

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,)	Nos. 06-cv-1096L
)	
v.)	DECLARATION OF JAMES
)	RIGOS IN SUPPORT OF
WEST PUBLISHING CORPORATION, a)	RESPONSE TO MOTION TO
Minnesota corporation dba BAR/BRI, and)	COMPEL
KAPLAN, INC., a Delaware corporation,)	
)	
Defendants.)	

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

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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

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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
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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

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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

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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 12th 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.

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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

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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.

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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

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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.

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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

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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 1L’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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RESPONSE TO MOTION TO COMPEL (No. 06-cv-
1096L) — 16

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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
17 President, Rigos Professional Education Programs,
18 Ltd.
19 Attorney at Law, J.D., LL.M.
20 Certified Public Accountant
21
22
23

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following:

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and I hereby certify that I have served by facsimile and United States Postal Service the document on the following non CM/ECF participants:

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DATED this 7th day of August, 2006.

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