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FEDERAL DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

CV05 3222

12 RYAN RODRIGUEZ and REENA B.
 13 FRAILICH, on behalf of themselves
 14 and all others similarly situated,

CASE NO.

R (Mex)

Plaintiffs,

**CLASS ACTION COMPLAINT
 FOR VIOLATIONS OF THE U.S.
 ANTITRUST LAWS (15 U.S.C. § 1,
 ET SEQ.)**

vs.

JURY TRIAL DEMANDED

17 WEST PUBLISHING
 18 CORPORATION, a Minnesota
 19 Corporation dba BAR/BRI, and
 20 KAPLAN, Inc., a Delaware
 21 corporation,

Defendants.

22
 23 Plaintiffs Ryan Rodriguez ("Rodriguez") and Reena B. Frailich ("Frailich"),
 24 on their own behalf and on behalf of all others similarly situated, bring this action
 25 for treble damages and injunctive relief under the antitrust laws of the United States.
 26
 27
 28

INTRODUCTION

1
2 1. Defendant West Publishing Corporation is a wholly-owned subsidiary
3 of Thomson Company (“Thomson”) and also known as “West Group” (collectively,
4 “West Publishing”). In or about 1995, West Publishing formed West Bar Review
5 (“West Bar”) for the purpose of competing in the market for the provision of full-
6 service bar review courses to candidates for admission to the bar of the several
7 states. It then commenced operations in some 43 states throughout the United
8 States, in part by purchasing and consolidating several other regional and local bar
9 review courses.

10 2. West Bar then began to compete vigorously against long-time dominant
11 competitor, BAR/BRI, then an assumed name of Harcourt Brace Jovanovich Legal
12 and Professional Publications, Inc., a wholly-owned subsidiary of Harcourt General,
13 Inc., a publicly-traded company (“Harcourt”). (Hereinafter, unless otherwise
14 indicated, “BAR/BRI” refers collectively to the business operated under that name,
15 whoever was its owner at the time.) BAR/BRI has provided basic, i.e., full-service,
16 and supplemental bar review courses for would-be lawyers in most, if not all, 50
17 states for decades, and also has provided other examination preparation courses over
18 many years. BAR/BRI represents that it now prepares more than 95 percent of all
19 students annually sitting for a bar exam.

20 3. West Publishing was acquired by Thomson in 1996. Shortly thereafter,
21 Thomson decided to sell West Bar. West Publishing then negotiated, and agreed to
22 a letter of intent, to transfer West Bar to Defendant Kaplan, Inc. (“Kaplan”). Kaplan
23 was then, and still is, the largest test preparation company in the United States. It
24 provides preparation courses for virtually all college, professional school and related
25 licensing examinations. However, at all pertinent times, Kaplan has offered no full-
26 service bar review course. Kaplan is a wholly-owned subsidiary of the Washington
27 Post Company.

1 Sherman Act, 15 U.S.C. § 1 and Section 7 of the Clayton Act, 15 U.S.C. § 18, as
2 alleged herein.

3 8. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331
4 and 1337, and by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

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

9 **PLAINTIFFS**

10 10. Rodriguez is an individual who resides in Los Angeles, California.
11 During the time period covered by this Complaint, Ryan Rodriguez purchased the
12 BAR/BRI bar review course at a price of \$2,775.

13 11. Frailich is an individual who resides in Los Angeles, California.
14 During the time period covered by this Complaint, Reena Frailich purchased the
15 BAR/BRI bar review course at a price of \$2,519.25.

16 **DEFENDANTS**

17 12. Kaplan is a corporation organized under the laws of Delaware, with its
18 principal place of business in New York, New York. It formerly did business as the
19 Stanley H. Kaplan Test Centers. Kaplan is the largest provider of preparatory
20 courses for numerous college and graduate school courses of study, including SAT,
21 GMAT, LSAT, MCAT, TOEFL, GRE, CPA and others, but at all pertinent times
22 including no full-service bar review courses.

23 13. Defendant West Publishing is a Minnesota corporation headquartered
24 in Eagan, Minnesota, and a subsidiary of Thomson. Thomson is a Canadian
25 corporation with its principal place of business in Toronto, Ontario and substantial
26 offices in the U.S. Thomson calls itself the "World's Leading Information
27 Resource." In or about 2001, Thomson's competitor, Reed Elsevier, Inc., purchased
28 BAR/BRI, among other businesses, from Harcourt, which owned BAR/BRI at the

1 time. After Reed Elsevier purchased BAR/BRI, it promptly sold it to its competitor
2 Thomson, which now operates BAR/BRI through West Publishing. Thomson also
3 acquired MicroMash Bar Review (“MicroMash”), a home study bar review course.

4 14. BAR/BRI is the only full-service bar review course operating
5 throughout the United States that offers courses for virtually all jurisdictions therein.
6 Until 1997, prior to its acquisition of West Bar’s assets from Thomson, BAR/BRI
7 also operated LSAT and other test preparation courses, among other such courses.
8 Prior to and immediately after 1997, BAR/BRI continued to operate a CPA test
9 preparation course in competition with Kaplan.

10 **CO-CONSPIRATORS**

11 15. Various other persons, firms and corporations, the identities of which
12 are presently unknown, have participated as co-conspirators with the Defendants in
13 the violations alleged herein and have performed acts and made statements in
14 furtherance thereof.

15 **TRADE AND COMMERCE**

16 16. At all pertinent times, BAR/BRI has regularly sold and shipped bar
17 review and LSAT course volumes, books, audio tapes and other materials, among
18 other things, across state lines. It is also continuously engaged in soliciting students
19 in one state to take courses in other states. Therefore, BAR/BRI’s activities,
20 including the anticompetitive activities described herein, are in and substantially
21 affect interstate commerce.

22 17. Kaplan operates its various courses throughout the United States. It
23 also regularly ships its course materials throughout the United States. Also, the
24 conspiracy entered into between Kaplan and BAR/BRI was accomplished through
25 the use of, at least, the wire and mails across state lines. Therefore, the activities of
26 Kaplan, including the anticompetitive activities described herein, are in and
27 substantially affect interstate commerce.

RELEVANT MARKETS

18. The provision of bar review courses to individuals preparing to take a bar examination generally is a relevant product market for purposes of enforcement of the antitrust laws. The provision of full-service bar review courses to such individuals, which in dollar volume accounts for the vast preponderance of sales in the overall market, is a relevant product submarket for purposes of enforcement of the antitrust laws. Here, West Bar and BAR/BRI, until the fall of 1997, competed in the relevant market, and more particularly, in the full-service submarkets thereof.

19. There are also relevant markets for each test preparation course provided by Kaplan, most particularly pertinent here for its courses for the LSAT and other exams.

20. A relevant geographic market for purposes of enforcement of the antitrust laws here is the United States. Other relevant geographic markets for antitrust law enforcement purposes may include each jurisdiction in the U.S., i.e., state or the District of Columbia, in which full-service bar review courses are provided, and the venues of each national law school, i.e., ABA accredited law schools in which a substantial percentage of students attend who emanate from, or migrate to, other states. Boalt Hall, Boston University, Columbia, Cornell, Duke, Georgetown, George Washington, Harvard, Northwestern, Notre Dame, NYU, Stanford, UCLA, University of Chicago, University of Illinois, University of Michigan, University of Pennsylvania, University of Virginia, University of Southern California, University of Wisconsin and Yale are principal examples of such schools.

PERTINENT FACTS

21. The business engaged in by West Publishing that is principally relevant here consists of training law school graduates to master the bar examination each needs to pass before receiving a license to practice law in every U.S. state, plus the District of Columbia.

1 22. The bar examination in most jurisdictions in the United States consists
2 of at least the following two parts. One part is the Multistate Bar Examination
3 (“MBE”). The MBE is prepared by the National Conference of Bar Examiners. It
4 is required by nearly all jurisdictions in the United States. The second part of the
5 bar examination consists of a test prepared under the control of each state’s Board of
6 Bar Examiners or similarly-titled state license-issuing body, which may incorporate
7 the Multistate Essay Examination and the Multistate Performance Test. This part is
8 designed to test local law and/or general legal concepts and the application thereof,
9 typically in an essay format.

10 23. BAR/BRI provides a full-service bar review course, typically about
11 seven weeks in duration, in which substantive law is reviewed, test-taking
12 techniques are taught, and pertinent skills honed for the grueling multi-day exam
13 that awaits each would-be attorney. This is the principal means employed by law
14 school graduates to prepare for the bar examination. BAR/BRI provides to students,
15 among other things, a set of written review materials which are specific to that
16 jurisdiction, lectures on the subjects and points of substantive law that are tested in
17 that jurisdiction and, frequently, review questions that are similar to those asked
18 previously, or have actually been asked previously, by the bar examiners therein.

19 24. MicroMash offers a home study bar review course in about 21 states,
20 plus the District of Columbia. It too has prepared thousands of law students to pass
21 a state bar examination.

22 25. Because of the grueling nature and obvious importance of the
23 examination process, a person desiring to take a bar examination in a given state for
24 the first time is almost certain to take a full-service bar review course, designed to
25 prepare him or her for the challenge that lies ahead. Even persons who have
26 previously failed one or more bar exams frequently attend full-service bar review
27 courses as often as they sit for an exam. The full-service bar review course proves
28 then to be the principal way to specifically prepare for such a bar examination.

1 There is little, if any, cross-elasticity of demand between or among full-service bar
2 courses, on the one hand, and supplementary specialty courses and generalized texts
3 dealing with the substantive topics which happen to be covered on the bar
4 examination, on the other.

5 26. BAR/BRI has been the dominant provider of bar review courses in the
6 United States for decades. In or about 1995 West Publishing Company, a multi-
7 billion dollar company, through its then newly launched West Bar Review, scooped
8 up many of the remaining full-service bar review course regional competitors in the
9 country, including, in California, American Professional Testing Services, doing
10 business as BarPassers, plus amassed a set of other local course materials, staff and
11 know-how sufficient to compete in the bar review business across the United States
12 against BAR/BRI.

13 27. In the bar review business, marketing is principally trained on first-year
14 law students. At that time, law students sign up for a bar review by paying a
15 deposit. They then obtain, at least, a non-refundable option for a lock-in guaranteed
16 price two to three years later when they actually purchase the course. In order for
17 West Bar or any potential competitor to succeed, it would have taken several years
18 to do so. The staying power needed to turn the first dollar of revenue, plus high
19 fixed costs (for competent faculty, current course materials, limited-availability
20 classrooms, etc.) has made successful entry extraordinarily unlikely in the full-
21 service bar course review relevant submarket.

22 28. Successful entry has been made even more difficult since the
23 combination of BAR/BRI and West Publishing. West Publishing provides its
24 powerful data and legal research retrieval service, Westlaw, free of charge to law
25 students who, of course, generally employ it on a virtually constant basis. At
26 pertinent times herein, Westlaw's user screens have contained regular pop-up and
27 other advertising to promote BAR/BRI. No other actual or potential bar review
28 course competitor has any access to such a powerful promotional vehicle.

1 29. Because of the practice of signing up law students for the bar exam
2 during their first year, it is important that the bar review course offer courses for
3 multiple states, as such students frequently are unsure of the exact state in which
4 they will ultimately sit for an exam, then practice law. BAR/BRI is now the only
5 bar review course in the U.S. that offers full-service bar review courses in virtually
6 every state, as well as in other U.S. jurisdictions, and, therefore, has an
7 insurmountable advantage in tying up most law students in their first year of law
8 school, so that those students are unlikely to be available to purchase another bar
9 review course thereafter.

10 30. On information and belief, West Bar, a uniquely deep-pocketed, well-
11 positioned, and determined entrant performed well beyond its own expectations. By
12 early 1997 it had commenced operations in some 43 states, had achieved in excess
13 of 20 percent of the full-service bar review market and had signed up some 50
14 percent of first year law students. Moreover, in the future, West Bar could
15 presumably have employed Westlaw as its own powerful marketing tool to compete
16 against BAR/BRI.

17 31. In 1996, West Publishing Company was acquired by Thomson. Also in
18 1996, West Publishing Company's management announced publicly how happy it
19 was with the early success of West Bar. By 1997, however, Thomson decided to
20 sell West Bar's assets, including its course materials, curriculum and student-
21 enrollment contacts. Its stated desire at that time was to exit the bar review course
22 business altogether.

23 32. Kaplan puts on training courses for almost every standardized exam
24 given to high school, college and graduate students and others seeking licenses of
25 one kind or another, as noted above. One of the few professional training exams, if
26 not the only exam, for which Kaplan did not have a preparation course in 1997 was
27 for the various state bar exams, although it did attempt to compete in that market in
28

1 the late 1980s to early 1990s in a failed joint venture with a then-extant bar review
2 course provider, S.M.H.

3 33. On information and belief, Kaplan was well-suited to succeed West Bar
4 as a full-service bar review course operator in the U.S. As of 1997, for example,
5 Kaplan controlled more than 50 percent of the Law School Aptitude Test (“LSAT”)
6 preparation course market and large percentages of preparation courses preparing
7 other exams, in markets in which BAR/BRI was a competitor or potential
8 competitor at the time. As the largest purveyor of LSAT courses, Kaplan offered a
9 natural audience to market a full-service bar review course. Plus, Kaplan possessed
10 a deep pocket and classrooms throughout the country, along with the infrastructure
11 in place to easily manage one more “training course.” BAR/BRI controlled about
12 seven percent of the LSAT course market at that time.

13 34. On information and belief, by early August 1997, Kaplan had entered
14 into an agreed letter of intent with West Publishing to purchase West Bar. However,
15 during the weekend of August 9-10, 1997, an executive of Kaplan communicated
16 with an executive of BAR/BRI in which BAR/BRI proposed that if Kaplan stayed
17 out of the bar review business, BAR/BRI would exit at least the LSAT market in
18 which it competed. Kaplan accepted this proposal. At the same time, both Kaplan
19 and BAR/BRI also competed in the sale of CPA preparation courses. As to this line
20 of commerce, the parties agreed to continue competing against each other. They
21 then also agreed to “strategically” work together in the future to promote their
22 complementary businesses.

23 35. On information and belief, on or about August 11, 1997, Kaplan
24 unilaterally backed out of its agreed letter of intent with West Publishing. About
25 one month later, West Publishing announced it was divesting West Bar because it
26 did not fit within its “long term strategic direction.” It then divested its operative
27 bar review assets to BAR/BRI, and BAR/BRI also acquired all or substantially all of
28 its competitor West Bar’s students’ commitments to purchase and complete a bar

1 review course. Shortly thereafter, BAR/BRI quietly wound down at least its LSAT
2 preparation course. In November 1997, Kaplan and BAR/BRI publicly announced
3 their “partnership,” the essence of which was that they would co-market their
4 respective courses.

5 36. On information and belief, this was not the first time that BAR/BRI had
6 agreed to a per se unlawful market division in order to preserve its monopoly in the
7 full-service bar review course market throughout the United States. Earlier in the
8 1990s, a company called PMBR offered the “Multistate” supplemental bar review
9 course, that is, a course focused on only the multiple-choice multistate bar exam
10 given throughout the U.S. At that time, BAR/BRI offered a competing multistate
11 course sometimes referred to as “Gilbert,” also sometimes referred to as “HBJ
12 Multistate Workshop.” At or about that time, PMBR commenced operating a full-
13 service bar review course, principally in California and in the southeast U.S. After
14 PMBR made substantial inroads against monopolist BAR/BRI in at least some of
15 those states which it entered, BAR/BRI and PMBR entered into an agreement, as
16 follows: BAR/BRI would drop its multi-state supplemental courses, and PMBR
17 would drop its full-service bar review course. That would leave BAR/BRI once
18 again with an uncontested national monopoly in the provision of full-service bar
19 review courses. To this day, PMBR does not offer a full-service course, and
20 BAR/BRI does not offer a multistate supplemental course. To this day, PMBR and
21 BAR/BRI have agreed not to speak of each other in any critical or comparative way
22 and to freely refer students from one program to the other.

23 37. On information and belief, in or about 2001, West Publishing returned
24 to the full-service bar review business when West Publishing purchased the
25 BAR/BRI business for a sum believed to be more than \$200 million, a far higher
26 price than BAR/BRI paid for West Bar’s burgeoning, competitive, bar review
27 course assets in 1997. The substantial price difference is due to the fact that the
28 acquisition of West Bar’s assets by BAR/BRI eliminated the only viable competitor

1 in the market, or likely to be in the market for the foreseeable future. (Boardwalk
2 and Park Place are, of course, worth far, far more when owned by one player than
3 by two in the Monopoly game, which explains the greater value attached to a
4 consolidated bar review course business by West Publishing when it re-entered this
5 market.) Notwithstanding West Publishing's claim of its erstwhile bar review
6 course business's purported lack of "fit" within Thomson's "long term strategic
7 direction" as of 1997, BAR/BRI is now an extremely profitable business of West
8 Publishing.

9 38. At all pertinent times hereto, BAR/BRI's share of the national
10 submarket for the provision of full-service bar review courses has been in excess of
11 90 percent. It now boasts on its website: "BAR/BRI Review is the largest bar
12 review company in the United States, preparing more than 95 percent of all students
13 sitting for the bar exam in any given year." In many states, its share of the
14 submarket is virtually 100 percent. As a practical matter, in most states, the claimed
15 Class herein has been literally trapped into taking the BAR/BRI course to assure its
16 members of a reasonable likelihood they will pass the subsequently-given state bar
17 examination. BAR/BRI is now the entrenched monopolist in the full-service bar
18 review submarket with no significant likelihood of its offering reasonable,
19 competitive prices or of meaningful new entry without the assistance of this Court.

20 39. Beginning in 1997, and continuing to this date, Kaplan and BAR/BRI
21 have concealed their conspiracy to divide the market. In fact, the concealment here
22 is particularly striking since it was engaged in by the wholly-owned subsidiary of
23 the Washington Post Company, which is also the parent company of well-known
24 national newspaper *The Washington Post*, famous for exposing corruption and
25 speaking the truth—except when it came to Kaplan, as it happens, its most
26 profitable subsidiary. To this date, BAR/BRI and Kaplan have yet to publicly
27 disclose the anticompetitive events, described herein, that occurred in August 1997.

28

1 40. On information and belief, since its acquisition of West Bar's assets,
2 BAR/BRI has continued to engage in wrongful conduct to maintain and preserve its
3 monopoly, including the following:

4 (a) BAR/BRI made a deal in the late 1990s to eliminate a significant
5 local bar review competitor in New York State, Marino Bar Review ("Marino"). It
6 closed down Marino, in exchange for which BAR/BRI provided to its owner a
7 lucrative contract to work with it;

8 (b) BAR/BRI unreasonably insists on, and has routinely obtained,
9 numerous agreements from faculty and staff prohibiting their working for or
10 otherwise assisting any other bar review course provider should they depart
11 BAR/BRI;

12 (c) BAR/BRI has engaged in the continuing practice of tearing
13 down, otherwise removing, or preventing the posting of, the signs, placards and
14 related promotional materials of local bar review course competitors at various law
15 schools in the U.S.; and

16 (d) BAR/BRI has anticompetitively implemented the so-called
17 "American Bar Association-BAR/BRI Scholarship" program. Endorsed by the
18 ABA, BAR/BRI provides financial assistance ostensibly to students with economic
19 need. Thus, in certain states where BAR/BRI competes against a local bar review
20 course provider, it issues such "scholarships" not only to those in need, but also to
21 students considering taking a competitor's lower-price course, irrespective of need.
22 The cost of all such "scholarships" is absorbed by BAR/BRI. However, the
23 anticompetitive use of such scholarships trading on the ABA's name is not endorsed
24 by the ABA.

25 **INJURY TO PLAINTIFFS AND MEMBERS OF THE CLASS**

26 41. During the period covered by this Complaint, Plaintiffs and members of
27 the Class purchased at least one bar review course from BAR/BRI. As a direct
28 result of Defendants' combination, conspiracy and monopolization, Plaintiffs and

1 members of the Class paid far more for the course(s) they purchased than they
2 would have paid in the absence of such wrongful acts, frequently substantially in
3 excess of \$1,000 above a competitive price. For example, in the recent past,
4 BAR/BRI's course has cost each paying student \$2,850 in California, \$2,445 in
5 Florida, \$2,295 in Illinois, \$2,370 in Maryland, \$2,500 in New York, \$2,195 in
6 Pennsylvania, \$2,275 in Texas, \$2,470 in Virginia, and comparably supra-
7 competitive price levels elsewhere in the United States, except in those few states
8 where state bar or similar rules put a cap on BAR/BRI's pricing (such as in Iowa) or
9 isolated local competition remains (such as in Indiana). In addition, BAR/BRI
10 imposes an effectively non-refundable book charge, repeat fees, add-on (second
11 state preparation) fees, plus other penalties and charges that have increased
12 substantially over the last several years and now average hundreds of additional
13 dollars of cost per student per year.

14 42. By reason of the violations of the federal antitrust laws alleged herein,
15 Plaintiffs and members of the Class have been injured in their business and property
16 and suffered damages in an amount presently undetermined, but estimated to be not
17 less than \$300 million.

18 **CLASS ACTION ALLEGATIONS**

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

22 All persons who purchased a bar review course from BAR/BRI
23 in the United States from August 1997 to the present.

24 44. Irrespective of any otherwise applicable statutes of limitation, because
25 of the fraudulent concealment alleged herein, the Class Period commences in
26 August 1997, at or about the time the heretofore-concealed antitrust violations
27 necessitated the transfer of West Bar's assets to BAR/BRI.

1 45. Plaintiffs do not know the exact number of Class members, because
2 such information is in the exclusive control of Defendants, but believe them, on
3 information and belief, to average 40,000-plus per year, or 300,000 over the past
4 seven years. Due to the nature of the trade and commerce involved, the Class
5 members here are sufficiently numerous and geographically dispersed throughout
6 the United States, so that the joinder of all Class members is impracticable.

7 46. Except as to the amount of damages each member of the Class has by
8 himself or herself sustained, as to which there is considerable commonality or
9 readily quantifiable differences, all other questions of law and fact are completely
10 common to the Class, including but not limited to:

11 (a) whether Defendants engaged in a combination and conspiracy
12 and/or unlawful acquisition to prevent competition in, and/or unlawfully
13 monopolized, the full-service bar review course market;

14 (b) the duration and extent of the combination, conspiracy and
15 monopolization alleged in this Complaint;

16 (c) whether the alleged wrongful acts violate Sections 1 and 2 of the
17 Sherman Act and/or Section 7 of the Clayton Act;

18 (d) whether the market division that eliminated Kaplan as a
19 competitor to BAR/BRI in the full-service bar review submarket was fraudulently
20 concealed;

21 (e) the adverse effect of Defendants' wrongful acts on the prices of
22 bar review courses sold in the United States during the Class Period; and

23 (f) that Plaintiffs and other members of the Class have been
24 damaged by Defendants' wrongful acts.

25 47. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the
26 claims of all Class members. Plaintiffs will fairly and adequately protect the
27 interests of the Class. Plaintiffs are typical purchasers of bar review courses sold by
28 BAR/BRI in the United States and their interests are coincident with and not

1 antagonistic to those of the other members of the Class. In addition, Plaintiffs are
2 represented by counsel who are competent and experienced in the prosecution of
3 antitrust and class action litigation.

4 48. The prosecution of separate actions by individual members of the Class
5 would create a risk of inconsistent or varying adjudications, establishing
6 incompatible standards of conduct for Defendants.

7 49. The questions of law and fact common to the members of the Class
8 predominate over any questions affecting only individual members, including legal
9 and factual issues relating to liability and damages.

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

19 **CLAIM ONE**
20 **(AGAINST WEST PUBLISHING)**
21 **UNLAWFUL ACQUISITION; VIOLATION OF SECTION 7**
22 **OF THE CLAYTON ACT**

23 51. Paragraphs 1 to 50 are incorporated by reference herein.

24 52. BAR/BRI unlawfully acquired the assets of its direct competitor, West
25 Bar, as detailed above, and may thereby tend to substantially lessen competition in
26 the full-service bar review course submarket market in the United States, if it has
27 not already done so. This acquisition thereby violates Section 7 of the Clayton Act,
28 15 U.S.C. § 18.

1 53. Plaintiffs and other members of the Class have been injured in their
2 business or property by reason of the antitrust violations of BAR/BRI alleged
3 herein, as follows:

4 (a) the prices of the full-service bar review courses they purchased
5 were far higher than they would have been but for BAR/BRI's violation of the
6 antitrust laws;

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

11 (c) they have been required to retain the law firm of Van Etten
12 Suzumoto & Becket LLP to prosecute this claim and to suffer all the burdens that
13 accrue to them from the prosecution of this case.

14 54. Plaintiffs and the other members of the Class, as a result of the
15 foregoing, have been damaged at least to the extent they have expended sums for the
16 full-service bar review courses they purchased from BAR/BRI far in excess of what
17 they would have paid in a market uncontaminated by the wrongful acts of West
18 Publishing, asserted hereinabove. They have sustained damages in a sum presently
19 not ascertained, but which is, in any event, in excess of \$1,000 each, and which will
20 be proven with greater exactitude, as the record permits at the time of trial, such sum
21 to be trebled, pursuant to 15 U.S.C. § 15(a).

22 55. Future bar exam candidates who will also be required to complete a bar
23 review course will be similarly damaged unless the Court orders appropriate
24 injunctive relief herein, including but not limited to the creation by BAR/BRI of a
25 fully-operational, competitive, full-service bar review business capable of
26 competing successfully against it throughout the United States, pursuant to
27 15 U.S.C. § 26.
28

1 course of conduct alleged herein, have been lost to Plaintiffs and the members of the
2 Class; and

3 (c) they have been required to retain the law firm of Van Etten
4 Suzumoto & Becket LLP to prosecute this claim and to suffer all the burdens that
5 accrue to them from the prosecution of this case.

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

14 63. Should Plaintiffs and the Class prevail herein, they are also entitled to
15 the reasonable attorneys' fees accrued by them herein, pursuant to 15 U.S.C. §
16 15(a).

17 **CLAIM THREE**
18 **(AGAINST WEST PUBLISHING)**
19 **MONOPOLIZATION; VIOLATION OF SECTION 2**
20 **OF THE SHERMAN ACT**

21 64. Paragraphs 1 to 63 are incorporated by reference herein.

22 65. BAR/BRI has monopolized the full-service bar review course market in
23 the United States in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

24 66. BAR/BRI has unlawfully acquired and/or maintained a monopoly of
25 the full-service bar review course market through at least the following unlawful
26 acts:

- 27 (a) agreeing to a market division with Defendant Kaplan;
28 (b) engaging in other anticompetitive activities to preserve and
maintain its monopoly, and

1 (c) on a continuing basis to the present, charging excessive, supra-
2 competitive prices for its full-service bar review courses.

3 67. As a direct and proximate result of BAR/BRI's abuse of its monopoly
4 power, competition in the full-service bar review course market has been
5 substantially restrained, and meaningful new entry is substantially unlikely to occur.

6 68. Unless BAR/BRI's anticompetitive acts as alleged herein are enjoined
7 by this Court, there is a reasonable probability that it will continue to monopolize
8 the full-service bar review course submarket and will continue to unreasonably
9 restrict and eliminate competition therein.

10 69. BAR/BRI's monopolization of the full-service bar review course
11 market has injured Plaintiffs in at least the following ways:

12 (a) the prices of the full-service bar review courses they purchased
13 were far higher than they would have been but for its violation of the antitrust laws;

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

18 (c) they have been required to retain the law firm of Van Etten
19 Suzumoto & Becket LLP to prosecute this claim and to suffer all the burdens that
20 accrue from the prosecution of this case.

21 70. Plaintiffs and the other members of the Class, as a result of the
22 foregoing, have been damaged at least to the extent they have expended sums for the
23 full-service bar review courses they purchased from BAR/BRI far in excess of what
24 they would have paid in a market uncontaminated by the wrongful acts of
25 BAR/BRI, asserted hereinabove. The damages are presently not ascertained, but are
26 believed to exceed \$1,000 each, which will be proven with greater exactitude, as the
27 record permits, at the time of trial, such sum to be trebled, pursuant to 15 U.S.C.
28 § 15(a).

1 71. Future bar exam candidates who will also be required to complete a bar
2 review course will be similarly damaged unless the Court orders appropriate
3 injunctive relief herein, including but not limited to the creation by BAR/BRI of a
4 fully-operational, competitive, full-service bar review business capable of
5 competing successfully against it throughout the United States, pursuant to
6 15 U.S.C. § 26.

7 72. Should Plaintiffs and the Class prevail herein, they are also entitled to
8 the reasonable attorneys' fees accrued by them herein, pursuant to 15 U.S.C.
9 § 15(a).

10 WHEREFORE, Plaintiffs pray for judgment as follows:

11 1. In accordance with their Complaint on file herein.

12 2. As to Claim One for violation of Section 7 of the Clayton Act, that
13 BAR/BRI be found liable, that Plaintiffs and other members of the Class
14 accordingly be awarded their damages according to proof, but not less than \$1,000
15 each, or in excess of \$300 million for all Plaintiffs believed to be eligible and
16 members of the Class, that amount to be trebled, their reasonable attorneys' fees,
17 and that appropriate injunctive relief be entered, including the creation by BAR/BRI
18 of a fully-operational, competitive, full-service bar review business capable of
19 competing successfully against BAR/BRI throughout the United States, and a
20 further order that:

21 (a) all non-compete clauses BAR/BRI has with faculty members and
22 related staff be canceled in California and otherwise reasonably limited in duration,
23 scope and geography (pursuant to 15 U.S.C. § 26);

24 (b) BAR/BRI be enjoined from engaging in the practice of tearing
25 down, otherwise removing, or preventing the posting of, the signs, placards and
26 related promotional materials of bar review course competitors; and

1 (c) BAR/BRI may not provide any American Bar Association–
2 BAR/BRI Scholarships other than based on genuine, demonstrable student need. It
3 may not, therefore, employ any such scholarship for any anticompetitive purpose.

4 3. As to Claim Two for violation of Section 1 of the Sherman Act, that
5 BAR/BRI and Kaplan be found liable and that Plaintiffs be awarded their damages
6 according to proof, but not less than \$1,000 each, or in excess of \$300 million for all
7 Plaintiffs believed to be eligible and members of the Class, that amount to be
8 trebled, and for their reasonable attorneys' fees and costs (pursuant to U.S.C. §
9 15(a)).

10 4. As to Claim Three for violation of Section 2 of the Sherman Act, that
11 BAR/BRI be held liable and that Plaintiffs be awarded their damages according to
12 proof, but not less than \$1,000 each, or in excess of \$300 million for all Plaintiffs
13 believed to be eligible and members of the Class, that amount to be trebled, and for
14 their reasonable attorneys' fees and costs (pursuant to U.S.C. § 15(a)); and that
15 appropriate injunctive relief be entered, including the creation by BAR/BRI of a
16 fully-operational, competitive, full-service bar review business capable of
17 competing successfully against it throughout the United States, and a further order
18 that:

19 (a) all non-compete clauses BAR/BRI has with faculty members and
20 related staff be canceled in California and otherwise reasonably limited in duration,
21 scope and geography (pursuant to 15 U.S.C. § 26);

22 (b) BAR/BRI is enjoined from engaging in the practice of tearing
23 down, otherwise removing, or preventing the posting of, the signs, placards and
24 related promotional materials of bar review course competitors; and

25 (c) BAR/BRI may not provide any American Bar Association–
26 BAR/BRI Scholarships other than based on genuine, demonstrable student need. It
27 may not, therefore, employ any such scholarship for any anticompetitive purpose.
28

1 5. That Plaintiffs have the costs of suit incurred herein by it and such
2 other further relief as the Court deems just and proper.

3
4 DATED: April 29, 2005

VAN ETEN SUZUMOTO & BECKET LLP

5
6 By: 

7 Eliot G. Disner
8 A Professional Corporation
9 *Attorneys for Plaintiffs*
10 RYAN RODRIGUEZ and REENA B.
11 FRAILICH

12
13
14 **TRIAL BY JURY**

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

16
17 DATED: April 29, 2005

VAN ETEN SUZUMOTO & BECKET LLP

18
19 By: 

20 Eliot G. Disner
21 A Professional Corporation
22 *Attorneys for Plaintiffs*
23 RYAN RODRIGUEZ and REENA B.
24 FRAILICH