

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION**

CHRISTOPHER GANN, LEANDRE BISHOP, KEVIN BURKE, ELISA CABEBE, ISRAEL CHIA, KRISTA COSTA, HILLARY DICK, JURA GERALD, SEIJI SILER-HYATTE, JEANINE INGRASSIA, ARNIKA IRELAND, MONTELL JONES, MICHAEL KANZLER, ALEXANDRA MCCULLOUGH, TERESE MIRANDA, AUTUMN PIERCE, ROBERT H. WEINBERG, LASHANDRIKA WILLIAMS, AND LAURA WINDOM, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC., a California corporation,

Defendant.

Case No. 3:18-cv-00966

**CLASS ACTION**

**DECLARATION OF BEN BARNOW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR CLASS REPRESENTATIVES**

District Judge Eli Richardson  
Courtroom 874  
Magistrate Judge Alistair E. Newbern  
Courtroom 774

**JURY TRIAL DEMANDED**

I, BEN BARNOW, declare as follows:

1. I am an attorney duly licensed to practice in the State of Illinois and the State of New York. I am the President of Barnow and Associates, P.C.

2. I am one of Court-appointed Co-Lead Class Counsel. I am also one of counsel for Plaintiffs in the related actions, *Weinberg v. Nissan North America, Inc.* No. 17-cv-08867 (N.D. Ill.), and *Costa v. Nissan North America, Inc.* No. 18-cv-11523 (D. Mass.).

3. I have been practicing law for over 48 years. During the last twenty-five plus years, I have successfully prosecuted some of the nation's largest class action lawsuits. Attached as Exhibit A is a copy of my firm's resume, which includes my curriculum vitae and the qualifications of each attorney from my firm who worked on the litigation.

4. I submit this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards. I have personal knowledge of the matters stated herein and, if called upon, could and would competently testify to them.

## **I. HISTORY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS<sup>1</sup>**

5. The Settlement Agreement covers and resolves four separate class actions:

- a. *Robert Weinberg v. Nissan North America, Inc.*, No. 17-cv-08867 (N.D. Ill.) ("*Weinberg*");
- b. *Elisa Cabebe, et al. v. Nissan North America, Inc.*, No. 18-cv-00144 (N.D. Cal.) ("*Cabebe*");
- c. *Krista Costa v. Nissan North America, Inc.*, No. 18-cv-11523 (D. Mass.) ("*Costa*"); and
- d. *Christopher Gann, et al. v. Nissan North America, Inc.*, No. 18-00966 (M.D. Tenn.) ("*Gann*").

6. This litigation concerns the performance of the continually variable transmissions ("CVTs") in model year 2013–2016 Nissan Altima vehicles (the "Class Vehicles"). Nissan

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<sup>1</sup> Unless otherwise indicated, all capitalized terms herein have the same meaning as set forth in the Settlement Agreement.

promoted the CVT as a major selling point and its marketing and advertisements emphasized the CVT's smoothness, fluid-feeling performance, improved drivability, and responsiveness. On behalf of themselves and other Class Members, Plaintiffs allege that, contrary to such representations, Class Vehicles' CVTs were defective, causing the vehicles to shudder, hesitate, stall, make unusual noises, and ultimately result in premature transmission failure.

7. In early Fall 2017, my firm and attorneys from Blood Hurst & O'Reardon, LLP ("BHO") conducted a significant pre-filing investigation upon learning of a significant number of complaints regarding the performance of Class Vehicles' CVTs. As part of that initial investigation, attorneys from my firm and BHO reviewed hundreds of relevant complaints filed with the National Highway Traffic Safety Administration ("NHTSA") and posted on popular consumer complaint websites, such as CarComplaints.com, analyzed NNA's marketing materials and advertisements for Class Vehicles, reviewed NNA's New Vehicle Limited Warranty for Class Vehicles, researched Nissan's statements regarding quality issues with JATCO's CVTs, and researched Nissan's responses to complaints regarding CVT performance on other Nissan model vehicles.

8. On December 8, 2017, on behalf of plaintiff Robert H. Weinberg ("*Weinberg*") and a proposed nationwide class of owners and lessees of model year 2013 and 2014 Altima vehicles, my firm and attorneys from BHO filed a Class Action Complaint in the United States District Court for the Northern District of Illinois. In that Complaint, Mr. Weinberg alleged violations of the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. §§ 2301, *et seq.*, the Illinois Consumer Fraud Act, 15 Ill. Comp. Stat. 505/2 ("ICFA"), and breach of warranty. To my knowledge, the *Weinberg* complaint was the first class action complaint filed asserting claims against NNA relating to Class Vehicle's allegedly defective CVTs.

9. The *Weinberg* case was initially assigned to the Honorable Amy J. St. Eve who now sits on the United States Court of Appeals for the Seventh Circuit. When the case was filed, Judge St. Eve was participating in the Northern District of Illinois' Mandatory Initial Discovery Pilot program ("MIDP"), the requirements of which were mandatory and superseded the

disclosures required by Fed. R. Civ. P. 26(a)(1). The *Weinberg* case was assigned to participate in the MIDP.

10. On February 20, 2018, Nissan moved to dismiss Weinberg's complaint and, separately, to strike the class action allegations in the complaint. On the same day and pursuant to the MIDP's requirements, NNA also filed an Answer to Weinberg's complaint.

11. On February 21, 2018, Weinberg and NNA jointly filed a Case Management Report Pursuant to Fed. R. Civ. P. 23(f). On February 26, 2018, Judge St. Eve held an initial case management conference at which she set a briefing schedule for NNA's motion to dismiss and motion to strike class allegations and a schedule for the parties' submission of an agreed confidentiality order, submission of an ESI order, exchange of mandatory initial discovery responses under the MIDP, and for the production of hard copy documents and ESI identified in the parties MIDP responses.

12. After several emails, telephone conversations, and exchanging drafts of each document, the parties submitted a proposed agreed confidentiality order and a proposed agreed document production protocol order to Judge St. Eve who entered the orders on March 22, 2018, and April 3, 2018, respectively.

13. On March 22, 2018, the parties exchanged MIDP-mandated initial discovery responses. Pursuant to the MIDP's requirements, the parties were obligated to provide, inter alia: (1) the "names and, if known, the addresses and telephone numbers of all persons [they] believe are likely to have discoverable information relevant to any party's claims or defenses, and [to] provide a fair description of the nature of the information each such person is believed to possess;" (2) provide a list of documents and ESI believed to be relevant to any party's claims or defenses; and (3) identity facts relevant to and the legal theories upon which each of their claims or defenses is based. *See* Mandatory Initial Discovery Pilot Project Standing Order, available at <https://www.ilnd.uscourts.gov/assets/documents/MIDP%20Standing%20Order.pdf>.

14. On March 26, 2018, my firm and BHO filed Weinberg's opposition to NNA's motion to strike the class allegations in his complaint, as well as his opposition to NNA's motion

to dismiss the complaint. NNA's reply briefs in support of its motion to dismiss and motion to strike class allegations were filed on April 16, 2018. As a result of Judge St. Eve's elevation to the Seventh Circuit Court of Appeals, the *Weinberg* cases was reassigned to the Honorable Joan B. Gottschall on May 23, 2018.

15. On June 1, 2018, NNA served its initial production of ESI on Weinberg's counsel via email. On July 13, 2018, my firm caused Plaintiff's First Set of Requests for Production of Documents to be served on NNA's counsel. NNA's second batch of ESI was produced on August 28, 2018, and its responses and objections to Plaintiff's First Set of Requests for Production of Documents were served on October 8, 2018. During the following months, the parties exchanged multiple emails and letters regarding NNA's responses and objections and outstanding discovery. NNA ultimately produced nearly 23,500 pages of documents in connection with discovery in the *Weinberg* case, all of which were reviewed by attorneys from my firm and BHO.

16. On December 14, 2018, I attended a meeting with NNA's attorneys to preliminarily discuss the possibility of a global resolution of the *Weinberg* case and other related Altima CVT cases.

17. On September 28, 2018, Judge Gottschall entered an order granting in part and denying in part NNA's motion to dismiss Weinberg's Class Action Complaint. The Order rejected NNA's request to dismiss Weinberg's breach of express warranty claim, but dismissed Weinberg's breach of implied warranty and the Illinois Consumer Fraud Act claims ("ICFA") without prejudice. The next day, Judge Gottschall entered an order denying NNA's motion to strike Weinberg's class allegations.

18. On October 19, 2018, my firm and BHO filed a motion for leave to file an amended class action complaint in the *Weinberg* case alleging additional facts in support of his ICFA and implied warranty claims and adding model year 2015 Altima vehicle owners and lessees to the proposed class definition. The motion was granted and Weinberg's amended class complaint was filed on October 25, 2018.

19. On December 17, 2018, NNA moved to dismiss Weinberg’s amended class action complaint. Weinberg opposed NNA’s motion to dismiss on January 16, 2019, and NNA’s reply brief in support of its motion to dismiss was filed on February 11, 2019.

20. On June 18, 2019, Weinberg and NNA jointly moved to stay the *Weinberg* case pending the settlement approval process in this matter. The next day, June 19, 2019, Judge Gottschall entered an Order staying the *Weinberg* case and denying NNA’s motion to dismiss Weinberg’s amended complaint without prejudice and with leave to reinstate in the event the Settlement is not approved.

21. On January 8, 2018, my Co-Lead Class Counsel, Mark Greenstone and Marc Godino, filed a related class action complaint against NNA in United States District Court for the Northern District of California on behalf of Elisa Cabebe and proposed nationwide and California classes of Altima purchasers and lessees alleging violations of the California Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; breach of implied warranty pursuant to California Song-Beverly Consumer Warranty Act (“Song-Beverly”), Cal. Civ. Code §§ 1792, 1791.1, *et seq.* and Cal. Com. Code § 2314; breach of express warranty, Cal. Com. Code § 2313; violation of the MMWA; and common law fraudulent omission. On March 7, 2018, NNA moved to dismiss Cabebe’s class action complaint.

22. Pursuant to the parties’ stipulation, on April 19, 2018, Messrs. Greenstone and Godino filed an amended class action complaint on behalf of Elisa Cabebe, Hillary Dick, Israel Chia, and Alexandra McCullough and proposed California, New York, and Pennsylvania classes. The *Cabebe* amended complaint alleged violations of the CLRA, UCL, MMWA, New York Gen. Bus. Law for Deceptive Acts or Practices §§ 349–350, Pennsylvania Unfair Trade Practices and Consumer Protection Law, 43 P.A. Cons. Stat. § 2314, breach of express warranty, breach of implied warranty of merchantability, and fraudulent omission. On May 9, 2018, Nissan filed a partial motion to dismiss the *Cabebe* amended complaint.

23. After full briefing, on October 26, 2018, the California court entered an order granting in part and denying in part Nissan's motion to dismiss. The California court's order dismissed the New York consumer protection statute (N.Y. Gen. Bus. Law § 349) claim and the New York fraudulent omission claim, but denied NNA's motion with respect to all other claims.

24. On December 19, 2018, Messrs. Greenstone and Godino filed a corrected second amended class action complaint in the *Cabebe* case on behalf of Elisa Cabebe, Hillary Dick, Israel Chia, Alexandra McCullough, Montell Jones, Kevin Burke, Arnika Ireland, Jeanine Ingrassia, Seiji Siler-Hyatte, Lashandrika Williams, Laura Windom, and Michael Kanzler and proposed Alabama, Arizona, California, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas classes alleging violations of the Alabama Deceptive Trade Practices Act (Ala. Code § 8-19, *et seq.*), Arizona's Consumer Fraud Act (Ariz. Rev. Stat. § 44-1521, *et seq.*), CLRA, UCL, Illinois Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. 505/1, *et seq.*), Florida's Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201, *et seq.*), New Jersey's Consumer Fraud Act (N.J. Stat. Ann. § 56:8-1, *et seq.*), New York General Business Law for Deceptive Acts or Practices § 349, Pennsylvania Unfair Trade Practices and Consumer Protection Law (P.S. § 201-1, *et seq.*), MMWA, breach of express warranty, breach of implied warranty of merchantability, and fraudulent omissions. On March 1, 2019, NNA moved to dismiss the *Cabebe* second amended complaint. On June 27, 2019, the California court entered an Order staying the *Cabebe* case pending the Settlement approval process in this matter.

25. On June 8, 2018, Salome Madrid and Teresa Miranda filed a class action complaint in the United States District Court for the Middle District of Tennessee, captioned *Madrid v. Nissan North America, et al.*, No. 18-cv-00534 (M.D. Tenn.), asserting claims under the CLRA, UCL, MMWA, Song-Beverly Act, and for breach of express warranty and unjust enrichment. On August 6, 2018, Nissan moved to dismiss Madrid's class action complaint, which was fully briefed. Thereafter, Salome Madrid dismissed her claims voluntarily and Teresa Miranda joined the *Gann* action as a named plaintiff. An amended complaint has since been filed in the *Madrid*

case on behalf of owners and lessees of certain Nissan Juke vehicles and which is the subject of a separate settlement agreement with NNA.

26. On July 20, 2018, my firm, BHO, and Pastor Law Office filed a class action complaint on behalf of Krista Costa (“Costa”) and a proposed class of “all persons who purchased or leased a 2013 or 2014 Nissan Altima for end use and not for resale in the Commonwealth of Massachusetts.” Ms. Costa alleged claims for violations of the Massachusetts Regulation of Business Practice and Consumer Protection Act, Mass. Gen. Laws. ch. 93A, *et seq.*; the MMWA; and breach of implied warranty. The case was assigned to the Honorable Leo T. Sorokin.

27. On September 28, 2018, NNA moved to dismiss Costa’s class action complaint. Along with co-counsel from BHO and Pastor Law Office, my firm prepared and filed an opposition to NNA’s motion to dismiss on October 12, 2018. On December 22, 2018, NNA filed a reply brief in support of its motion.

28. On January 18, 2019, Judge Sorokin entered a 6-page order denying NNA’s motion to dismiss. NNA’s answer to Costa’s class action complaint was filed on February 1, 2019.

29. After a series of calls and emails, amongst attorneys from my firm, co-counsel, and NNA’s attorneys, on March 18, 2019, the parties submitted a Joint Local Rule 16.1 Statement (including a proposed scheduling order). At the March 28, 2019 scheduling conference, Judge Sorokin set a schedule for the parties’ exchange of initial disclosures and a briefing schedule for class certification and expert disclosures relating thereto.

30. On June 18, 2019, Costa and NNA jointly moved to stay the *Costa* case pending the settlement approval process in this matter. The next day, June 19, 2019, Judge Sorokin entered an order granting the parties’ joint motion to stay and directing the parties to provide a status report every 90 days. Pursuant to Judge Sorokin’s directive, my firm and attorneys from BHO and Pastor Law Office worked with NNA to prepare and file joint status reports in the *Costa* case on September 16, 2019, and December 26, 2019.

31. On September 25, 2018, my firm, BHO, and Sanford Heisler Sharp LLP filed a class action complaint against NNA in this Court on behalf of Christopher Gann and a proposed



nationwide class of “all persons and entities that purchased or leased a 2013 or 2014 Nissan Altima for end use and not for resale.” In that complaint, Gann alleged California state law claims for breach of implied and express warranties and violations of the MMWA, CLRA and UCL.

32. Prior to NNA answering or moving to dismiss that complaint, on December 14, 2018, my firm, along with co-counsel from BHO and Sanford Heisler Sharp LLP, filed an amended class action complaint in the *Gann* case on behalf of Christopher Gann, Leandre Bishop, Autumn Pierce, Jura Gerald, and a proposed nationwide class of all persons and entities that purchased or leased a model year 2013–2015 Nissan Altima vehicle for end use and not for resale. The *Gann* amended class action complaint alleged claims against NNA for breach of express and implied warranty and for violation of the MMWA, CLRA, UCL, Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code § 17.41, *et seq.*, South Carolina Consumer Protection Act, S.C. Code § 39-5-10, *et seq.*, and the North Carolina Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. § 75.1, *et seq.*

33. After a number of calls and emails between attorneys from my firm, co-counsel from BHO and Sanford Heisler Sharp, and counsel for NNA, the *Gann* plaintiffs and NNA jointly filed a Proposed Initial Case Management Order on February 22, 2019. On March 20, 2019, I participated in an initial case management conference with Magistrate Judge Barbara D. Holmes along with co-counsel Jonathan Tepe from Sanford Heisler Sharp LLP, and NNA’s attorneys Paul Cauley and John Hicks.

34. On February 25, 2019, NNA moved to dismiss the *Gann* amended class action complaint. My firm, along with co-counsel from BHO and Sanford Heisler Sharp LLP, prepared an opposition to NNA’s motion to dismiss, which was filed with the Court on April 1, 2019.

35. On April 16, 2019, I attended a mediation session in Atlanta, Georgia, moderated by Hunter Hughes, a highly-respected mediator. The negotiation was complex, intense and, at times, highly contested. After more than 8 hours of mediation, the parties finally reached a preliminary agreement on the material terms of the Settlement, except for attorneys’ fees, expenses, and service awards, which were not agreed upon until a later time.

36. Negotiations continued in the weeks following the mediation with the assistance of Hunter Hughes. On May 3, 2019, the parties' executed a Memorandum of Understanding. The parties did not discuss attorneys' fees, costs, and expenses, or service awards until after reaching agreement on all material terms of the Settlement.

37. On May 31, 2019, Plaintiffs filed a Consolidated Second Amended Class Action Complaint ("CSACC") with the Court. The CCACC consolidates Plaintiffs' claims in the *Gann*, *Weinberg*, *Costa*, and *Cabebe* cases and alleges a nationwide class of current and former owners of Class Vehicles who purchased or leased the vehicle in the United States or its territories, including Puerto Rico.

38. After execution of the MOU, I participated in dozens of telephone calls and exchanged numerous emails with other Co-Lead Class Counsel, Class Counsel, and NNA's counsel to finalize the language of the Settlement, the notice documents, and other exhibits to the Settlement.

39. In the weeks leading up to execution of the Settlement, my firm and other Co-Lead Class Counsels' firms worked on drafting the motion for preliminary approval of the Settlement and supporting memorandum. During that period, I participated in several calls and exchanged numerous emails with other Co-Lead Class Counsel regarding the preparation of these documents. Several drafts were also exchanged and commented on by Co-Lead Class Counsels' firms. Plaintiffs' motion for preliminary approval of the Settlement was filed on June 6, 2019.

40. On June 21, 2019, the Court entered an order requesting additional briefing on certain aspects of the Settlement. In connection with responding to the Court's questions, Co-Lead Class Counsel retained the services of Lee M. Bowron, ACAS, MAAA. Mr. Bowron is an actuary who specializes in pricing and valuing extended service contracts and warranty extensions. Using the information provided to him by Plaintiffs' counsel (e.g., number of class vehicles, average CVT replacement costs, failure rate, etc.), Mr. Bowron was able to estimate the minimum retail value to the Settlement Class of the extended warranty and reimbursement coverage for this Settlement.

41. After several calls and emails and the exchange of multiple drafts, on July 8, 2019, the parties filed a Joint Supplemental Brief responding to the Court's questions regarding the Settlement. On July 16, 2019, the Court entered an Order, *inter alia*, granting preliminary approval of the Settlement, conditionally certifying the Settlement Class for Settlement purposes only, approving the Long Form Notice and the Summary Notice as to form and content, finding the Notice as set forth in the Notice Program to constitute the best notice practicable under the circumstances, directing KCC to commence the Notice Program, and setting the Final Fairness Hearing for May 11, 2020.

42. Following entry of the Preliminary Approval Order, my firm, other Co-Lead Class Counsels' firms, and NNA's attorneys worked with KCC to ensure Summary Postcard Notice was mailed to Class Members as soon as reasonably possible. As a result of such efforts, KCC was able to send Postcard Summary Postcard notice to Class Members on November 1, 2019—approximately six weeks earlier than December 13, 2019 deadline reflected in the Settlement.

43. On September 30, 2019, the parties jointly moved to move the Final Fairness Hearing from May 11, 2020, to March 6, 2020, and to adjust all associated deadlines accordingly. The Court granted the parties' joint motion on October 1, 2019.

44. As a result of their investigations, discovery, and information exchanged during settlement discussions, Co-Lead Class Counsel obtained significant information regarding the potential cause(s) of the alleged CVT defect, the frequency of the alleged CVT defect, the average cost to replace a Class Vehicle's CVT. That process involved, among other things, speaking to hundreds of Altima owners and lessees regarding their experiences with Class Vehicles, reviewing and analyzing nearly 23,500 pages of documents produced by NNA (excluding warranty data), examining almost 1 million lines of warranty claim-related information provided by NNA for Class Vehicles, reviewing hundreds of consumer complaints submitted to the National Highway Traffic Safety Administration and popular consumer complaint websites, such as CarComplaints.com, and reviewing NNA's technical service bulletins relating to the alleged CVT defect, and reviewing service manuals for the Class Vehicles. Attorneys from Co-Lead Class

Counsels' firms also interviewed an engineer from NNA's Total Customer Satisfaction department regarding the root causes of CVT repairs, countermeasures implemented in response to such repairs, and the effects such countermeasures had on improving CVT performance.

45. Shortly after preliminary approval, and even before Class Notice was mailed, my office began receiving telephone calls and emails from Class Members. Attorneys in my office and the offices of Co-Lead Class Counsel have responded to numerous emails and telephone calls, often spending considerable time on the phone answering questions about the Settlement, the settlement benefits, and the claim process. To date, my office has worked with over 200 people. This work will continue throughout the settlement implementation process—likely for several years.

## **II. BARNOW AND ASSOCIATES, P.C.'S TIME, COSTS, AND EXPENSES**

46. My firm prosecuted this Litigation on a contingent-fee basis with no guarantee of recovery. My firm, along with other Plaintiffs' counsel, incurred 100% of the risk in pursuing this Litigation. My firm has advanced costs and expenses with the understanding we would be entitled to a fee and reimbursement for costs and expenses only if successful.

47. The following information regarding my firm's time and out-of-pocket costs and expenses is taken from time and expense records prepared and maintained by the firm in the ordinary course of business. The time records were prepared daily or shortly thereafter by each attorney working on the Litigation. The expense records are prepared from receipts, expense vouchers, check records and other documents, and are an accurate record of the expenses. I reviewed the printouts and reviewed the backup documentation where necessary. The purpose of these reviews was to confirm the accuracy of the entries on the printouts as well as the reasonableness of the time and expenses committed to the Litigation.

48. The schedule below provides a summary of the hours expended by timekeepers from my firm who performed work in this Litigation. The schedule includes the name of each person who worked on the case, years of experience, hourly billing rates, the number of hours

expended, and the resulting lodestar for each timekeeper. The backgrounds and qualifications of the attorneys who worked on the matter are set forth in the Firm Resume attached as Exhibit A.

49. The lodestar calculation is based on the firm’s current billing rates at the firm’s customary hourly rates charged in all of our cases, and which have been accepted as reasonable by courts throughout this state and other district courts in numerous other class action litigations. *See, e.g., Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171 FMO (FFMx), 2017 U.S. Dist. LEXIS 77576, at \*42-43 (C.D. Cal. May 21, 2017) (approving Barnow and Associates, P.C.’s rates as reasonable given “the prevailing rates in the community for lawyers of comparable skill, experience, and reputation”).

50. Further, based on my knowledge of the class action plaintiff’s bar nationwide, the rates charged by my firm are in line with the rates charged by other firms that handle class actions of similar size and complexity. Each of the Barnow and Associates, P.C. attorneys have practiced for the following number of years: Ben Barnow—48 years; Erich P. Schork—13 years; Anthony L. Parkhill—5 years. Based on the qualifications and experience of each of these attorneys, the hourly rates of \$425.00 to \$875.00 are reasonable.

51. The total number of hours spent on this Litigation by my firm as of January 23, 2020 was 1,345.5 hours. The total lodestar for attorney time is \$786,470.

<b>Attorney/Paralegal</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>	<b>Bar Admission</b>
Ben Barnow (President)	172.3	\$875	\$150,762.50	1969
Erich P. Schork (Vice President)	460.6	\$700	\$322,420.00	2006
Anthony L. Parkhill (Associate)	295.3	\$425	\$125,502.50	2014
Jeffrey Blake (Associate) <sup>2</sup>	417.3	\$450	\$187,785.00	2013
<b>Totals</b>	<b>1345.5</b>		<b>\$786,470.00</b>	

52. The hours and lodestar incurred by my firm will increase because, my firm, along with other Co-Lead Class Counsel, is responsible for any further briefing in this case and in

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<sup>2</sup> Jeffrey Blake is a former associate. The summary includes his standard hourly rate as of the time he left the firm.

particular responding to objectors, obtaining any needed discovery or deposition testimony from objectors, attending the final approval hearing, and the significant post hearing work. If appeals are filed, Co-Lead Class Counsel will handle the appeals. On an ongoing basis, my firm will continue to be in regular contact with Class Members who contact us regarding the Settlement and its claims process, as well as KCC regarding the same, and will continue to oversee the inspection and repair/replacement programs, the claim process, and will continue to regularly review and act on the reports provided by the Settlement Administrator, as well as address any issues as they arise. However, no additional fees will be paid for this work.

53. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

54. As detailed below, my firm has incurred a total of \$11,458.41 in unreimbursed costs and expenses in connection with the prosecution of the Litigation from inception through January 24, 2020. The expenses incurred in the Litigation are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

55. The out-of-pocket litigation expenses incurred by Barnow and Associates, P.C., are reasonable in amount and were necessary for the effective and efficient prosecution of the Litigation. In addition, I believe the expenses are of a type that would normally be charged to a fee-paying client in the private legal marketplace. They are also the categories of expenses that have been awarded to my firm and other plaintiff's counsel in other class action settlements, including in the following cases: *Smith v. ComplyRight, Inc.*, No. 18-4990 (N.D. Ill. 2019); *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171 FMO (FFMx) (C.D. Cal. 2017); *Rafofsky v. Nissan North America, Inc.*, No. 15-CV-1848 (C.D. Cal. 2017); *Campos v. Calumet Transload R.R., LLC*, No. 13-CV-8376 (N.D. Ill. 2016); *In re Countrywide Financial Corp. Customer Data Security Breach Litig.*, 08-MD-1998 (W.D. Ky. 2010).

56. My firm's out-of-pocket litigation expenses total \$11,458.41 as summarized below:

<b>Expense Category</b>	<b>Total</b>
Filing/Court Fees	\$926
Postage/FedEx	\$40.45
Westlaw/PACER	\$6,391.13
Conference Calls	\$58.91
Travel	\$4,041.92
<b>TOTAL</b>	<b>\$11,458.41</b>

57. The following is additional information regarding these expenses:

(a) Filing/Court Fees: \$926. This includes a \$400 filing fee for the *Weinberg* complaint, \$50 for service of process, \$76 to obtain certificates of good standing to attach in support of attorneys' *pro hac vice* applications, and \$400 for *pro hac vice* admission fees required by courts in the Litigation.

(b) Postage / FedEx: \$40.45. My firm paid \$40.45 to FedEx documents and correspondence related to the litigation.

(c) Online Research: \$6,391.13. This was paid to Thompson Reuters (Westlaw) for legal research and to the Administrative Office of the United States Courts for PACER research of federal court filings. Westlaw is used to obtain access to legal research, factual databases, and for cite-checking of briefs. The expense amount detailed herein represents the out-of-pocket costs incurred by my firm in connection with use of these services in connection with this litigation. My firm has a flat-rate contract with Thompson Reuters for use of its Westlaw services. When my firm utilizes Westlaw services, a case name is entered for the specific case being researched. At the end of each billing period in which a service is used, the firm's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period. As a result of the contract negotiated by my firm, the Class enjoys substantial savings in comparison with the "market rate" for *a la carte* use of online legal research services, which some law firms pass on to their clients.

(d) Conference Calls: \$58.91. My firm paid \$58.91 to host conference calls related to the Litigation. At my firm, each conference call is allocated to the relevant case shortly before or after the call occurs, and the conference call charges for each case are entered into our billing system.

(e) Travel: \$4,041.92. My firm paid \$4,041.92 in travel expenses (airfare, meals, transportation, hotels) in connection with the litigation. These travel expenses were incurred in connection with my travelling from Chicago, Illinois, to Nashville, Tennessee, to participate in a Case Management Conference before the Court, with Anthony Parkhill and I travelling from Chicago, Illinois, to Atlanta, Georgia, to participate in a full-day mediation before Hunter R. Hughes, and in connection with Erich Schork travelling from Chicago, Illinois, to Nashville, Tennessee, to participate in the interview of a Nissan engineer.

58. NNA also agreed to pay incentive awards of \$5,000 to each of the nineteen Plaintiffs named in the Lawsuits. SA ¶ 115. These will be paid separately and will not reduce Settlement benefits to Class Members. *Id.* These amounts are based on time and efforts Plaintiffs expended and their commitment to the Lawsuits. Each of the Plaintiffs stepped forward to file the various lawsuits and represent other Altima purchasers knowing that they could be subject to discovery, that the litigation could take years, that they were obligated to testify at trial, and that, in the end, their efforts might not be successful. Nonetheless, Plaintiffs were willing to and did do everything required and without out them these cases would not have been brought and the settlement obtained. Plaintiffs Robert Weinberg, Leandre Bishop, Krista Costa, Jura Gerald, Autumn Pierce, for instance, communicated extensively with attorneys from my firm regarding their individual experiences with Class Vehicles' CVTs, searched for and produced documentation relevant to their claims, and discussed the status of the litigation. They each provided valuable information necessary for drafting complaints, reviewed and approved of complaints prior to filing, and reviewed and discussed the Settlement with counsel prior to executing the Settlement agreement. Similar efforts were spent by Plaintiffs Christopher Gann, Kevin Burke, Elisa Cabebe, Israel Chia, Hillary Dick, Seiji Siler-Hyatte, Jeanine Ingrassia, Arnika Ireland, Montell Jones,



Michael Kanzler, Alexandra McCullough, Terese Miranda, Lashandrika Williams, and Laura Windom, based on information provided to me by Plaintiffs' counsel and based on my knowledge of the work and contributions made by the Plaintiffs in the Lawsuits. The modest service awards are fair and reasonable.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 24, 2020, at Chicago, Illinois.

By:   
\_\_\_\_\_ 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 consumer 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, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the District of Colorado, the Eastern District of Wisconsin, and the Western District of Wisconsin. 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 forty-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: Sony Gaming Networks and Customer Data Security Breach Litigation, MDL 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."

## Deceptive Trade Practices and Other Consumer Protection Cases

***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 serves as a Co-Lead Counsel for third-party payor plaintiffs in this antitrust action alleging that certain defendants conspired to artificially inflate the prices of aftermarket sheet metal automotive parts sold in the U.S. Settlements with four of the six defendants have been granted final approval, 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.”

# ERICH P. SCHORK

## BARNOW AND ASSOCIATES

*a professional corporation*  
ATTORNEYS AT LAW

Erich P. Schork has more than thirteen years of experience prosecuting some of the nation's largest complex consumer fraud, automotive defect, antitrust, and privacy class action matters.

Mr. Schork graduated from Purdue University with a Bachelor's degree in Management. He received his Juris Doctor *Magna Cum Laude* from the University of Illinois College of Law where he served as an editor of the *University of Illinois Law Review*. 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 Third, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the United States District Court for the District of Colorado, and the United States District Court for the Eastern District of Wisconsin. He is a member of the American Bar Association, the Illinois State Bar Association, and the Chicago Bar Association.

Mr. Schork has been appointed to and served in leadership positions in a number of class action cases, including *Winstead v. ComplyRight, Inc.*, *In re Pilot Flying J Fuel Rebate Contract Litigation*, and *Rafofsky v. Nissan North America, Inc.*, where settlements were reached and granted final approved. Mr. Schork's achievements also include successfully arguing appeals before the United States Court of Appeals for the Third Circuit in *In re Horizon Healthcare Services Inc. Data Breach Litig.*, 846 F.3d 625 (3d Cir. 2017), the United States Court of Appeals for the Sixth Circuit in *Galaria v. Nationwide Mutual Insurance Co.*, 663 Fed App'x 384 (6th Cir. 2016), and the United States Court of Appeals for the Seventh Circuit in *Dieffenbach v. Barnes & Noble, Inc.*, 887 F.3d 826 (7th Cir. 2018). In all three decisions, the Court of Appeals vacated the order of the trial court and remanded the matter for further proceedings.

Mr. Schork also played an active role in litigating the following class action matters that successfully settled: *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); *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); *Miner v. Philip Morris USA, Inc.* (Ark. Cir. Ct.) (\$45 million settlement reached relating to allegations that the defendant engaged in deceptive marketing practices); *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); *In Re: Sony Gaming Networks and Customer Data Security Breach Litigation*, MDL 2258 (S.D. Cal.) (settlement reached in this 60-case data breach MDL); *Schulte v. Fifth Third Bank* (N.D. Ill.) (\$9.5 million settlement fund and injunctive relief valued at \$108.4 million over ten years achieved relating to allegations that the defendant unlawfully re-sequenced debit card transactions); *In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation*, MDL No. 1998 (W.D. Ky.) (settlement reached in this 40- case data breach MDL making benefits valued at over \$650 million available to the Class); *In Re: TJX Retail Security Breach Litigation*, MDL No. 1838 (D. Mass.) (settlement reached in this data breach MDL making benefits valued at over \$200 million available to the Class); *In Re: High Sulfur Content Gasoline Products Liability Litigation*, MDL No. 1632 (E.D. La.) (settlement reached in this 26-case MDL relating to the alleged sale of defective gasoline resulting in approximately \$100 million being made available towards satisfaction of consumers' claims); *Palace v. DaimlerChrysler Corp.* (Ill. Cir. Ct.) (\$8.25 million settlement achieved relating to the defendant's alleged sale of vehicles with defective head gaskets).

# ANTHONY L. PARKHILL

## BARNOW AND ASSOCIATES

*a professional corporation*  
ATTORNEYS AT LAW

Anthony L. Parkhill has more than five years of litigation experience and has spent the last four 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, and the United States District Court for the District of Colorado. He is a member of the American Bar Association, the Illinois State Bar Association, and the Chicago Bar Association.

Mr. Parkhill has played an active role in litigating the following class action matters that successfully settled: *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); *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); *Rafofsky v. Nissan North America, Inc.*, (settlement providing class members with up to \$85 cash or vouchers worth up to \$1,250); 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).

Mr. Parkhill was appointed as one of Class Counsel in *Rafofsky v. Nissan North America, Inc.*, where a class settlement was granted final approval.