- 4. Throughout this action, Barnow and Associates and co-counsel have managed the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls and emails, working to avoid duplication of efforts and unnecessary work undertaken, and ensuring that the skills and talents of counsel were put to use in a manner that maximized what each firm and attorney could contribute in a non-redundant manner.
- 5. As explained herein, I believe the Settlement to be fair, reasonable, and adequate, and in the best interests of the Settlement Class.

MY FIRM'S LITIGATION EFFORTS AND WORK ON BEHALF OF THE CLASS

- 6. On December 29, 2021, Barnow and Associates and co-counsel at Ahdoot & Wolfson, PC, and Bendich, Stobaugh & Strong, P.C., filed a complaint against Sound Generations on behalf of Plaintiffs Richard Easter and Tristan Star and similarly situated individuals relating to the Sound Generations data breach. *Easter, et al. v. Sound Generations*, Case No. 21-2-16953-4 SEA.
- 7. My firm has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, my firm investigated potential legal claims (and potential defenses thereto) arising from Sound Generations' alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.
- 8. My firm has performed the following work on behalf of Plaintiffs and Class members (which is ongoing):
 - a. Diligently investigated the circumstances surrounding the Incident;
 - b. Articulated the nature of the Incident in a detailed complaint;
 - Stayed abreast of and analyzed reports, articles, and other public materials
 discussing the Incident and describing the challenged conduct;
 - d. Reviewed public statements concerning the Incident;

DECLARATION OF BEN BARNOW ISO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS - 2

- e. Researched Sound Generations' corporate structure;
- f. Fielded contacts from potential class members inquiring about this matter;
- g. Investigated the nature of the challenged conduct at issue here by interviewing potential clients;
- h. Investigated the adequacy of Plaintiffs to represent the putative class;
- i. Drafted and filed the original complaint against Sound Generations;
- j. Drafted and filed an opposition to Sound Generations' Motion to Dismiss;
- k. Attended mediation with Sound Generations in an all-day session and prepared for the mediation;
- Engaged in continued settlement negotiations after the mediation until the Settlement was achieved and finalized;
- m. Negotiated and memorialized the Settlement and all of its supporting documents in preparation for seeking preliminary approval from the Court;
- n. Drafted and successfully moved for preliminary approval of the Settlement; and
- o. Developed with the administrator and notice provider the class notice materials and claims forms.
- 9. In all phases of the litigation, Barnow and Associates stayed abreast of all material developments involving the Incident and had (and has) an ample understanding of the legal issues underlying Plaintiffs' and the Settlement Class's claims.
- 10. I believe the requested Service Awards in the amount of \$2,500 per Class Representative fairly reflect the work the Class Representatives have performed in assisting counsel with this litigation and their dedication in bringing this lawsuit on behalf of the Settlement Class.
- 11. The named Plaintiffs have been actively engaged in this litigation and were essential to the success achieved. Among other things, they came forward, provided information

to counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Settlement would not have been possible without the effort and commitment of Plaintiffs, who sacrificed their time and put their name on the line for the sake of the Class.

BARNOW AND ASSOCIATES HAS COMMITTED SIGNIFICANT EFFORTS AND RESOURCES TO THIS LITIGATION FOR THE BENEFIT OF THE CLASS

- 12. Barnow and Associates has expended 249.8 hours in this litigation through May 14, 2023, for a total lodestar of \$149,707.50.
- 13. Barnow and Associates' representation of the Class in this matter is on a wholly contingent basis. Barnow and Associates' fees were not guaranteed—the retainer agreements Barnow and Associates has with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. Barnow and Associates has devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that Barnow and Associates committed to the litigation of this case. As such, Barnow and Associates assumed a significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case. Moreover, Barnow and Associates was required to forego other financial opportunities to litigate this case.
- 14. Barnow and Associates attorneys who worked on this case maintained contemporaneous time records reflecting the work and time spent on all billable matters. In all instances, the Barnow and Associates timekeeper indicated the date and amount of time spent on a task to the tenth of an hour, described the work that was performed during the indicated time period, and identified the case to which the time should be billed.

15. Barnow and Associates' fee records accurately reflect work actually and reasonably performed in connection with the litigation of this matter. I believe that the hours spent reflect time spent reasonably litigating this case.

16. A summary of rates and hours expended by Barnow and Associates' attorneys, as of May 14, 2023, is set forth as follows:

Name	Title	Billable Rate	Billable Hours	Lodestar
Ben Barnow	Partner	\$1,050	33.4	\$35,070.00
Anthony L. Parkhill	Associate	\$725	77.7	\$56,332.50
Riley W. Prince	Associate	\$475	83.9	\$39,852.50
Nicholas W. Blue	Associate	\$300/\$4251	54.8	\$18,452.50
		TOTALS	249.8	\$149,707.50

17. These are the hourly rates my firm charges in similar matters, and these rates have been approved by state and federal courts in other contingent matters. See, e.g., In re BJC Healthcare Data Breach Litigation, No. 2022-CC09492 (Circuit Court of the City of St. Louis, Missouri Sep. 6, 2022) (approving fee award of \$790,000, which included Barnow and Associates' fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, and \$425/hour for Riley W. Prince); Yamagata v. Reckitt-Benckiser, LLC, 17-cv-03529, ECF No. 238 (N.D. Cal. Oct. 28, 2021) (awarding \$12,500,000 of reasonable attorneys' fees, costs, and expenses on the basis of evidence submitted, including time records for Ben Barnow (\$950/hr) and Anthony L. Parkhill (\$650/hr)); Brown-Davis v. Walgreen Co., 19-cv-05392, ECF No. 107 (N.D. Ill. Jan. 4, 2022) (approving a reasonable attorneys' fee award of \$4,583,333.33, which included Barnow and Associates, P.C.'s fees at rates of \$950/hr for Ben Barnow and \$650/hr for Anthony L. Parkhill).

18. Litigation is inherently unpredictable and risky. Here, that risk was very real due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law.

¹ Mr. Blue began working full time with the firm while his admission to the Illinois State Bar was pending, which reflects the \$300 rate. He was admitted to practice law in Illinois on November 17, 2022, reflecting the rate change to \$425.

- 19. Plaintiffs faced a determined adversary represented by experienced counsel, sophisticated legal issues and challenges, and resistance from Sound Generations at the outset of the litigation.
- 20. Therefore, despite Barnow and Associates' devotion to the case and its confidence in the claims alleged against Sound Generations, there have been many factors beyond our control that posed significant risks. Had Sound Generations prevailed on the merits, on class certification, or on appeal, Barnow and Associates might have recovered nothing for the time and expenses we invested in representing the Settlement Class.
 - 21. I believe that the time and resources expended by my firm were reasonable.
- 22. Barnow and Associates will continue to expend significant attorney time and resources given the future work still needed for completion of the Settlement, including: drafting and filing a motion for final approval, preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections, addressing any appeals, and working with Sound Generations and the Settlement Administrator on the distribution of benefits to the Settlement Class.

BARNOW AND ASSOCIATES' REASONABLE COSTS AND EXPENSES

23. To date, Barnow and Associates has incurred \$9,711.59 of litigation costs and expenses, as follows:

Description	Amount
Mediation Fees	\$9,393.08
Legal Research (PACER,	\$318.51
Lexis)	
Total	\$9,711.59

24. We advanced these out-of-pocket costs without assurance that they would be repaid. Each of these costs and expenses are documented, and in my opinion, were necessary and reasonable. This amount does not include internal and other additional costs that Barnow and Associates incurred in this litigation but, in an exercise of discretion, does not seek to recover.

BARNOW AND ASSOCIATES' FIRM EXPERIENCE

- 25. At all times, Barnow and Associates has/had the experience, expertise, and resources to effectively litigate any all issues related to this litigation.
- 26. I am nationally recognized for my experience in leading some of the nation's largest consumer class actions and have been recognized as a Titan of the Plaintiffs Bar.² As a court-appointed lead counsel or equivalent designation, I have successfully led over fifty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. This includes leading noteworthy privacy class actions where class settlements were achieved. Below is a brief description of some of the cases in which I served as a lead or co-lead counsel.
- 27. In Re: Sony Gaming Networks and Customer Data Security Breach Litigation, No. 11-md-2258 (N.D. Cal.). I was appointed to the Plaintiffs' Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, the Honorable Judge Anthony J. Battaglia remarked: "Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It's been a real pleasure dealing with you."
- 28. In Re: TJX Retail Security Breach Litigation, No. 1:07-cv-10162 (D. Mass). I served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of, inter alia, approximately 45 million credit and debit card numbers used at TJX stores. I took the lead in negotiating a settlement with TJX's attorneys. The

² See Sindhu Sundar, Law360, Titan of the Plaintiffs Bar: Ben Barnow (Oct. 8, 2014), https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow.

Honorable Judge Young granted final approval to the settlement, which he referred to as "excellent," and as containing "innovative" and "groundbreaking" elements.

- 29. In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation, No. 08-md-01998 (W.D. Ky.). I served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee's theft and sale of millions of Countrywide customers' private and confidential information. I negotiated the settlement that was granted final approval, making benefits available to approximately 17 million Settlement Class Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that "Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches," and stated that "the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process."
- 30. Lockwood v. Certegy Check Services, Inc., No. 8:07-cv-01434 (M.D. Fla.). I served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals' private and confidential information from Certegy Check Services, Inc.'s computer databases. I negotiated the settlement that was granted final approval. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a "good deal," providing "a real benefit to a large class of persons" as "the result of the focused attention of skilled counsel for a protracted time."
- 31. Rowe v. Unicare Life and Health Insurance Co., No. 1:09-cv-02286 (N.D. Ill.). I was Lead Counsel in this proceeding relating to the defendants' alleged failure to secure the private health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. I negotiated the settlement that was granted final approval. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

- 32. *In re: Zappos.com Inc. Customer Data Security Breach Litigation*, No. 12-cv-00325 (D. Nev.). I was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. I also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where I served as counsel of record for plaintiffs. After many years of litigation, I negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over \$7 million.
- 33. Hestrup, et al. v. DuPage Medical Group, Ltd., No. 2021L937 (Circuit Court of DuPage County, IL). I was appointed as one of Class Counsel in this medical data breach class action. I helped negotiate a settlement establishing a \$3 million cash fund for a class of approximately 655,000 persons. The settlement allowed for class members to select between reimbursement for damages incurred as a result of the data breach and alternative cash payments.
- 34. A copy of my firm's resume was submitted with Plaintiffs' Motion for Preliminary Approval and is incorporated by reference herein.
- 35. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Attorneys' Fees, Costs, Expenses, and Service Awards are reasonable, and that the Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of May, 2023, in Chicago, Illinois.

/s/ Ben Barnow
Ben Barnow