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LETTER TO THE CLERK OF COURT  
CENTRAL DISTRICT OF CALIF.

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12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **CV08-00810 PSG (Ex)**

16 CASE NO. CV

16 STEPHEN STETSON, SHANE  
 LAVIGNE, CHRISTINE LEIGH  
 17 BROWN-ROBERTS, VALENTIN  
 YURI KARPENKO, JAKE JEREMIAH  
 18 FATHY, and all others similarly situated,

**CLASS ACTION COMPLAINT  
 FOR VIOLATIONS OF THE U.S.  
 ANTTITRUST LAWS (15 U.S.C. §§ 1  
 AND 2)**

19 Plaintiffs,

**JURY TRIAL DEMANDED**

20 vs.

21 WEST PUBLISHING CORPORATION,  
 a Minnesota Corporation dba BAR/BRI,  
 22 and KAPLAN, INC.,

23 Defendants.

1 Plaintiffs Stephen Stetson, Shane LaVigne, Christine L. Brown-Roberts,  
2 Valentin Yuri Karpenko, and Jake Jeremiah Fathy on their own behalf and on behalf  
3 of all others similarly situated, bring this action for injunctive relief and for damages  
4 under the antitrust laws of the United States.

5  
6 **INTRODUCTION**

7 1. Plaintiffs file this complaint for two purposes: (1) to break up the  
8 illegally obtained and maintained monopoly of BAR/BRI (an assumed name of  
9 Defendant West Publishing Corporation) in the market for the provision of bar  
10 review preparation courses for the nation's various bar exams, and to otherwise  
11 restore viable and enduring competition in that market for the benefit of consumer  
12 class members and (2) to recover the excess prices paid by many such class  
13 members for a BAR/BRI course as a consequence of said monopoly. BAR/BRI has  
14 monopolized the bar review course market through means other than skill, industry,  
15 foresight or historical accident. In fact, it has committed literally a catalogue of  
16 antitrust violations over the years in order to create and maintain said monopoly,  
17 including market division, unlawful acquisition, and conspiracies to restrain trade.  
18 As will be detailed further herein, the practices of BAR/BRI are longstanding and so  
19 pervasive that this lawsuit seeks, in substantial part, the remedy of eviscerating  
20 BAR/BRI's unlawful market power to permit the sun to shine in this dark corner of  
21 the world, then to allow competition there to blossom.

22 2. There are two proposed classes here. Class A consists of individuals  
23 who have heretofore paid for a BAR/BRI course since July 1, 2006 or will do so  
24 prior to the time any injunctive relief obtained herein is fully implemented. Class B  
25 consists of law students who have not yet paid in full for a BAR/BRI course, but  
26 will be purchasing such courses when they graduate from law school as soon as in  
27 2008. This Court then is asked to expeditiously and actively enforce the antitrust  
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1 laws here, in order to permit such a competitive marketplace to develop as soon as  
2 reasonably possible.

### 3 **JURISDICTION AND VENUE**

4 3. This Complaint is filed and these proceedings are instituted, in part,  
5 under Section 16 of the Clayton Act, 15 U.S.C. § 26, to obtain injunctive relief and  
6 the costs of suit, including reasonable attorneys' fees, against Defendants to remedy  
7 violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2,  
8 respectively, as alleged in great detail herein below. This Complaint is also filed  
9 under Section 4 of the Clayton Act, 15 U.S.C. § 15, as to individuals who have paid  
10 for a BAR/BRI course or for whom injunctive relief is not timely provided. Such  
11 members will be entitled to obtain their damages and the costs of suit, including  
12 reasonable attorneys' fees thereunder.

13 4. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331  
14 and 1337, and by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26,  
15 respectively.

16 5. Defendants transact business, maintain offices, and are found within  
17 this Judicial District. The interstate commerce described hereinafter is also carried  
18 on, in part, within this Judicial District. Venue is proper in this District pursuant to  
19 the provisions of 15 U.S.C. § 22 and 28 U.S.C. § 1391.

### 20 **PLAINTIFFS**

21 6. Stephen Stetson ("Stetson") is an individual who resides in Tuscaloosa,  
22 Alabama. Stetson is a graduate of the University of Alabama School of Law and is  
23 currently enrolled in a BAR/BRI bar preparation course. Stetson will take  
24 Alabama's February 2008 Bar Examination. He believes he overpaid for the  
25 BAR/BRI bar preparation course as a consequence of Defendants' monopolistic  
26 activities, and now seeks to recover his actual damages.

27 7. Shane LaVigne ("LaVigne") is an individual who resides in San Diego,  
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1 California. LaVigne is a graduate of the Thomas M. Cooley Law School in  
2 Lansing, Michigan who enrolled in, and completed, a BAR/BRI bar preparation  
3 course after July 1, 2006. LaVigne took the California July 2007 Bar Examination  
4 and currently practices law in California. He believes he overpaid for the BAR/BRI  
5 bar preparation course as a consequence of Defendants' monopolistic activities, and  
6 now seeks to recover his actual damages.

7 8. Christine L. Brown-Roberts ("Brown-Roberts") is an individual who  
8 resides in Sacramento, California. Brown-Roberts is a fourth-year evening law  
9 student at University of the Pacific McGeorge School of Law in Sacramento,  
10 California. Brown-Roberts seeks, to the extent possible, a competitive marketplace  
11 for bar review preparation courses, in which market she will be a consumer, in  
12 preparation for the bar exam she will be taking in one state or another in or about  
13 July 2008. At this time, Brown-Roberts has not decided in which state she intends  
14 to practice law, and, therefore, seeks for herself and the class the creation of  
15 competitive conditions throughout the U.S.

16 9. Valentin Yuri Karpenko ("Karpenko") is an individual who resides in  
17 Michigan. Karpenko is a third-year law student at Emory University School of Law  
18 in Atlanta, Georgia. Karpenko has pre-enrolled in a BAR/BRI bar preparation  
19 course. Karpenko seeks, to the extent possible, a competitive marketplace for bar  
20 review preparation courses, in which market he will be a consumer, in preparation  
21 for the bar exam he will be taking in one state or another in or about July, 2008. At  
22 this time, Karpenko has not decided in which state he intends to practice law, and,  
23 therefore, seeks for himself and the class the creation of competitive conditions  
24 throughout the U.S.

25 10. Jake Jeremiah Fathy ("Fathy") is an individual who resides in  
26 Sacramento, California. Fathy is a second-year law student at University of the  
27 Pacific McGeorge School of Law in Sacramento, California. Fathy has pre-enrolled  
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1 in a BAR/BRI bar preparation course. Fathy seeks, to the extent possible, a  
2 competitive marketplace for bar review preparation courses, in which market he will  
3 be a consumer, in preparation for the bar exam he will be taking in one state or  
4 another in or about July 2009. At this time, Fathy has not decided in which state he  
5 intends to practice law, and, therefore, seeks for himself and the class the creation of  
6 competitive conditions throughout the U.S.

#### 7 **DEFENDANTS**

8 11. Defendant West Publishing Corporation is a wholly-owned subsidiary  
9 of Thomson Company ("Thomson"), also known as "West Group" (here, "West").  
10 West is a Minnesota corporation headquartered in Eagan, Minnesota. Thomson is a  
11 Canadian corporation with its principal place of business in Toronto, Ontario, and  
12 with substantial offices in the U.S. Thomson calls itself the "World's Leading  
13 Information Resource."

14 12. In or about 2001, Thomson's principal competitor, Reed Elsevier, Inc.,  
15 dba Lexis/Nexis ("Reed Elsevier"), purchased BAR/BRI, among other lines of  
16 business, from Harcourt General Inc. ("Harcourt"), which owned BAR/BRI at the  
17 time. After Reed Elsevier purchased BAR/BRI, it promptly sold it to its competitor  
18 Thomson, which now operates BAR/BRI through West. At that time, Thomson also  
19 acquired MicroMash Bar Review ("MicroMash"), a full-service home study bar  
20 review course.

21 13. At all pertinent times, BAR/BRI has been the only full-service bar  
22 review course operating throughout the United States that offers courses for  
23 virtually all jurisdictions in which bar examinations are provided. In the past, it has  
24 also operated LSAT, GRE, GMAT, MCAT, and CPA test preparation courses.

25 14. Defendant Kaplan, Inc. ("Kaplan") is a corporation organized under the  
26 laws of Delaware, with its principal place of business in New York, New York. It  
27 formerly did business as the Stanley H. Kaplan Test Centers. Kaplan is the largest  
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1 provider of preparatory courses for numerous college and graduate school courses of  
2 study, including LSAT, SAT, GMAT, MCAT, TOEFL, GRE, CPA and others, but  
3 at all pertinent times it offered no full-service bar review course.

#### 4 **TRADE AND COMMERCE**

5 15. At all pertinent times, BAR/BRI has regularly sold and shipped bar  
6 review courses, course volumes, books, audio and video tapes and other materials,  
7 *inter alia*, across state lines. It has also continuously engaged in soliciting students  
8 to take courses outside their resident states. Therefore, BAR/BRI's activities,  
9 including the anticompetitive activities described herein, are in, and substantially  
10 affect, interstate commerce.

11 16. Kaplan operates its various courses throughout the U.S. It also  
12 regularly ships its course materials throughout the United States. Also, the  
13 conspiracy entered into between Kaplan and BAR/BRI was accomplished through  
14 the use of, at least, the wire and mails across state lines. Therefore, the activities of  
15 Kaplan, including the anticompetitive activities described herein, are in, and  
16 substantially affect, interstate commerce.

#### 17 **RELEVANT MARKETS**

18 17. The provision of bar review courses to individuals preparing to take a  
19 bar examination is a relevant product market for purposes of enforcement of the  
20 antitrust laws. In addition, the provision of so-called full-service bar review courses  
21 to such individuals, which in dollar volume accounts for the vast preponderance of  
22 all sales in the overall market, is in and of itself a relevant product market (or  
23 submarket) for purposes of enforcement of the antitrust laws.

24 18. There are also relevant markets for each test preparation course  
25 provided by Kaplan and previously provided by BAR/BRI, most particularly  
26 pertinent here, for courses for the LSAT, MCAT, GRE, and GMAT exams.

27 19. A relevant geographic market for purposes of enforcement of the  
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1 antitrust laws here is the U.S. Other relevant geographic markets for antitrust law  
2 enforcement purposes may include each locale, e.g., state or the District of  
3 Columbia, in which full-service bar review courses are provided (collectively  
4 "states"), and the venues of all law schools, in which a measurable percentage of  
5 students attend who emanate from, or migrate to, other states.

6       20. The relevant business engaged in by BAR/BRI consists of training law  
7 school graduates for the bar examination each needs to pass before receiving a  
8 license to practice law in one or more states. The bar examination in most states in  
9 the U.S. consists of, at least, two parts. One part is the Multistate Bar Examination  
10 ("MBE"). The MBE is prepared by the National Conference of Bar Examiners and  
11 is identical throughout the U.S. It is required in nearly all states. The second part of  
12 the bar examination consists of a test prepared under the control of each State's  
13 Board of Bar Examiners or similarly-titled state license-issuing body. This second  
14 part is designed to test local law and/or general legal concepts and the application  
15 thereof, typically in essay format. Numerous states also incorporate the so-called  
16 Multistate Essay Examination and/or the Multistate Performance Test into their  
17 exams. These tests are substantially similar between and among the states where  
18 employed. The materials and courses overall are also substantially similar from  
19 state to state.

20       21. Like its erstwhile competition, BAR/BRI provides a full-service bar  
21 review course, typically about seven weeks in duration, in which substantive law is  
22 reviewed, test-taking techniques are taught, and pertinent skills honed for the  
23 grueling multi-day exam that awaits each exam-taker. Bar review courses are the  
24 principal means employed by law school graduates to prepare for the bar  
25 examination. BAR/BRI provides to students, among other things, a set of written  
26 review materials, live or pre-taped lectures on the subjects and points of substantive  
27 law that are tested in that state, and review questions that are similar to those asked  
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1 previously, or have actually been asked previously, by the bar examiners therein.

2       22. MicroMash offers courses in about 21 states, plus the District of  
3 Columbia. It, too, has prepared thousands of law school graduates to pass a state bar  
4 examination.

5       23. Despite, or more likely because, these intensive preparation courses are  
6 predominately provided by BAR/BRI, with rare exception, the nation's bar exam  
7 passage rate has been steadily sinking. This trend has been occurring over the past  
8 several years, while at the same time LSAT scores for incoming law students have  
9 been rising and competition stiffening among students just to get in to law school.  
10 (MBAs are less attractive then they were 10 years ago.) There can be little doubt  
11 that BAR/BRI has contributed to this decline, by behaving like many monopolists  
12 that earn substantial profits by stinting on the quality of its products. Thus,  
13 BAR/BRI: (1) save money by reprinting materials without updates, e.g., using  
14 summer material in the next winter's course without updates; (2) increasingly  
15 offering videotaped over live lectures; and (3) investing more funds and energy in  
16 killing any competitor that might threaten its position, rather than improving its  
17 product offerings.

18       24. Because of the practice of BAR/BRI signing up most law students for  
19 the bar exam during their first year, it is important that a bar review course provider  
20 offer courses for multiple states, as many such students are frequently unsure of the  
21 particular State in which they will ultimately sit for an exam, then practice law.  
22 BAR/BRI is now the only bar review course in the U.S. that offers full-service bar  
23 review courses in every state, and offers many state courses in numerous other  
24 states. Therefore, it has an insurmountable advantage tying up most law students in  
25 or about their first year of law school, so that those students are uninterested in  
26 shopping for another bar review course thereafter, i.e., they are no longer consumers  
27 in the market.

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1           25. As the examination process is both grueling and obviously important,  
2 persons desiring to take a bar examination in a given state for the first time, will,  
3 with rare exception, take a full-service bar review course, designed to prepare them  
4 for the challenge that lies ahead. Even persons who have previously failed one or  
5 more bar exams frequently attend full-service bar review courses as often as they sit  
6 for an exam. Similarly, a substantial number of admittees to a state's bar will take at  
7 least a second state's bar exam and a subsequent bar review preparation course in or  
8 for that state, in all likelihood BAR/BRI's. The full-service bar review course  
9 proves then to be the principal means to specifically prepare for the bar examination  
10 of each state. There is little, if any, cross-elasticity of demand between full-service  
11 bar courses, on the one hand, versus supplementary specialty courses and  
12 generalized texts dealing with the substantive topics which happen to be covered on  
13 the bar examination, on the other.

14           26. At all relevant times, BAR/BRI's share of the national market for the  
15 provision of full-service bar review courses has been in excess of 90 percent. Until  
16 recently it boasted on its website: "BAR/BRI Bar Review is the largest bar review  
17 company in the United States, preparing more than 95 percent of all students sitting  
18 for the bar exam in any given year." In many states, its share of the market  
19 approaches 100 percent. As a practical matter, in all but a handful of states,  
20 Plaintiffs will literally be trapped into taking the BAR/BRI course, as whatever the  
21 quality of BAR/BRI's course may be, far too often it is the only choice.

22           27. Regarding entry barriers, they are very high in this market. In part,  
23 there are structural limitations to entry, mainly that to succeed, entry must occur in  
24 most states within a short period, which is a very costly proposition. But the  
25 principal entry barrier in the relevant market is BAR/BRI's own wrongful actions  
26 which serve to drive up that cost enormously. Thus, the entry barriers here are  
27 largely "endogenous." Such barriers can be readily lowered, then, only by  
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1 eviscerating BAR/BRI's monopoly and the practices that helped create it. At such  
2 time as that power is dissipated and those practices enjoined, it will become far  
3 easier for potential competitors to enter the market and successfully market high  
4 quality, reasonably priced courses.

5 28. Successful entry has been made even more difficult since the  
6 combination of BAR/BRI and West. West provides its powerful data and legal  
7 research retrieval service, Westlaw, free of charge to law students who, of course,  
8 typically employ it on a virtually constant basis. At pertinent times herein,  
9 Westlaw's user screens have contained regular pop-up and other advertising to  
10 promote BAR/BRI. A substantial number of law students are, in fact, required to  
11 view the Westlaw website and its advertising because their professors post  
12 homework and related assignments on "The West Education Network," access to  
13 which is available only by traversing said Westlaw website. No other competitor  
14 has comparable, if any, access to such a powerful promotional vehicle.

15 29. There has been no successful entry against BAR/BRI since 1995.  
16 (Regarding events commencing in that year, see West Bar Review discussion  
17 below.)

18 30. Due to BAR/BRI's clear monopoly in preparing (or failing to prepare)  
19 students to take a state's bar examination, BAR/BRI has been able to unilaterally  
20 control pricing in this market for many years. Specifically, it has raised prices for its  
21 course approximately \$100 per year in every state, across the board for several years  
22 now. Where "discounting" takes place, that principally seems to be in the area of  
23 providing students discounts for early signups, scholarships and the like. Such  
24 discounts are unrelated to competitive factors, except for two known instances  
25 which are detailed below.

26 31. BAR/BRI is now the entrenched monopolist in the full-service bar  
27 review market, with no significant likelihood of its offering reasonable, competitive  
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1 prices or of the entry of meaningful new competition, without the assistance of this  
2 Court.

3 32. Kaplan puts on training courses for almost every standardized exam  
4 given to high school, college and graduate students and others seeking licenses of  
5 one kind or another, as noted above. One of the few professional training exams, if  
6 not the only such exam, for which Kaplan did not have a preparation course in 1997,  
7 was for the various state bar examinations. It did, however, attempt to compete in  
8 that market in the late 1980s to early 1990s in a failed joint venture with a then-  
9 extant bar review course provider, SMH.

10 33. Kaplan was well-suited to succeed West Bar Review as a full-service  
11 bar review course operator in the U.S. As of 1997, for example, Kaplan was the  
12 largest provider in the live Law School Aptitude Test ("LSAT") preparation course  
13 market, with classrooms and related facilities for such courses located around the  
14 U.S. Kaplan also occupies a similar position in providing preparation courses for  
15 other exams, in the markets in which BAR/BRI was a competitor or potential  
16 competitor at the time. As the largest purveyor of LSAT courses, Kaplan offered a  
17 natural audience to market a full-service bar review course. Plus, Kaplan has  
18 possessed a deep pocket and classrooms throughout the country, along with the  
19 infrastructure in place to easily manage one more "training course." BAR/BRI  
20 controlled as much as seven percent of the LSAT course market during the years  
21 preceding 1997.

22 **BAR/BRI's OVERALL SCHEME TO MONOPOLIZE THE**  
23 **RELEVANT MARKET**

24 34. BAR/BRI has engaged over many decades in an overall scheme to  
25 monopolize the relevant market. The following are substantial instances of said  
26 overall scheme to monopolize.

27 35. **BRC.** Early in BAR/BRI's existence, back in the late 1970s, it  
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1 encountered a fast-growing competitor, BRC. With BAR/BRI, headquartered in  
2 Illinois, and BRC, headquartered in Michigan, they secretly conspired then not to  
3 compete against each other in their home states, in order to eliminate competition  
4 between them at the time. As a consequence, BRC reversed its plan to enter Illinois  
5 and BAR/BRI stayed out of Michigan – for more than a decade thereafter. That  
6 permitted each company to monopolize their respective home states. The  
7 conspiracy then endured for nearly a decade. The market-division conspiracy that  
8 so endured violated Section 1 of the Sherman Act (15 U.S.C. § 1).

9       36. In 1987, Steve Emanuel (“Emanuel”) purchased BRC from its then  
10 owner Wolters Kluwer. Within six weeks thereof, Emanuel closed the BRC course  
11 without explanation, leaving some 9000 pre-signed students stranded. On  
12 information and belief, BAR/BRI took action at the time involving Emanuel, to  
13 drive BRC out of business. Upon BRC’s departure, BAR/BRI sold its own course  
14 to most of said students.

15       37. **Becker.** In the early 1990s, the Becker CPA Review (“Becker”) was  
16 the largest provider of CPA courses in the U.S. At that time, it was a most likely  
17 entrant into the bar review course business because of its pertinent national  
18 infrastructure and related course. (As noted above, BAR/BRI itself generated a  
19 CPA prep course at the time.) Enter Hugh Reed (“Reed”). Reed was a BAR/BRI  
20 executive who left BAR/BRI around that time. Shortly thereafter he entered into an  
21 agreement with Becker to commence a national bar review course to compete  
22 against BAR/BRI. For a period of a few days in the early 1990s, Reed received  
23 mysterious phone calls over several nights. At exactly the same time, Becker  
24 inexplicably backed out of the deal. This all coincided with a suit BAR/BRI had  
25 brought against Reed for purported violations of his employment agreement with  
26 BAR/BRI during his tenure there. Subsequently, Becker never entered the bar  
27 review business. On information and belief, BAR/BRI interfered with and

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1 prevented Becker's entry into the relevant market.

2       **38. PMBR.** PMBR has provided only a multi-state bar review course for  
3 many years, i.e., a course covering just the so-called "multi-state exam" or MBE.  
4 BAR/BRI also marketed a separate MBE course to compete against the PMBR  
5 course for many years. In the early 1990s, however, PMBR entered into the full-  
6 service bar review course business in California, as well as in several southeastern  
7 states. It then commenced to engage in very aggressive competition against  
8 BAR/BRI. Among other things, PMBR sued BAR/BRI in Colorado, essentially for  
9 BAR/BRI changing its class times, such that its classes then interfered with PMBR's  
10 supplemental course class times which were adjacent to the times BAR/BRI had  
11 previously set for its own course. PMBR claimed precisely \$100,000 in damages in  
12 that lawsuit. However, BAR/BRI then inexplicably settled the matter in an amount  
13 believed to be far more than this amount.

14       **39.** Thereafter, PMBR never again offered a full-service course and  
15 BAR/BRI never again offered a for-pay supplemental MBE course, though it did,  
16 and does, continue to offer its separate for-pay so-called "Essay Advantage" course.  
17 PMBR has never offered any comparable course. In fact, PMBR's reps were trained  
18 to praise BAR/BRI's course in the process of offering PMBR's MBE supplemental  
19 course. PMBR and BAR/BRI do not speak of each other in any critical or  
20 comparative way and freely refer students from one program to the other. In 2006,  
21 Defendant Kaplan acquired PMBR. This market division conspiracy described here  
22 also violates Section 1 of the Sherman Act (15 U.S.C. § 1).

23       **40. Marino.** For many years Marino was a small competitor in New York  
24 State. (Its principal claim to fame there was successfully getting John F. Kennedy,  
25 Jr. through the New York bar exam after he failed the test two prior times.) By the  
26 1990s, Marino had expanded into Pennsylvania and New Jersey. Shortly after it  
27 initiated this outward push from New York, BAR/BRI gave Marino's principal a  
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1 lucrative consulting contract, then shut down its competing course in the several  
2 states in which it then operated. The elevated importance of Marino to BAR/BRI  
3 after it entered *other* states is consistent with BAR/BRI's sustained goal to keep  
4 competition out of the "national" market. This restraint of trade also violates  
5 Section 1 of the Sherman Act (15 U.S.C. § 1).

6       41. **Pieper.** Pieper is one of the few remaining local competitors in the  
7 U.S. in the relevant market. Although it prepares students for only the New York  
8 Bar Exam, Pieper has successfully operated there for decades. Why has Pieper  
9 alone not come under the wrath of BAR/BRI? Pieper, like Marino, had expanded  
10 into at least one other State in the distant past. At that time in fairly short order, it  
11 withdrew from said state and restricted itself to New York, on information and  
12 belief, in response to BAR/BRI's threats, then peacefully reverting to its New York  
13 only program. With respect to its pricing, curiously Pieper has no particular  
14 incentive to take business away from BAR/BRI, as its prices in New York are  
15 virtually identical to BAR/BRI's own high prices. Thus, BAR/BRI still controls  
16 more than 75 percent of the entire New York market. Whatever steps BAR/BRI took  
17 to restrict Pieper to New York also violates Section 1 of the Sherman Act (15 U.S.C.  
18 § 1).

19       42. **West Bar Review.** In 1995, West formed West Bar Review ("West  
20 Bar") for the purpose of competing in the relevant market here. It then commenced  
21 operations throughout the U.S., in part by acquiring a number of pertinent then  
22 extant regional competitors in the relevant market, including BarPassers, a  
23 significant competitor in California, Arizona and Florida at the time. West Bar  
24 Review commenced then to compete vigorously against long-time dominant  
25 competitor, BAR/BRI, still owned by Harcourt at the time.

26       43. In 1996 West was acquired by Thomson. Shortly thereafter, Thomson  
27 decided to sell West Bar, notwithstanding that it proved to be a viable competitor to  
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1 BAR/BRI. By the summer 1997 course, it had already earned a gross profit. For  
2 whatever reason West's new owner at the time Thomson wanted no part of the bar  
3 review business and put West Bar Review up on the block.

4 44. West transferred to BAR/BRI pertinent assets of West Bar Review in  
5 the fall of 1997, eschewing at the time other less anticompetitive and more lucrative  
6 potential acquirers. Without substantial competition, BAR/BRI's net price per  
7 student then increased steadily in most states.

8 45. BAR/RBI also acquired West Bar Review's superior academic  
9 materials and the right to provide a course to some 20-plus thousand students  
10 previously signed up to take the West Bar Review course. Also, it "bought" the  
11 right to close out West Bar Review's nationwide infrastructure which was formed, in  
12 part, by its having made the acquisitions referred to above. With that one stroke,  
13 BAR/BRI's monopoly was all but cast into concrete. This acquisition violated  
14 Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act (15 U.S.C. §§  
15 18, 1, and 2).

16 46. In 2001, West returned to the full-service bar review business when it  
17 purchased the BAR/BRI business, for a sum believed in excess of \$200 million, a  
18 far higher price than BAR/BRI paid for West Bar's burgeoning, competitive, bar  
19 review course assets in 1997. The substantial price difference is due to the fact that  
20 the acquisition of West Bar Review's assets by BAR/BRI eliminated the only viable  
21 competitor in the market, or likely to be in the market, for the foreseeable future.  
22 (Boardwalk and Park Place are, of course, worth far, far more when owned by one  
23 player than by two in the Monopoly game. This economic truism readily explains  
24 the greater value attached to the consolidated bar review course business acquired  
25 by West to re-enter this market.)

26 47. Notwithstanding West's claim of its erstwhile bar review course  
27 business' purported lack of "fit" within Thomson's "long term strategic direction,"  
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1 as of 1997, BAR/BRI is now an extremely profitable business of West, with recent  
2 net profits approximating 40 percent of its sales.

3 48. **Kaplan.** On or about July 31, 1997, Kaplan entered into a letter of  
4 intent with West to purchase the assets of West Bar. However, within the next 10  
5 days, executives of Kaplan and BAR/BRI secretly communicated. As a result of  
6 these communications, Kaplan withdrew its bid for West Bar, instead entered into a  
7 so-called "co-marketing" agreement with BAR/BRI in which BAR/BRI secretly  
8 paid to Kaplan up to \$750,000 per year, but on the condition that Kaplan secretly  
9 agree to stay out of the full-service bar review course market. BAR/BRI and Kaplan  
10 also further agreed to "strategically" work together in the future to promote their  
11 complementary businesses.

12 49. Around the time the Kaplan/West Bar acquisition fell through, West  
13 announced it was closing West Bar, purportedly because it did not fit within its  
14 "long term strategic direction." As noted above, it then divested its operative bar  
15 review assets to BAR/BRI, including the commitments of more than 20,000 students  
16 to purchase and complete its bar review course. Also around that time, BAR/BRI  
17 quietly wound down, at least, its LSAT preparation course. (Part of its agreement  
18 with Kaplan was that BAR/BRI would not compete in the LSAT course market  
19 against Kaplan.) BAR/BRI's combination with Kaplan violated Sections 1 and 2 of  
20 the Sherman Act (15 U.S.C. §§ 1 and 2).

21 50. Prior to its 1997 Agreement with BAR/BRI, Kaplan sought to enter  
22 into the full service bar review business course business. To date, however, neither  
23 Kaplan nor PMBR has entered the market, nor has BAR/BRI resumed sale of a  
24 separate supplemental MBE course. Every indication then is that BAR/BRI  
25 continues its PMBR conspiracy with Kaplan, its new owner.

26 51. **Louisiana.** For many years in Louisiana there were two courses, one  
27 operated by BAR/BRI out of Tulane University (part of the West Bar acquisition)  
28



1 and another independently operated by Louisiana State University in Baton Rouge.  
2 In 2003, BAR/BRI acquired the right to provide the LSU course for a three-year  
3 period, and for that paid the sum of \$100,000 to LSU. LSU then withdrew from the  
4 market and BAR/BRI became a monopolist there. Within three years, the price  
5 charged for the Louisiana bar review course tripled! At least one faculty member of  
6 its Louisiana course has a contract extending through 2007, beyond the ostensible  
7 three-year term of the agreement. The agreement, in fact, appears to continue to the  
8 present. In any event, no new bar review course has emerged in Louisiana since  
9 2003. The agreement, therefore, eliminated all competition from Louisiana and  
10 violated at least Section 1 of the Sherman Act (15 U.S.C. § 1).

11       **52. Supreme Bar Review.** Supreme Bar Review ("Supreme") operates a  
12 full-service course in Ohio. It is one of BAR/BRI's very few competitors anywhere.  
13 Although Supreme is limited to Ohio, BAR/BRI has taken steps to rid the course  
14 even from that state. BAR/BRI has used, at least, one improper device to  
15 accomplish this task. Throughout the country, in conjunction with the American  
16 Bar Association ("ABA"), BAR/BRI offers various scholarship programs providing  
17 assistance to needy students. However, it has misused this program in, at least, Ohio  
18 and Washington (see Rigos below).

19       **53.** In Ohio, BAR/BRI's so-called "Tuition Assistance Plan" has been  
20 offered to students who intend to take the Supreme course. The secret purpose of  
21 the plan is to provide those students an amount of money, at least equal to the price  
22 difference between the Supreme course and the BAR/BRI course, whether or not  
23 they need financial support. The ABA never authorized its name to be associated  
24 with the anticompetitive use of this assistance program. The effect is to improperly  
25 divert business from Supreme to BAR/BRI.

26       **54.** BAR/BRI has undertaken other acts to suppress Supreme and eliminate  
27 it from the market. Among other things, it started a rumor that Supreme would be  
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1 going out of business soon, i.e., not in the market to provide courses years later for  
2 nervous students who might sign up with it. It also made comparative  
3 representations about its passing percentages which were misleading, if not outright  
4 false. In addition, it filed a federal lawsuit against Supreme seeking to have it shut  
5 down. After two years of costly litigation, that meretricious lawsuit fortunately  
6 failed to achieve that objective, as Supreme continues to struggle to remain in  
7 business to the present time.

8         55. Within various law schools in Ohio, BAR/BRI has also effectively co-  
9 opted so-called "Student Bar Association" executives who are responsible for  
10 bulletin board advertising space and the like. In many law schools the student  
11 government is referred to as the SBA (for Student Bar Association). Important to  
12 the promotion of a bar review course, particularly a new bar review course, is the  
13 right to post flyers on bulletin boards within the law schools. As it happens, in many  
14 law schools the management of those bulletin boards and other public access spaces  
15 of the same sort have been ceded by the administration to the SBA. BAR/BRI has  
16 made it a practice, at least in Ohio, of approaching "executives" of such SBAs,  
17 persuading them to become BAR/BRI reps, by offering them free BAR/BRI  
18 courses. Then, BAR/BRI either requires or incentivizes such executives not to  
19 approve the posting of flyers on bulletin boards of competing bar review courses.

20         56. Thus, Supreme has been restricted in law schools in Ohio from posting  
21 advertising about its course because a number of SBA executives, so co-opted by  
22 BAR/BRI, have refused to permit such flyers to be posted. As there are few other  
23 places to promote bar review courses than in a law school (where the bulk of  
24 potential and actual consumers reside), the restriction on such advertising is a  
25 substantial restraint on competition imposed on Supreme by BAR/BRI in Ohio.

26         57. **DeVry.** Like Becker and Kaplan, DeVry (which has also owned  
27 Becker for many years) is a provider of a variety of courses for post-secondary  
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1 examinations. Among the most significant of its offerings is the preparatory course  
2 for the CPA exam. Until July 1999, BAR/BRI profitably operated a CPA  
3 preparation course, along with its bar review course. In that year, BAR/BRI sold its  
4 so-called Conviser Duffy CPA Course to DeVry. Like Kaplan and Becker before it,  
5 DeVry, too, has been a most likely entrant into the bar review course business.  
6 Plaintiffs are informed and believe that incident to BAR/BRI's sale to DeVry of said  
7 CPA course, each party has agreed not to compete in the market of the other, i.e.,  
8 BAR/BRI, not to initiate another CPA preparation course and DeVry comparably  
9 not to initiate a bar review course. This market division also violates section 1 of the  
10 Sherman Act (15 U.S.C. § 1).

11       58. **Rigos.** Rigos is a course operated in, and for, Washington State. Like  
12 Supreme in Ohio, it is one of the few surviving competitors of BAR/BRI. Rigos has  
13 been the victim of substantial anticompetitive activity by BAR/BRI in Washington  
14 State, including defamation about its principal and trade libel about its course,  
15 misstatements about BAR/BRI's passing percentages versus Rigos', contamination  
16 of Rigos' customer relations, and more. Most notable about Rigos here, however, is  
17 the declaration its principal has filed in connection with the repeated breaking and  
18 entering into his offices and theft of its bar review course records just after he was  
19 listed as a witness in the case *Rodriquez v. West Publishing Corporation CV 05-*  
20 *3222R.* (A true copy of Mr. Rigo's declaration is attached hereto as Exhibit 1, and  
21 incorporated herein by this reference).

22       59. The Rigos declaration recites a lengthy list of predatory acts inflicted  
23 by BAR/BRI and calculated to eliminate the Rigos threat to its monopoly. They  
24 include employing faculty of Washington law schools to promote BAR/BRI while  
25 teaching, repeatedly chilling free speech by baselessly threatening Rigos' student  
26 reps *personally* with lawsuits claiming their false advertising and defamation,  
27 repeatedly threatening Rigos with litigation for passing percentage representations  
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1 (which were accurate), but refusing to submit its own supporting records to an audit,  
2 and starting rumors that Rigos was about to go out of business.

3 60. As in Ohio, BAR/BRI also attracts those considering Rigos by offering  
4 them "scholarships" to take the BAR/BRI course. BAR/BRI also effectively "blood-  
5 dopes" its own performance, should passing percentages ever be required or  
6 otherwise discernible, by providing scholarships to law review and similar high  
7 achieving students at various law schools in Washington. These are students who  
8 are almost certain to pass the bar exam, whatever course they take.

9 61. Regarding the burglaries, Rigos' office was recently broken into or  
10 otherwise electronically invaded four times (the only such acts in 26 years of Rigos'  
11 occupying said offices). During those burglaries, all that was taken were  
12 competitive marketing materials for its course and information about BAR/BRI.  
13 BAR/BRI employs on its staff a reputed former FBI agent in San Francisco who, on  
14 information and belief, would think little before causing such activities to occur,  
15 having engineered a similar break-in at the Santa Monica offices of erstwhile  
16 competitor BarPassers some years earlier.

17 62. The first Rigos burglary occurred just four days after it was listed by  
18 the Plaintiffs in *Rodriguez, et. al v. West Publishing Corp., d/b/a BAR/BRI, and*  
19 *Kaplan, Inc.*, Case No. CV-05-3222 R, as a possible witness. The electronic  
20 hacking of its replaced hard drive occurred just days later. The final burglary  
21 occurred just a few days after Rigos' owner was contacted by BAR/BRI counsel for  
22 the first time and hung up on said counsel, as they endeavored to interrogate him.  
23 This Court will be requested to assist in efforts to get to the bottom of the unusual  
24 events that so coincidentally surrounded Rigos just after he was listed as a witness in  
25 that case, so that such palpable witness tampering does not impact this case too.

26 63. **Bar Secrets.** Dennis P. Saccuzzo and Nancy E. Johnson essentially  
27 built a "better mousetrap," i.e., a course, Bar Secrets, which served to be a far more  
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1 successful vehicle for improving the passage rates of its attendees, particularly for  
2 lesser performing law school graduates. Saccuzzo and Johnson, licensed  
3 psychologists and lawyers with years of collective teaching experience, apparently  
4 concluded that there was a substantial psychological component affecting many of  
5 those who failed the bar exam. By blending their knowledge of psychology with the  
6 law, they were able to achieve substantially improved passing results in two second-  
7 tier law schools in the San Diego area (California Western School of Law and  
8 Thomas Jefferson School of Law). For example, it was recently announced that at  
9 the Thomas Jefferson School of Law, the students who took Bar Secrets had a 16  
10 percent higher pass rate than those who took the "other" course.

11         64. When BAR/BRI learned of this superior course, one that could  
12 presumably threaten its entire existence, if rolled out by a new competitor across the  
13 country via a joint venture or license, it took steps to immediately destroy it. On  
14 December 30, 2001, Defendant BAR/BRI sent a derogatory and misleading letter,  
15 signed by one Karen Reimus, to all students who had signed up with BAR/BRI in  
16 their first year of law school, but switched to Bar Secrets collectively for the  
17 February 2002 bar exam. Saccuzzo and Johnson were working only at one school at  
18 the time – California Western School of Law. BAR/BRI contributed substantial  
19 resources to that school to divert business from them to BAR/BRI. Then, various  
20 student representatives and faculty members at that school were co-opted to  
21 badmouth Bar Secrets, notwithstanding it was indisputably superior to BAR/BRI's  
22 in terms of passing percentages, ultimately the only relevant marketing criterion.  
23 BAR/BRI substantially interfered with Saccuzzo and Johnson's relationship with  
24 California Western School of Law, and eventually ran them out of that law school.

25         65. Another BAR/BRI employee, Tara Shaw, went so far as to write letters  
26 to potential Bar Secrets customers advising them of the purported superiority of its  
27 course, in part by making misleading, if not outright false, representations about the  
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1 passing percentages of Bar Secrets. Shaw is a former student of Saccuzzo, who  
2 attended two of his Bar Secrets programs at California Western School of Law, and  
3 whom he personally helped prepare for the bar. BAR/BRI hired and used her in a  
4 continuing effort to destroy Bar Secrets, after their earlier attempts did not prove  
5 effective in terms of enrollments in his program at California Western School of  
6 Law. Shaw has now worked her way into an influential position on the California  
7 Western School of Law Alumni Board and Bar Secrets is now on the outside  
8 looking in there.

9       66. As their latest effort, BAR/BRI planted a mole, one Jon Baumunk, to  
10 work for and *help* Saccuzzo and Johnson. Baumunk attended their full program at  
11 least three times over a period of two years, after they hired him to grade and teach,  
12 and obtained for him an adjunct position at Thomas Jefferson School of Law to  
13 assist them there. After showing Saccuzzo that he had taken copious notes for each  
14 of the three Bar Secrets 72-hour lecture programs, Baumunk went to California  
15 Western School of Law and was hired, along with BAR/BRI, as Director of Bar  
16 Programs at the law school. Baumunk then admitted to Saccuzzo that he had been  
17 hired by BAR/BRI to learn as much as he could about the Bar Secrets course, then  
18 to discredit it! Thereafter, California Western School of Law failed to renew its  
19 contract with Saccuzzo and Johnson. Baumunk now openly works with BAR/BRI,  
20 teaching the curriculum once taught by Saccuzzo, even though he is ill equipped to  
21 do so.

22       67. Although Saccuzzo and Johnson are now contracted with just Thomas  
23 Jefferson School of Law, BAR/BRI gives a free course to everyone on that school's  
24 law review. Those students are open and vocal in their criticism of Bar Secrets,  
25 making Saccuzzo's efforts there too all the more difficult.

26       68. **LexisNexis.** LexisNexis ("Lexis") is West's principal competitor. In  
27 approximately 2001, Lexis purchased a variety of courses and related assets from  
28

1 Harcourt, which included the BAR/BRI business. Shortly thereafter, it sold  
2 BAR/BRI and various other assets to West. On information and belief, the various  
3 agreements entered into at the time do not reflect any written non-compete  
4 agreements with Lexis, the type that might be incident to the sale of an asset and  
5 might even have been legitimate if made at the time, though they have not competed  
6 since in the relevant market.

7 69. However, there is joint marketing activity between Lexis and West  
8 outside the U.S., in Hong Kong, in connection with the BAR/BRI bar review course  
9 offered there. There, apparently, for expatriates or others who wish to take an  
10 American bar exam, BAR/BRI offers a course that purports to be a "Lexis/Nexis...  
11 course." In addition, prior to purchase of BAR/BRI by Lexis, the two companies  
12 had entered into a marketing agreement. On information and belief, West and Lexis  
13 have entered into an agreement wherein, among other things, Lexis will not compete  
14 against BAR/BRI in the United States. Upon the taking of discovery, Plaintiffs  
15 expect to learn West's *quid pro quo* for this understanding. Such a market division  
16 agreement violates section 1 of the Sherman Act (15 U.S.C. § 1).

17 70. **Other Acts.** BAR/BRI unreasonably insists on, and has routinely  
18 obtained, numerous agreements from faculty and staff prohibiting their working for,  
19 or otherwise assisting, any other bar review course provider should they depart  
20 BAR/BRI.

21 71. BAR/BRI has engaged in the continuing practice of tearing down,  
22 otherwise removing, or preventing the posting of, the signs, placards and related  
23 promotional materials of local bar review course competitors at various law schools  
24 in the U.S., including by the means set forth in paragraphs 54-56 and 64-65 above.

25 72. BAR/BRI has paid so-called "consulting" fees to various law school  
26 administrators personally, at least, in part, to assure that BAR/BRI maintains  
27 preferential, if not exclusive, access to the use of such law schools' assembly and  
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1 common areas for marketing and related purposes, and to further assure that any  
2 potential competitors will be unable to obtain such access.

### 3 **ADVERSE EFFECT ON COMPETITION**

4 73. BAR/BRI's overall scheme to monopolize the bar review market  
5 adversely affects competition and the competitive process in, at least, the following  
6 ways:

7 (a) Plaintiffs and members of the claimed Classes have paid, or will pay,  
8 far more for the course(s) they purchased, or will purchase, than they would have  
9 paid, or pay, in the absence of such wrongful acts, frequently in excess of \$1,000  
10 above a competitive price;

11 (b) Competitors that promoted price and quality competition have been  
12 eliminated;

13 (c) Plaintiffs and members of the claimed Classes have been and will be  
14 too often left with BAR/BRI as the only choice for a bar preparation course; and

15 (d) Plaintiffs and members of the claimed Classes are more likely to fail  
16 the bar examination as a result of the decreased quality of services BAR/BRI  
17 provides to its customers.

### 18 **INJURY TO PLAINTIFFS** 19 **MEMBERS OF CLAIMED CLASSES**

20 74. During the period covered by this Complaint, Plaintiffs and members of  
21 the claimed Classes have either purchased from, signed up for, or intend to  
22 purchase, at least one bar review preparation course from BAR/BRI. As a direct  
23 result of Defendants' combination, conspiracy and monopolization, Plaintiffs and  
24 members of the claimed Classes paid, or will pay, far more for the course(s) they  
25 purchased or will purchase than they would have paid or pay in the absence of such  
26 wrongful acts, frequently substantially in excess of \$1,000 above a competitive  
27 price.  
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1           75. In the recent past, BAR/BRI's course has cost each consumer about the  
2 following amounts: \$3,550 in California, \$2,745 in Florida, \$2,595 in Illinois,  
3 \$2,625 in Maryland, \$2,850 in New York, \$2,600 in Pennsylvania, \$2,495 in Texas,  
4 \$2,725 in Virginia, and comparably supra-competitive price levels elsewhere in the  
5 United States, except in those few states where state bar or similar rules put a cap on  
6 BAR/BRI's pricing (e.g., Iowa) or isolated and independent, but viable local  
7 competition remains (such as in Indiana, where a bar review course is offered by a  
8 local bar association there). In addition, BAR/BRI imposes an effectively non-  
9 refundable book charge, repeat fees, add-on (second state preparation) fees, plus  
10 other penalties and charges that have increased substantially over the last several  
11 years and now average hundreds of additional dollars of extra cost per student per  
12 year. What BAR/BRI will charge for its course, wherever and whenever some  
13 Plaintiffs will take it, is unknown. Thus, its illegal overcharge is also  
14 immeasurable at this point in time.

15           76. Alternative and superior competitive and copyrighted course materials  
16 and instructional approaches have been acquired by BAR/BRI, which have then  
17 been suppressed by it, then unavailable to, and unused by, others. The effect of this  
18 is that the claimed Classes have suffered, or will suffer, irreparable injury since they  
19 have been deprived, or will be deprived, of the right to choose among such  
20 alternative materials and approaches. Plus, a potential competitor faces a possible  
21 copyright infringement claim from BAR/BRI if it prepares such materials for its  
22 own use, as it must. This has further suppressed competitive choices to members of  
23 the claimed Classes.

24           77. Consistent with its monopoly status and the behavior of other  
25 monopolists, BAR/BRI has also reduced the quality of the course services it  
26 provides to its customers, for example, increasingly replacing live lectures with  
27 video lectures, then curtailing student questions even at such live lectures. The  
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1 members of the Classes have suffered, or will suffer, irreparable injuries since they  
2 are reasonably more likely to fail the bar as a result of BAR/BRI's antitrust  
3 violations.

4 78. By reason of the violations of the federal antitrust laws alleged herein,  
5 Plaintiffs and members of the Classes have been, or will be, irreparably injured in  
6 their business and property and suffer substantial damages in an amount presently  
7 undetermined, a significant and material threat to their business and property unless  
8 the injunctive relief sought here is granted.

### 9 CLASS ACTION ALLEGATIONS

10 79. Plaintiffs bring this action on their own behalf and as a Class Action  
11 under the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil  
12 Procedure on behalf of all members of the following classes:

13 A. All persons who have purchased a bar review course from  
14 Defendant BAR/BRI after July 1, 2006, including those who  
15 may purchase at least a second BAR/BRI bar review course  
16 in the future.

17 B. All law students who intend to purchase a bar review  
18 course from Defendant BAR/BRI, but have not purchased  
19 such a course prior to the implementation of any injunctive  
20 relief ordered herein.

21 80. At the present time, Stetson and LaVigne are designated the class  
22 representatives of Class A, and Brian-Roberts, Karpenko, and Fathy are designated the  
23 class representatives of Class B.

24 81. Plaintiffs do not know the exact number of claimed Class members, but  
25 believe it, on information and belief, to exceed 120,000. Due to the nature of the trade  
26 and commerce involved, the claimed Class members here are sufficiently numerous  
27 and geographically dispersed throughout the U.S, so that the joinder of all claimed  
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1 Class members is impracticable.

2 82. There is considerable commonality here among the claimed Class  
3 members in Class A in that each has purchased, or will have purchased, a BAR/BRI  
4 bar review course in a monopolistic market prior to the implementation of any  
5 injunctive relief ordered herein.

6 83. Each claimed Class member in Class B seeks to purchase a bar review  
7 course with competition among course offerings, including materials, format and  
8 time.

9 84. Each claimed Class member in Class B desires to pay a price consistent  
10 with a competitive market instead of a monopoly market, i.e., a lower versus a  
11 higher price.

12 85. Each claimed Class member in Class B desires to purchase a course of  
13 sufficient quality that they will not be impaired in the slightest in their quest to pass  
14 the bar exam that follows.

15 86. In connection with the foregoing, Plaintiffs in Class B have a common  
16 interest in assuring that the market for bar review for the purpose of bar review  
17 courses they intend to purchase will be occupied not just by BAR/BRI, but also by  
18 reasonable competition thereto.

19 87. Plaintiffs in both classes also have a common interest in determining  
20 the following:

21 (a) whether Defendants unlawfully restrained trade and/or monopolized the  
22 full-service bar review course market;

23 (b) whether the alleged wrongful acts violate Section 1 and Section 2 of the  
24 Sherman Act;

25 (c) the adverse effect of Defendants' wrongful acts on the reasonable  
26 availability of bar review courses to be sold in the U.S. in the future; and

27 (d) that Plaintiffs and other members of the claimed Classes have been, or  
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1 are substantially likely to be, damaged by Defendants' wrongful acts.

2 88. Plaintiffs are members of one of the two claimed Classes. Plaintiffs'  
3 claims are typical of the claims of all Class members. Plaintiffs will fairly and  
4 adequately protect the interests of the Classes. Plaintiffs are or will be typical  
5 purchasers of bar review courses sold BAR/BRI throughout the United States,  
6 absent the assistance of this Court. Their interests are coincident with, and not  
7 antagonistic to, those of the other members of the Classes. In addition, Plaintiffs are  
8 represented by counsel who are competent and experienced in the prosecution of  
9 antitrust and class action litigation.

10 89. The prosecution of separate actions by individual members of the  
11 Classes would create a risk of inconsistent or varying adjudications, establishing  
12 incompatible standards of conduct for Defendants.

13 90. The questions of law and fact common to the members of the Classes  
14 predominate over any questions affecting only individual members, including legal  
15 and factual issues relating to liability injunctive relief.

16 91. A class action is superior to other methods for the fair and efficient  
17 adjudication of this controversy. Treatment as a class action will permit a large  
18 number of similarly situated persons to adjudicate their common claims in a single  
19 forum simultaneously, efficiently, and without the duplication of effort and expense  
20 that numerous individual actions would engender. Class treatment will also permit  
21 the adjudication of claims by many Class members who could not afford  
22 individually to litigate an antitrust claim such as is asserted in this Complaint. The  
23 Class is readily ascertainable. Finally, this class action likely presents no difficulties  
24 in management that would preclude maintenance as a class action.

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**CLAIM ONE**  
**CONSPIRACY TO RESTRAIN TRADE; VIOLATION OF SECTION 1 OF  
THE SHERMAN ACT (AGAINST BOTH DEFENDANTS)**

92. Paragraphs 1-91 are incorporated by reference herein.

93. Defendants combined, conspired, and contracted among themselves and with co-conspirators to eliminate competition in the full-service bar review course market throughout the U.S., a transaction which was kept secret from the public and thereby was fraudulently concealed from the Classes, among others.

94. In furtherance of this conspiracy, the Defendants agreed to the aforementioned market division, the effect of which, *inter alia*, eliminated the only viable actual competitor in the sale of full-service bar review courses throughout the U.S., and also a substantial competitor in the LSAT course market in the U.S., in which Defendant Kaplan was, and remains, dominant.

95. This action violates 15 U.S.C. § 1 et seq., in that it serves to restrain trade and to fix, raise, maintain or stabilize, at least, the retail price of full-service bar review courses sold in the United States during the Class Period.

96. Plaintiffs and the other members of the Classes have been injured, or injury is substantially threatened, in their business or property, by reason of Defendants' antitrust violations, at least, as follows:

(a) The prices of the full-service bar review courses they purchased, or will purchase, were, or will be, far higher than they would have been, or will be due to BAR/BRI's violation of the antitrust laws;

(b) Opportunities to choose among various courses, each with its own unique attributes, that would have been available in the absence of the unlawful course of conduct alleged herein, were or will be lost to Plaintiffs and the members of the Classes; and

(c) They are more likely to fail the bar examination in whichever jurisdiction they decide to practice law; and

1 (d) They have been required to retain the law firms of The Disner  
2 Law Corporation and Harris & Ruble to prosecute these claims and to suffer all the  
3 burdens that accrue from the prosecution of this case.

4 97. Plaintiffs and the other members of Class A, as a result of the  
5 foregoing, have been damaged at least to the extent they have expended sums, or  
6 will expend sums, for the full-service bar review courses they purchased, or will  
7 purchase, from BAR/BRI, far in excess of what they would have paid or would pay  
8 in a market uncontaminated by the wrongful acts of BAR/BRI, asserted  
9 hereinabove. They have sustained or will sustain damages in a sum presently not  
10 ascertained, but which is, in any event, in excess of \$1,000 each, and which will be  
11 proven with greater exactitude, as the record permits, at the time of trial, such sum  
12 to be trebled, pursuant to 15 U.S. C. § 15(a).

13 98. Should the Classes, or either of them, prevail herein, they are also  
14 entitled to a reasonable multiple of the lodestar of the reasonable attorney fees and  
15 costs accrued by them herein, pursuant to 15 U.S.C. § 15(a).

16 **CLAIM TWO**  
17 **UNLAWFUL MONOPOLIZATION; VIOLATION OF**  
18 **SECTION 2 OF THE SHERMAN ACT (AGAINST DEFENDANT WEST)**

19 99. Paragraphs 1 to 98 are incorporated by reference herein.

20 100. BAR/BRI has monopolized the full-service bar review course market in  
21 the United States in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

22 101. BAR/BRI has unlawfully acquired and/or maintained a monopoly of  
23 the full-service bar review course market through the ways and means set forth  
24 above.

25 102. As a direct and proximate result of BAR/BRI's egregious conduct and  
26 abuse of its monopoly power, competition in the full-service bar review course  
27 market has been adversely affected, and meaningful new entry is substantially  
28 unlikely to occur.

1 103. Unless BAR/BRI's anticompetitive acts, as alleged herein, are enjoined  
2 by this Court, there is a reasonable probability that it will continue to monopolize  
3 the full-service bar review course market and will continue to unreasonably restrict  
4 and eliminate competition therein.

5 104. BAR/BRI's monopolization of the full-service bar review course  
6 market will irreparably injure Plaintiffs in at least the following ways:

7 (a) The prices of the full-service bar review courses they have  
8 purchased, or will purchase, were, or will be, far higher than they would have been,  
9 or be, but for its violation of the antitrust laws; and,

10 (b) Opportunities to choose among various courses, each with its  
11 own unique attributes, that would be available in the absence of the unlawful course  
12 of conduct alleged herein, have been lost to Plaintiffs and the members of the Class;  
13 and;

14 (c) Plaintiffs are more likely to fail the bar in whichever jurisdiction  
15 they decide to practice law; and

16 (d) They have been required to retain the law firms of The Disner  
17 Law Corporation and Harris and Ruble to prosecute this claim and to suffer all the  
18 burdens that accrue from the prosecution of this case.

19 105. The members of the Class B will be substantially damaged unless the  
20 Court orders appropriate injunctive relief herein, including but not limited to the  
21 creation of a fully-operational, competitive, full-service bar review business capable  
22 of competing successfully against it throughout the U.S, pursuant to 15 U.S.C. § 26.

### 23 CLAIM THREE

#### 24 CONSPIRACY TO MONPOLIZE (AGAINST DEFENDANT WEST)

25 106. Paragraphs 1 to 105 are incorporated by reference herein.

26 107. Defendant West has engaged in combinations and conspiracies through  
27 which they have actually monopolized the relevant market as described here and  
28

1 above in paragraphs 35 through 71, including with Defendant Kaplan, in violation of  
2 Section 2 of the Sherman Act. Said conspiracies have had a high degree of  
3 probability of successful monopolization of said relevant market.

4 108. The effect of West's conspiracy to monopolize has adversely affected  
5 competition in the relevant market.

6 109. Plaintiffs and the other members of the Classes have been injured or  
7 injury is substantially threatened in their business or property as a direct and  
8 proximate result of West's conspiracies to monopolize in an amount to be proven at  
9 trial.

10 110. BAR/BRI's conspiring to monopolize the full-service bar review  
11 course market will irreparably injure Plaintiffs in at least the following ways:

12 (a) The prices of the full-service bar review courses they have  
13 purchased, or will purchase, were, or will be, far higher than they would have been,  
14 or be, but for its violation of the antitrust laws; and,

15 (b) Opportunities to choose among various courses, each with its  
16 own unique attributes, that would be available in the absence of the unlawful course  
17 of conduct alleged herein, have been lost to Plaintiffs and the members of the Class;  
18 and;

19 (c) Plaintiffs are more likely to fail the bar in whichever jurisdiction  
20 they decide to practice law; and

21 (d) They have been required to retain the law firms of The Disner  
22 Law Corporation and Harris and Ruble to prosecute this claim and to suffer all the  
23 burdens that accrue from the prosecution of this case.

24 111. Should the Classes, or either of them, prevail herein, they are also  
25 entitled to a reasonable multiple of the lodestar of the reasonable attorney fees and  
26 costs accrued by them herein, pursuant to 15 U.S.C. § 15(a).



1           **WHEREFORE**, Plaintiffs pray for judgment as follows:

2           1.     As to their claim for violation of Section 2 of the Sherman Act (15  
3 U.S.C. § 2) that West be held liable pursuant thereto;

4           2.     As to their claim for violation of Section 1 of the Sherman Act (15  
5 U.S.C. § 1) that West and Kaplan be held liable pursuant thereto;

6           3.     Regarding Plaintiffs in Class A, that Plaintiffs obtain damages plus  
7 interest and treble damages, all to be provided pursuant to 15 U.S.C. § 15;

8           4.     Regarding Plaintiffs in Class A and B, that appropriate injunctive relief  
9 be entered, including but not limited to, an order creating at least one fully-  
10 operational, competitive, full-service bar review business capable of competing  
11 successfully against BAR/BRI throughout the United States, and other equitable  
12 relief needed to ameliorate its wrongdoing here, all to be provided pursuant to 15  
13 U.S.C. § 26;

14          5.     That Plaintiffs obtain their reasonable attorney fees and costs, to be  
15 determined according to pertinent case law authority (15 U.S.C. § 15); and

16          6.     That Plaintiffs obtain the costs of suit incurred herein by them and such  
17 other further relief as the Court deems just and proper.

18  
19       DATE: February 6, 2008

**THE DISNER LAW CORPORATION**

20  
21  
22       By: 

Eliot G. Disner

A Professional Corporation

Attorneys for Plaintiffs

Stephen Stetson, Shane LaVigne, Christine

Leigh Brown-Roberts, Valentin Yuri

Karpenko, Jake Jeremiah Fathy, and all

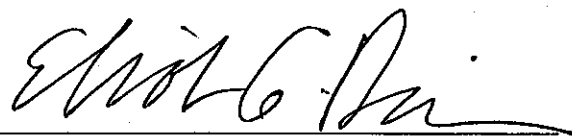
others similarly situated

**TRIAL BY JURY**

Please take notice that a trial by jury is hereby requested.

DATE: February 6, 2008

**THE DISNER LAW CORPORATION**

By: 

Eliot G. Disner  
A Professional Corporation  
Attorneys for Plaintiffs  
Stephen Stetson, Shane LaVigne, Christine  
Leigh Brown-Roberts, Valentine Y.  
Karpenko, Jake Jeremiah Fathy, and all  
others similarly situated

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**EXHIBIT 1**

The Honorable Robert S. Lasnik  
Noted for Consideration: August 11, 2006  
ORAL ARGUMENT REQUESTED

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RYAN RODRIGUEZ, et al.,

Plaintiffs,

v.

WEST PUBLISHING CORPORATION, a  
Minnesota corporation dba BAR/BRI, and  
KAPLAN, INC., a Delaware corporation,

Defendants.

Nos. 06-cv-1096L

DECLARATION OF JAMES  
RIGOS IN SUPPORT OF  
RESPONSE TO MOTION TO  
COMPEL

I, James Joseph Rigos, declare under penalty of perjury as follows.

1. I am an adult over the age of 18 and competent to testify concerning all matters in this Declaration.

2. I am the owner-operator of Rigos Professional Education Programs, Ltd. ("Rigos"), a Washington state corporation headquartered in Seattle, Washington. Since 1980, Rigos has created, published, and marketed professional publications, including bar review programs, CPA review programs, CMA-CFM review programs (for accountants

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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EX. 1

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1 and financial professionals in business), and a series of professional ethics programs for  
2 corporations, attorneys and CPA's.

3 3. I have been subpoenaed against my will as a witness by West Publishing  
4 d/b/a BarBri ("West-BarBri"), a Defendant in this lawsuit. West-BarBri's students are  
5 now suing BarBri for damages under two theories: alleged illegal conspiracies used to  
6 create and maintain West-BarBri's monopoly and abuse of the monopolistic power to  
7 eliminate competition and thereby artificially raise prices. I do know that West-BarBri  
8 discriminates in pricing, depending upon the extent of competition in local markets and  
9 that Washington is priced substantially below other states such as California. West-BarBri  
10 apparently alleges that Rigos's survival is proof the market is still competitive.

11 4. My company and I are not a party to this case and have no direct stake in  
12 this case whatsoever. In the past, we have been seriously damaged by both the West-  
13 BarBri students and their course administrators. We have asked both sides of this case to  
14 excuse Rigos from any participation in this suit or, in the alternative, limit me to a mere  
15 witness at trial. Both sides have refused. In twenty-six (26) years of operations our  
16 organization has never sued or been sued by a student or competitor. Formal litigation  
17 would destroy our review organization. For us, this may be the first battle of the final war  
18 with Thomson-West-BarBri.

19 5. Based upon past events spanning many years, I have a well-founded fear  
20 and belief that West-BarBri will retaliate against me and my company after they pay  
21 money to settle this student class-action lawsuit if I cooperate in any way in this case with  
22 the Plaintiffs. The Defendants' lawyers suggest they will not retaliate if I state I have no  
23 knowledge of any predatory acts by their clients. They would use such a statement against

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
RESPONSE TO MOTION TO COMPEL (No. 06-cv-  
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1 me in any subsequent litigation involving my company. I am thus forced against my will  
2 to itemize some, but not all, of the most egregious anti-competitive practices they have  
3 used against us. The purpose of making this Declaration is to state what I currently have  
4 and currently do not have knowledge of, so the Court may quash the subpoena and deny  
5 West-BarBri discovery from me and my company altogether.

6 6. My fear of retaliation is based upon three past factors. The first is the past  
7 savage, predatory attacks we have suffered from West-BarBri, which are described in some  
8 detail below. The second involves my sincere belief that some individuals connected to  
9 the defense of this lawsuit have broken the law and burglarized my office, stolen my files  
10 and memoranda and hacked into my computer system. I realize this latter suggestion may  
11 appear unbelievable, but when fully described, I hope the Court will come to appreciate the  
12 reasons for this belief.

13 **The November 2005 Burglaries and Hacking of Rigos's Offices:**

14 7. As described below, I have had a number of problems with West-BarBri as  
15 a competitor, particularly related to advertising by that company. For a period of several  
16 years I have been collecting copies of bulletins, fliers and other advertisements West-  
17 BarBri circulates throughout the law schools and related contemporaneously-prepared  
18 detailed hand drawn memoranda. Their advertisements have frequently contained false  
19 and misleading claims about the pass rates of BarBri students and false and disparaging  
20 claims about me, my wife, my other employees, my program, and my students.

21 8. On November 8, 2005, the Plaintiffs, without my knowledge or consent,  
22 designated me as a person with possible knowledge on their Supplemental Rule 26

23 Disclosures. Approximately four days later – over the weekend of November 12, 2005 to  
DECLARATION OF JAMES RIGOS IN SUPPORT OF  
RESPONSE TO MOTION TO COMPEL (No. 06-cv-  
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1 November 13, 2005, my office was burglarized. Two clean cut individuals – a man and a  
2 woman – broke into my business office in downtown Seattle. They avoided surveillance  
3 cameras throughout the office, though they missed one and each was captured on  
4 videotape. They took the hard drive connected to my computer in my personal office. The  
5 hard drive was locked and secured. They did not take a valuable, highly marketable,  
6 laptop which had been left unlocked and unsecured on a table in the office. They did not  
7 take numerous other items of value within the office.

8 9. I promptly replaced the hard drive.

9 10. Unbeknownst to me at the time, on November 17, 2005, after the hard drive  
10 had been replaced, a hacker accessed documents on my hard drive from outside of the  
11 office. Several letters I had written in 1997 and 1998 to individuals at the then West bar  
12 review were accessed and converted from their Word Perfect format to a Word format.  
13 These letters were connected to my efforts to purchase bar review courses run by West  
14 Publishing or invite their instructors to join my company after West sold out.

15 11. Between November 26, 2005 and November 27, 2005, my office was  
16 burglarized again. The individuals were again captured on a surveillance camera. The  
17 tape revealed it was the same individuals involved in the earlier November break in. The  
18 hard drive attached to my computer in my personal office was again taken. It had again  
19 been locked and secured. Numerous others items of value were not taken.

20 **The June 2006 Burglary of Rigos' Offices:**

21 12. In early June 2006, I was called one day by two attorneys from New York  
22 who said they represented the Defendant West in this action. They were from the  
23 Shearman & Sterling firm. They called me on speaker phone and attempted to interrogate

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
RESPONSE TO MOTION TO COMPEL (No. 06-cv-  
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1 me over the phone about what I knew about this lawsuit. When I asked why they were  
2 calling me, the woman attorney said I had been designated as a witness by the Plaintiffs in  
3 November 2005. I asked her to send me a copy of the designation, as I had never seen it. I  
4 then told the woman I was not willing to speak to them and I hung up the phone. These  
5 lawyers never asked me if I was represented by counsel even though I told them I had to  
6 hire a law firm to defend my business from their client in the past. I found it surprising  
7 that they even contacted me since I was certain they knew I was represented. West-BarBri  
8 through its attorneys had exchanged several letters with my lawyers at Davis Wright  
9 Tremaine related to the many threats of lawsuits BarBri has made against my company  
10 over the years.

11 13. In a letter dated June 7, 2006, Rebecca Trent of the Shearman & Sterling  
12 firm sent me a copy of the Plaintiffs' Supplemental Rule 26 Disclosures. I noted for the  
13 first time that I was listed in that disclosure as a person likely to have discoverable  
14 information.

15 14. On June 10, 2006 or June 11, 2006, my office was burglarized a third time.  
16 This time a laptop was stolen. The laptop computer contained all of our marketing  
17 information including our enterprises' future plans and strategies.

18 15. On June 26, 2006, West-BarBri attorney Alan Gruber of Shearman &  
19 Sterling called my office attempting to talk to me. I was not available, and he left a  
20 message. I understand that the Shearman & Sterling lawyers -- or the other lawyers for the  
21 Defendants -- did not ask my lawyer for permission to contact me prior to calling and  
22 trying to interrogate me.

23  
DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 **Files Missing After Burglaries:**

2 16. When I received the supplemental disclosures, the coincidence in dates  
3 immediately raised my suspicion. I have since gone to look for the paper files of old  
4 BarBri litigation, law school and advertisement controversies. I then realized these were  
5 all missing. The files were in plain sight in manila expandable file folders in and alongside  
6 my desk and credenza. In addition, other materials related to West-BarBri and several  
7 other files I know I had prior to November 2005 now appear to be missing. I believe all of  
8 these records were taken in connection with one or more of the three break ins described  
9 above. No one in my organization took them or discarded them. No non Thomson-West-  
10 BarBri related files appeared to have been stolen.

11 **Burglaries Documented in Police Reports:**

12 17. The three burglaries are documented in police reports to the Seattle Police  
13 Department under Seattle Police case numbers 05-439134, 05-466595, and 06-267003.  
14 The videotapes of the thieves are also on file with the Seattle Police Department. The  
15 Seattle Police have stated that these burglaries were very well executed by professional  
16 burglars with lock tumbling experience. The apparent actors were not on their local roster  
17 suggesting an out-of-area contract.

18 **Sole Copies of Responsive Records Taken:**

19 18. While I have made a practice over the years of keeping back up tapes of the  
20 records on my hard drive, I am not certain my back up tapes contain all of my records.  
21 Particularly since my hard drive was stolen twice in a short time period, I suspect no back  
22 up exists for many of the records. I also cannot trust the accuracy of what is now on my  
23 computer since a hacker accessed relevant records from outside my office in November

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1 2005 and may have altered my copies. No back up files exist for the many important  
2 missing hand-drafted memoranda.

3 **Office Never Before Burglarized in 26 Years:**

4 19. I have been in business at my current location in the Skinner Building for  
5 more than twenty years. Never before have we been a victim of burglary or theft. Yet,  
6 within days of being disclosed as a witness and days of refusing to cooperate with the  
7 Defense, my office was burglarized three times and documents specifically requested in  
8 the subpoena at issue here were accessed by a hacker.

9 **Subpoena Issued:**

10 20. On June 28, 2006, I was served with a Subpoena and record request in this  
11 action. The subpoena asks for the very records which were accessed by a hacker in  
12 November 2005 – specifically my writings to West related to my efforts to purchase  
13 West's bar review course or employ their former employees and serve their students. (See  
14 document requests 3(g) and (i).) The subpoena also calls for the paper files which were  
15 stolen – *i.e.* the false, misleading or defamatory advertisements published by West-BarBri  
16 over the years. Some of the requested documents involved matters West-BarBri would  
17 have no knowledge of unless they were the beneficiary of the theft.

18 21. The subpoena demanded that I produce records on July 12, 2006 and that I  
19 appear for an all-day deposition on July 13, 2006. As the Defendants know, the bar exam  
20 in Washington State was administered on July 25, 2006 through July 27, 2006. The week  
21 of July 12<sup>th</sup> was a very busy week for all of our people. I was teaching and our employees  
22 were in classes all day preparing our students for the bar examination and/or grading their  
23 practice exams to give them feedback.

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
RESPONSE TO MOTION TO COMPEL (No. 06-cv-  
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1 22. I instructed my attorney to file an objection to the subpoena and to serve a  
2 copy on the parties. She did so, and was issued a cause number of MS 6-112 by this Court  
3 for matters related to the subpoena.

4 23. On July 27, 2006, the Defendants filed a Motion to Compel before this  
5 Court. They initiated their own action under cause number MS 06-119 rather than file the  
6 motion to compel in the action containing my objection to their subpoena. We noticed this  
7 by happenstance shortly before this Court made the same discovery and consolidated the  
8 two actions into one.

9 24. I have already spent more than forty-hours of my own time -- time taken  
10 away from my business -- trying to confirm which records are now gone which have been  
11 sought through the subpoena. I have incurred thousands of dollars in legal fees related to  
12 this subpoena. I will spend thousands more related to this motion to compel. If I am  
13 required to search for and produce records or produce the detailed withholding index  
14 demanded by the Defendants, I will be forced to place at least two employees on this task  
15 full time for a period of approximately two months at a cost to me of several thousand  
16 additional dollars. My employees and I will be forced to compare line by line any records  
17 we can locate on back up tapes and compare them against records contained on hard drives  
18 to see if records have been altered. We will have to review hundreds of paper files and  
19 assess whether records in those paper files are responsive to the subpoena. We will have to  
20 try and resurrect files of the false and misleading advertisements and other records from  
21 our student representatives and other contacts. The handwritten memos are not  
22 recoverable and most importantly our whole company will be forced to turn our attention  
23 away from our regular business -- as one of the last surviving direct competitors of the

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 Defendants – to work without compensation at the behest of the Defense. This will  
2 destroy our program and my company.

3 **Well-Founded Fear of Retaliation:**

4 25. I have been subjected to predatory attacks by West-BarBri for many years.  
5 As described below, West-BarBri has been attempting to put me out of business for nearly  
6 a decade. I believe the timing and circumstances of the three burglaries and hacking  
7 suggest someone connected to the Defense in this case was involved. Many of the  
8 documents requested in the subpoena appear to have come directly from those records  
9 stolen.

10 26. I am somewhat afraid for my personal safety, as I have never experienced  
11 this degree of predatory competition. I feel that the burglaries and this subpoena as well as  
12 the contacts by West-BarBri's attorneys are meant to send a message to me. I believe I am  
13 being warned by West-BarBri not to cooperate and not to reveal what I know or risk being  
14 singled out even more for an aggressive attack. Further, the material requested by West-  
15 BarBri – asking us to reveal our business plans and weaknesses – exposes Rigos to more  
16 retaliatory attacks without us having any reciprocal discovery right at all.

17 **Relevant Knowledge of Predatory Behavior:**

18 27. I understand there is a student allegation in the Complaint that West-BarBri  
19 conspired with Kaplan Review to allocate the operation of the separate LSAT and bar  
20 review markets. Kaplan does offer a national CPA review course but does not operate a  
21 national bar review course. Beyond the obvious — they both operate only in one market  
22 and cross-promote/sell for the other — at this time I have no direct knowledge of the  
23 veracity of this claim.

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 28. I understand there is a student allegation that West (now Thomson) bar  
2 review had other (non-BarBri) potential purchasers who expressed interest in West's bar  
3 review. I have knowledge of this because I had a number of written and oral  
4 communications with the then-West corporate people in an effort to buy West's bar  
5 review. I understood that they were selling out to avoid complaints of tying their products  
6 in the law schools. It was then still a competitive national bar review market, and West  
7 had roughly a third of the market. I was totally unsuccessful in these efforts and in the end  
8 felt they were just going through the motions to create the appearance of considering other  
9 buyers. I also learned that West arranged for its students to take the BarBri course free of  
10 charge when it canceled its courses, and that West would not allow its students to take any  
11 other bar preparation course for free. (I learned this because a student in Washington  
12 wanted to take the Rigos course, and I tried to get West to allow her to take my course  
13 instead of BarBri at whatever price had been negotiated for that service. West refused.)

14 29. I understand there is a student allegation that West (now Thomson) sold its  
15 bar review course to BarBri when they were both American corporations, and the U.S.  
16 antitrust authorities approved this. Approval was given because, unlike the second  
17 transaction, the purchaser then had no other substantial law school products, so the tying  
18 objection was less apparent and compelling. At this time I have no other direct knowledge  
19 of the veracity of this claim.

20 30. I understand there is a student allegation that Thomson-West (then and now  
21 a foreign corporation) acquired BarBri from Reed Elsevier (an English corporation) in a  
22 transaction involving two non-American corporations to reduce the antitrust scrutiny level  
23 by U.S. authorities. Thomson-West at that time owned many law school student

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 publications that were clearly susceptible to being tied to their bar review. They did not  
2 make full disclosure and thus got away with doing indirectly what they could not do  
3 directly. Thompson subsequently combined their West and BarBri marketing efforts.  
4 Besides the obvious current cross-marketing, at this time I have no other direct knowledge  
5 as to the veracity of this claim.

6 31. I understand there is a student allegation that West-BarBri has tied their bar  
7 review monopoly to increasing the domination of their Westlaw products over other  
8 publishers by recruiting law students for life. This is particularly acute in recruiting law  
9 students to West's online research systems, thus overwhelming LexisNexis, Loislaw, and  
10 other potential electronic competitors. Beyond the obvious present law school cross-  
11 marketing, discounts, and pressures that BarBri imposes on the law school students who  
12 are involved with West, at this time I have no direct knowledge of the veracity of this  
13 claim.

14 32. I understand there is a student allegation that West-BarBri has operated in a  
15 predatory manner with the intention of destroying other course competition and student  
16 choice so West-BarBri may raise prices. I have substantial knowledge of specific incidents  
17 of these predatory practices. My students, faculty, and staff have all suffered greatly from  
18 their practices.

19 33. Rigos has 20% to 25% of the Washington state bar review students. This is  
20 in part because the Washington State Bar Association ("WSBA") Admission Committee  
21 has a high quality all-local exam. Based upon a decade of "bar review wars" with West-  
22 BarBri, it is my opinion that West-BarBri has two objectives. The first is to destroy our  
23 Washington course and thereby further encourage the WSBA to drop their local exam.

DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 Second, without a viable competitor in the market, West-BarBri will almost certainly raise  
2 the student price some \$1,000 to a level of what they charge in states where they have  
3 destroyed all substantial competition. Their predatory practices employed against Rigos  
4 to achieve these dual objectives include at least the following:

5 34. When Rigos opened the Washington bar review course in 1995, BarBri had  
6 a total monopoly in our state, as it had destroyed the local course named BRAW (Bar  
7 Review Associates of Washington). Rigos understands that for a small review course to  
8 survive against a monopolist, it must execute much better. Merely being as good or the  
9 same is insufficient; a viable competitor must achieve superior pass rates and substantively  
10 distinguish itself.

11 35. Around 2000, West-BarBri transferred in a new area director from  
12 California named Melissa Shaw, who was experienced in applying West-BarBri predatory  
13 practices. Shaw recruited as her "head marketer" a then-associate professor from the  
14 University of Puget Sound in Tacoma (which subsequently sold its law school to Seattle  
15 University) named Kelley Testy. Since then, Testy has been paid tens of thousands of  
16 dollars by West-BarBri to aggressively market the West-BarBri program at all the law  
17 schools in the Pacific Northwest and discourage any competition.

18 36. Rigos early produced better pass-rate results due to a more Washington-  
19 focused material and a "seamless preparation process." We began to compile and advertise  
20 two pass rates: one based upon students who fulfill all our money-back guarantee  
21 requirements and a second one based on all Rigos students. West-BarBri threatened to sue  
22 Rigos for publishing any of our pass rate results. When this did not work, West-BarBri  
23 began advertising a pass rate at or above 95% and refused to state their total pass rate (all

**DECLARATION OF JAMES RIGOS IN SUPPORT OF  
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1 students, not just some limited population ) or explain their pass rates or agree to a mutual,  
2 audited verification process under specifically state population parameters. For example,  
3 West-BarBri is rumored to advertise pass rates of its alleged "students" counting 1L law  
4 students who enrolled with BarBri as 1Ls but did not actually take the BarBri law school  
5 preparation course. (This includes students who instead enrolled with Rigos.) We believe  
6 that West-BarBri's real pass rates are substantially below the state average, and that their  
7 advertisements were and are deceptive.

8 37. West-BarBri has on repeated occasions had their instructor-lawyer Tyna Ek  
9 threaten to sue Rigos or its student representatives personally for alleged defamation or  
10 false advertising. One of these occasions was based on six letters sent only to Rigos-  
11 enrolled students. Ek objected to statements made in those six letters and demanded  
12 information about Rigos's students and business to which she and her client were not  
13 entitled. Rigos published a retraction to those six students based on Ek and BarBri's  
14 instructions to avoid being sued.

15 38. West-BarBri also sent their student representatives to ask questions at a  
16 Rigos student table at the law schools and then later had Ek threaten to sue Rigos and the  
17 student representatives personally for statements allegedly made to these representatives.  
18 This kind of behavior greatly discourages Rigos's student representatives from serving and  
19 again required Rigos to hire expensive lawyers to defend against this harassment and  
20 constant lawsuit threats.

21 39. One of the most predatory West-BarBri practices is "covering" every  
22 creative feature Rigos uses to become distinctive. An example is that Rigos's materials are  
23 written specifically for the unique Washington bar exam, while the West-BarBri text is

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1 much more generic (it also has not been updated for a decade, a cost a monopolist can  
2 avoid), since the generic material is what is tested in most jurisdictions using multi-state  
3 bar examinations. Since state-specific materials distinguished Rigos, West-BarBri had  
4 their instructors throw together some short inconsistent outlines and began advertising their  
5 course as "Washington specific." Beyond being misleading to law student consumers, this  
6 "covering" takes away the distinctive advantage that a local competitor must establish to  
7 stay alive against a monopolist.

8 40. Subsequently, Testy was promoted at Seattle University Law School.  
9 Notwithstanding her clear conflict of interest, Testy continues to this day her very  
10 aggressive marketing campaign for West-BarBri. Her efforts are to ensure that Seattle  
11 University's law students enroll 100% with West-BarBri, give West-BarBri maximum  
12 exposure to law students, and block Rigos from growing enrollment. She travels to other  
13 law schools in the state to promote West-BarBri. Testy assists West-BarBri in "locking in"  
14 new LL's, and she personally conducts law school marketing classes for West-BarBri  
15 thereby facilitating student enrollment in West-BarBri programs. This includes allowing  
16 her West-BarBri colleagues to promote West-BarBri during their regular law school  
17 classes and allowing West-BarBri student representatives to make unilateral class  
18 presentations.

19 41. Under Testy's active leadership, West-BarBri has recruited and hired away  
20 some of the best instructors Rigos has over the years trained. West-BarBri requires its  
21 faculty to sign a non-compete that prevents them from teaching for any other review  
22 course. So when West-BarBri hires away talented faculty, it succeeds in depriving its  
23 competitors of needed employees. West-BarBri does this not just to get good teachers who

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1 learned the bar exam process at Rigos, but more importantly, to marginalize and discredit  
2 Rigos and leave Rigos short-handed. For example, Testy recently recruited long-time  
3 Rigos instructor Anita Ramasastry to teach for BarBri. At the time she recruited  
4 Ramasastry, Testy had full knowledge that Ramasastry was with Rigos. I objected when  
5 Ramasastry told me her plans after all of our course marketing for the next cycle had gone  
6 out listing her as a senior instructor. I learned that she planned to use lecture notes and a  
7 script-lecture written by me and copyrighted by my company to teach the BarBri course.  
8 She intended to teach the same subject for West-BarBri that she had been teaching for us  
9 using my materials. When I complained about Ramasastry's use of my materials, Testy  
10 gave lecture notes to Ramasastry to use to avoid violating Rigos's copyright. Even so,  
11 Ramasastry's subsequent West-BarBri classes at Testy's law school used virtually all the  
12 exam examples and solution approaches she learned from Rigos.

13 42. Similarly, West-BarBri recruited and hired away a Rigos instructor Lou  
14 Wolcher, a tort teacher who used the same notes for BarBri that were developed and  
15 refined during the Rigos course. West-BarBri has also approached a longtime Rigos  
16 instructor, Janet Ainsworth. Ainsworth was not limited by a non-compete agreement but  
17 had the loyalty, integrity, and strength of character to say no, even though West-BarBri  
18 offered her more than three times what Rigos can pay.

19 43. Shortly after these hires, West-BarBri immediately advertised their "new  
20 instructors" — Wolcher and Ramasastry — by name and stated that they had 15 years of  
21 combined bar instruction experience. While this was accurate, they concealed the fact that  
22 it was with Rigos and was thus misleading. As the word got out, it seriously demoralized  
23 both the remaining Rigos instructors and all the Rigos student representatives. West-

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1 BarBri portrayed Rigos as an off-Broadway tryout for the big time opportunity of joining  
2 the West-BarBri monopoly course.

3 44. West-BarBri sets up tables at the law schools during the first weeks of  
4 school and actively signs up 1L students during these first weeks for the BarBri bar review  
5 course. This "lock-in" discourages students from considering other courses later in their  
6 law school career and creates a "herd mentality." This is quite effective. More than half of  
7 the students who eventually enroll with Rigos have already given BarBri substantial sums.  
8 Converting such students is very difficult even if the merits suggest they were pressured  
9 into a bad premature decision.

10 45. Rigos's advertisements on bulletin boards at law schools have been  
11 routinely taken down. This has included a special plaque awarded to Jim Rigos and Rigos  
12 Review for a contribution toward the new law school building at Seattle University.

13 46. West-BarBri gives "scholarships" for the bar preparation course but focuses  
14 these "scholarships" in Washington primarily on very bright students and the students  
15 intending to enroll in Rigos. This denies Rigos enrollments, especially the best and the  
16 brightest law students. This makes it more difficult to produce superior pass rates.

17 47. West-BarBri representatives routinely attend Rigos law school  
18 informational meetings and orientation lectures and ask disruptive questions. An example  
19 is a 2004 incident at the University of Oregon's law school, in which a West-BarBri  
20 representative suggested that Rigos was insolvent and going to close up business thus  
21 leaving students in the lurch.

22 48. Rigos has recommended informally and formally that both courses engage  
23 in reasoned, structured joint law school informational presentations similar to those used in

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1 CPA review courses. This would allow students to hear both sides, and thus objectively  
2 compare and contrast the relative features of the two programs so students could make an  
3 educated choice. Testy has barred such open dialog from her law school, and West-BarBri  
4 has refused to join such an event at any other school.

5 49. In the spring of 2006, Testy arranged and presented marketing efforts for  
6 West-BarBri. Just before the review courses began, Testy's subordinate informed Rigos  
7 that their large room at her law school, which we had been promised for our course, was  
8 being given to West-BarBri. We were told we would be given a much smaller room.  
9 Again, there was no explanation offered, except: "You could always go elsewhere if you  
10 don't like it." Rigos had used the larger room in the past. Our students had enrolled for a  
11 morning class at Seattle University and Testy's people knew we had more students  
12 enrolled that we could accommodate in the smaller room. This meant that some Rigos  
13 students who wanted a morning class at Seattle University were forced to transfer to  
14 Testy's West-BarBri class (which had extra room since it was given the larger room Rigos  
15 had previously been assigned).

16 50. In an attempt to resolve these never-ending disputes and encourage  
17 professional collegiality between the review courses, Rigos recommend that both courses  
18 mediate all these disputes using a neutral named David Boerner. Mr. Boerner is a law  
19 school professor, had previously been a senior King County Prosecutor, and has served  
20 with distinction on the ethics committee of the WSBA. This suggestion was rejected by  
21 West-BarBri right out of hand. They refused to suggest or agree to any other neutral that  
22 could resolve some of these disputes and restore cordiality between the courses.  
23

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1           51. It is thus made unfortunately clear that West-BarBri fully intends to destroy  
2 the Rigos Washington bar review course. This lawsuit by their students has become their  
3 latest predatory method of achieving their objective. It is sad and ironic that West-BarBri  
4 is allowed to use their own students' lawsuit against them as a vehicle to further attack  
5 Rigos, which is the little Washington state competition left.

6           52. Many involved in the WSBA's local exam are very disturbed by the  
7 dangerous message West-BarBri affirmatively sends to bar takers and the recruiting and  
8 personnel departments at Seattle law firms. West-BarBri routinely states that since it has  
9 the greatest percentage of test-takers in its course, that its students are better-advantaged at  
10 getting a passing grade than other test-takers because the majority responses will control.  
11 They claim that if most West-BarBri students miss an issue on a question, the "group  
12 think" examiners will discount the importance of the issue. This discredits the important  
13 role our volunteer Washington bar exam graders provide to the state bar. It suggests West-  
14 BarBri can control the grading of exams by virtue of what it stresses in its teaching. Some  
15 students and law firm recruiters believe it.

16           53. Rigos has contacted the American Bar Association ("ABA") and the  
17 National Conference of Bar Examiners ("NCBE"). Both have an ongoing financial  
18 association and loyalty to West-BarBri. Suggestions of competitive restoration actions  
19 such as sale on the ABA's web store (as they do with other authors) of competitive  
20 material that could be used by law school operated and independent review courses have  
21 been rejected. The American Institute of CPA's ("AICPA") has actively discouraged tying  
22 agreements and monopolization by Thomson in the national CPA review course market,  
23 but the ABA seems to have no such interest. The ABA and their Law Student Division

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1 ("LSD") seem very satisfied with the compensation and other benefits they receive from  
2 allowing West-BarBri to control the entrance into the proud U. S. legal profession.

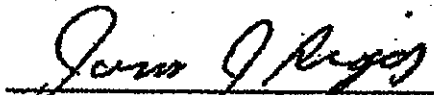
3 54. The students' lawsuit will probably settle producing some refund.  
4 However, it will not likely change the industry domination and predatory practices of  
5 Thomson-West-BarBri to restrain competition.

6 55. Since the organized legal profession institutions have no interest in reducing  
7 and protecting the American law students' plight, an appeal should be made to the federal  
8 government to investigate and prosecute Thomson-West-BarBri. Foreign owners should  
9 not control entrance into the American legal profession in such a manner.

10 56. At this time, I have no direct knowledge except the above that is relevant to  
11 the questions the students have raised against their West-BarBri course.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed in Seattle, Washington, on August 5, 2006.

14  
15 

16 James J. Rigos, WSBA 9659  
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18 Ltd.  
19 Attorney at Law, J.D., LL.M.  
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21  
22  
23

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