

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: National Association of Music Merchants, Musical Instruments and Equipment Antitrust Litigation

MDL No. 2121

ORDER APPOINTING LEAD-LIAISON COUNSEL

At the status conference held May 28, 2010, the Court identified the need to appoint interim lead counsel who would serve as liaison between the Court and Plaintiffs. The Court indicated it would defer to Plaintiffs' choice in the first instance, but if they were unable to reach a consensus about the appointment of such counsel, the Court would entertain applications for the position, to be submitted by June 23.

The Court received three applications: one from Girard Gibbs LLP (currently representing Plaintiff Joshua Ramsey in case number 09cv2211, *Ramsey, et al. v. National Association of Music Merchants, Inc.*, et al.); a second from Robbins Geller Rudman & Dowd LLP¹ (currently representing Plaintiff Colby Giles in case number 09cv2146, *Giles v. Guitar Center, Inc.* et al.); and a third from Barnow & Associates, PC (currently representing

¹ The Court previously disclosed a connection to Girard Gibbs but now also discloses Robbins Geller's named partner Michael Dowd represented the Court's position in *In re Vasquez-Ramirez*, 443 F.3d 692 (9th Cir. 2006) and Judge Burns maintains a friendly relationship with Mr. Dowd.

1 Plaintiff Walter Witherspoon in case number 09cv2178, *Witherspoon v. National Association*
2 *of Music Merchants, Inc.*, et al.) The Robbins Geller application proposed a steering
3 committee consisting of itself, Squitieri & Fearon, LLP (currently representing Plaintiff David
4 Giambusso in case number 09cv2002, *Giambusso v. National Association of Music*
5 *Merchants, Inc.*, et al.), Scott + Scott LLP (currently representing Plaintiffs Niranjan Parikh
6 and Kate Mac Williamson in case numbers 10cv19, *Parikh v. Guitar Center, Inc.*, et al. and
7 10cv20, *Williamson v. Guitar Center, Inc.*, et al., respectively), and Milberg LLP (currently
8 representing Plaintiff Jason Paradise in case number 09cv2285, *Paradise v. National*
9 *Association of Music Merchants, Inc.*, et al.) Attorney Ben Barnow applied on behalf of his
10 firm, but also named five of his co-counsel in *Witherspoon*, and their firms, as applicants,
11 and also sought appointment of an executive committee. Girard Gibbs primarily sought
12 appointment as lead counsel, but it requested in the alternative appointment to the steering
13 committee.

14 After reviewing the initial applications, the Court requested supplemental information
15 from the applicants in the form of good-faith estimates of the number of hours required to
16 have all cases trial-ready, and the billing rate of each firm. The applicants have provided this
17 information.

18 In appointing lead or liaison counsel, the Court considers a variety of factors,
19 including:

- 20 • qualifications, functions, organization, and compensation of designated
21 counsel;
- 22 • whether there has been full disclosure of all agreements and
23 understandings among counsel;
- 24 • would-be designated attorneys' competence for assignments;
- 25 • whether there are clear and satisfactory guidelines for compensation and
26 reimbursement, and whether the arrangements for coordination among
27 counsel are fair, reasonable, and efficient;
- 28 • whether designated counsel fairly represent the various interests in the
litigation—where diverse interests exist among the parties, the court may
designate a committee of counsel representing different interests;
- the attorneys' resources, commitment, and qualifications to accomplish the
assigned tasks; and

1 • the attorneys' ability to command the respect of their colleagues and work
2 cooperatively with opposing counsel and the court—experience in similar
3 roles in other litigation may be useful, but an attorney may have generated
personal antagonisms during prior proceedings that will undermine his or her
effectiveness in the present case.

4 Manual on Complex Litigation (4th Ed.) § 10.224. See also *id.*, § 22.62 (discussing
5 appointment of lead counsel in multidistrict litigation and factors to be considered), § 14.211
6 (discussing fees and other factors courts have considered).

7 The appointed counsel will be primarily responsible for communicating with the Court
8 and serving as liaison between the Court and other Plaintiffs' counsel. The appointed
9 counsel will also function as interim lead counsel as provided under Fed. R. Civ. P. 23(g).
10 Because the appointed counsel will serve in both these capacities, this order refers to it as
11 lead-liaison counsel. Although the Court has not yet given directions concerning fees,
12 appointed counsel should be aware from the outset of the need for keeping thorough and
13 accurate billing records.

14 Barnow & Associates identified its average firm billing rate as \$450. It did not provide
15 a specific estimate of hours for these cases, but referenced a case it considered similar
16 where the number of hours exceeded 100,000. Robbins Geller estimated its average billing
17 rate at less than \$400 per hour, and estimated that 50,000 attorney and paralegal hours
18 would be required to have the cases trial-ready. Girard Gibbs estimated a somewhat higher
19 average hourly rate of \$447.50, but came in with the low estimate of 6,250 attorney and
20 paralegal hours to have the cases trial-ready.

21 While the Court finds Barnow & Associates competent, it believes this firm's
22 resources, even when supported by co-counsel, would not be adequate to assure the
23 speedy and efficient preparation of these cases for trial if Barnow were appointed as lead-
24 liaison counsel. While Barnow certainly has the competency to serve as lead-liaison
25 counsel, the Court is also mindful of the possibility that heavier demands will be placed on
26 lead-liaison counsel than are now anticipated. Robbins Geller and Girard Gibbs by contrast
27 both have extensive resources at their disposal.

28 ///

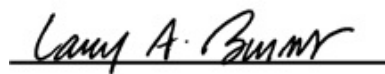
1 As between Robbins Geller and Girard Gibbs, the latter projects far leaner staffing of
2 the cases. While a number of antitrust class actions may merit billing tens of thousands of
3 hours, the Court does not believe the cases involved here require such extensive work. The
4 incidents and evidence are more limited than in many other antitrust cases, and the interests
5 of the various Plaintiffs are limited and rather closely aligned. Furthermore, Plaintiffs' task
6 has been simplified by a Federal Trade Commission investigation. Girard Gibbs has
7 accounted for its 6,250 hour estimate in a manner the Court finds reasonable. The Court
8 finds the large number of hours proposed by Robbins Geller and Barnow & Associates are
9 not warranted.

10 The estimated number of hours is relevant to the Court's decision because it bears
11 on the cost to Plaintiffs. Should Plaintiffs prevail, they will benefit from the lower fees. The
12 lower estimate also corresponds to more streamlined and efficient litigation and a speedier
13 resolution of the disputes, which serve the interest of all parties and of the public.

14 After considering all the relevant factors, the Court **APPOINTS** Girard Gibbs as lead-
15 liaison counsel. Girard Gibbs is directed to confer with Plaintiffs' counsel to determine
16 whether sharing some of its responsibilities among an executive committee would be helpful,
17 bearing in mind work delegated to committee members will correspondingly reduce the
18 amount of work Girard Gibbs will do. Girard Gibbs may then move for appointment of an
19 executive committee if appropriate.

20 **IT IS SO ORDERED.**

21
22 DATED: June 28, 2010

23 

24 **HONORABLE LARRY ALAN Burns**
25 United States District Judge
26
27
28