

1 THE HONORABLE JUDGE JAMES E. ROGERS  
2 HEARING DATE: July 14, 2023  
3 TIME: 10:00 AM  
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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR THE COUNTY OF KING**

9 RICHARD EASTER and TRISTEN STAR,  
10 individually and on behalf of all others  
11 similarly situated,

11 Plaintiffs,

12 v.

13 SOUND GENERATIONS,

14 Defendant.

Case No. 21-2-16953-4 SEA

15 **DECLARATION OF BEN BARNOW IN SUPPORT OF PLAINTIFFS’**  
16 **MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

17 I, Ben Barnow, hereby declare as follows:

18 1. I have personal knowledge of the facts stated herein, an adult, and am competent to  
19 so testify. I am one of counsel for Plaintiffs in this action. I am the President of Barnow and  
20 Associates, P.C. (“Barnow and Associates”), and a member in good standing of the bars of the  
21 states of Illinois and New York.

22 2. This Declaration is submitted in Support of Plaintiffs’ Motion for Attorneys’ Fees,  
23 Costs, Expenses, and Service Awards.

24 3. Barnow and Associates, along with co-counsel, have vigorously and zealously  
25 represented the interests of the Settlement Class from the inception of this litigation and continue  
26 to do so.



- 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;
- l. 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

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

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

7 12. Barnow and Associates has expended 249.8 hours in this litigation through May  
8 14, 2023, for a total lodestar of \$149,707.50.

9 13. Barnow and Associates' representation of the Class in this matter is on a wholly  
10 contingent basis. Barnow and Associates' fees were not guaranteed—the retainer agreements  
11 Barnow and Associates has with Plaintiffs do not provide for fees apart from those earned on a  
12 contingent basis, and, in the case of class settlement, approved by the Court. Barnow and  
13 Associates has devoted substantial resources to this matter, and we have received no payment for  
14 any of the hours of services performed or the out-of-pocket costs and expenses that Barnow and  
15 Associates committed to the litigation of this case. As such, Barnow and Associates assumed a  
16 significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to  
17 represent our clients and because of the public interest and social importance of this case.  
18 Moreover, Barnow and Associates was required to forego other financial opportunities to litigate  
19 this case.

20 14. Barnow and Associates attorneys who worked on this case maintained  
21 contemporaneous time records reflecting the work and time spent on all billable matters. In all  
22 instances, the Barnow and Associates timekeeper indicated the date and amount of time spent on  
23 a task to the tenth of an hour, described the work that was performed during the indicated time  
24 period, and identified the case to which the time should be billed.

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

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

<b>Name</b>	<b>Title</b>	<b>Billable Rate</b>	<b>Billable Hours</b>	<b>Lodestar</b>
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/\$425 <sup>1</sup>	54.8	\$18,452.50
		<b>TOTALS</b>	<b>249.8</b>	<b>\$149,707.50</b>

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11           17.     These are the hourly rates my firm charges in similar matters, and these rates have  
12 been approved by state and federal courts in other contingent matters. *See, e.g., In re BJC*  
13 *Healthcare Data Breach Litigation*, No. 2022-CC09492 (Circuit Court of the City of St. Louis,  
14 Missouri Sep. 6, 2022) (approving fee award of \$790,000, which included Barnow and Associates'  
15 fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, and \$425/hour  
16 for Riley W. Prince); *Yamagata v. Reckitt-Benckiser, LLC*, 17-cv-03529, ECF No. 238 (N.D. Cal.  
17 Oct. 28, 2021) (awarding \$12,500,000 of reasonable attorneys' fees, costs, and expenses on the  
18 basis of evidence submitted, including time records for Ben Barnow (\$950/hr) and Anthony L.  
19 Parkhill (\$650/hr)); *Brown-Davis v. Walgreen Co.*, 19-cv-05392, ECF No. 107 (N.D. Ill. Jan. 4,  
20 2022) (approving a reasonable attorneys' fee award of \$4,583,333.33, which included Barnow and  
21 Associates, P.C.'s fees at rates of \$950/hr for Ben Barnow and \$650/hr for Anthony L. Parkhill).

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

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

1 19. Plaintiffs faced a determined adversary represented by experienced counsel,  
2 sophisticated legal issues and challenges, and resistance from Sound Generations at the outset of  
3 the litigation.

4 20. Therefore, despite Barnow and Associates' devotion to the case and its confidence  
5 in the claims alleged against Sound Generations, there have been many factors beyond our control  
6 that posed significant risks. Had Sound Generations prevailed on the merits, on class certification,  
7 or on appeal, Barnow and Associates might have recovered nothing for the time and expenses we  
8 invested in representing the Settlement Class.

9 21. I believe that the time and resources expended by my firm were reasonable.

10 22. Barnow and Associates will continue to expend significant attorney time and  
11 resources given the future work still needed for completion of the Settlement, including: drafting  
12 and filing a motion for final approval, preparing for and attending the final approval hearing,  
13 responding to Class Member inquiries or challenges, responding to any requests for exclusion or  
14 objections, addressing any appeals, and working with Sound Generations and the Settlement  
15 Administrator on the distribution of benefits to the Settlement Class.

16 **BARNOW AND ASSOCIATES' REASONABLE COSTS AND EXPENSES**

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

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

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22 24. We advanced these out-of-pocket costs without assurance that they would be  
23 repaid. Each of these costs and expenses are documented, and in my opinion, were necessary and  
24 reasonable. This amount does not include internal and other additional costs that Barnow and  
25 Associates incurred in this litigation but, in an exercise of discretion, does not seek to recover.  
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1 Honorable Judge Young granted final approval to the settlement, which he referred to as  
2 “excellent,” and as containing “innovative” and “groundbreaking” elements.

3 29. *In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation*, No. 08-  
4 md-01998 (W.D. Ky.). I served as one of Co-Lead Settlement Class Counsel in this forty-case  
5 MDL proceeding relating to a former Countrywide employee’s theft and sale of millions of  
6 Countrywide customers’ private and confidential information. I negotiated the settlement that was  
7 granted final approval, making benefits available to approximately 17 million Settlement Class  
8 Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge  
9 Russell noted that “Co-Lead Settlement Counsel are nationally recognized in the field of class  
10 actions, particularly those involving security breaches,” and stated that “the Court was impressed  
11 with Co-Lead Counsel and Countrywide counsels’ knowledge and skill, as represented in the  
12 various motions and hearings that took place throughout this settlement process.”

13 30. *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-cv-01434 (M.D. Fla.). I served  
14 as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft  
15 of approximately 37 million individuals’ private and confidential information from Certegy Check  
16 Services, Inc.’s computer databases. I negotiated the settlement that was granted final approval.  
17 At the final fairness hearing, the Honorable Judge Merryday described the settlement as a “good  
18 deal,” providing “a real benefit to a large class of persons” as “the result of the focused attention  
19 of skilled counsel for a protracted time.”

20 31. *Rowe v. Unicare Life and Health Insurance Co.*, No. 1:09-cv-02286 (N.D. Ill.). I  
21 was Lead Counsel in this proceeding relating to the defendants’ alleged failure to secure the private  
22 health information of approximately 220,000 individuals enrolled in the defendants’ health  
23 insurance plans, resulting in such information being accessible to the public via the Internet. I  
24 negotiated the settlement that was granted final approval. At the preliminary approval hearing, the  
25 Honorable Judge Hibbler described the efforts of the parties as “exemplary.”  
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