

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT

ELAINE LAFRATTA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00106  
(Lead Case)

**Consolidated With:**

CHRISTIAN DONNER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00108

**-and-**

EVAN WEISENFELD, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00110

**DECLARATION OF BEN BARNOW IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS, EXPENSES, AND A SERVICE AWARD**

I, Ben Barnow, declare as follows:

1. I am licensed to practice in the States of Illinois and New York and I am counsel for Plaintiff Elaine LaFratta in the above-captioned matter. I am the president of Barnow and Associates, P.C. (“Barnow and Associates”).

2. I have personal knowledge of the facts stated herein. If called upon to do so, I could and would competently testify thereto.

3. I submit this Declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, Expenses, and a Service Award.

4. I understand the duties imposed upon class counsel in consumer class actions and have proven adept at all phases of such litigation.

#### **BARNOW AND ASSOCIATES, P.C.’S EXPERIENCE**

5. Barnow and Associates has (and had) the experience, expertise, and resources to effectively litigate any and all issues related to this litigation.

6. After years of leadership in other areas, such as representing advertising and PR companies as an outside general counsel, construction companies, banks, and other companies, I turned to a practice of class actions. I have been pursuing class actions for plaintiffs and class members for close to 30 years and have been recognized as a Titan of the Plaintiffs Bar.<sup>1</sup> I have proven to be a leader in class action cases and law. *See, e.g., Schwab v. America Online, Inc. (America Online Access Litigation)*, No. 96 CH 13732 (Cir. Ct. of Cook Cty., IL) (organizing over 50 law firms and setting up the co-chairmanship and the Executive Committee, which allowed for resolution of the case); *In re: Chicago Flood Litig.*, Nos. 1-98-0593, 1-98-2326, 1-98-2364, 1-98-

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<sup>1</sup> *See* Sindhu Sundar, *Titan of the Plaintiffs Bar: Ben Barnow*, LAW360 (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow>.

2589, 1-98-2664 Cons.(appointed as one of co-lead class counsel and a member of the executive committee and argued a portion of the case at the Supreme Court); *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:15-cv-2171 (C.D. Cal.) (serving as one of co-lead counsel and achieving a settlement valued at \$3.4 billion). Overall, I have led over 50 class actions, including MDLs.

7. I am a leader in the data breach class action area, crafting valuable settlements for class members. In *Cochran v. Kroger Co.*, No. 5:21-cv-01887-EJD (N.D. Cal.), I took a leading role as a Co-Lead Settlement Class Counsel, involving a data breach affecting Kroger approximately 3.8 million customers and employees. The settlement, which created a \$5,000,000 non-reversionary common fund, was granted final approval and no appeals were filed. In *Hestrup v. DuPage Medical Group, Ltd.*, No. 2021L937 (Cir. Ct. DuPage Cnty., Ill.), I served as one of class counsel and negotiated a finally-approved settlement that made benefits available to the settlement class of approximately 655,383 persons. I was appointed as one of class counsel in *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Mass. Super. Ct. – Worcester), a medical data breach class action, where he negotiated a settlement creating a \$1,200,000 fund for approximately 209,000 class members. In *Keefer v. Fulton Bank, N.A.*, No. 1:23-md-03056 (N.D. Ga.), I served as Settlement Class Counsel and obtained a settlement on behalf of the class that created a \$750,000 fund for approximately 111,663 persons. In *In re Afni, Inc. Data Breach Litigation*, No. 1:22-cv-01287 (C.D. Ill.), I was appointed as one of Settlement Class Counsel and helped negotiate a settlement that created a fund of \$1,850,000 for approximately 261,449 class members. I also served as one of Settlement Class Counsel in *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty, Utah), which established a settlement fund of \$2,100,000 for approximately 583,642 class members.

8. A copy of my firm's resume, which further details my firm's and my experience, is attached hereto as Exhibit A.

**BARNOW AND ASSOCIATES, P.C.'S EFFORTS ON BEHALF OF THE CLASS**

9. My firm has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from Defendant Medical Healthcare Solutions, Inc.'s ("MHS") failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

10. My firm has performed the following work on behalf of Plaintiff and Class members:

- a. Diligently investigated the circumstances surrounding the Data Breach;
- b. Set forth the nature of the Data Breach in a detailed complaint;
- c. Stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Breach;
- d. Reviewed public statements concerning the Data Breach;
- e. Investigated the nature of the challenged conduct at issue here by interviewing potential clients who contacted Barnow and Associates;
- f. Propounded requests for production and interrogatories on MHS;
- g. Attended mediation with MHS and McCormack Consultants, Inc. ("MCI") in an all-day session and extensively prepared for the mediation;
- h. Engaged in weeks of continued settlement negotiations until the Settlement was finalized;
- i. Communicated and conferred with co-counsel regarding the strategy and

administration of the litigation; and

- j. Worked with the Settlement Administrator to finalize the notice documents and settlement website.

11. There is substantial additional work to be done in connection with the settlement and settlement approval, including preparation of papers in support of final settlement approval, appearance at the final settlement approval hearing, and additional communications with the settlement administrator and class members regarding questions and issues relating to claims and the claims process.

**BARNOW AND ASSOCIATES, P.C.'S FEES, COSTS, AND EXPENSES**

12. Barnow and Associates has expended 197.1 hours in this litigation through December 20, 2023, for a total lodestar of \$128,552.50.

13. 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.

14. My firm's work on this matter was on a wholly contingent basis.

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, through December 20, 2023, is set forth as follows:

<b>Professional</b>	<b>Title</b>	<b>Billable Rate</b>	<b>Billable Hours</b>	<b>Billable Fees</b>
Ben Barnow	President	\$1,050	27.3	\$28,665.00
Anthony L. Parkhill	Associate	\$725	79.6	\$57,710.00
Riley W. Prince	Associate	\$475	77.1	\$36,622.50
Nicholas W. Blue	Associate	\$300/\$425 <sup>2</sup>	13.1	\$5,555.00
<b>TOTALS:</b>			<b>197.1</b>	<b>\$128,552.50</b>

17. These hourly rates are the current usual and customary rates set by my firm and used in all current litigation matters. These rates have been approved in cases in courts across the country. *See, e.g., Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty., Utah) (approving a fee award of \$700,000 which included Barnow and Associates' lodestar at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, \$475/hour for Riley W. Prince, and \$300/\$425 for Nicholas W. Blue); *Kesner v. UMass Mem'l Health Care, Inc.*, No. 2185 CV 01210 (Worcester Cnty., Mass. May 25, 2023) (approving Barnow and Associates' lodestar at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, \$475/hour for Riley W. Prince, and \$300/\$425 for Nicholas W. Blue); *Kostka v. Dickey's Barbecue Rests., Inc.*, 2023 U.S. Dist. LEXIS 110058, \*11 (N.D. Tex. June 6, 2023) (approving a fee award for plaintiffs' counsel, including Barnow and Associates' rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, \$475/hour for Riley W. Prince, and \$425 for Nicholas W. Blue); *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

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<sup>2</sup> Nicholas Blue worked at Barnow and Associates, P.C. prior to being admitted to the Illinois State Bar. The lesser rate reflects his rate after taking the bar exam, but prior to being admitted to the bar.

of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, and \$425/hour for Riley W. Prince).

18. As of December 20, 2023, Barnow and Associates has incurred \$6,094.16 of litigation costs and expenses, as follows:


<b>Description</b>	<b>Amount</b>
Electronic Research (PACER, LEXIS)	\$58.05
Case-Related Travel Expenses; Meals	\$2,830.65
Attorney Admission Fees	\$1,065.00
Conference Call Charges	\$15.46
Mediation Fees	\$2,125.00
<b>Total</b>	<b>\$6,094.16</b>

19. Barnow and Associates 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.

20. Plaintiff assisted in the prosecution of this action by conferring with counsel concerning the Data Breach, providing relevant information to counsel, reviewing pleadings and other documents in the case, and generally fulfilling the duties and obligations of a class representative.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed at Chicago, Illinois on December 22, 2023.

  
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Ben Barnow

# **Exhibit A**



**BEN BARNOW**  
**BARNOW AND ASSOCIATES**  
*a professional corporation*  
ATTORNEYS AT LAW

Ben Barnow is nationally recognized for his experience in leading some of the nation's largest class actions. In that capacity, he has successfully led the prosecution of a number of large-scale class actions relating to consumer data security breaches, consumer protection issues, and antitrust violations. He has been appointed to and served in leadership positions in cases throughout the nation, in both state and federal courts, including MDL proceedings. His efforts have delivered resolutions in numerous significant cases, including cases against America Online, DaimlerChrysler, McDonald's, Microsoft, Shell Oil, Sony, TJX, and Toyota.

Ben Barnow graduated from the University of Wisconsin in 1966 with a Bachelor's degree in Business Administration. He received his Juris Doctor from the University of Michigan Law School in 1969. He is licensed to practice in the State of Illinois and the State of New York. Mr. Barnow is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the First, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the Central District of Illinois, the District of Colorado, the Eastern District of Wisconsin, the Western District of Wisconsin, and the Eastern District of Michigan. He is a member of the American Bar Association, the American Association for Justice, the Illinois State Bar Association, and the Chicago Bar Association. He has also served as a member of the Panel of Arbitrators of the American Arbitration Association. He is listed in Martindale-Hubbell with an AV rating.

During his over fifty-year legal career, Ben Barnow has represented both plaintiffs and defendants in many types of litigation and has engaged in significant transactional work. He was General Counsel to one of the world's largest public relations agencies and presided as chairman of certain of its retirement trusts. Ben Barnow was an Associate Professor at Northern Michigan University from 1969- 1971, where he taught business law and unfair competition. Mr. Barnow joined the law firm of Herrick, McNeill, McElroy & Peregrine in July 1971, where he became a partner in 1977.

As part of a series of articles by Law360 featuring notable plaintiff attorneys, Ben Barnow was recognized as a Titan of the Plaintiffs Bar, and Barnow and Associates, P.C. "a plaintiffs' class action outfit known for winning big-time antitrust and data breach settlements." Sindhu Sundar, Titan of the Plaintiffs Bar: Ben Barnow, Law360 (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow> (last visited June 3, 2019).

## Selected Cases

### Data Security Breach Cases

***In re Afni, Inc. Data Breach Litigation.*** Ben Barnow served as one of Settlement Class Counsel and helped craft a settlement that made available a non-reversionary common fund of \$1,850,000 for approximately 261,449 class members. The settlement allowed class members to select between either reimbursement for damages incurred as a result of the data breach and credit monitoring services or alternative cash payments.

***Keefer v. Fulton Bank, N.A.*** Ben Barnow was appointed as Class Counsel with respect to Fulton Bank class members in this class action involving a data breach affecting a class of approximately 111,663 persons. He negotiated a settlement that created a \$750,000 non-reversionary common fund, out of which Settlement Class Members could claim certain benefits.

***Lukens v. Utah Imaging Associates, Inc.*** Appointed as one of Settlement Class Counsel, Ben Barnow crafted a settlement that made available a non-reversionary common fund of \$2,100,000 for approximately 583,642 class members. The settlement allowed class members to select between either reimbursement for damages incurred as a result of the data breach and credit monitoring services or alternative cash payments.

***Kesner v. UMass Memorial Health Care, Inc.*** Serving as one of Settlement Class Counsel in this class action relating to a data breach that affected the personally identifiable information and personal health information of 209,000 persons, Ben Barnow helped create a fund of \$1,200,000 that allowed class members to select between a cash payment or reimbursement for lost expenses and time and credit monitoring services.

***Easter v. Sound Generations.*** Ben Barnow was appointed as class counsel and crafted a settlement that made available cash payments, credit monitoring, and reimbursements for expenses and lost time dealing with the data incident for approximately 600,605 persons. The settlement provided a \$100,000 fund for class members whose Social Security numbers were affected in the data breach that was in addition to the other benefits provided under the settlement.

***Kostka v. Dickey's Barbecue Restaurants, Inc.*** Appointed as one of class counsel in this data breach affecting approximately 725,000 Dickey's customers, Ben Barnow helped negotiate a settlement that created a \$2,350,000 common fund. The settlement allowed class members to select between a cash payment or credit monitoring services.

***McCullough v. True Health New Mexico, Inc.*** Ben Barnow served as one of Class Counsel in this class action involving a medical data breach affecting a class of over 62,982 persons. Ben Barnow negotiated a settlement that allows class members to claim reimbursements for lost time and expenses that arose as a result of the data breach and obtain two years of credit monitoring and insurance services.

***Cochran v. Kroger Co.*** Ben Barnow took a leading role in this litigation against Kroger involving a data breach of Accellion's File Transfer Appliance affecting a class of Kroger customers and

employees. He was instrumental in negotiating a settlement that made benefits of \$5 million available to the settlement class. He was appointed as one of Class Counsel and the Settlement was finally approved.

***Hestrup, et al. v. DuPage Medical Group, Ltd.*** Ben Barnow was appointed as one of Class Counsel in this medical data breach class action. He helped negotiate a settlement establishing a \$3 million 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.

***Lozano v. CodeMetro, Inc.*** Serving as Co-Lead Settlement Class Counsel in a case relating to a data breach of a medical industry business service provider, Ben Barnow secured a settlement making benefits of \$850,000 available to the class of approximately 98,700 persons. The plaintiff's claims against the defendant included claims for violations of the California Consumer Privacy Act and the California Confidentiality of Medical Information Act, claims that have only become more important in data breach litigation since.

***In re BJC Healthcare Data Breach Litig.*** Ben Barnow served as Class Counsel in an action involving a medical data breach affecting a class of over 280,000 persons. Ben Barnow played a central role in negotiating a settlement allowing class members to claim reimbursements for certain expenses that arose as a result of the data breach.

***In re: Zappos.com Inc. Customer Data Security Breach Litigation.*** Ben Barnow 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. He also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where he served as counsel of record for plaintiffs. After many years of litigation, he negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over \$5 million.

***In Re: Sony Gaming Networks and Customer Data Security Breach Litigation, MDL No. 2258.*** The Honorable Anthony J. Battaglia appointed Ben Barnow 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 in the United States and Canada. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, Judge 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."

***In Re: TJX Retail Security Breach Litigation, MDL No. 1838.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. Mr. Barnow took the lead in negotiating a settlement with TJX's attorneys that made available benefits valued at over \$200 million to the Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as "excellent," and as containing "innovative" and "groundbreaking" elements.

***In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation, MDL No. 1998.*** Ben Barnow 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. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$650 million 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."

***In Re: Heartland Payment Systems Inc., Data Security Breach Litigation, MDL No. 2046.*** Ben Barnow served as one of Co-Lead Counsel for the Consumer Track in this MDL proceeding relating to what, at the time, was reported as one of the largest data security breaches in history. Mr. Barnow negotiated a settlement on behalf of a Settlement Class that is estimated to include more than 120 million members. Notice of the settlement was completed and only one objection was received. Final approval of the settlement was granted.

***Winstead v. ComplyRight, Inc.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of approximately 665,000 individuals' private and confidential information (including Social Security numbers) from ComplyRight, Inc.'s web portal. Mr. Barnow and his Co-Lead Settlement Class Counsel negotiated a settlement that included the creation of a \$3,025,000 settlement fund and which allowed Settlement Class members to claim, at their selection, a cash payment, a protection plan option, or reimbursement of up to \$200 in documented and unreimbursed out-of-pocket expenses incurred as a result of the Data Breach. Final approval of the settlement was granted.

***Lockwood v. Certegy Check Services, Inc.*** Ben Barnow 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. Mr. Barnow organized all plaintiffs' counsel and pending cases without the benefit of an MDL and negotiated a settlement that was granted final approval, making benefits valued at over \$500 million available to Settlement Class Members. 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."

***McGann v. Schnuck Markets, Inc.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of the credit and debit card information of an estimated 777,000 individuals from point-of-sale terminals at affected Schnucks stores. Mr. Barnow negotiated a settlement that has been granted final approval, making significant benefits available to the Settlement Class.

***Rowe v. Unicare Life and Health Insurance Co.*** Ben Barnow 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. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$20 million available to Settlement Class Members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

***Orr v. InterContinental Hotels Group, PLC.*** Ben Barnow was appointed as one of Lead Class Counsel in this payment card data breach litigation. He successfully negotiated a class settlement providing a claim process for Class Members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of \$1.55 million. The settlement was granted final approval.

***Perdue v. Hy-Vee, Inc.*** Ben Barnow served as one of Co-Lead Class Counsel in this payment card data breach case. His work with other Plaintiffs' counsel was instrumental in securing a settlement that made reimbursements available to class members. In addition, the defendant committed no less than \$20 million to maintaining data security enhancements.

### **Deceptive Trade Practices and Other Consumer Protection Cases**

***In re: 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation.*** Ben Barnow was appointed as one of Co-Lead Counsel in this MDL relating to multiple retailers' parmesan cheese labels which advertised the products as "100% Grated Parmesan Cheese" even though the products contained substances other than parmesan cheese. Following the district court's dismissal of plaintiffs' deceptive labeling claims, Mr. Barnow and his co-counsel appealed the decision to the Seventh Circuit. The Seventh Circuit overturned the district court's order, finding that a reasonable consumer could believe that the phrase "100% Grated Parmesan Cheese" means that the product was 100% cheese. The Seventh Circuit's opinion has become one of the most important decisions in the deceptive labeling practices litigation area.

***Gann v. Nissan North America, Inc.*** Ben Barnow served as one of Class Counsel in this case regarding defective continuously variable transmissions on 1.4 million 2013–2016 Nissan Altima vehicles. After successfully defeating Nissan's motions to dismiss the litigation in two separate courts, he negotiated a settlement providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over \$444 million.

***Warner v. Toyota Motor Sales, U.S.A., Inc.*** Ben Barnow served as one of Co-Lead Counsel in this litigation regarding claims of excessive frame rust to certain Toyota vehicles, yielding a recent landmark settlement estimated at \$3.4 billion. Under the settlement, owners of 2005–2010 Toyota Tacoma, 2007–2008 Toyota Tundra, and 2005–2008 Toyota Sequoia vehicles are eligible for free frame inspections for a period of twelve years from the date the vehicle was originally sold or leased, or one year from the date of the Final Order and Judgment, whichever is longer. Vehicles that exhibit excessive frame rust are eligible for a free frame replacement.

***Rafofsky v. Nissan North America, Inc.*** Ben Barnow served as Class Counsel in this litigation regarding the failure to timely deliver certain advertised infotainment apps on 2014 Infiniti Q50s.

Class Counsel achieved a settlement in which class members could file claims for cash worth up to \$85 or for vouchers to purchase of a new Infiniti vehicle worth up to \$1,250.

***Palace v. DaimlerChrysler Corp.*** Ben Barnow was one of Co-Lead Class Counsel in this litigation relating to the defendant's sale of Neons containing allegedly defective head gaskets. After several years of litigation, a settlement was granted final approval, making up to \$8.25 million available to Class members for reimbursement of repair costs and other expenses.

***Schulte v. Fifth Third Bank.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to allegations that the defendant unlawfully re-sequenced debit card transactions in order to maximize overdraft fees. In this capacity, he negotiated a settlement with Defendant's counsel providing for the establishment of a \$9.5 million settlement fund and including substantial injunctive relief, the present value of which Plaintiffs' expert estimated to be approximately \$58.8 million over five years and \$108.3 million over ten years. The settlement has been granted final approval.

***Schwab v. America Online, Inc. (America Online Access Litigation).*** Ben Barnow served as Class Counsel and Co-Chair in this highly publicized litigation relating to AOL's representation that users would have unlimited access to AOL for \$19.95/month and the connectivity problems that ensued in conjunction therewith. In the face of what was ultimately over one hundred class actions filed nationwide, Mr. Barnow organized over 50 law firms and set up the co-chairmanship and the Executive Committee, which brought order and resolution to this litigation. A settlement was reached and was granted final approval, resulting in a multi-million-dollar benefit to a Class estimated to include over 8 million people.

***Miner v. Philip Morris USA, Inc.*** Ben Barnow served as one of Class Counsel in this litigation concerning Philip Morris USA, Inc.'s practice of marketing and selling its Marlboro Lights and Marlboro Ultra-Lights cigarettes as less harmful to smoke than regular cigarettes when, in fact, they were not. A settlement was reached and granted final approval, providing for Philip Morris's payment of \$45 million into an escrow account for the benefit of Class members.

***Boland v. McDonald's Corp. (McDonald's Sweepstakes Litigation).*** As Co-Lead Class Counsel in this litigation, Ben Barnow coordinated the efforts of approximately 25 plaintiffs' firms. The litigation concerned certain McDonald's promotional games and arose from the fraudulent removal of winning game pieces from random public distribution. Mr. Barnow developed and accomplished the settlement concept; to wit, for a chance lost, a chance would be given. The settlement, valued at approximately \$20 million, included fifteen \$1 million prizes given away by random selection. The settlement included the United States and nine other countries.

***Campos v. Calumet Transload R.R., LLC.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this litigation relating to the defendants' alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities in Chicago, Illinois. Two settlements were reached which collectively provided for the payment of \$1,455,000 for the benefit of Settlement Class members. The settlements were granted final approval.

***Fernandez v. Vitamin Shoppe Industries, Inc.*** Ben Barnow served as Co-Lead Counsel in this national class action that settled, resulting in injunctive relief regarding labeling practices, and additional relief by way of discount coupons and cy pres relief to appropriate charities.

***Gianopolous v. Interstate Brand Corp. and Interstate Bakeries Corp.*** Ben Barnow was appointed one of Class Counsel in this litigation concerning allegedly adulterated bakery goods. A settlement was reached and granted final approval, making valuable relief available to consumers.

***Glenz v. RCI, LLC.*** Ben Barnow served as one of three Class Counsel in this litigation involving the RCI Points program and allegations of improper use of points by RCI. The settlement made available cash benefits of approximately \$19 million to members of the Settlement Class and included substantial injunctive relief. Final approval of the settlement has been granted.

***Heilman v. Perfection Corp.*** Ben Barnow served as Co-Lead Class Counsel in this national class action concerning allegedly defective dip tubes in over 14.2 million hot water tanks sold throughout the United States. In this capacity, Mr. Barnow organized twenty-three law firms and oversaw numerous filings in bringing about a national unified settlement that provided for a 100% recovery of out-of-pocket expenses and requisite repairs, including preventive replacement of all concerned dip tubes, whether or not the dip tubes had actually failed.

***In Re: Chicago Flood Litigation.*** As Co-Lead Class Counsel and a member of the Executive Committee, Ben Barnow was responsible for several major aspects of this class action, which included years of litigation, appellate practice, trial, and a multi-million-dollar settlement. Mr. Barnow argued a related portion of the matter before the Supreme Court of the United States, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), and was responsible for preparing the petition for a writ of certiorari and all related filings. At the Supreme Court level, opposing counsel was John Roberts, who now sits as Chief Justice of the Supreme Court of the United States.

***In Re: High Sulfur Content Gasoline Products Liability Litigation, MDL No. 1632 (“Shell Oil”).*** Ben Barnow served as Co-Lead Settlement Class Counsel in this 26-case MDL proceeding relating to the defendant’s alleged sale of defective gasoline. A settlement was reached and was granted final approval, resulting in approximately \$100 million being made available towards the satisfaction of consumers’ claims.

***In Re: Mercury Class Action Litigation.*** Ben Barnow served as Co-Lead Class Counsel in this case relating to the location of mercury-containing gas regulators in and on real estate. A settlement was reached and granted final approval that provided for medical monitoring, removal of the regulators, and cash compensation to certain class members.

***In Re: M3Power Marketing Practices Litigation, MDL No. 1704.*** Ben Barnow was appointed Co-Lead Class Counsel in this MDL proceeding relating to the defendant’s allegedly deceptive marketing and sale of M3Power shaving razors. A settlement was reached and granted final approval, making available benefits of more than \$7 million to Class members.

***In Re: Pilot Flying J Fuel Rebate Contract Litigation.*** Ben Barnow served as one of Settlement Class Counsel in this litigation involving allegations that the defendants withheld portions of fuel

discounts and rebates that Class members were contractually entitled to receive in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (“RICO”), and various state laws. The settlement was granted final approval.

***In Re: Starlink Corn Products Liability Litigation, MDL No. 1403.*** Ben Barnow served as Co-Lead Class Counsel in this MDL proceeding relating to the alleged inclusion of genetically engineered corn in the defendants’ food products. A settlement was reached, valued at \$9 million, including the return of up to \$6 million to consumers on a fluid recovery/cy pres basis through price reduction on future purchases coupled with a cash payment to approved charities based on shortfall in the redemption.

***In Re: United Parcel Service, Inc., Shipper Excess Value Insurance Coverage Litigation.*** Ben Barnow was one of Settlement Class Counsel in this litigation. A settlement was reached and granted final approval, providing relief to UPS shippers who had paid premiums for excess value insurance coverage.

***Ori v. Fifth Third Bank.*** Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to inactive mortgage loans that were erroneously reported as active to Consumer Credit Reporting Agencies. The Settlement Class included approximately 55,000 individuals, and the settlement made available cash benefits of approximately \$3,000,000 to members of the Settlement Class. Final approval of the settlement has been granted.

***Orrick v. Sonic Communications.*** Ben Barnow was one of Lead Class Counsel in this matter relating to the practice known as “slamming.” The private actions and actions filed on behalf of various Attorneys General were consolidated. A settlement covering all of the pending cases and providing benefits of approximately \$8.3 million was achieved and granted final approval. This litigation is believed to be the first class certification and settlement relating to the practice known as “slamming.”

***Rosen v. Ingersoll-Rand Co., Kryptonite Corp.*** Ben Barnow was Co-Lead Class Counsel in this matter relating to allegedly defective bicycle locks. Mr. Barnow organized 18 U.S. and Canadian law firms and negotiated a settlement on behalf of Class members in the U.S. and Canada. The settlement was granted final approval, providing valuable relief to purchasers of the allegedly defective U-shaped tubular cylinder bicycle locks in the U. S. and Canada.

***Schneider v. Dominick’s Finer Foods, Inc.*** Ben Barnow was Co-Class Counsel in this matter relating to the defendant’s alleged failure to deliver on representations of 100% ground beef. A settlement was reached and granted final approval, which included significant remedial relief in the form of shop signage regarding cleanliness and meat grinding practices, and fluid recovery mechanisms to compensate the class members by way of in-store sales and published coupons.

***Schwab v. Binney & Smith.*** Ben Barnow served as Co-Lead Class Counsel in this case relating to crayons that were produced for decades with talc, which allegedly contained, or was subject to containing, asbestos. Mr. Barnow negotiated a national class settlement that contributed to the reformulation of most crayons produced in this country, so as to eliminate the inclusion of talc



and, thus, the alleged asbestos inclusion, and the settlement was granted final approval. This represented one of the largest classes ever certified, if not the largest.

***Siegel v. Synchronys.*** Ben Barnow was Co-Class Counsel in this nationwide class action concerning an allegedly defective computer product. The matter was settled, resulting in a remedy for the Class that provided for a 100% reimbursement on moneys spent for the product; the value of the settlement was estimated at \$22 million.

***Smith v. J.M. Smucker Co.*** Ben Barnow was Class Counsel in this litigation relating to allegedly deceptive advertising practices. Mr. Barnow negotiated a national settlement and organized a group of plaintiffs' counsel from over 25 firms throughout the country who supported the settlement. The settlement was granted final approval, making available valuable relief to consumers of spreadable fruit products labeled "Simply 100% Fruit," including a change of labeling practices by the defendant, which added and maintained the following language, in prominent fashion, on the front label of its Simply 100% Fruit products: "Sweetened with fruit syrup from apple, pineapple or pear juice concentrate," thus fairly and fully advising consumers of the product they were purchasing.

***Stelk v. BeMusic, Inc.*** Ben Barnow served as Co-Lead Class Counsel in this litigation relating to charges for shipping and handling in the context of a "free" offer. The Class included an estimated 16 million members. A settlement was reached and granted final approval providing substantial relief to Class members, including a guaranteed minimum of \$8 million.

### **Antitrust Cases**

***Wisconsin Civil Microsoft Antitrust Litigation.*** Ben Barnow served as one of Co- Lead Class Counsel in this indirect purchaser antitrust lawsuit. Mr. Barnow and his co-counsel successfully petitioned the Wisconsin Supreme Court to recognize the rights of indirect purchasers to recover under Wisconsin's antitrust laws. *Olstad v. Microsoft Corp.*, 700 N.W.2d 139 (Wis. 2005). Subsequently thereto, Mr. Barnow negotiated a settlement valued at approximately \$224 million that was granted final approval.

***Arkansas, Kansas, South Dakota Civil Microsoft Antitrust Litigations.*** Ben Barnow served as a Co-Lead Class Counsel in the Arkansas, Kansas, and South Dakota Microsoft civil antitrust cases. Each of these cases settled, and the settlements were granted final approval.

***Microsoft Civil Antitrust Litigation, MDL No. 1332.*** Ben Barnow served as a member of the nine-member Plaintiffs' Lead Counsel Committee in this MDL antitrust proceeding before Judge Motz in the United States District Court for the District of Maryland.

***Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*** Ben Barnow served as a Co-Lead Counsel for third-party payor plaintiffs in this antitrust action where settlements were reached and finally approved collectively providing for the payment of \$9,850,000 for the benefit of the Settlement Class.

***Loeb Industries, Inc. v. Sumitomo Corp.*** Ben Barnow served as Co-Lead Counsel in this nationwide antitrust class action, which sought recovery on behalf of scrap copper purchasers who were allegedly harmed by activities designed to manipulate the copper market. A \$20 million cash settlement with one of the defendants (Merrill Lynch) was reached.

***Vichreva v. Cabot Corp.*** Ben Barnow served as Co-Lead Counsel in this Florida antitrust litigation. An \$825,500 common fund, which is believed to be the largest per-consumer Carbon Black state court antitrust class action settlement in the country, was obtained.

### **Public Speaking Engagements**

1. HarrisMartin’s Equifax Data Breach Litigation Conference (Atlanta, GA, Nov. 10, 2017), topic: “Settlements” (Program Co-Chair)
2. Bridgeport Continuing Education’s 2016 Class Action Litigation & Management Conference (Los Angeles, CA, Apr. 15, 2016) (Program Co-Chair)
3. HarrisMartin’s Data Breach Litigation Conference: The Coming of Age (San Diego, CA, Mar. 25, 2015), topic: “Creative Approaches to Settling Data Breach Cases.”
4. Bridgeport Continuing Education’s 2014 National Consumer Class Action Conference (Chicago, IL, Jun. 12-13, 2014); topic: “Privacy/TCPA Class Actions: State of the Law, Claims and Defenses, What Does the Future Hold?”
5. HarrisMartin’s MDL Conference: Target Data Security Breach Litigation (San Diego, CA, Mar. 26, 2014); topic: “Settlement of a Data Breach Case.”
6. NetDiligence Cyber Risk & Privacy Liability Forum (Marina del Rey, CA, Oct. 11–12, 2012).
7. 25th Annual Producer Conference (Stowe, VT, Sept. 10–12, 2012); topic: “Cyber 2.0—The Evolution of Cyber in the Boardroom.”
8. NetDiligence 2012 Cyber Risk & Privacy Liability Forum (Philadelphia, PA, June 4–5, 2012); topic: “State of the Cyber Nation—Cases, Theories, and Damages.”
9. Tulane University Law School’s symposium on The Problem of Multidistrict Litigation (February 15–16, 2008); topic: “The Practicalities of Multidistrict Litigation.”

# ANTHONY L. PARKHILL

## BARNOW AND ASSOCIATES

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ATTORNEYS AT LAW

Anthony L. Parkhill has more than eight years of litigation experience and has spent the last six years prosecuting some of the nation's largest complex consumer fraud, automotive defect, and privacy class action matters.

Mr. Parkhill graduated from DePaul University with a Bachelor's degree in Political Science in 2010. He received his Juris Doctor from the University of Chicago Law School in 2014. He is licensed to practice in the State of Illinois. He is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, the United States District Court for the District of Colorado, and the United States District Court for the Eastern District of Michigan. He is a member of the Illinois State Bar Association.

Mr. Parkhill has served in leadership roles in multiple class action lawsuits, including the following: *Cochran v. Kroger Co.* (N.D. Cal.) (appointed as one of Class Counsel in this data breach class action against Kroger and helped negotiate a settlement making \$5 million in benefits available to the class); *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty, Utah), (served as one of settlement class counsel and helped establish a settlement fund of \$2,100,000 for approximately 583,642 class members); *Kesner v. UMass Memorial Health Care, Inc.*, (Mass. Super. Ct. – Worcester) (served as one of class counsel and aided in creating a settlement fund of \$1,200,000 for a class of approximately 209,000 class members); *Easter v. Sound Generations*, No. 21-2-16953-4 SEA (Sup. Ct., King County, WA) (appointed as one of settlement class counsel and helped achieve a settlement that allowed for claims of cash payments, credit monitoring, and reimbursements for expenses and lost time dealing with the data incident for approximately 600,605 persons); *Kostka v. Dickey's Barbecue Restaurants, Inc.*, No. 3:20-cv-3424 (N.D. Tex.) (appointed as one of Additional Class Counsel in this payment card data breach that affected approximately 725,000 of Dickey's customers and helped create a settlement creating a common fund of \$2.350,000); *McCullough v. True Health New Mexico, Inc.*, No. D-202-CV-2021-06816 (2nd Dist. Ct. of New Mexico) (appointed as one of settlement class counsel and helped negotiate a settlement that allows class members to claim reimbursements for lost time and expenses that arose as a result of the data breach and obtain two years of credit monitoring and insurance services); *Lozano v. CodeMetro, Inc.* (Super. Ct. San Diego, Cal.) (serving as one of settlement class counsel in this data breach class action and helped achieve a settlement making benefits of \$850,000 available to the class of approximately 98,700 persons); *Rafofsky v. Nissan North America, Inc.* (C.D. Cal.) (appointed as one of class counsel where a class settlement was granted final approval).

Mr. Parkhill has played an active role in litigating the following class action matters that successfully settled: *Gann v. Nissan North America, Inc.* (M.D. Tenn.) (settlement reached in case regarding defective transmissions providing reimbursement for out-of-pocket costs for prior

transmission replacements and a warranty extension, collectively valued at over \$444 million); *Warner v. Toyota Motor Sales, U.S.A., Inc.* (C.D. Cal.) (settlement reached regarding allegations of excessive frame rust to certain vehicles providing benefits valued at in excess of \$3.4 billion to Settlement Class members); *Hestrup, et al. v. DuPage Medical Group, Ltd.* (DuPage Cty. Circ. Ct., Illinois) (settlement establishing a common fund of \$3 million relating to a medical data breach); *In re BJC Healthcare Data Breach Litig.* (St. Louis Circ. Ct., Missouri) (settlement allowing a class of over 280,000 persons to claim reimbursements for certain expenses that arose as a result of a medical data breach); *Winstead v. ComplyRight, Inc.* (N.D. Ill.) (settlement reached relating to a data breach providing a \$3.025 million fund to approximately 665,000 class members); *Perdue v. Hy-Vee, Inc.* (C.D. Ill.) (settlement reached relating to a payment card data breach, allowing for class members to receive reimbursements for damages resulting from the breach); *Orr v. InterContinental Hotels Group, PLC* (N.D. Ga.) (settlement reached in payment card breach case providing reimbursement for certain expenses subject to an aggregate cap of \$1.55 million); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.* (E.D. Wis.) (settlements reached with four of six defendants in this ongoing international antitrust action providing for the payment of \$9,850,000); *Campos v. Calumet Transload R.R., LLC* (N.D. Ill.) (settlements reached providing for payment of \$1,455,000 for the benefit of the Settlement Class in action relating to the alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities); and *In re Zappos Security Breach Litigation* (D. Nev.) (settlement providing class with benefits in excess of \$5 million); and *Cullan and Cullan LLC v. m-Qube, Inc.*, (D. Neb.), (making over \$1 million available to victims of cell phone cramming).

**RILEY W. PRINCE**  
**BARNOW AND ASSOCIATES**  
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Riley W. Prince graduated from the University of Michigan-Ann Arbor in 2017 with Bachelor's degrees in Political Science and Spanish. He received his Juris Doctor from the Chicago-Kent College of Law in 2021. Mr. Prince has been a part of Barnow and Associates, P.C. since January of 2020, working as a clerk with the firm while in law school. Mr. Prince is licensed to practice in the State of Illinois and is admitted to practice before the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, and the United States District Court for the Eastern District of Michigan.

Mr. Prince has played a significant role in many data breach class actions that have resulted in finally approved settlements. *See Hestrup, et al. v. DuPage Medical Center, Ltd.*, No. 2021L937 (DuPage Cty. Circ., Illinois) (a medical data breach class action that resulted in a settlement establishing a \$3 million fund for approximately 655,000 class members); *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618 (Salt Lake Cnty, Utah), (medical data breach where a settlement fund of \$2,100,000 for approximately 583,642 class members was created); *Kesner v. UMass Memorial Health Care, Inc.*, (Mass. Super. Ct. – Worcester) (a medical data breach class action where a settlement fund of \$1,200,000 for a class of approximately 209,000 class members was established); *Easter v. Sound Generations*, No. 21-2-16953-4 SEA (Sup. Ct., King County, WA) (a medical data breach class action that allowed for claims of cash payments, credit monitoring, and reimbursements for expenses and lost time dealing with the data incident for approximately 600,605 persons); *McCullough v. True Health New Mexico, Inc.*, No. D-202-CV-2021-06816 (2nd Dist. Ct. of New Mexico) (a medical data breach class action where a settlement was reached that allows class members to claim reimbursements for lost time and expenses that arose as a result of the data breach and obtain two years of credit monitoring and insurance services).

**NICHOLAS W. BLUE**  
**BARNOW AND ASSOCIATES**  
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ATTORNEYS AT LAW

Nicholas W. Blue is an associate at Barnow and Associates, P.C. Mr. Blue attended the University of Missouri, earning degrees in Anthropology and Political Science and graduating with Honors in 2019. He was a member of Phi Beta Kappa and a Fellow at the Kinder Institute on Constitutional Democracy. He received his Juris Doctor from Washington University School of Law in 2022. Mr. Blue is admitted to practice in the State of Illinois and the United States District Court for the Northern District of Illinois. Mr. Blue's practice focuses on complex class action litigation, data breach and privacy litigation, and consumer protection cases.