

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,  
INC.,

Defendant.

Case No. 2185 CV 01210

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

I, Ben Barnow, declare and state as follows:

1. I am President of Barnow and Associates, P.C. ("Barnow and Associates") and counsel for Plaintiffs in the above-captioned action against UMass Memorial Health Care, Inc. ("UMMHC"). If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.

**MY FIRM'S EFFORTS ON BEHALF OF THE CLASS**

3. Barnow and Associates has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Barnow and Associates diligently investigated potential legal claims (and potential defenses thereto) arising from UMMHC's failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

4. Barnow and Associates has performed the following work on behalf of Plaintiffs and Class Members, among other things:

- Investigated the circumstances surrounding the Data Breach;
- Stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Breach and describing UMMHC's challenged conduct;
- Reviewed public statements from UMMHC concerning the Data Breach, including the contents of the breach notification letter sent to impacted Class members;
- Researched UMMHC's corporate structure and potential co-defendants;
- Fielded contacts from class members inquiring about this matter;
- Investigated the nature of the challenged conduct at issue here by interviewing multiple potential clients who contacted proposed Class Counsel's firms;
- Drafted and filed an initial complaint against UMMHC, and served that complaint on UMMHC;
- Drafted and filed an opposition to the Motion to Dismiss;
- Served robust discovery on UMMHC, including 15 interrogatories and 48 document requests;
- Analyzed information provided by UMMHC in pre-mediation discovery; and
- Engaged in a full-day mediation before the Hon. Bonnie H. McLeod (Ret.) of JAMS and continued to engage in arm's-length negotiations through telephone conferences and e-mails, exchanging draft term sheets until the Parties—represented by experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses—were able to reach an agreement in principle for the Settlement.

5. Barnow and Associates has committed appropriate and substantial time and resources to organizing and working collaboratively toward the advancement of the litigation, and will continue to do so. As a result of these efforts, Barnow and Associates developed a clear understanding of the strengths and weaknesses of the claims and defenses in this case and they were well-prepared to evaluate the fairness, reasonableness, and adequacy of the Settlement.

6. Barnow and Associates will continue to work cooperatively, coordinate, and meet and confer with Defendant's counsel in this litigation through final settlement approval.

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

7. At all times, Barnow and Associates had the experience, expertise, and resources

to effectively litigate any and all issues related to this litigation.

8. 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.<sup>1</sup> 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.

9. *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.”

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

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<sup>1</sup> 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> (last visited Feb. 28, 2023).

11. *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."

12. *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."

13. *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."

14. *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.

15. *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.

16. A copy of my firm's resume was submitted with Plaintiffs' Motion for Preliminary Approval and is incorporated by reference herein.

#### **TIME AND EXPENSES**

17. My firm has dedicated a significant amount of time and labor to this case.

18. All of the services performed by our firm were undertaken on a contingent fee basis, and we have not been compensated for any of this work to date. Barnow and Associates' rates are reasonable and have been approved by courts. Our firm's current hourly rates are as follows: \$1,050/hour for Ben Barnow (President of Barnow and Associates); \$725/hour for Anthony L. Parkhill (senior associate); \$475/hour for Riley W. Prince (associate); and \$425/hour for Nicholas W. Blue (associate). These hourly rates are the current usual and customary rates set by my firm

for each individual and used in all current litigation matters, as periodically adjusted according to market rates. *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). The rates reflect what would be charged to a fee-paying client in the private legal marketplace for complex litigation. The rates are also in line with the rates charged by other firms that handle complex cases and class actions.

19. The work performed thus far required the efforts of various attorneys at Barnow and Associates, P.C. As of February 28, 2023, my firm has expended over 266 hours pursuing this matter on behalf of the Settlement Class.

20. My firm’s total lodestar as of February 28, 2023, is \$182,105.00. A summary of rates and hours expended are as follows:

<b>Attorney</b>	<b>Rate</b>	<b>Hours Expended</b>	<b>Lodestar</b>
Ben Barnow (Partner)	\$1,050	36.1	\$37,905
Anthony L. Parkhill (Associate)	\$725	153.2	\$111,070
Riley W. Prince (Associate)	\$250/\$475 <sup>2</sup>	12.6/60.8	\$32,030
Nicholas W. Blue (Associate)	\$300/\$425	3.1/0.4	\$1,100
<b>Total</b>		<b>266.2</b>	<b>\$182,105</b>

21. In my opinion, all of this time was reasonable and necessary for the prosecution of

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

this action and my firm took meaningful steps to ensure the efficiency of our work.

22. In connection with the action, Barnow and Associates also advanced costs and expenses.

23. Because our firm handled this action on a contingent basis, we have not yet received reimbursement for any of these costs and expenses.

24. As of the date of this Declaration, Barnow and Associates has incurred \$7,180.60 in costs and expenses in connection with this action. Below is a table categorizing these expenses.

Category	Amount
Electronic Research (LexisNexis, PACER)	\$283.41
Mediation Fees	\$4,631.00
Travel	\$1,556.25
Attorney Admission Fees	\$710.00
<b>Total:</b>	<b>\$7,180.66</b>

25. The amount of expenses stated above does not include internal and other additional costs that my firm incurred in this litigation but, in an exercise of discretion, do not seek to recover.

26. Based on my experience prosecuting this action and overseeing the conduct of the litigation, all of these expenses were reasonable and incurred in connection with the action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 1st day of March, 2023, in Chicago, Illinois.

  
Ben Barnow

**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that on March 1, 2023, I caused copies of the Declaration of Ben Barnow In Support of Motion for Attorneys' Fees, Costs, Expenses and Service Awards to be served via email upon counsel for Defendant as follows:

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/s/ David Pastor  
David Pastor