UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF DETROIT, KIRK DAHL, HELMUT GOEPPINGER, JOSEPH S. FISHER, M.D., P.C. NEW PROFIT SHARING TRUST BY JOSEPH S. FISHER, M.D., TRUSTEE, JAMES J. KLEIN, M.D., RUFUS ORR, and ROBERT ZIMMERMAN, Individually and on Behalf of All Others Similarly Situated,	No. 1:07-cv-12388
Plaintiffs,	THIRD AMENDED CLASS ACTION COMPLAINT
vs.	
APOLLO GLOBAL MANAGEMENT, LLC, BAIN CAPITAL PARTNERS, LLC, THE BLACKSTONE GROUP, TC GROUP IC, L.P., THE GOLDMAN SACHS GROUP, INC., GS CAPITAL PARTNERS, L.P., JP MORGAN CHASE & CO., JP MORGAN PARTNERS, LLC, KOHLBERG KRAVIS ROBERTS & COMPANY, L.P., MERRILL LYNCH & CO., INC., MERRILL LYNCH GLOBAL PRIVATE EQUITY, INC., PERMIRA ADVISERS L.L.C., PROVIDENCE EQUITY PARTNERS, INC., SILVER LAKE PARTNERS, L.P., TPG CAPITAL, L.P., THOMAS H. LEE PARTNERS, L.P. and WARBURG PINCUS LLC,	DEMAND FOR JURY TRIAL
Defendants.	

Plaintiffs, Police and Fire Retirement System of the City of Detroit, Kirk Dahl, Helmut Goeppinger, Joseph S. Fisher, M.D., P.C. New Profit Sharing Trust by Joseph S. Fisher, M.D., Trustee, James J. Klein, M.D., Rufus Orr, and Robert Zimmerman on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, allege, upon knowledge as to their own acts and otherwise upon information and belief, as follows:

INTRODUCTION

1. In the 1980s, the image of the buy-out firm was epitomized by Kohlberg Kravis Roberts & Company, L.P.'s ("KKR") $25 billion conquest of RJR Nabisco and captured by Michael Douglas' character Gordon Gekko in the movie Wall Street, where he intoned that "greed is good." Buy-out firms were the new anti-heroes of western capitalism, pale riders in the form of corporate raiders.

2. In the last two decades, these corporate raiders have self-styled themselves as "private equity firms," but their goal of completing leveraged buyouts ("LBOs") has remained the same. Defendants' means to this end, however, have changed – the winner-take-all approach of the 1980s and 1990s has been replaced by a collaborative, collectivist scheme amongst the private equity firms that consciously and intentionally limit competition. Defendants have operationalized "greed is good" through manipulation and collusion. Indeed, some private equity executives have conceded that the private equity firms' formation of bidding clubs lowers the purchase price of target companies. Indeed, one prominent private equity investor admitted, "'***[y]ou're not going to get me***

to say that aloud, but let's just say that you're not wrong,'" when asked whether bidding clubs diminish the final takeover price.[1]

3. This action targets defendants' collusion in the very largest LBOs. It is here that defendants' collectivist tactics are most acute. Defendants themselves have stated as much. "'***There's less competition for the biggest deals,***'" said TPG Capital, L.P. ("TPG") founder David Bonderman during a March 22, 2006 luncheon speech in New Orleans.[2] During his speech, Bonderman displayed a graphic admitting that "'***[c]onsortia often limits bidding***.'"[3]

4. People familiar with the decision-making process for LBOs confirm that this type of collusion exists. For example, when hospital operator HCA, Inc. ("HCA") announced a deal to be taken private by a trio of private-equity firms during the summer of 2006 for $21.3 billion, the buyers were confident that a rival bidding group would not crash the party and force the price higher. In fact, no competing bid materialized. People familiar with the decision making say rival bidders held off because they feared a competing bid for HCA would open the door for other firms to jump into other buyout deals with competing bids. In other words, "***you don't bid on my deal, I won't bid on yours***."[4]

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1 Andrew Ross Sorkin, *Dealbook: One Word Nobody Dares Speak* (Oct. 16, 2005), http://www.nytimes.com/2005/10/16/business/16dealbook.html?scp=1&sq=one+word+nobody+dares+speak&st=nyt#.

2 Andrew Ross Sorkin, *Dealbook: Colluding or Not, Private Equity Firms Are Shaken* (Oct. 22, 2006), http://www.nytimes.com/2006/10/22/business/yourmoney/22deal.html?scp=2&sq=one+word+nobody+dares+speak&st=nyt.

3 *Id.*

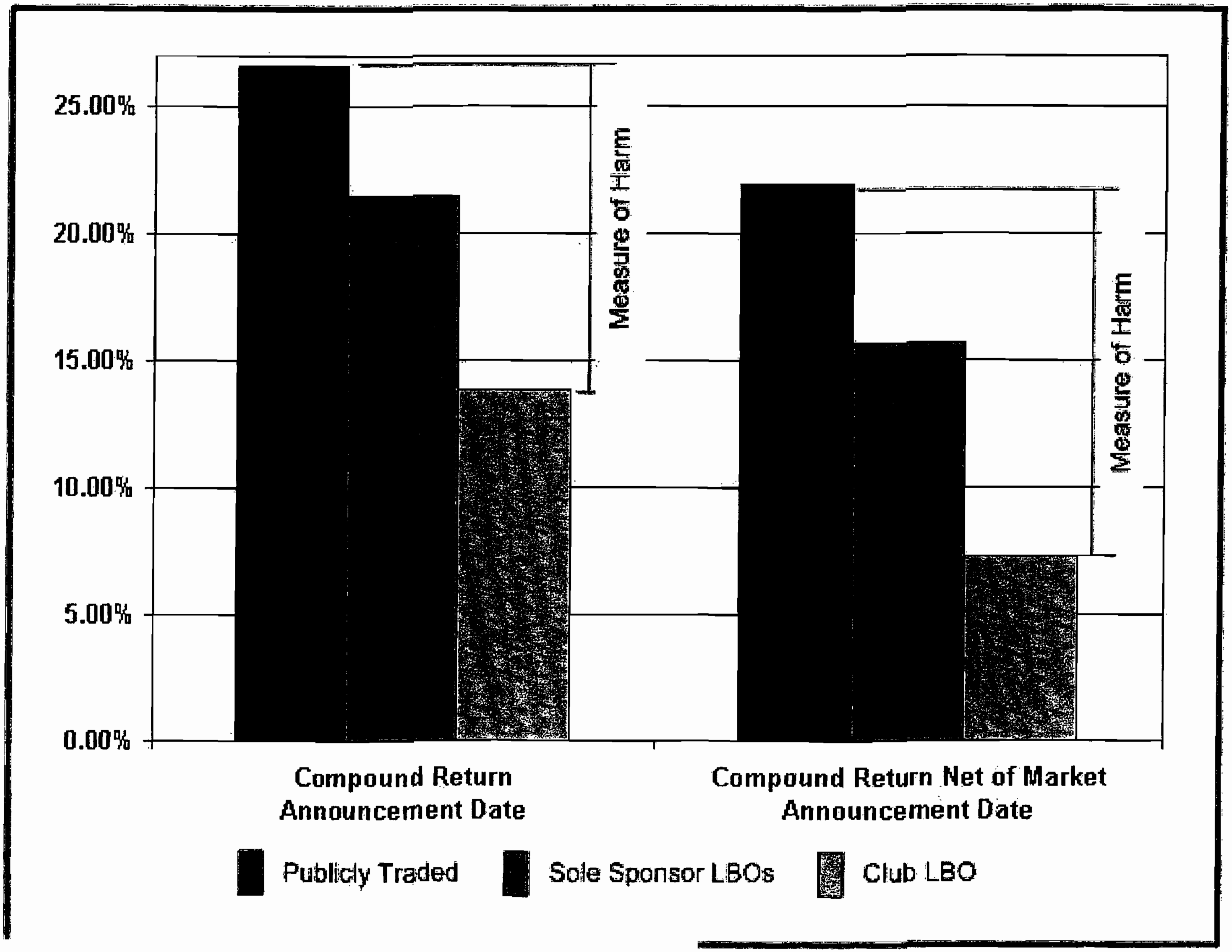
4 Dennis K. Berman & Henny Sender, *Probe Brings 'Club Deals' to Fore*, Wall St. J., Oct. 11, 2006, at C1.

5. Private equity firms agree not to compete in return for the *quid pro quo* of a competitive cease fire. The result is that private equity firms collectively capture multi-billion dollar public corporations and take them private at artificially low prices, often cutting in management and directors in return for keeping the price low.

6. The private equity firms who define and police the new rules of engagement are limited to a handful of the most prominent and best funded – KKR, The Blackstone Group L.P. ("Blackstone"), TC Group, IC, L.P. ("Carlyle"), TPG, GS Capital Partners, L.P. ("Goldman Capital") and the other defendants in this action. They often end up as co-owners of buyout targets. From 2003 through the present (the "Conspiratorial Era"), they regularly and repeatedly collaborated in the valuation of deals – sharing proprietary information among themselves. For example, in the Kinder Morgan, Inc. ("Kinder Morgan") LBO, Blackstone served as financial advisor to Carlyle, which was part of the winning club. Later, Blackstone and Carlyle bid together to buy Freescale Semiconductor, Inc. ("Freescale").

7. From the perspective of shareholders who rely on the integrity of the free market, defendants' collectivist scheme is disastrous. In this conspiracy, the winners and losers are clear. The winners are the private equity firms, management, and the investment banks, whose mammon led Congress to seek to raise the private equity firms' tax bracket. The losers are shareholders, whose equity defendants acquired deceptively and on the cheap. Although deals grew larger and private equity firms funds exploded from 2003 through 2006, as the following graphic demonstrates, the premiums paid to shareholders in LBOs were significantly less than premiums paid to shareholders in publicly-traded company acquisitions.

Buyout Premiums Paid to Shareholders 2003-2006



8. Defendants' previous history of competition belies their current conduct. Throughout the 1980's, 1990's and up to the Conspiratorial Era, defendants rarely engaged in club deals. Instead, they competed against each other and strategic buyer companies for LBOs. The premiums paid by defendants for LBOs prior to the Conspiratorial Era were significantly higher. Defendants' conduct during the Conspiratorial Era, which represents an about-face from their history of competition, demonstrates an agreement that they cease competing in favor of collectivist conduct that pays handsomely at the expense of shareholders.

NATURE OF THE CASE AND SUMMARY OF THE CONSPIRACY

9. This action arises out of a conspiracy among defendant private equity firms that form consortia or bidding clubs to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide the market for private equity services for LBOs. Plaintiffs, on behalf of themselves and the classes defined herein, bring this action pursuant to §1 of the Sherman Act, 15 U.S.C. §1, and §§4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26. The conduct of defendants challenged herein is not regulated by federal securities law.

10. An LBO occurs when a purchaser acquires a controlling majority of the shares of the target company, then withdraws the shares of the company from public stock exchanges, thereby taking the company private. The company whose publicly-traded stock is purchased in an LBO is referred to as the "target company." Substantial debt must be issued and sold in order to fund these transactions, hence the name ***leveraged*** buyout.

11. Defendants and their co-conspirators formed "bidding clubs" – also known as "consortia" or "teams" in the private equity industry – to rig the bidding for control of public corporations. Defendants' collectivist bidding clubs suppress premiums paid to shareholders by restraining the number of available competitors who bid on deals. Defendants also suppress

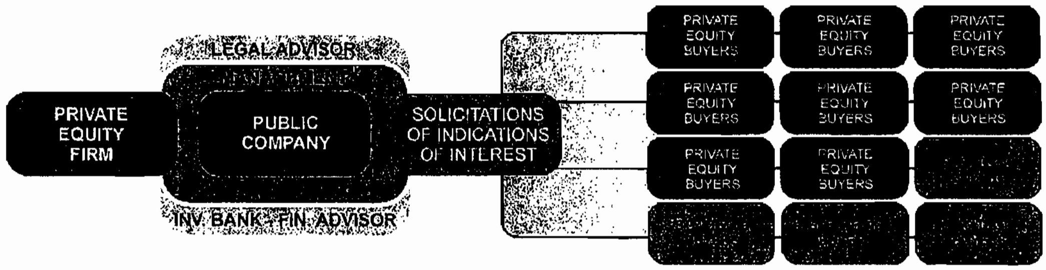
premium prices by orchestrating "competing" bids whereby members of the conspiracy knowingly submit inferior sham bids.

12. Defendants and their co-conspirators are among the largest private equity firms in the United States, both by measure of assets and frequency of participation in LBOs. Defendants, via the bid-rigging and market-allocation cartel described herein, conspired to dominate and control the largest LBOs in the United States and to fix the prices for target companies at artificially low levels during the Conspiratorial Era.

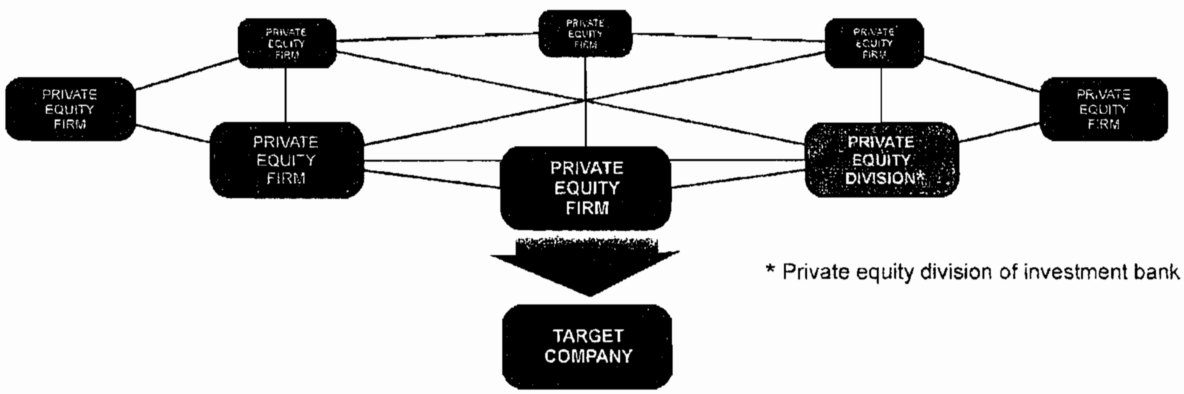
13. Data surveying LBOs during the Conspiratorial Era show that the average premium paid to shareholders for shares in club deal LBOs is significantly less than premiums paid in either sole sponsor LBOs or acquisitions by strategic bidders.

14. The following chart illustrates the operation of defendants' bid-rigging conspiracy.

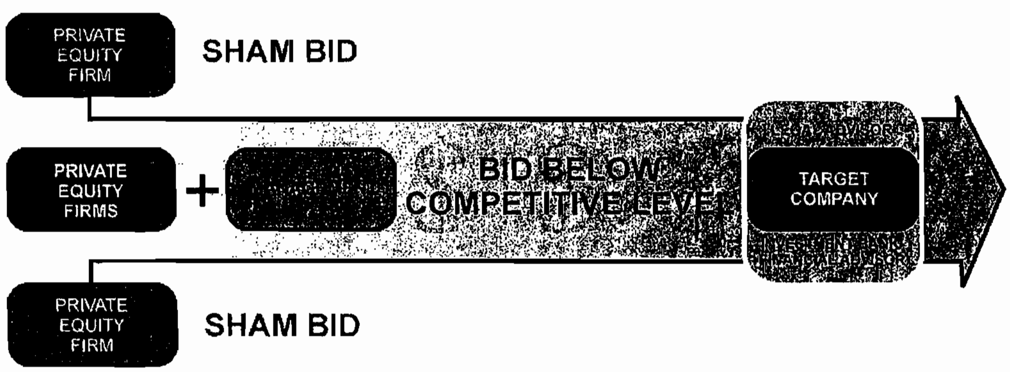
THE MECHANICS OF A RIGGED LEVERAGED BUYOUT



1 Management of a public company may be approached by a ***private equity firm***. In discussing their "strategic alternatives," a public company usually considers a management-led buyout and/or sends solicitations of indications of interest to private equity and strategic buyers. The public company will hire financial consultants.

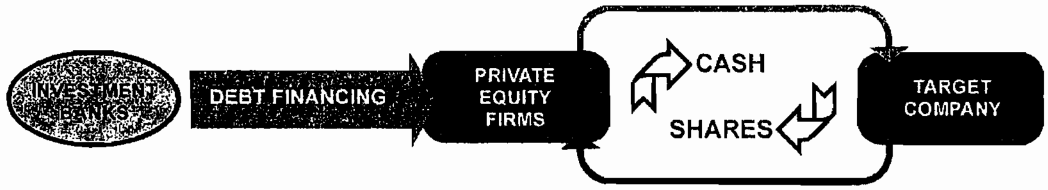


2 Private equity firms form "***consortia***" or cartels and conspire to rig bids, fix prices and allocate the purchase of stock of certain public companies as part of "going private" transactions.

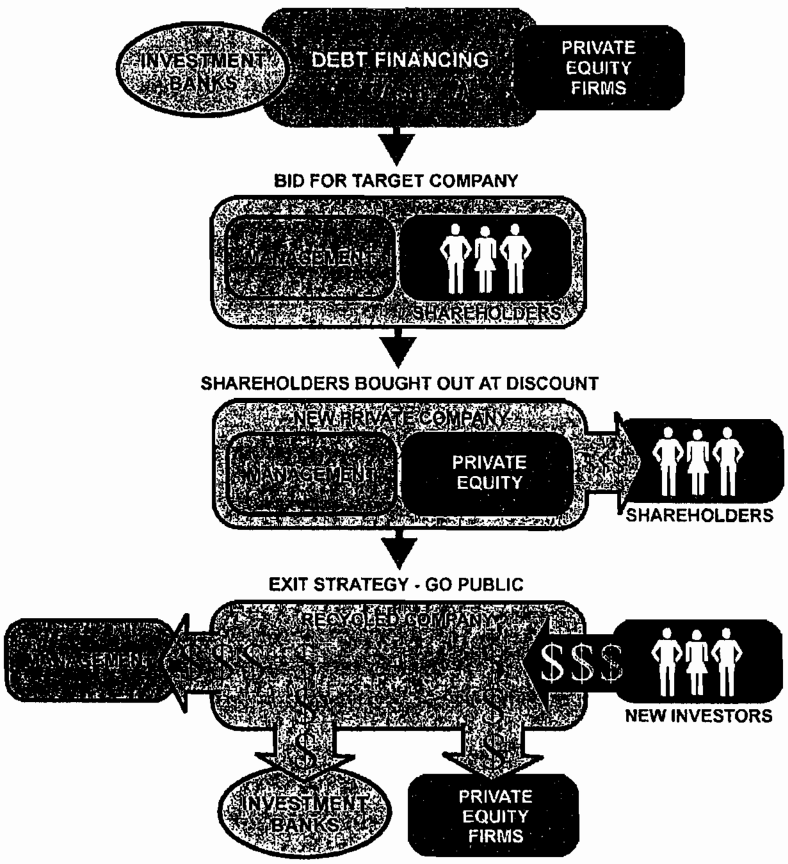


3 An agreed-upon group of private equity firms or one firm acting on behalf of a group (often including management) will submit a single bid for ***control of a public corporation***. Other members of the "consortia" may submit inferior or sham bids.

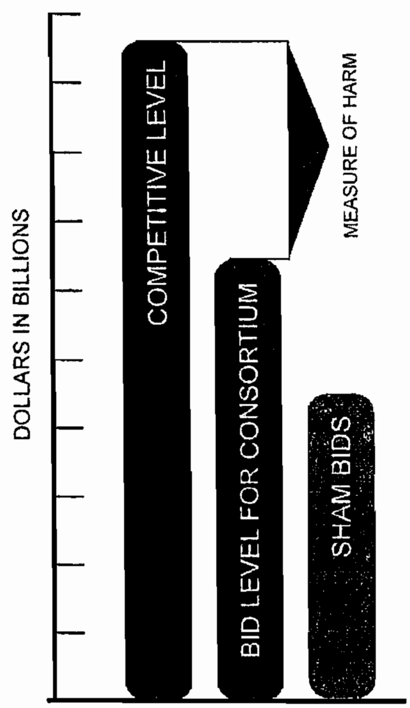
THE MECHANICS OF A RIGGED LEVERAGED BUYOUT



4 Investment banks participate in the cartel as advisors to and provide debt financing for each of the participant private equity firms. The successful bidder offers cash for a majority of the company's existing public shares.



5 Private equity firms are enriched by colluding to purchase a public company for a discount. **Debt financing** *shields* the income they pull out of the target company from taxes. The annualized net returns are **20-30%**. Management retains a share of the new private company in addition to a buyout of their public shares. Shareholders lose because the winning firms bid below competitive levels.



6 The measure of harm is the difference between the competitive price and the actual price paid.

DEFENDANTS

15. Defendant Apollo Global Management, LLC ("Apollo") is a global asset manager headquartered at 9 West 57th Street, 43rd Floor, New York, New York 10019. It has over $40 billion under management and operates private equity funds.

16. Defendant Bain Capital Partners, LLC ("Bain") is a private investment firm headquartered at 111 Huntington Avenue, Boston, Massachusetts 02199. It has over $20 billion under management and operates private equity funds.

17. Defendant Blackstone is a public investment firm headquartered at 345 Park Avenue, New York, New York 10154 and incorporated in Delaware. It has nearly $50 billion under management and operates private equity funds.

18. Defendant Carlyle is a Delaware limited liability company headquartered at 1001 Pennsylvania Avenue, N.W., Washington, District of Columbia 20004. It has nearly $40 billion under management and operates private equity funds.

19. Defendant The Goldman Sachs Group, Inc. ("Goldman Sachs") is a diversified financial services firm and investment bank that advises and underwrites the debt for a large percentage of LBOs. Defendant Goldman Capital is the private equity arm of Goldman Sachs. Goldman Capital has approximately $39 billion under management. Both Goldman Sachs and Goldman Capital are headquartered at 85 Broad Street, New York, New York 10004. All allegations herein against Goldman Sachs are also alleged against its subsidiary, Goldman Capital, and all allegations against Goldman Capital are alleged against its parent, Goldman Sachs.

20. Defendant JP Morgan Chase & Co. ("JP Morgan") is a diversified financial services firm and investment bank that advises and underwrites the debt for a large percentage of LBOs. Defendant JP Morgan Partners, LLC ("JP Morgan Partners") is the private equity arm of JP Morgan.

All allegations herein against JP Morgan are also alleged against its subsidiary, JP Morgan Partners, and all allegations against JP Morgan Partners are alleged against its parent, JP Morgan.

21. Defendant KKR is a private equity firm incorporated in Delaware and headquartered at 9 West 57th Street, New York, New York 10019. KKR has over $30 billion under management and operates private equity funds.

22. Defendant Merrill Lynch & Co., Inc. ("Merrill") is a diversified financial services firm and investment bank that advises and underwrites the debt for a large percentage of LBOs. Defendant Merrill Lynch Global Private Equity, Inc. ("Merrill Partners") is the private equity arm of Merrill. It operates several private equity funds, among them ML Global Private Equity Fund, L.P. Both Merrill and Merrill Partners are headquartered at 4 World Financial Center, 250 Vesey Street, New York, New York 10080. All allegations herein against Merrill are also alleged against its subsidiary, Merrill Partners, and all allegations against Merrill Partners are alleged against its parent, Merrill.

23. Defendant Permira Advisors LLC ("Permira") is a private investment firm with its United States office at 320 Park Avenue, 33rd Floor, New York, New York 10022. It has approximately $26 billion under management and operates private equity funds.

24. Defendant Providence Equity Partners, Inc. ("Providence") is a private investment firm incorporated in Delaware and headquartered at 50 Kennedy Plaza, 18th Floor, Providence, Rhode Island 02903. Providence operates private equity funds with nearly $21 billion in equity commitments.

25. Defendant Silver Lake Partners, L.P. ("Silver Lake") is a private equity firm headquartered at 2775 Sand Hill Road, Suite 100, Menlo Park, California 94025. It has $5.9 billion under management and operates private equity funds.

26. Defendant TPG is a private equity firm headquartered at 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102. It has over $30 billion under management and operates private equity funds.

27. Defendant Thomas H. Lee Partners, L.P. ("Thomas Lee") is a private equity firm, organized in Delaware, with its headquarters at 100 Federal Street, 35th Floor, Boston, Massachusetts 02110. It has approximately $20 billion under management and operates private equity funds.

28. Defendant Warburg Pincus LLC ("Warburg") is a private equity investment firm headquartered at 466 Lexington Avenue, New York, New York 10017. It has approximately $28 billion under management and operates private equity funds.

29. The defendants listed in ¶¶15 through 28 above are collectively referred to, where appropriate, as "Defendants" or "Private Equity Defendants."

30. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or partnership, the allegation means that the corporation or partnership engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, representatives, parent, predecessors, or successors in interest while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

CO-CONSPIRATORS

31. Co-conspirator Clayton, Dubilier & Rice, Inc. ("CDR") is a private equity firm headquartered at 375 Park Avenue, 18th Floor, New York, New York 10152. CDR operates private equity funds worth more than $4 billion.

32. Various other persons, firms, and corporations, including investment banks, officers, and directors of private equity firms and management of target companies not named as Defendants

in this Complaint have participated as co-conspirators with Defendants in the violations alleged herein, and aided, abetted, and performed acts and made statements in furtherance of the conspiracy.

33. At all times herein mentioned, each and every defendant and co-conspirator was an agent of each and every other defendant and co-conspirator. Each of the Defendants aided and abetted the commission of unlawful, unfair, and deceptive business practices by their co-conspirators and were aware, or should have been aware, that the agreements to allocate and rig bids substantially assisted and/or encouraged their co-conspirators in the commission of the unlawful, unfair, and anticompetitive acts alleged herein.

PLAINTIFFS

34. Plaintiff Joseph S. Fisher, M.D., P.C. New Profit Sharing Trust by Joseph S. Fisher, M.D., Trustee (the "Trust") is organized under the laws of the Commonwealth of Pennsylvania. The Trust held shares of SunGard Data Systems Inc. ("SunGard") on or about August 11, 2005. On that date, SunGard, a public corporation, finalized an arrangement to be taken private by a group formed by defendants Silver Lake, Bain, Blackstone, Goldman Sachs, KKR, Providence, and TPG (collectively, the "SunGard LBO Group") for the specific purpose of purchasing all of SunGard's publicly listed securities. As a result of the conspiracy herein alleged, the prices paid by the SunGard LBO Group for securities that the Trust and other public shareholders of SunGard held were suppressed below prices that would otherwise prevail in a competitive market, and as a result of the alleged conspiracy, public shareholders of SunGard were injured in their business and property by reason of the antitrust violations alleged herein.

35. Plaintiff James J. Klein, M.D. is a resident of Bergen County, New Jersey. Dr. Klein held shares of The Neiman Marcus Group, Inc. ("Neiman") on or about October 6, 2005. On that date, Neiman, a public corporation, finalized an arrangement to be taken private by a group formed

by defendants Warburg and TPG (collectively, the "Neiman LBO Group") for the specific purpose of purchasing all of Neiman's publicly listed securities. As a result of the conspiracy herein alleged, the prices paid by the Neiman LBO Group for securities that Dr. Klein and other public shareholders of Neiman held were suppressed below prices that would otherwise prevail in a competitive market, and as a result of the alleged conspiracy, public shareholders of Neiman were injured in their business and property by reason of the antitrust violations alleged herein.

36. Plaintiff Police and Fire Retirement System of the City of Detroit (the "Detroit Fund") is located in Wayne County, Michigan and is a public retirement trust fund organized under the laws of the State of Michigan. The Detroit Fund held shares of HCA on or about November 11, 2006. On that date, HCA, a public corporation, finalized an arrangement to be taken private by a group formed by defendants Bain, KKR, and Merrill Partners (collectively, the "HCA LBO Group"), for the specific purpose of purchasing all of HCA's publicly listed securities. As a result of the conspiracy herein alleged, the prices paid by the HCA LBO Group for securities that the Detroit Fund and other public shareholders of HCA held were suppressed below prices that would otherwise prevail in a competitive market, and as a result of the alleged conspiracy, public shareholders of HCA were injured in their business and property by reason of the antitrust violations alleged herein.

37. Plaintiff Kirk Dahl is a resident of Stillwater, Minnesota. Plaintiff Helmut Goeppinger is a resident of Esslingen am Neckar, Germany. Plaintiff Rufus Orr is a resident of King County, Washington. Mr. Dahl, Mr. Goeppinger, and Mr. Orr held shares of Freescale on or about December 1, 2006. On that date, Freescale, a public corporation, finalized an arrangement to be taken private by a group formed by defendants Carlyle, Blackstone, TPG, and Permira (collectively, the "Freescale LBO Group") for the specific purpose of purchasing all of Freescale's publicly listed securities. As a result of the conspiracy herein alleged, the prices paid by the Freescale LBO Group

for securities that Mr. Dahl, Mr. Goeppinger, Mr. Orr, and other public shareholders of Freescale held were suppressed below prices that would otherwise prevail in a competitive market, and as a result of the alleged conspiracy, public shareholders of Freescale were injured in their business and property by reason of the antitrust violations alleged herein.

38. Plaintiff Robert Zimmerman is a resident of Summit County, Ohio. Mr. Zimmerman held shares of Kinder Morgan on or about May 30, 2007. On that date, Kinder Morgan, a public corporation, finalized an arrangement to be taken private by a group formed by defendants Carlyle and Goldman Sachs (collectively, the "Kinder Morgan LBO Group"), for the specific purpose of purchasing all of Kinder Morgan's publicly listed securities. As a result of the conspiracy herein alleged, the prices paid by the Kinder Morgan LBO Group for securities that Mr. Zimmerman and other public shareholders of Kinder Morgan held were suppressed below prices that would otherwise prevail in a competitive market, and as a result of the alleged conspiracy, public shareholders of Kinder Morgan were injured in their business and property by reason of the antitrust violations alleged herein.

39. The plaintiffs listed in ¶¶34 through 38 above are collectively referred to, where appropriate, as "Plaintiffs."

DEFENDANTS' SCHEME TO COLLUDE

40. Defendants' objective in an LBO is to purchase the securities of publicly listed target companies at the lowest possible price. As a part of this process, and after the target is taken private, Defendants routinely engage their co-conspirator investment banks to issue bonds to recoup their equity investment. Defendants obtain additional profits by siphoning off cash flow from the private company, a process facilitated by the tax advantage of financing the debt used to take the company private, and then pay themselves back their equity investments. Then, after a period of time,

Defendants relist the securities and sell them to the public or to private buyers at a substantially higher price than would have prevailed absent their collusion. As part of LBO transactions, Defendants often retain target company management to operate the company. Defendants' anticompetitive conduct adversely affected shareholders in club deal LBOs during the Conspiratorial Era. This Complaint describes nine such transactions that were part of Defendants' conspiracy to dominate and control the largest LBOs in the United States and to fix the prices for target companies at artificially low levels.

41. Defendants' collusive behavior in setting prices and terms in LBOs has enabled them to reap supracompetitive, inflated, and monopolistic returns on their invested capital, typically 20%-30% per year, and sometimes more than 100% per year. Such consistently high returns on investment are not due to extraordinary business acumen; rather they are due to Defendants' ability to acquire the stock of the target companies at less than competitive prices in a manner that violates federal antitrust law.

42. During the Conspiratorial Era, to lessen the competition for deals and to facilitate their scheme to allocate the market and fix prices at artificially low levels, Defendants and their co-conspirators formed bidding clubs to rig the bidding for control of public corporations. Defendants' bidding clubs restrain competition because they limit the available number of competitors to bid on deals, which artificially depresses buyout prices and thereby harms shareholders of publicly traded companies. The conspiracy allows Defendants to orchestrate "competing" bids whereby members of the conspiracy knowingly submit inferior sham bids. An executive of one defendant admitted that

the Defendants have strong reasons to submit sham "competing" bids saying "'***[a]s long as two girls show up to the dance, there's enough competition***.'"[5]

43. Defendants engaged in numerous anti-competitive and collusive tactics to rig the per share purchase price of target company securities. As a result of these violations of antitrust law, Defendants were able to purchase the target company's stock for significantly less than if competitive bidding had occurred.

44. Two typical examples of Defendants' pattern and course of conduct in rigging LBO bids from mid-2003 through late 2006 were the SunGard and Neiman LBOs:

SunGard LBO

SunGard was purchased by a bidding club consisting of seven private equity firms. In November 2004, Silver Lake made its initial offer for the company and stated that it expected current management to remain with the company and participate in the transaction. By early February 2005, Silver Lake had made its final offer and executed the agreement on March 27, 2005. Before that date, no other proposals were made to acquire the stock of the company, although after Silver Lake made its final offer and after it had reached preliminary agreement with management on its participation in the transaction, six more private equity firms joined in the acquisition with Silver Lake – Bain, Blackstone, Goldman Sachs, KKR, Providence, and TPG. ***These firms agreed not to and did not submit competing bids against Silver Lake for the acquisition of SunGard.***

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[5] Andrew Ross Sorkin, *Dealbook: One Word Nobody Dares Speak* (Oct. 16, 2005), http://www.nytimes.com/2005/10/16/business/16dealbook.html?scp=1&sq=one+word+nobody+dares+speak&st=nyt#.

Neiman LBO

During the Neiman acquisition process, the company limited the size of the private equity bidding clubs to create the appearance of competition in order to sell the process to shareholders. In early 2005, Neiman decided to explore the possibility of selling the company. Eight private equity firms expressed interest in the company. The private equity firms wanted to form a bidding club to make a joint offer for the company, but Neiman limited the size of each bidding club to two members in order to create the appearance of a competitive bidding process. As a result, four bidding clubs of two private equity firms each were formed. One club dropped out. That left three bidding clubs: TPG/Warburg, Blackstone/Thomas Lee and KKR/Bain. The bidding club of TPG/Warburg offered $100 per share and the other two bidding clubs offered less than $100 per share. When the other two bidding clubs were invited to re-bid, ***their second bids were still below $100 per share, and the terms were no more favorable than TPG/Warburg's initial offer***.

45. As part of their pattern and course of conduct in rigging LBO bids, Defendants agreed, after one bidding club signed a definitive acquisition agreement with a target company, to refrain from submitting legitimate competing bids or taking any action that would interfere with the winning bidding club's acquisition of the target company at the non-competitive price. Some Defendants admitted to their agreement to limit bidding, publicly acknowledging that their scheme works by limiting competition for LBOs. "'***There's less competition for the biggest deals***,'" said TPG founder Bonderman during a March 22, 2006 luncheon speech in New Orleans.[6] During his

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[6] Andrew Ross Sorkin, *Dealbook: Colluding or Not, Private Equity Firms Are Shaken* (Oct. 22, 2006), http://www.nytimes.com/2006/10/22/business/yourmoney/22deal.html?scp=2&sq=one+word+nobody+dares+speak&st=nyt.

speech, Bonderman admitted in a graphic that "'***[c]onsortia often limits bidding***.'" [7] This was a prime driver behind Defendants combining to form bidding clubs on the largest LBOs.

46. Some private equity executives concede bidding club deals lower the purchase price of target companies. One prominent private equity investor admitted, "'***[y]ou're not going to get me to say that aloud, but let's just say that you're not wrong***,'" when asked whether forming a bidding club diminishes the final takeover price.[8]

47. As compensation for not submitting a competitive bid, Defendants who were not members of the winning bidding club: (i) were cut into the deal as advisors, where they garnered lucrative fees; (ii) were given minority equity stakes in the deal; and/or (iii) secured an agreement that they would be included in the next LBO bidding club. This collusive conduct prevented competition in LBO bidding and reduced the prices Defendants paid to target company shareholders in LBOs.

THE ECONOMIC EVIDENCE

48. Recent economic scholarship has examined the pricing and characteristics of club deal LBOs. *See* Micah S. Officer, Oguzhan Ozbas & Berk A. Sensoy, *Club Deals in Leveraged Buyouts* (June 11, 2008), available at SSRN: http://ssrn.com/abstract=1128404. The paper defines a "club deal" LBO as a completed LBO that has a deal value of greater than $100 million in which at least one of the participating private equity partnerships is a prominent private equity firm. The authors conclude that club deal LBO acquirers paid shareholders significantly lower premiums

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7 *Id.*

8 Andrew Ross Sorkin, *Dealbook: One Word Nobody Dares Speak* (Oct. 16, 2005), http://www.nytimes.com/2005/10/16/business/16dealbook.html?scp=1&sq=one+word+nobody+dares+speak&st=nyt#.

compared to sole sponsor LBOs (where only one private equity firm is involved in the deal) and strategic acquirers.

49. Officer, *et al.*, examine two definitions of "deal premium" in their study. One definition is an absolute measure of the premium difference and the second definition is a relative measure of premium.

50. Under the absolute measure, there are two subsets: Compound Return and Compound Return Net of Market. The Compound Return to the target's shares is determined by the change in premium over the period from the day the deal is announced through the delisting date of the target's shares (or six months after announcement, whichever is earlier). The Compound Return Net of Market is determined by the Compound Return less the compound return to a broad-based market index (provided by the Center for Research in Security Prices at the University of Chicago) over the same period, which filters out the general market return from the Compound Return of the acquired company. These are absolute measures of the premium.

51. The second definition of premium is the percentage difference between the deal multiple (equity deal value plus total debt minus (excess) cash scaled by either sales or EBITDA[9]) for the LBO and the average multiple for comparable (within the same three-year window and in the same industry) non-LBO deals. The percentage difference in deal multiples between LBO and comparable non-LBO deals is a conservative estimate of the percentage difference in premiums between these two types of deals. Thus, this second measure of premiums is a relative one, providing

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[9] EBITDA stands for "Earnings Before Interest, Taxes, Depreciation and Amortization." It is a measure of the cash flow available to service debt and pay dividends. EBITDA is, along with price to earning ratio and price to earnings growth ratio, the most common metric by which target companies are valued.

a metric for comparisons of LBO deals to non-LBO deals announced at about the same time and for targets in the same industry.

52. Under these measures, the authors found that club deal LBOs have statistically significantly lower premiums (both in absolute and relative terms) compared to both sole sponsor LBOs and acquisitions by publicly-traded acquirers. For example, under the Compound Return Net of Market absolute measure the average increase in the target's stock price is 7.3% for club deal LBOs compared to 15.8% for sole sponsor LBOs and 22.0% for acquisitions by strategic acquirers. Thus, the difference in change of premium between club LBOs and the sole sponsor LBOs is approximately 53% (7.3% compounded to 15.8%) and the difference between club LBOs and acquisitions by publicly-traded acquirers is approximately 66% (7.3% compared to 22%). In other words, the differences noted above are extremely unlikely to have occurred by chance.

53. Under the relative measure, the average percent difference from deal multiples for comparable acquisitions by publicly traded bidders is between 8% and 20% ***lower*** for club deals than for sole sponsor LBOs. The disparity grows between club deals and strategic deals. This metric therefore also suggests that premiums are statistically significantly lower for club LBOs than for sole sponsored LBOs and for strategic LBOs.

54. The Department of Justice's ("DOJ") investigation into bidding practices of private equity firms (discussed in more detail at ¶¶99-103) started in the last quarter of 2006. All of the differences in premiums between club and sole sponsor LBO deals noted above are particularly acute for deals announced prior to the end of 2006 (as all illegal club LBOs in this Complaint are). The practice of clubs paying low premiums in LBOs (relative to sole sponsor LBOs or acquisitions more generally) was significantly curtailed by the DOJ investigation. Furthermore, Officer, *et al.*,

report that, throughout the period examined in the paper, there were significantly fewer competing bids in successful club deals than successful sole sponsor private equity acquisitions.

55. Overall, Officer, *et al.*, find that the results of this recent economic analysis are most consistent with the view that club deal LBOs have anticompetitive effects, and are detrimental to target company shareholders. Specifically, by the premium measures described above, deal premiums are significantly lower for club deal LBOs relative to both sole sponsor LBOs and acquisitions by publicly traded acquirers.

ALTERNATIVE ECONOMIC RATIONALES ARE IMPLAUSIBLE

56. The economic evidence described above does not support benign reasons for the prevalence of club deals. Neither the (i) desire to diversify in sufficiently large or risky deals, nor (ii) interest in facilitating the acquisition of debt financing on favorable terms explains Defendants' conduct in club LBOs.

57. While club deals are larger on average than sole sponsor LBOs, only 20% of club deal LBOs are larger than the largest sole sponsor LBO conducted by any of the Defendants during the Conspiratorial Era. In other words, the vast majority of club deals are of a size that at least one of the participating private equity firms has recently completed (or is likely contemplating) on its own. Moreover, club deal targets do not appear systematically riskier or harder to value than targets of sole sponsor LBOs, as measured by historical stock return volatility, historical cash flow volatility, number of business segments (a measure of complexity), or analyst forecast errors (a measure of asymmetric information). These facts suggest that capital constraints or diversification concerns are unlikely to be first-order motivations for club deals.

58. While club deals have somewhat better financing terms than sole sponsor LBOs, the differences are not statistically significant. And this factor should actually ***increase***, not decrease,

premiums paid to shareholders. Finally, club deals also involve significantly more lenders than sole sponsor LBOs because the private equity firms lock up the investment banks to prevent other private equity firms from obtaining financing for competing bids. This further exacerbates the anticompetitive effects of club LBOs.

PRIOR COLLUSION IN THE FINANCIAL MARKETS

59. Other instances exist in which economic and statistical evidence first disclosed the existence of collusion in financial markets. For example, in 1994 an economic analysis by two scholars provided the first evidence of collusion by market makers in the Nasdaq stock market in fixing transaction prices. *See* William G. Christie & Paul H. Schultz, *Why do NASDAQ Market Makers Avoid Odd-Eighth Quotes?*, 49 J. Fin. 1813 (1994). An opposing study sponsored by Nasdaq asserted that "the [NASDAQ] market structure makes any collusion inconceivable," arguing that "'it would be prohibitively difficult to establish and maintain collusion on Nasdaq.'" Floyd Norris, *Market Place; The Battle of the Studies: Is there competition at Nasdaq?*, N.Y. Times, Apr. 6, 1995, at D10.

60. Notwithstanding the derision with which the Christie and Schultz analysis was greeted by Wall Street, the study was taken seriously by the DOJ and the Securities and Exchange Commission ("SEC"), which launched simultaneous investigations in 1994. After a two-year investigation, in July 1996, the DOJ sued 24 of the largest Nasdaq market makers, alleging a market-wide agreement to avoid quoting in odd-eighths, essentially fixing the transaction price at 25 cents per share. *See United States v. Alex Brown & Sons, Inc., et al.*, www.usdoj.gov/atr/cases/f0700/0740.htm. Contemporaneously, the DOJ filed a Stipulated Consent Judgment in which the defendants agreed to terminate their illegal agreement. *See* www.usdoj.gov/atr/cases/f0700/0741.htm. The DOJ also filed a Competitive Impact Statement

detailing the evidence of the conspiracy compiled in the course of the Department's two-year investigation. *See* www.usdoj.gov/atr/cases/f0700/0739.htm. Some parties to the DOJ's NASDAQ case – Goldman Sachs, JP Morgan, and Merrill – are also defendants in this case. After the government case was brought these defendants, and all of the other defendants sued in the government case, dramatically reduced their transaction price for the Nasdaq stocks where they were market makers. *See* Arthur M. Kaplan, *Antitrust as a Public-Private Partnership: A Case Study of the Nasdaq Litigation*, 52 Case W. L. Rev. 111 (2001).

THE ROLE OF MANAGEMENT

61. One way Defendants limited competitive bids was to co-opt target company management by offering them economic inducements to limit the number of competitive bids or collude with other potential bidders to depress bidding. LBOs are often initiated when company management and a primary investment bank meet to discuss "strategic alternatives" for the company. These discussions quickly turn to the feasibility of a management-led LBO. The primary investment bank, which acts as the financial advisor, usually brings in its own private equity arm or a private equity firm recommended by management to discuss the price and terms of the LBO. Just as importantly, the primary investment bank also assesses the financial players and resources needed to be deployed to prevent any of these financial players from submitting competing bids.

62. Once LBO models are developed to demonstrate the feasibility of financing with a significant rate of return, the primary investment banker solicits participation from other cooperative private equity firms. The discussion centers around which private equity firms will be invited into the bidding club, with the objective of making the leveraged buyout sufficiently attractive for themselves as well as management. For example, Goldman Sachs and JP Morgan were originally hired by Aramark Corporation ("Aramark") to evaluate strategic alternatives. Ultimately, with

Aramark's Chairman and CEO, Joseph Neubauer, Goldman Sachs and JP Morgan became part of the bidding club, and co-opted Thomas Lee and Warburg into the bidding club to avoid competition.

63. Management participation and collusion are fundamental to Defendants' scheme because management could, in the interest of shareholders, hold out for the highest price by encouraging competing bids. This is a particular risk when management holds a large equity stake in the target company. Thus, Defendants bring management into the conspiracy by giving management a financial stake in the deal in exchange for assistance in preventing potentially competing bids.

64. For example, in the Neiman LBO, management realized accelerated stock option gains and huge profits in the conversion of its preferred shares into an equity position in the new private entity, and Neiman's founding family, the Smith family, which owned 12.42% of Neiman, retained an equal share in the private entity. These were essential components of the deal. Similarly, Thomas Frist, Jr., founder and CEO of HCA, conspired with Bain (where he was an investor), KKR, and Merrill in the HCA LBO; Richard Kinder, founder and CEO of Kinder Morgan, conspired with Carlyle and Goldman Sachs in the Kinder Morgan LBO; and Neubauer, Chairman and CEO of Aramark, conspired with Thomas Lee, Warburg, Goldman Sachs, and JP Morgan in the Aramark LBO.

65. Thus, management of the target companies became co-conspirators by agreeing to sell their companies at a lower price in return for a piece of the resulting private companies. In 2005, shareholders received approximately 9% less per share on LBOs involving management than in LBOs not involving management.

THE ROLE OF THE INVESTMENT BANKS

66. Investment banks play a critical role in the negotiation, financing, and exit strategies of LBOs and have organizational and financial incentives to align themselves with the largest private equity firms.

67. At the beginning of the LBO process, an investment bank is typically hired by a company to advise it on "strategies to increase shareholder value," which is often a euphemism for designing and putting an LBO in motion. The investment banker receives a lucrative fee for advising the company during this process.

68. Once the company decides to sell itself, or is persuaded to put itself on the block, its investment bank is responsible for packaging the company and contacting selected potential buyers. Potential buyers comprise two general categories: (i) long-term corporate or strategic buyers; and (ii) short-term financial buyers such as Defendants.

69. The investment bankers that advise on selling a company have shifted from primarily soliciting corporate/strategic buyers to soliciting private equity firms. The result has been a complete shift of the source of fees for the investment banks from corporate/strategic buyers to private equity firms. In 2001, 17 of the 20 largest fee generators for investment banks were corporations/strategic buyers, whereas in 2005, only four of the 20 largest fee generators were corporations/strategic buyers and 16 of the largest fee generators were private equity firms. In 2006, the top ten global LBO firms, including Defendants and their co-conspirators, paid more than $5 billion in investment banking advisory fees in connection with LBOs. Investment banks steer their clients to private equity firms rather than corporate/strategic buyers because LBOs produce much larger advisory and future debt underwriting fees – and often a cut of the deal for the investment banks' private equity affiliates.

70. Each private equity firm typically aligns itself with an investment bank for financing. When a bidding club is formed, the bidding club will tie up numerous investment banks and potential sources of capital to create an additional barrier to entry for other potential buyers. For example, some of the largest investment banks, Citigroup, Deutsche Bank, Goldman Sachs, JP Morgan, Credit Suisse First Boston ("Credit Suisse"), and Morgan Stanley, all acted as advisors and/or provided debt financing for the SunGard and Neiman LBOs.

71. Only a few investment banks have the capital, resources, and connections to the private equity community necessary to participate in the largest LBOs, and these few banks are all repeat players. Private equity firms exert control over the investment capital markets by aligning with particular investment banks and executing exclusivity deals with these banks. Defendant private equity firms lock up the investment banks to prevent other competing private equity firms from obtaining necessary financing to support a competitive bid and to receive a lower interest rate on the deal financing. This suppresses competition by excluding other possible bidders for a target company.

72. The investment banks also participate in the scheme to earn substantial fees post-acquisition ("recycling fees"). These recycling fees provide the financial incentive for the investment banks to offer lower interest rates to the private equity firms who most often participate in LBOs as compared to other possible acquirers (such as strategic buyers). Economic data indicate that the lower interest rates paid by private equity firms led to a four percentage point ***increase*** in equity return to the private equity firms, while at the same time premiums paid to shareholders in club LBOs ***decreased***.

73. After the acquisition is complete, the private equity firm buyers often place a secondary debt offering to fund a dividend recapitalization to recoup as much as 35% of their

original investment, often within six months of the acquisition. The investment banks also receive a fee for underwriting secondary bond placements. Corporate/strategic buyers are less desirable partners for investment banks because they lack any incentive to hire the banks to issue secondary debt to fund large dividends.

74. Similarly, private equity firms, soon after they acquire a company, seek to sell some of the company's assets, or sell most or all of their interest in the company in an initial public offering ("IPO") or to a strategic buyer. These activities also require substantial investment banking services and produce very high fees for investment banks, providing additional motivation to participate in the conspiracy. In 2005 and 2006, the big investment banks received fees from private equity firms exceeding $11 billion, including advisory fees and recycling fees from follow-on bond offerings and exit strategies. The chart after ¶134 which illustrates the sources of fees in the PanAmSat Holding Corporation ("PanAmSat") deal and serves as an example, in general, of how investment banks generate fees from private equity firms.

75. Certain investment banks, including Merrill, Goldman Sachs, Credit Suisse, Citigroup, and JP Morgan, also have private equity arms that participate directly in bidding clubs. This creates a situation ripe for the sharing of competitive information and self-dealing. One hand washes the other, as the investment bank lines up capital and debt financing for its fraternal private equity firm which in turn pays the bank substantial fees along each step in the deal. As a result, the various opportunities for profiting from the deal are kept in the family. For example:

- In HCA, Merrill – which HCA retained to discuss strategic alternatives with management – brought in its private equity arm, Merrill Partners, once HCA's management decided to go private. The four financial advisors to the group – Merrill, Bank of America, Citigroup, and JP Morgan – also provided the debt financing.

- In Neiman, Goldman Sachs acted as both investor and advisor to the company.

- In Aramark, Goldman Sachs participated as a private equity firm, an investment bank, and an advisor.
- In Kinder Morgan, Goldman Sachs initially acted as advisor to the company as it explored its strategic alternatives, but after the company's CEO and founder, Kinder, expressed interest in an LBO, Goldman Sachs switched sides to advise the buy-out group and Goldman Capital took a 25% stake in the deal.
- In PanAmSat, Credit Suisse acted as both advisor to the company and provided debt financing.
- In Michaels Stores, Inc. ("Michaels Stores"), JP Morgan acted as both the advisor to the company and provided debt financing.

76. The line between investment banks and private equity firms is further blurred, if not erased, by bank investments in funds managed by private equity firms. As a result of interlocking investments, investment banks are often advising the target company to participate in an LBO with a private equity firm they control or in which they have invested capital. This creates an additional incentive for the investment bank to render favorable fairness opinions even though the takeover price has been artificially suppressed.

77. Because the investment banks play both sides of the table, information regarding pending and future deals flows freely between investment banks, and private equity firms. This communications network is enhanced when private equity firms, investment banks, and target companies invest in one another and/or have common corporate officers and directors, such as in the HCA LBO, and other specific deals identified in this Complaint. These and other associations provide conduits for communicating competitive information among Defendants and their co-conspirators.

DEFENDANTS' INCENTIVES TO PLAY BY "CLUB RULES"

78. Bidding clubs are comprised of the major private equity firms, including the Defendants. These are repeat players who have raised the largest funds. These private equity firms'

participation in the large club LBOs is based on their willingness to play by "bidding club rules," including abiding by agreements made to allocate participation in present and future LBOs and to exclude participation by outside bidders. As a result, the bidding club's collusive offer: (i) is the only real bid on the table; (ii) is the only deal that is presented to the shareholders; and (iii) has the endorsement of management. When the bids are rigged in this fashion, potential competitors, including members of the bidding club, are prevented, through exclusivity agreements, cartel allocation agreements, and exorbitant "break-up" fees, from competing or making lower bids.

79. Playing by "club rules" undermines the free market and provides these private equity firms a collectivist, conspiratorial safety net. Potential competitive bidders that were not contacted in the initial search for a private equity firm, *i.e.*, who were not a part of the "winning" bidding club cartel, were offered the opportunity to participate in the "syndication" of the bid. This is a *quid pro quo* for the excluded firms agreeing to fall in line and not submit competitive bids. By bringing the "losers" into the fold, the winners are assured that, if they are not part of the winning bidding club in a subsequent deal, their financial interests will be protected.

80. The end result is that there are no private equity firms with the resources to make a competing bid for the transaction which have not been co-opted into the deal or promised a piece of subsequent deals. The private equity Defendants and their co-conspirator investment banks, as well as target company management are all winners in this game. Defendants' collusive conduct causes the ultimate price paid to the target company's shareholders to be inferior to what it would be in a competitive market. The only actual losers are those left out of the clubs, *i.e.*, the shareholders of the target companies who are paid artificially low premiums.

JURISDICTION AND VENUE

81. This action is instituted under §§4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26, to recover damages and costs of suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiffs and the members of the class by reason of the violations, as herein alleged, of §1 of the Sherman Act, 15 U.S.C. §1.

82. This action is also instituted to secure injunctive relief against Defendants to prevent them from further violations of §1 of the Sherman Act, as alleged herein.

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

84. Venue is found in this District pursuant to §§4, 12 and 16 of the Clayton Act, 15 U.S.C. §§15, 22 and 26, and 28 U.S.C. §1391(b)-(d). Venue is proper in this judicial District because during the Conspiratorial Era one or more of the Defendants resided, transacted business, was found, or had agents in this District, and because a substantial part of the events giving rise to Plaintiffs' claims occurred, and a substantial portion of the affected interstate trade and commerce described herein has been carried out, in this District.

85. Defendants maintain offices, have agents, transact business, or are found within this judicial District.

86. This Court has personal jurisdiction over each Defendant because each was engaged in an illegal scheme directed at and with the intended effect of causing injury to persons and entities residing in, located in, or doing business throughout the United States.

CLASS ACTION ALLEGATIONS

87. Plaintiffs bring this action on behalf of themselves and as a class action under the provisions of Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following class (the "Class") and sub-classes:

Injunctive Relief Class

> All persons who have an ownership interest in securities in any publicly-listed company traded on any United States securities market or exchange. Excluded from the Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.

Damages Sub-Classes

> All persons who sold their SunGard securities to private equity defendants Silver Lake, Blackstone, Bain, KKR, TPG, Providence, and Goldman Capital on or about August 11, 2005 (the "SunGard Sub-Class"). Excluded from the SunGard Sub-Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.
>
> All persons who sold their Neiman securities to private equity defendants TPG and Warburg on or about October 6, 2005 (the "Neiman Sub-Class"). Excluded from the Neiman Sub-Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.
>
> All persons who sold their HCA securities to private equity defendants Bain, KKR, and Merrill Partners on or about November 11, 2006 (the "HCA Sub-Class"). Excluded from the HCA Sub-Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.
>
> All persons who sold their Freescale securities to private equity defendants Carlyle, Blackstone, TPG, and Permira on or about December 1, 2006 (the "Freescale Sub-Class"). Excluded from the Freescale Sub-Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.

> All persons who sold their Kinder Morgan securities to private equity defendants Carlyle and Goldman Capital on or about May 30, 2007 (the "Kinder Morgan Sub-Class"). Excluded from the Kinder Morgan Sub-Class are the federal government, the Court and any members of the Court's immediate family, the Defendants, and their co-conspirators, and the present and former partners, predecessors, subsidiaries, and affiliates of the foregoing.

88. The prosecution of separate actions by individual members of the Class and sub-classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants and their co-conspirators.

89. Defendants and their co-conspirators have acted, and refused to act, on grounds generally applicable to the Class and sub-classes, thereby making appropriate final injunctive relief with respect to the Class and sub-classes as a whole.

90. Plaintiffs believe that while there are thousands of Class and sub-class members as described above, their exact number and identities are ascertainable from trading records.

91. The Class and sub-classes are so numerous and geographically dispersed that joinder of all members is impracticable.

92. There are questions of law and fact common to the Class and sub-classes, which relate to the existence of the conspiracies alleged and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

(a) whether Defendants and their co-conspirators engaged in combinations and conspiracies among themselves to fix and maintain prices of securities of target companies, as alleged herein, purchased by Defendants and their co-conspirators;

(b) the identity of the participants in the conspiracies;

(c) the duration of the conspiracies alleged in this Complaint and the nature and character of the acts performed by Defendants and their co-conspirators in furtherance of the conspiracies;

(d) whether the alleged conspiracies violated §1 of the Sherman Act;

(e) whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to Plaintiffs and other members of the Class and sub-classes;

(f) the effect of Defendants' conspiracies on the prices of securities sold to Defendants and their co-conspirators during the Conspiratorial Era;

(g) the appropriate measure of damages sustained by Plaintiffs and other members of the Class and sub-classes;

(h) the appropriate injunctive relief;

(i) whether releases obtained in state court breach of fiduciary duty class action settlements release any defendant from the Class' claim for injunctive relief; and

(j) whether releases obtained in state court breach of fiduciary duty class action settlements release any defendant from the subclasses' claims for damages.

93. Plaintiffs' claims are typical of the claims of the other Class and sub-class members, and Plaintiffs will fairly and adequately protect the interests of the members of the Class and sub-classes. Plaintiffs are sellers of securities in the target companies that underwent or are in the process of undertaking an LBO and are current in the United States' securities markets or exchanges, and their interests are coincident with and not antagonistic to those of the other members of the Class and sub-classes. In addition, Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

94. The questions of law and fact common to the members of the Class and sub-classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

95. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class and sub-classes are readily definable and are ones for which records should exist in the files of Defendants and their co-conspirators. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would engender. Treatment of this case with a Class and sub-classes will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

TRADE AND COMMERCE

96. The activities of Defendants and their co-conspirators, as described in this Complaint, were within the flow of, and substantially affected, interstate commerce.

97. During the time period covered by this Complaint, Defendants and their co-conspirators purchased securities of the target companies enumerated herein throughout the United States.

98. Defendants and their co-conspirators, collectively and individually, have used instrumentalities of interstate commerce to purchase securities of the target companies enumerated herein.

UNITED STATES DEPARTMENT OF JUSTICE INVESTIGATION

99. On October 11, 2006, the *Wall Street Journal* reported that the DOJ had launched an investigation into the bidding practices of private equity firms including, among others, the following Defendants and co-conspirators: (i) KKR; (ii) Carlyle; (iii) CDR; (iv) Merrill Partners;

and (v) Silver Lake. Each received letters from the New York regional office of the DOJ seeking broad information about their business practices and involvement in LBOs going back to late 2003.

100. Specifically, the DOJ is investigating instances of collusion in the form of bid-rigging, focusing on whether bidding clubs – which include Defendants, the investment banks, and often the target company's senior management – communicated about prices and the value of bids in order to reach secret agreements and keep target companies' prices low.

101. One unnamed source stated that the DOJ investigation concentrates on "'what deals did we do, who did we work with [and] when did we find out about them.'"[10] Private equity transactions involving management-led LBOs are a primary target of the inquiry because management has an incentive to protect their own financial interests by collaborating closely with a club of private equity firms to avoid an open bidding process.

102. In the August 13, 2007 Amendment No. 1 to Form S-1, KKR confirmed that the DOJ was requesting documents as part of its bid-rigging investigation. Specifically, KKR disclosed "we have received a request for certain documents and other information from the Antitrust Division of the United States Department of Justice, or the DOJ, in connection with the DOJ's investigation of private equity firms to determine whether they have engaged in conduct prohibited by the United States antitrust laws." In the April 8, 2008 Form S-1, Apollo stated that "it has been reported in the press that a few of our competitors in the private equity industry have received information requests relating to private equity transactions from the Antitrust Division of the U.S. Department of Justice." This indicates that the DOJ's investigation of several Defendants is ongoing.

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[10] Peter Smith, *Buy-Out Firms Face Harsher Regulation*, Financial Times, Oct. 12, 2006, at 29.

OVERVIEW OF THE PRIVATE EQUITY INDUSTRY AND ALLEGATIONS OF WRONGDOING

110. Private equity firms operate outside the purview of the legal and administrative regime that regulates some aspects of the securities markets. This lack of regulation and the ability of private equity firms to operate with minimum transparency facilitates the formulation of the conspiracies alleged herein and has made private equity firms indispensable to target company officers who wish to share in the gains of uncompetitive LBOs at the expense of the outside shareholders of the target company.

111. Defendants who collectively bid and ultimately conduct the LBO transaction generally organize a limited partnership of investors which is controlled by the management of the particular private equity firm that serves as a general partner. The limited partnership funds obtain capital commitments from certain qualified investors who become passive limited partners in the partnership funds. When the general partner identifies an appropriate investment opportunity and "calls" the required equity capital, each limited partner pays a pro rata portion according to its commitment. Federal securities laws do not regulate these funds.

112. The defendant private equity firms align themselves in LBOs with the large investment banks who provide necessary financing. Participation in LBOs is immensely profitable to investment banks such as Goldman Sachs, Merrill, and JP Morgan. These banks are repeat players in LBOs and often function as both investors and advisors.

113. As a method of enforcing the agreed-upon cartel rules, private equity firms require the prospective investment banks to execute exclusivity agreements, which prevent the investment banks from offering to finance an LBO bid on the same target company from a competing bidder or group of bidders. These exclusivity agreements are designed to – and effectively do – lock out financing for any potential competing bidder for a target company.

114. Private equity firms experienced historic economic growth from mid-2003 through 2006. The total number of acquisitions of public companies by both strategic buyers and single sponsor LBOs was nearly 27% lower from 2003 through 2006 compared to the four preceding years, 1999 through 2002; however, the number of LBOs ***almost doubled***. By 2006, over 40% of all acquisitions of public companies were LBOs.

	1999	2000	2001	2002	Total 1998-2002
Acquisitions of Publicly Traded Companies - Both Strategic Buyers & LBOs	746	676	591	411	2,424
Total LBOs	74	77	77	70	298
% of Total Acquisitions	9.90%	11.40%	13%	17%	12.30%

	2003	2004	2005	2006	Total 2003-2006
Acquisitions of Publicly Traded Companies - Both Strategic Buyers & LBOs	463	372	448	488	1,771
Total LBOs	124	98	142	202	566
% of Total Acquisitions	26.80%	26.30%	31.70%	41.40%	32%

Source: Mergerstat Review 2006

115. This seismic shift to private equity firm bidding clubs was fueled by over $160 billion pouring into private equity funds during 2006, nearly four times the $41 billion invested in all of 2003.

116. As private equity firms completed a greater percentage of transactions, the median premiums offered for all acquisitions, including LBOs, as measured from five days prior to the announcement date to the announcement date, declined from 41.1% in 2000 to 23.4% in 2004 and remained relatively flat for 2005 and 2006. Similarly, the median premiums for only LBOs was in the low 40% range from 2000 through 2003. However, LBOs suffered a precipitous drop in median premiums from 41.5% in 2003 to 17.2% in 2004. Due to the large number of LBOs from 2004 through 2006, the median premium for all acquisitions was negatively affected by this huge drop in premiums for LBOs. In other words, as the number of LBOs increased, the median premium offered

on all acquisitions was mathematically reduced due to the low premium paid on LBOs, indicating non-LBO premiums would be significantly higher during 2004, 2005, and 2006 than the median premiums on all acquisitions.

117. As set forth in recent economic scholarship, club LBO premiums are statistically significantly lower than premiums paid by publicly traded companies and in sole sponsored LBOs. Using the absolute measure of premium, calculated using the period from announcement date through delisting, the average Compound Returns and average Compound Returns Net of Market (as defined in ¶50) for all acquisitions of publicly-traded companies through club LBOs, sole sponsor LBOs, and by publicly-traded companies are summarized as follows:

	Announcement Date	
	Compound Return	Compound Return Net of Market
Club LBO	13.8%	7.3%
Sole sponsor LBOs	21.58%	15.76%
Publicly-Traded	26.6%	21.9%

118. Using the relative measure of premiums (as defined in ¶51), the average premiums for club LBOs is approximately 24% less than the average premiums for acquisitions by publicly-traded companies.

DEFENDANTS' PREVIOUS HISTORY OF COMPETITION

119. Defendants' previous history of competition belies their current conduct. Throughout the 1980s, 1990s and up to the Conspiratorial Era, Defendants rarely engaged in club deals. Instead, they competed against each other and strategic buyers companies for LBOs. As shown above, the premiums paid by Defendants for LBOs prior to the Conspiratorial Era were significantly higher. Defendants' conduct during the Conspiratorial Era, which represents an about-face from their

history of competition demonstrates an agreement that they cease competing in favor of collectivist conduct that pays handsomely at the expense of shareholders.

PENALTIES IMPOSED ON TARGET COMPANIES TO DISCOURAGE COMPETING BIDS

120. Defendants have conspired to uniformly impose, as a condition of even submitting the initial LBO bid, "breakup fees" requiring the target company to pay huge penalties if it later accepts a higher competing LBO bid. These penalties can reach $500 million. These fees do not accurately reflect any lost business cost to the bidders and effectively exclude all potential bidders who are not part of the cartel.

121. These breakup fees make the target company significantly less attractive because the massive breakup fees increase the company's price if a competing bid is accepted. Moreover, the breakup fees make it economically impractical for a target company to accept a higher price for its stock if the higher price does not exceed the breakup fees Defendants imposed on the target company. As a result, the prices target company shareholders are paid in LBOs led by Defendants is materially lower than the prices that would prevail in a market free of Defendants' collusive tactics.

THE ILLEGAL LBOS

122. During the Conspiratorial Era, Defendants, along with their co-conspirators, conspired to rig the purchase price in club LBOs the number and identity of which are unknown to Plaintiffs at this time, but which include the following subset of LBOs: PanAmSat, AMC Entertainment Inc. ("AMC"), SunGard, Neiman, Michaels Stores, HCA, Freescale, Aramark, and Kinder Morgan.

The PanAmSat Deal

123. In early March 2004, PanAmSat, with the assistance of Credit Suisse, obtained indications of interest from potential buyers. Six bidders or bidder groups were selected to continue

with the process, but not all submitted bids. The following chart details Defendants' cartel, advisors, and financier for the PanAmSat deal, date closed, and price of the deal.

PanAmSat Bidding Club

Deal Amount: $4.3 billion

Date Closed: August 20,2004

INVESTORS

- KKR – Lead Investor
- Carlyle
- Providence
- Management

DEBT FINANCING

- Credit Suisse
- Citigroup

ADVISORS TO INVESTORS

- Citigroup

ADVISORS TO MGT.

- Credit Suisse
- Evercore Partners

124. On March 19, 2004, Carlyle and Providence, the two members of one bidder group, advised that they would be combining with Blackstone, one of the other six bidding groups, thus reducing the field to five bidders.

125. Only three of the five remaining bidders submitted bids by April 14, 2004: (i) Carlyle, Providence, and Blackstone together bid $20 per share; (ii) Bain and Thomas Lee together bid slightly more than $20 per share; and (iii) KKR bid $24 per share.

126. By April 18, 2004, KKR ***lowered*** its offer to $23.50 per share. The Bain/Thomas Lee bidding group failed to bid more than $22.50 per share. The Carlyle/Providence/Blackstone bidding group did not make a second offer, even though Carlyle and Providence were still interested in acquiring PanAmSat.

127. On April 20, 2004, KKR was announced as the winning bidder and immediately gave Carlyle and Providence a piece of the deal. On May 17, 2004, KKR sold over half of its rights in the deal (54%) to Carlyle and Providence and retained 44% of the outstanding common stock. Management received 2% of the deal.

128. The deal closed on August 20, 2004 for $23.50 per share. This per share price represented a 6.8% discount from the target company's prior day closing share price of $25.21.

129. As a result of Defendants' bid-rigging, the winning bidder purchased PanAmSat ***for less than the highest bid*** and the ***lowest bidders*** walked away with the largest share of the deal.

130. The total consideration for the shares was in excess of $4 billion (including the assumption of debt), but KKR, Carlyle, and Providence collectively contributed only $550 million in equity. The rest of the acquisition price was financed with debt.

131. On October 19, 2004, PanAmSat borrowed money at a very high interest rate and used the money to pay a dividend of $245 million to KKR, Carlyle, and Providence.

132. On March 22, 2005, PanAmSat completed an IPO at $18 per share in which the company received $658 million and KKR, Carlyle, and Providence received $200 million as a dividend. PanAmSat issued new shares and did not sell the shares owned by the private equity entities.

133. On August 29, 2005, strategic buyer Intelsat, Ltd. ("Intelsat") announced that it was acquiring PanAmSat for $25 per share in cash and closed the deal on October 26, 2005. While $25 per share on its face seems only slightly more than the private equity cartel paid for PanAmSat in the LBO, Intelsat paid $25 per share after PanAmSat had been loaded up with debt and stripped of $445 million of cash via special dividends. The sale to Intelsat netted the private equity firms approximately $1.8 billion. In total, KKR, Carlyle, and Providence received $2.245 billion for a $550 million initial investment made 14 months earlier, or a return of 308%. But for Defendants' collusive conduct, these gains would have flowed to the initial PanAmSat shareholders.

134. Below is a chart illustrating the sources of fees in the PanAmSat deal.

Life Cycle of PanAmSat DEAL

	Advise on LBO →	Closing Price: $4.0 B →	Secondary Bond Offering: $245 M →	Additional Shares Issued in IPO: Company Received $658 M →	Sale of Entire Company to IntelSat
Date	March 2004	August 20, 2004	October 19, 2004	March 22, 2005	August 29, 2005
Private Equity Firms	Contacted by Investment Banks	**$550 M INVESTED** - Receive Shares of Stock in New Company	**$245 M Dividend Paid** to PE Firms	**$200 M Dividend Paid** to PE Firms; PE Firms Maintained All Their Shares	**$1.8 B Paid** to PE Firms for Their Shares
Investment Banks	**Received Fees** to Advise	**Received Fees** for Sale Closing; **Received Fees** to Underwrite Debt to PE Firms	**Received Fees** to Underwrite Bond Offering	**Received Fees** to Underwrite IPO	**Received Fees** Related to Sale of Shares

The AMC Deal

135. The AMC deal illustrates the concept of "you take a company private, I take a company private, and we put the two companies together shortly thereafter," rather than an actual bidding process. The following chart details Defendants' cartel, advisers, and financiers for the AMC deal, date the deal closed, and price of the deal.

AMC Bidding Club

Deal Amount: $2.5 billion

Date Closed: December 23, 2004

INVESTORS

- JP Morgan Partners
- Apollo

DEBT FINANCING

- JP Morgan
- Citigroup Global
- Citigroup

ADVISORS TO INVESTORS

- Lazard Freres

ADVISORS TO MGT.

- JP Morgan
- Goldman Sachs

136. AMC and Loews Cineplex Entertainment Corporation ("Loews") began discussing a possible merger in November 2003. Those discussions terminated without explanation at the end of January 2004. At the time, JP Morgan was the financial adviser to AMC's board of directors. In March 2004, AMC became aware that Loews intended to conduct a sale process and entered into a confidentiality agreement with Loews to gain access to Loews' financial information in connection with its sale process, as opposed to continuing discussion toward a strategic acquisition or merger. AMC also held discussions with its investment adviser JP Morgan about the possibility of taking AMC private through an LBO.

137. JP Morgan, which had been advising the AMC board of directors, had its private equity arm, JP Morgan Partners join Apollo (who had held a significant number of AMC shares since 2001) to form a bid group. In May 2004, the JP Morgan Partners and Apollo group initially bid for the purchase of AMC's public shares.

138. On June 24, 2004, a representative of Goldman Sachs, the new investment advisor for AMC, received an informal inquiry from a representative of Cinemark about AMC's willingness to engage in a strategic transaction with Cinemark.

139. On June 30, 2004, another private equity firm executed a confidentiality agreement with the goal of participating in the bidding club with JP Morgan Partners and Apollo. However, the firm did not join JP Morgan Partners and Apollo. On July 23, 2004, less than one month after receiving the notification of interest from Cinemark and after passing on the possibility of a merger with Loews earlier in 2004, AMC's board of directors accepted the offer from the JP Morgan Partners/Apollo bidding club.

140. The AMC transaction closed on December 25, 2004 at a price of $19.50 per share.

The Loews Transaction

141. Loews was purchased by Onex Corporation and Oaktree Capital Management from bankruptcy on March 21, 2002, thereby becoming a private company. In March 2004, after merger talks had apparently ended with AMC, Loews put itself up for sale. On July 30, 2004, only seven days after AMC was acquired, Bain, Carlyle, and Spectrum Equity acquired Loews for approximately $2 billion.

The Combination

142. On June 20, 2005, less than one year after both companies announced they were being acquired by private equity bidding clubs, AMC and Loews merged to form a company worth approximately $4 billion. After the merger, all of the private equity firms remained owners of the merged company; the AMC private equity firms owned 60% of the equity, and the Loews private equity firms held 40% of the equity.

143. The merger of AMC and Loews, originally considered in January 2004, but dropped, was consummated after the bidding clubs had taken them private, thereby cutting the AMC and Loews shareholders out of the ultimate merged company and depriving them of any resulting premiums. JP Morgan, who flip-flopped from advisor to investor, helped quarterback Defendants' strategy by advising the AMC board not to pursue the merger with Loews while the company was still public, thereby depriving the AMC shareholders of the higher premiums being received in strategic acquisitions.

The SunGard Deal

144. The SunGard LBO was a one-bid auction. On March 24, 2005, Silver Lake offered to pay $36 per share for the company. Although several other parties expressed an interest in SunGard, there were no other proposals. Instead, Silver Lake and six other private equity firms joined together

and agreed to split the deal. Those bidding club members were: Blackstone, Bain, KKR, TPG, Providence, and Goldman Capital. The following chart details Defendants' cartel, advisors, and financiers for the SunGard deal, date closed, and price of the deal.

SunGard Bidding Club

Deal Amount: $10.8 billion

Date Closed: August 11,2005

INVESTORS	Silver Lake
	Blackstone
	Bain
	KKR
	TPG
	Providence
	Goldman Capital
	Management
DEBT FINANCING	Citigroup
	Deutsche Bank
	Goldman Sachs
	JP Morgan
	Morgan Stanley
ADVISORS TO INVESTORS	Citigroup
	Deutsche Bank
	Goldman Sachs
	JP Morgan
	Morgan Stanley
ADVISORS TO MGT.	Credit Suisse
	Lazard Freres

145. Consistent with Silver Lake's intention at the outset, management participated in the buyout. Concurrently with the buy-out negotiation, five-year employment contracts were negotiated with the top seven executives, which offered the CEO/President and six other senior executives the opportunity to invest up to $35 million of their proceeds from the sale of the company into new company stock. The employment contracts also included a 15% incentive equity stake of the new company stock.

146. As a result of the Defendants' collusive conduct, the bidding club was able to purchase SunGard at an artificially low price. The price paid by the bidding club for SunGard's stock was less than the average price paid in other acquisitions in the same industry over the same time period as measured by the target company's price/earnings ratio.

The Neiman Deal

147. The Neiman deal illustrates the use of "dummy" or false bids to give the illusion of competition for the takeover target. In this deal, management and the largest shareholders had a motive to (and did) keep the price as low as possible as each were cut in for a substantial share of the new private entity. The following chart details Defendants' cartel, advisors, and financiers for the Neiman deal, date closed, and price of the deal.

Neiman Marcus Bidding Club

Deal Amount: $5.2 billion

Date Closed: October 6, 2005

INVESTORS

- TPG
- Warburg

DEBT FINANCING

- Credit Suisse
- Goldman Sachs
- Deutsche Bank
- Bank of America Securities

ADVISORS TO INVESTORS

- Credit Suisse

ADVISORS TO MGT.

- Goldman Sachs
- JP Morgan

148. In early 2005, Neiman solicited potential bidders for the purchase of the company.

149. In an April 27, 2005 meeting with potential buyers, certain of the executive officers of Neiman, including CEO Burton Tansky, disclosed their interest in staying with the new entity and having their current equity converted into equity in the new entity. Two days later, on April 29, a bidding club consisting of TPG and Warburg submitted a bid of $100 per share. As a condition of the bid, the Smith family, which held over 12% of the outstanding shares, pledged to vote all of its shares in favor of the TPG/Warburg bid. The other two bidding clubs (Blackstone/Thomas Lee and Bain/KKR) submitted bids under $100 per share. Neiman invited these two bidding clubs to improve their bids.

150. On April 30, 2005, both Blackstone/Thomas Lee and Bain/KKR communicated increased bids but remained under $100 per share. These bids were extraordinary because both Blackstone/Thomas Lee and Bain/KKR again submitted bids ***less than*** the TPG/Warburg bid, which they already knew was $100 per share. These increased bids were less than the TPG/Warburg bid because Blackstone/Thomas Lee and Bain/KKR had agreed not to compete with TPG/Warburg and were made simply to give the appearance that a fair auction occurred. This Potemkin Village bidding stratagem was implemented to convince public shareholders of the fairness of the process.

151. The next day, May 1, 2005, with this ruse in place, JP Morgan, the investment bank hired by the company to opine on the fairness of the offers, presented an opinion to the company that the TPG/Warburg bid was fair. JP Morgan based its fairness opinion on Neiman being valued at $93 to $107 per share and estimated a 15% interest rate of return over three years and an 18.3% rate of return over five years. Importantly, other analysts who valued the company valued it at $115 per share.

152. On October 6, 2005, TPG/Warburg purchased Neiman for approximately $5.4 billion. Outside shareholders, such as Plaintiffs and Class members, realized a paltry gain of 1.7% as a result of the Neiman deal. However, the deal was substantially more lucrative for the Smith family and senior management. The Smith family retained their 12% equity interest in the new entity. Executive management were also granted securities in the new entity.

The Michaels Stores Deal

153. In early 2006, Michaels Stores considered a review of its strategic plan and potential alternatives to maximize shareholder value. First JP Morgan and then Goldman Sachs advised Michaels Stores in this process when two private equity clubs were seemingly bidding for the company. Ultimately, the economic data reveal a diminished price was paid to shareholders. The following chart details Defendants' cartel, advisors, and financier for the Michaels Stores deal, the date closed, and price of the deal.

Michaels Stores

Deal Amount: $6.0 billion

Date Closed: October 31, 2006

INVESTORS	Bain
	Blackstone
DEBT FINANCING	Deutsche Group
	JP Morgan
	Bank of America
	Credit Suisse
ADVISORS TO INVESTORS	Deutsche Bank
	Credit Suisse
	Bank of America
ADVISORS TO MGT.	JP Morgan
	Goldman Sachs

154. On June 21, 2006, Bain and Blackstone submitted a $42 per share bid for the purchase of the company. On the same day, a second bidding club comprised of KKR and TPG submitted a bid for $42.50 per share. Carlyle, who had been participating in the process, dropped out of the bidding process at approximately the same time.

155. Bain/Blackstone and KKR/TPG submitted second bids of $44.00 and $43.50, respectively. On June 30, 2006, nine days after the initiation of the bidding process, the bidding club of Bain and Blackstone entered into an agreement with Michaels Stores for $44 per share, with a total deal value of approximately $6 billion. The price of $44 per share was approximately the same as the stock's 52-week high.

156. This ultimate price was only $2 per share higher (a 4.5% increase) than the initial offer by the same bidding club. This was slightly less than the average percentage increases in club LBO premiums and far less than the 15% average premium for sole sponsor LBOs or the 21% average premium for purchases by public companies during the relevant time period.

157. As a result of the Defendants' collusive and abbreviated bidding process, the bidding club was able to purchase Michaels Stores' public shares at an artificially deflated price. The price paid by the bidding club for Michaels Stores' shares was less than the average price paid for acquisitions by publicly traded companies and was less than the average price paid in other acquisitions in the same industry during the same time period (whether acquired by public or private companies).

The Aramark Deal

158. In the Aramark deal, Chairman and CEO Neubauer led the LBO of Aramark – the second under his ownership and control of the company. The first buyout, in 1984, resulted in Neubauer making a fortune when he took the company public in 1991. Seeking to reprise this earlier

result, Neubauer and a bidding group comprised of Goldman Capital, JP Morgan Partners, Thomas Lee, and Warburg managed to purchase Aramark in an "auction" that once again was free from competing bids – despite a grossly inadequate club bid – and despite the fact that winning the auction would certainly bring any private equity firm substantial profits. The following chart details the Defendants' cartel, advisors, and financiers for the Aramark deal, date closed, and price of the deal.

Aramark Bidding Club

Deal Amount: $8.2 billion

Date Closed: January 26, 2007

INVESTORS	Thomas Lee
	Warburg
	Goldman Capital
	JP Morgan Partners
	CCMP Capital Advisors
	Joseph Neubauer, Aramark Chairman & CEO
DEBT FINANCING	Goldman Sachs
	JP Morgan
ADVISORS TO INVESTORS	Goldman Sachs
	JP Morgan
ADVISORS TO MGT.	Goldman Sachs
	JP Morgan
	Credit Suisse

159. On December 6, 2005, Neubauer, who held slightly more than 12% of Aramark's stock, initiated the exploration of strategic alternatives, including an LBO. To that end, Neubauer brought in Goldman Sachs and JP Morgan as financial advisors.

160. At a board meeting on March 22, 2006, Neubauer expressed his desire to maintain a significant equity position in the new company. He also informed the board that he wanted Goldman Sachs and JP Morgan to involve their respective firms' private equity affiliates, Goldman Capital and JP Morgan Partners.

161. On April 28, 2006, Warburg and Thomas Lee were added to the existing bidding club, instead of being asked to make a competing bid.

162. On May 1, 2006, Neubauer, Goldman Capital, JP Morgan Partners, Thomas Lee, and Warburg (the "Neubauer Group"), submitted and announced a bid for Aramark of $32 per share.

163. On May 3, 2006, representatives of Eminence Capital, LLC ("Eminence"), an investment manager and Aramark's second largest shareholder, which together with its affiliates owned approximately 7.8% of Aramark's Class B common stock, stated that the $32 per share was "grossly inadequate." Eminence opined that the company was worth at least $40 per share, a value that would still represent less than 8.5 X EBITDA. Eminence also stated that a buyout at $32 per share would permit the Neubauer Group to reap a rate of return of over 30%, and that a buyout at $40 per share would still yield a rate of return in the "mid to high teens in percentage terms." In June 2006, Eminence refined its analysis and valued Aramark at $38.91 to $42.49 per share, a range that would still yield a rate of return of 15%-20% for the Neubauer Group.

164. On August 7, 2006, Aramark's special committee, charged with overseeing any sale of the company, indicated a willingness to consider a proposal of $34.00 per share. The same day, the Neubauer Group submitted a bid of $33.60 per share. The bid was rejected the same day. That

evening, Neubauer agreed to value the portion of his shares of Class A common stock that would be contributed to the sale at less than $33.80 per share. The Neubauer Group thereafter informed the special committee that it was willing to enter into the transaction at a price of $33.80 per share. This offer was accepted.

165. At the time the offer was accepted, Credit Suisse, the special committee's financial advisor, valued Aramark at $33.35 to $41.00 per share. This analysis was based on lowered financial projections submitted by management to Credit Suisse on August 2, 2006, just five days prior to the final bid.

166. The acquisition premium based on the day of announcement was approximately 20%; however, the acquisition premium over the price from just one month earlier was only 12.9%.

167. Prior to the deal, JP Morgan, whose stock analysts cover Aramark and who had a stake in the deal, issued an analyst report containing negative statements about the company and giving the company the equivalent of a sell recommendation. This sent Aramark's stock spiraling downward and ***saved the Neubauer Group hundreds of millions on the purchase price***.

168. Despite maintaining the same percentage equity in the new, privately-owned company, Neubauer received approximately $1.37 billion at closing.

169. In sum, despite separate financial opinions from: (i) the special committee and Eminence that the company should sell at close to $40 per share; (ii) the Neubauer Group's winning bid being far less than $40 per share; and (iii) the special committee's own advisor, Credit Suisse, opining that a fair price per share ranged up to $41 per share, not one competing bid was submitted.

The Kinder Morgan Deal

170. The Kinder Morgan deal began with management discussions of an LBO with Goldman Sachs, the company's financial advisor. On February 16, 2006, Kinder Morgan's

President, C. Park Shaper, spoke with Goldman Sachs about an LBO that would involve Kinder Morgan management, and shortly thereafter Goldman Capital expressed an interest in participating in such a transaction. The following chart details the Defendants' cartel, advisors, and financiers for the Kinder Morgan deal, date closed, and price of the deal.

Kinder Morgan Bidding Club

Deal Amount: $27.5 billion
Date Closed: May 30, 2007

INVESTORS	Carlyle Goldman Capital Richard Kinder Mike Morgan Bill Morgan Fayez Sarofim Other Sr. Members of Management AIG Global Asset Management Riverstone Holdings
DEBT FINANCING	Goldman Sachs Citigroup Deutsche Bank Lehman Brothers Merrill Wachovia
ADVISORS TO INVESTORS	Goldman Sachs
ADVISORS TO MGT.	Morgan Stanley

171. By May 2006, several other Kinder Morgan insiders expressed an interest in an LBO, including founder Kinder, who owned 18% of the company stock; Michael Morgan, a director and substantial shareholder; and Fayez Sarofim, also a director and substantial shareholder. Goldman Sachs further enlisted Carlyle. Together, on May 28, 2006, this bidding club proposed a buy-out at $100 per share. That represented a modest premium to the stock's then-current trading price of $84.41 per share but was less than the stock's recent high of $103.75 per share on January 20, 2006.

172. On May 31, 2006, an analyst report from Citigroup set $105 per share as its target price for Kinder Morgan stock, but stated that the "target price represents a minimum amount for a management-led buyout of [the company] and does not provide a reasonable takeout premium."

173. To give the collusive LBO a patina of legality, 35 potential investors were solicited to present competing bids. None did so, resulting in a one-bid auction won by Kinder Morgan insiders along with Goldman Capital and Carlyle. Analyst valuations of Kinder Morgan's stock ranged as high as $160 per share.

174. The special committee was advised that Kinder Morgan's stock should be valued at least 10% more than the current bid of $100 per share, but the committee accepted the group's final offer of $107.50 per share.

The HCA Deal

175. On January 19, 2006, HCA's stock closed at a price of $51.38 per share. Around this time, HCA disclosed that it had engaged Merrill to review various strategic alternatives to "enhance shareholder value." The following chart details the Defendants' cartel, advisors, and financiers for the HCA deal, date closed, and price of the deal.

HCA Bidding Club

Deal Amount: $32.1 billion

Date Closed: November 11, 2006

INVESTORS

- Bain
- KKR
- Merrill Partners
- Frist Entities / Individuals

DEBT FINANCING

- JP Morgan
- Merrill
- Citigroup
- Bank of America

ADVISORS TO INVESTORS

- Bank of America Securities
- Citigroup
- JP Morgan
- Merrill

ADVISORS TO MGT.

- Merrill
- Credit Suisse
- Morgan Stanley

176. Merrill proposed the possibility of a leveraged buyout and in April 2006, Frist, the company's founder and a substantial shareholder, contacted Bain and KKR to discuss the feasibility of a management-led buyout.[11] At about the same time, Merrill introduced HCA management to representatives from Merrill Partners.

177. Based on a capital structure described by Frist, the private equity firms – KKR, Bain, and Merrill Partners – concluded that a leveraged buyout would be feasible. HCA's board was not informed of these discussions until May 8, 2006. Thereafter, the private equity firms were allowed to conduct due diligence and officially discuss terms with management. The buyout group requested and was allowed to bring in another private equity firm to conduct due diligence – not for the purpose of making a competing bid for the company, but for the purpose of joining the existing bidding club in making a single bid.

178. On July 19, 2006, KKR, Bain, and Merrill Partners expressed an interest in acquiring the stock of the company for $51 per share. No other potential bidders were contacted and/or invited to present a competing bid.

179. HCA accepted the only bid of $51 per share and executed a merger agreement on July 24, 2006 that included a $300 million termination fee. Only after this huge and unattractive termination fee was in place did HCA finally solicit other bidders, but of course no other bids were made.

180. The $51 per share price represents a premium of 17.8% based on the HCA share price the day prior to the bid; however, the $51 per share is less than the share price on the day

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[11] Notably, Frist was at the time an investor in one or more funds managed by Bain.

(January 19, 2006) that HCA started to review "strategic alternatives with the goal of enhancing shareholder value."

The Freescale Deal

181. In early 2006, Freescale began to consider various strategic alternatives, including purchasing Royal Philips Electronics semiconductor unit ("Royal Philips").

182. In May 2006, Blackstone contacted Michael Mayer, the chief executive officer and the chairman of the board of directors, to discuss its interest in the possible acquisition of Freescale. On June 4, 2006, Blackstone expressed an interest in exploring an acquisition with a possible price of $37.00 to $38.00 per share. No formal offer was presented at this time. The following chart details the Defendants' cartel, advisors, and financiers for the Freescale deal, date closed, and price of the deal.

Freescale Bidding Club

Deal Amount: $17.5 billion

Date Closed: December 1, 2006

INVESTORS	Carlyle
	Blackstone
	TPG
	Permira Advisors LLC
	Management
DEBT FINANCING	Citigroup
	Credit Suisse
	JP Morgan
ADVISORS TO INVESTORS	Blackstone
	Citigroup
	Credit Suisse
ADVISORS TO MGT.	Goldman Sachs

183. Shortly thereafter, in mid-June 2006, Royal Philips publicly announced that it was considering a sale of its semiconductor business and Freescale continued to evaluate the merits of acquiring this business.

184. During July 2006, Freescale decided not to pursue the acquisition of Royal Philips; however, two bidding groups led by the same firms, Blackstone and KKR, appeared to be pursuing both Royal Phillips and Freescale.

185. On July 25, 2006, Blackstone lowered its preliminary non-binding statement of interest to acquire Freescale for $35.50 to $37.00 per share. It was widely reported at this time that Blackstone was considering bidding for Royal Philips.

186. On August 3, 2006, a club of private equity firms led by KKR reached a definitive merger agreement with Royal Philips. It was reported that KKR "edged out a rival bid" from a Blackstone-led group.

187. On September 10, 2006, KKR, Silver Lake, Bain, and Apax Partners Worldwide, LLP (the "KKR Group") delivered a written indication of interest in acquiring Freescale for a price of $40.00 to $42.00 per share. The KKR Group also stated that it would consider further increasing its valuation of the company upon receiving access to due diligence information and meetings with management, which presumably would have included Mayer. The KKR Group acknowledged it could pay more for Freescale than any other buyer due to the synergies that it could generate by combining Freescale with the Royal Philips semiconductor business, purchased one month earlier.

188. The KKR Group indicated that it expected it could complete its due diligence and negotiate a definitive agreement in two to three weeks.

189. Then, on September 14, 2006, an LBO bidding club led by Blackstone submitted a formal offer of $40 per share for Freescale, with a fuse expiring at ten o'clock the next day, thus

limiting the ability for any other potential buyers to conduct due diligence review and prepare a counter-offer.

190. As a component of the Blackstone offer, Mayer would: (i) continue as Chairman and CEO of the new company; (ii) have all his shares and options acquired in the transaction; and (iii) be awarded 133,327 Class B units in the new partnership. An acquisition by the KKR Group and merger into Royal Phillips, on the other hand would create uncertainties for Mayer's continued future with Freescale.

191. The next day, on September 15, 2006, Freescale entered into a definite merger agreement with the Blackstone club without soliciting final competitor bids or allowing potential buyers to complete their due diligence.

192. The KKR Group withdrew from the bidding the next day allowing Blackstone to acquire the company for $40 per share even though the *Wall Street Journal* stated in an article on the same day, September 16, 2006, that:

> [T]he KKR-Bain group can conceivably offer billions more to Freescale shareholders by reducing the combined group's research and development and eliminating the overlap in sales and marketing offices and staff. The prospect of consolidation and more market power makes it possible for them, in turn, to bid more for Freescale.[12]

193. At the end of the day, the KKR Group ended up with Royal Philips, but was the "losing bidder" in the Freescale deal; the Blackstone-led bidding club ended up with Freescale even though it was reported that the KKR Group could have offered "billions more" for the company, but was the "losing" bidder in the Royal Philips deal. Mayer ended up keeping his positions as CEO and Chairman of Freescale, plus an ownership stake in the acquiring partnership. The shareholders

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[12] Henny Sender & Don Clark, *Freescale Agrees to Blackstone Offer $17.6 Billion*, Wall St. J., Sept., 16, 2006, at A3.

ended up with far less per share than they would have received in the absence of Defendants' collusion.

ECONOMIC INFORMATION ON ILLEGAL LBOS

194. Under accepted econometric analyses and using industry averages, the premiums paid in the nine LBO deals described herein were statistically significantly lower than the premiums paid in non-club LBO acquisitions in the same year.

Transaction Premiums and Price/Earnings Offered

195. The following table identifies the acquisition premiums[13] offered and P/E ratio of the nine collusive LBOs described in this Complaint:

[13] Acquisition premium in this instance is measured by the price of the stock five days prior to the announcement of the deal compared to the acquisition price on a per share basis. An LBO's acquisition premium is a frequently used absolute measure of the value received from the LBO by the target company's shareholders. However, measures of the acquisition premium are frequently used in conjunction with the price/earnings (P/E) to analyze an acquisition. P/E is the ratio of the prior 12 months earnings and the price at which the transaction ultimately closed. P/E (or Price/EBITDA) is a commonly used measure of a company's relative valuation.

Transactions Premiums and P/E Offered

Industry Average

PanAmSat	April 20, 2004	**2004 "Communications and Broadcasting"**
Premium Offered	**< 0.0%**	**52.1%**
P/E Offered	**34.0**	**23.5**

AMC Entertainment	July 22, 2004	**2004 "Leisure and Entertainment"**
Premium Offered	**35.9%**	**24.1%**
P/E Offered	**NEG**	**27.3**

SunGard	March 28, 2005	**2005 "Computer Software, Supplies & Services"**
Premium Offered	**44.3%**	**34.5%**
P/E Offered	**22.9**	**33.8**

Neiman Marcus	May 2, 2005	**2005 "Retail"**
Premium Offered	**3.5%**	**27.0%**
P/E Offered	**19.9**	**23.4**

Michaels Stores	June 30, 2006	**2006 "Retail"**
Premium Offered	**16.4%**	**32.7%**
P/E Offered	**26.5**	**26.7**

HCA	July 24, 2006	**2006 "Health Services"**
Premium Offered	**15.8%**	**40.1%**
P/E Offered	**16.5**	**22.9**

Freescale	September 15, 2006	**2006 "Electronic"**
Premium Offered	**30.1%**	**20.8%**
P/E Offered	**20.4**	**30.2**

Aramark	May 12, 2006	**2006 "Leisure & Entertainment"**
Premium Offered	**21.1%**	**20.1%**
P/E Offered	**19.3**	**27.7**

Kinder Morgan	May 30, 2006	**2006 "Oil & Gas"**
Premium Offered	**30.1%**	**48.2%**
P/E Offered	**23.7**	**31.4**

196. In seven of the nine deals described in this Complaint, the P/E is less (in most circumstances, significantly less) than the P/E for other transactions in the relevant industry during the year of the illegal LBO transaction. In only two deals was the P/E higher than the industry P/E. In one, PanAmSat, the P/E is significantly higher than the industry average due to its minimal earnings (compared to the company's historical returns) in the 12 months preceding the transaction. In the other, AMC, the P/E cannot be calculated due to negative earnings in the 12 months preceding the LBO.

197. In eight of the nine deals that are the subject of this Complaint, either the acquisition premium or the P/E of the deal price is significantly lower than the industry average. For AMC, the only other deal, the P/E cannot be calculated due to negative earnings in the 12 months preceding the LBO.

Compound Returns

198. Using the absolute measure of premiums, the average Compound Returns and average Compound Returns Net of Market (as defined in ¶50) for all nine LBOs set forth in this Complaint based on deal premiums from the announcement date through delisting are summarized as follows:

	Announcement Date	
	Compound Return	Compound Return Net of Market
PanAmSat	<5.4%>	<1.5%>
AMC	13.5%	0.5%
SunGard	14.0%	6.2%
Neiman	3.0%	<3.4%>
Michaels Stores	16.4%	8.1%
HCA	6.8%	<7.2%>
Freescale	6.4%	<0.8%>
Aramark	19.2%	14.4%
Kinder Morgan	26.4%	15.6%
Club LBOs	**13.8%**	**7.3%**
Sole sponsor LBOs	**21.5%**	**15.7%**
Publicly-Traded	**26.6%**	**21.9%**

199. Based on the announcement date data, all of the transactions in the Complaint had Compound Returns and Compound Returns Net of Market below (and, in most instances, significantly below) the average for acquisitions by publicly traded bidders. Also on the announcement date, eight of the nine transactions detailed in the Complaint had Compound Returns and Compound Returns Net of Market below (and, in most instances, significantly below) the average for acquisitions through sole sponsor LBOs.

200. As evidenced by the nine deals addressed herein and as part of their collusive conduct in each of these deals, Defendants agreed that once a private equity firm or group of firms signed a definitive merger agreement with a public company, other members of Defendants' conspiracy would not submit superior competing bids or take other action that might make it more difficult for the bidding group to acquire the target at the lowest possible price. In fact, as set forth above, certain "sham" competing bids were submitted to promote the impression Defendants were actually competing. The data illustrates that these rigged auctions resulted in a reduced price per share.

SETTLEMENT AGREEMENTS AND PURPORTED RELEASES

201. In four of the nine club LBOs identified herein, settlements were reached in separate, unrelated earlier-filed state court breach of fiduciary duty actions, in which plaintiffs alleged that the directors and officers of the target companies breached their fiduciary duties to the company and its shareholders by agreeing to have the company engage in a going-private transaction. The plaintiffs in those actions did not allege antitrust claims.

202. The cases were resolved through settlement and each settlement contained releases. The releases were drafted in vague fashion, but antitrust claims and claims sounding in antitrust were absent from the release language.

203. Each release was by its own terms limited to the parameters of a swift transaction. The settlements purported to release the directors, officers, and the private equity firms involved in the specific deals from all claims that were or could have been brought.[14] The releases do not however run in favor of private equity firms, investment banks, and their co-conspirators who did not take part in the specific deals.

204. The release terms do not address prospective conduct, such as secondary bond offerings used by the defendant private equity firms to recoup their initial equity investment, the recycling of the target company in a subsequent IPO, or the future participation of Defendants in LBO auctions to lower the price paid per share.

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[14] In one case, where the plaintiffs alleged breach of fiduciary duty during the Aramark LBO, the company and its board of directors were named as defendants. In the subsequent settlement, not only did Aramark and its board of directors receive releases, but non-defendants GS Capital Partners, JP Morgan Partners, Thomas Lee, and Warburg were released as well.

205. Additionally, Defendants' pursuit of settlement agreements are acts in furtherance of their conspiracy to rig bids in club LBOs. Defendants' failure to disclose the existence of the ongoing DOJ antitrust investigation to class members, or to the courts who were asked to approve the settlements, demonstrates Defendants' coordinated efforts to limit their antitrust liability.

VIOLATIONS ALLEGED

COUNT I

Horizontal Price Fixing Per Se and Rule of Reason Violations - Sherman Act §1

206. Plaintiffs re-allege and incorporate herein by reference the above-referenced allegations on behalf of the Injunctive Class and Damages Sub-Classes.

207. Beginning as early as mid-2003 and continuing until late 2006, the exact dates being unknown to Plaintiffs, Defendants and their co-conspirators engaged in a continuing agreement, understanding, and conspiracy in restraint of trade to allocate the market for and artificially fix, maintain, or stabilize prices of securities in club LBOs in violation of §1 of the Sherman Act, 15 U.S.C. §1.

208. In formulating and effectuating the aforesaid contract, combination, or conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including, among other things:

(a) forming groups referred to as "bidding clubs" or "consortia" to rig the bidding for control of a public corporation;

(b) allocating the company buyout auctions among themselves;

(c) exchanging information about which companies they would bid for, as well as the price per share and terms and conditions of their bids in order to control and/or limit the number of bids for the target company and the number of Defendants participating in the going public transaction;

(d) agreeing among themselves to submit or not submit bids in connection with company buyout auctions;

(e) submitting bids for securities at agreed-upon prices in connection with company buyout auctions;

(f) monitoring and implementing the agreements among members of the conspiracy;

(g) entering into exclusive banking arrangements to deprive potential competitive bidders of financing;

(h) conspiring with company management to limit or avoid the seeking of competitive bids; and

(i) attempted to obtain the release of their antitrust liability in certain breach of fiduciary duty state actions.

209. During and throughout the period of the conspiracy, Plaintiffs and members of the Class and sub-classes directly sold securities to Defendants.

210. The unlawful contracts, combination, or conspiracies alleged herein have had the following effects, among others:

(a) Defendants restrained competitors in the market for club LBO tender offers exceeding $2.5 billion;

(b) Defendants allocated the market for club LBOs in excess of $2.5 billion amongst themselves;

(c) prices paid by Defendants and their co-conspirators to Plaintiffs and the members of the Class and sub-classes for securities in club LBOs in excess of $2.5 billion were maintained at artificially low and non-competitive levels; and

(d) Plaintiffs and members of the Class and sub-classes were paid less for securities sold to Defendants and their co-conspirators in club LBOs exceeding $2.5 billion than they would have paid in a competitive marketplace unfettered by Defendants' and their co-conspirators' collusive and unlawful price-fixing and market allocation.

211. As a direct and proximate result of the illegal combination, contract, or conspiracy, Plaintiffs and the members of the Class and sub-classes have been injured and damaged in their respective businesses and property, in amounts which are presently undetermined.

212. The activities described above have been engaged in by Defendants and their co-conspirators for the purpose of effectuating the unlawful arrangements to fix, maintain, and/or stabilize prices of securities in club LBOs and allocate club LBOs in excess of $2.5 billion in the United States. Such violations and the effects thereof may be continuing and will continue unless the injunctive relief requested is granted.

COUNT II

Unjust Enrichment, Restitution, and Constructive Trust

213. Plaintiffs allege and incorporate by reference the allegations set forth above on behalf of the Injunctive Class and the Damages Sub-Classes.

214. This Count is alleged against all Defendants. Defendants have benefited from their unlawful and inequitable acts alleged in this Complaint. Defendants' financial benefits, which result from their unlawful and inequitable conduct, are traceable to Defendants' conspiracy to fix and

maintain the prices of club LBOs at artificially low levels through bid-rigging, market allocation, and other anti-competitive acts.

215. The sub-classes have conferred upon Defendants an economic benefit in the nature of profits resulting from their market allocation and bid-rigging of LBOs, to the economic detriment of Plaintiffs and the members of the Classes. The Defendants' collusive conduct conferred additional economic benefits on Defendants by providing them the opportunity to participate in post-LBO corporate actions including issuance of bonds, debt refinancing, and, in some instances, the relisting and re-sale of securities to the public.

216. The economic benefit derived by Defendants through their market allocation and bid-rigging of LBOs and subsequent financing arrangements is a direct and proximate result of Defendants' unlawful practices.

217. The financial benefits derived by Defendants by reason of their unlawful conduct rightfully belong to the Plaintiffs and the sub-classes, as they have been paid artificially low prices for their shares as a result of Defendants' market allocation and bid-rigging of LBOs, inuring to the benefit of Defendants.

218. It would be inequitable for Defendants to be permitted to retain any of the revenue derived from their unfair and unlawful acts and trade practices as alleged in this Complaint.

219. Defendants should be compelled to disgorge into a common fund for the benefit of Plaintiffs and the Damages Sub-Classes all unlawful or inequitable proceeds received by them. A constructive trust should be imposed upon all sums unlawfully or inequitably received by Defendants traceable to Plaintiffs and the Damages Sub-Classes from which Plaintiffs and the other Damages Sub-Class members may make restitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

B. That the contract, combination, or conspiracy, and the acts done in furtherance thereof by Defendants and their co-conspirators, be adjudged to have been in violation of §1 of the Sherman Act, 15 U.S.C. §1.

C. That judgment be entered for Plaintiffs and members of the Class against Defendants for damages sustained by Plaintiffs and the Class as provided for in §4 of the Clayton Act, together with the costs of this action, including reasonable attorneys' fees.

D. That Defendants and their co-conspirators and their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner continuing, maintaining, or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination, or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

E. That Plaintiffs and members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: August 26, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2008, I filed the foregoing via the Electronic Filing System and I further certify that I have mailed the foregoing Third Amended Class Action Complaint via the United States Postal Service to all counsel of record who are not registered to receive electronic notice.

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103. Not surprisingly, after the DOJ began investigating their practices, Defendants' and their co-conspirators' conduct in LBOs started to change. Economic evidence indicates that the difference in premiums between club LBOs and acquisitions by publicly-traded companies has narrowed somewhat since late-2006. This suggests that the practice of clubs paying low premiums in LBOs (relative to sole sponsor LBOs or acquisitions more generally) has decreased as a result of DOJ scrutiny, which began in the last quarter of 2006. In the period for which the DOJ sought information, there were significantly fewer competing bids in successful club deals than in successful sole sponsored private equity acquisitions. Still, Defendants' collectivist behavior has continued in large part.

USE OF TRADE GROUP TO FACILITATE CONSPIRACY

104. On December 26, 2006, shortly following the initial public disclosures of the DOJ investigation, Defendants announced the formation of a private equity investment trade group called the Private Equity Council ("PEC"). The PEC is a lobbying organization whose mission is to sponsor research and promote the private equity industry's interests with policy makers. Although there are hundreds of private equity firms operating in the United States, there are only 13 PEC members, ten of whom are defendants in this action: Apollo, Bain, Blackstone, Carlyle, KKR, Permira, Providence, Silver Lake, Thomas Lee, and TPG.

105. According to news reports, as a result of the increased scrutiny of the secretive private equity industry by regulators and policy makers in both the United States and overseas, Blackstone President Tony James originally pitched the idea of a private equity trade group to David Rubenstein of Carlyle. Soon after in 2006, Rubenstein, Henry Kravis of KKR, Blackstone CEO Stephen Schwarzman, and Bonderman of TPG met in KKR's New York headquarters to discuss the idea.

106. Cloaked as a public relations organization, the meetings and discussions Defendants participated in to establish the PEC provide the means and opportunity to initiate, monitor, and/or advance the conspiracies alleged herein. The PEC's ongoing activities, including meetings and discussions of its members, likewise provide the means and opportunities to initiate, monitor, and/or advance the conspiratorial conduct alleged herein. Public disclosure of the existence of the PEC does not provide legal protection for the anti-competitive activities undertaken and furthered by the PEC's members.

RELEVANT MARKET

107. The relevant product market for purposes of this action is the market for LBO tender offerings of more than $2.5 billion and related LBO and investment banking services paid for through reduced prices paid for the acquisition of target companies. The relevant geographic market is the United States.

108. Defendants are among the largest United States based private equity firms and controlled approximately 80% of the LBOs in the relevant market (LBO offerings of more than $2.5 billion) during the relevant time period. Defendants and their co-conspirators collude to dominate the relevant market, setting prices and transaction terms, as would a single firm monopolist, via the collective exercise of their combined monopoly power.

109. The billions of dollars of both debt and equity that must be raised to participate in these LBOs creates tremendous barriers to entry into the relevant market. The number of private equity firms that have the ability and financial means necessary to control the LBOs in the relevant market is limited to a small group of repeat players who invest collectively. This "club" approach further restricts an already inaccessible market.