ("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 . . . ."). Nonetheless, the time records contain some evidence of excessive and duplicative billing, as set forth above. For purposes of the cross-check, it is reasonable to reduce the lodestar by an additional 10% due to excessive and inefficient billing.

e. Noncompensable Tasks

Defendants next argue that class counsel's billing for "time spent traveling is not appropriate absent evidence that it is customary in the District and appropriate under the circumstances." (Defs.' Billing Response at 14.) Billing for time spent traveling is reasonable so long as the practice is customary in the relevant legal community. *See Davis v. City & County of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992), *vacated in part on other grounds by* 984 F.2d 345 (9th Cir. 1993). Courts within the district routinely compensate lawyers for reasonable travel time at full hourly rates. *See Rodriguez v. County of Los Angeles*, 96 F. Supp. 3d 1012, 1025 (C.D. Cal. 2014) ("In Los Angeles, the practice is to compensate at full rates for travel time."); *Contreras v. County of Los Angeles*, 2013 WL 1296763, at *6 (C.D. Cal. Mar. 28, 2013) ("[D]istrict courts have routinely awarded fees for time spent traveling."). Plaintiffs also submitted declarations from two lawyers who practice in Los Angeles who state that billing for travel time is customary in the Los Angeles market. (*See* Dkt. 364, Perez Decl. ¶ 5; Godino Decl. ¶¶ 5-7.)

Class counsel traveled numerous times throughout this case. From our review, virtually all travel was case related. Class counsel mostly traveled for motion hearings and research work during the pre-filing investigation and discovery phases. Defendants argue that some attorneys billed for time spent traveling to hearings at which they did not speak. (*See* Defs.' Billing Reply at 11.) But it is not uncommon for only a single attorney to speak on behalf of clients at a hearing. Other attorneys in attendance may be present to assist the speaker.

However, one travel entry appears excessive. In November 2015, Rifkin billed $5,330 for time spent traveling to a Copyright Society meeting in Los Angeles where he gave a lecture discussing our summary judgment ruling. (Billing Records at 50.) Rifkin argues that he accepted an invitation to speak "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.[10] 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 . . . was a particularly appropriate venue in which to do so." (Pls.' Billing Response at 19.) But the event was advertised as providing a "behind-the-

[10] Defendants do not deny this assertion. They note that once we preliminarily approved the settlement, they told prospective licensees that "if the prospective licensee decided to pay for a license, then that prospective licensee would have a claim if and when the settlement was finally approved." (Defs.' Billing Reply at 10.)

scenes look at the case," suggesting that the lecture was about more than just countering Defendants' demands for payment. (*See* Defs.' Billing Reply at 11 (citing Copyright Society advertisement).) The lecture likely promoted the reputation of Rifkin and his firm more than it benefitted the class. There were certainly more cost-effective ways of informing the public about the ruling than giving a lecture in Los Angeles. This expense is not reasonably related to the prosecution of the case and would be deducted from Rifkin's lodestar if we were conducting a true lodestar analysis.

f. Media Time

Defendants argue that class counsel should not be reimbursed for time spent speaking with the media. (Defs.' Billing Response at 15.) Generally, media-related activity is only compensable when "directly and intimately related to the successful representation of a client and when [it] contribute[s], directly and substantially, to the attainment of the litigation goals." *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 900 (E.D. Cal. 2009) (internal quotation marks and alteration omitted).

Class counsel argue that they responded to media inquiries to "provide information to the public, many of whom were members of the Class [they] sought to represent." (Dkt. 324, Rifkin Decl. ¶ 32.) Discussing the case with the media may have been a valid way to inform class members about the action, especially because not all class members had been identified. However, some of the media-related billing appears unrelated to publicizing the case to class members. Rifkin, for example, billed for an email with his client about a clip from *The Colbert Report*. (Billing Records at 22.) On several occasions, Rifkin also billed for "respond to media inquiries," (*id.* at 47-48, 52, 56), but it is impossible to tell what those inquiries concerned. To the extent media-related billing is excessive, the reductions for vague and inefficient entries should be sufficient to address the problem.

g. Hunt Ortmann's Late Filing

Finally, Defendants request that we entirely discount Hunt Ortmann's lodestar because it was not timely disclosed. (Defs.' Billing Response at 16.) Hunt Ortmann submitted its declaration in support of its time records late, a mere day before Defendants' opposition to the Fee Motion was due. (*See* Dkt. 330.) A full reduction of Hunt Ortmann's lodestar due to its late filing is unwarranted, especially given that Defendants now have had a full opportunity to respond to class counsel's time sheets and declarations. However, as explained, Hunt Ortmann's contribution to this case appears to be minimal. For purposes of conducting the lodestar cross-check, our 75% discount of Hunt Ortmann's purported lodestar assessed above is sufficient.

3. Conclusion Regarding Lodestar Cross-Check

Our review of class counsel's time records reveals that, were we to employ the lodestar method, we would have made several deductions to the claimed lodestar of $5,233,055.33. We would have discounted the lodestar due to block billing (excepting Manifold's hours), vagueness, inefficiencies in staffing, excess billing on certain matters, and billing for noncompensable tasks. For purposes of the

cross-check, a 25% across-the-board discount likely is sufficient to capture overbilling resulting from these problems. We also conclude that a 25% reduction of Landes's, Pollack's, and Godino's entries would be appropriate to adjust for their pervasive billing in whole and half-hour increments. Moreover, because Hunt Ortmann's participation appears to have been largely unnecessary, we consider 25% of its purported lodestar for purposes of the cross-check. Finally, Rifkin's billing for time spent traveling to Los Angeles for the Copyright Society meeting was not reasonable and would be deducted from his lodestar. Considering all of these deductions, a more reasonable lodestar is approximately $3.85 million.[11]

Accepting the $3.85 million figure as a rough, but reasonable, lodestar calculation for purposes of a cross-check, the requested fee award of $4.62 million yields a modest lodestar multiplier of 1.2. "Though the lodestar figure is presumptively reasonable, the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment. Foremost among these considerations, however, is the benefit obtained for the class." *In re Bluetooth*, 654 F.3d at 941-42 (internal citation and quotation marks omitted); *see also Vizcaino*, 290 F.3d at 1051 (affirming award of 3.65 multiplier given "the substantial risk class counsel faced, compounded by the litigation's duration and complexity"); *Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997) (noting that the considerations of "skill, quality, complexity and results" are usually "subsumed by the lodestar," but "in exceptional cases, quality of the representation and exceptional results can, in fact, warrant an adjustment to the lodestar"). "[M]ultiples ranging from one to four are frequently used in common fund cases when the lodestar method is applied." *Vizcaino*, 290 F.3d at 1051 n.6.

Given the unusually positive results achieved by the settlement, the highly complex nature of the action, the risk class counsel faced by taking this case on a contingency-fee basis, and the impressive skill and effort of counsel, we conclude that a 1.2 multiplier is warranted.[12] The lodestar cross-check serves only to further support an award of 33% of the $14 million common fund, or $4.62 million.

III. CONCLUSION

We **GRANT** Plaintiffs' fee request and award class counsel $4,620,000.00.

[11] We emphasize that we are not setting a precise lodestar and that "the lodestar cross-check does not trump the primary reliance on the percentage of common fund method." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005). Nonetheless, due to the various problems with the time records that we have identified, the $5,233,055.33 figure is excessive. Our adjusted calculation represents a more accurate and reasonable lodestar for cross-check purposes.

[12] Even if we accepted the lodestar proposed by Defendants, a maximum of $3,452,108, the requested fee award of $4.62 million represents a multiplier of only 1.34. As courts routinely award multipliers ranging from one to four, a multiplier of 1.34 is on the low end. The factors that favor a 1.2 multiplier similarly favor a 1.34 multiplier.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-4460-GHK (MRWx)	Date	August 16, 2016
Title	*Good Morning to You Productions Corp., et al. v. Warner/Chappell Music, Inc., et al.*		

IT IS SO ORDERED.

_____ : _____

Initials of Deputy Clerk PS