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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NIKITA TURIK and ERIC BALK,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

EXPEDIA, INC., HOTELS.COM LP;  
TRAVELOCITY.COM LP, SABRE  
HOLDINGS CORPORATION,  
PRICELINE.COM INCORPORATED,  
BOOKING.COM B.V., BOOKING.COM  
(USA), INC., ORBITZ WORLDWIDE, INC.,  
HILTON WORLDWIDE INC., STARWOOD  
HOTELS & RESORTS WORLDWIDE, INC.,  
MARRIOTT INTERNATIONAL, INC.,  
TRUMP INTERNATIONAL HOTELS  
MANAGEMENT, LLC, KIMPTON HOTEL  
& RESTAURANT GROUP, LLC,  
INTERCONTINENTAL HOTELS GROUP  
RESOURCES, INC., and JOHN DOES 1-100,

Defendants.

CV 12 4365

No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

DMR

ORIGINAL  
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NORTHERN DISTRICT OF CALIFORNIA

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1 Plaintiffs, Nikita Turik and Eric Balk, by and through their attorneys, on behalf of  
2 themselves and all others similarly situated, bring this Class Action Complaint against Expedia,  
3 Inc. ("Expedia"), Hotels.com LP ("Hotels.com"), Travelocity.com LP ("Travelocity"), Sabre  
4 Holdings Corporation ("Sabre Holdings"), Booking.com B.V., Booking.com (USA), Inc.  
5 (Booking.com B.V. and Booking.com (USA), Inc. will be referred to as "Booking.com"), and  
6 Priceline.com, Inc. ("Priceline"), Orbitz Worldwide, Inc. ("Orbitz") (collectively, "the Online  
7 Retailer Defendants"), and Hilton Worldwide, Inc. ("Hilton"); Marriott International, Inc.  
8 ("Marriott"); Trump International Hotels Management, LLC, ("Trump"); InterContinental Hotels  
9 Group Resources Inc. ("InterContinental"), Starwood Hotels & Resorts Worldwide, Inc.  
10 ("Starwood"), and Kimpton Hotel & Restaurant Group, LLC ("Kimpton") (collectively, "Hotel  
11 Defendants") and allege, based upon personal knowledge as to themselves and their own acts, and  
12 as to all other matters upon information and belief, as follows:

### 13 I. NATURE OF ACTION

14 1. Plaintiffs purchased hotel room reservations online ("Room Reservations") directly  
15 from one or more of the Online Retailer Defendants in the United States. Plaintiffs bring this direct  
16 purchaser antitrust action to challenge the Online Retailer Defendants' conspiracy with the Hotel  
17 Defendants to enter into, maintain and/or enforce minimum resale price maintenance ("RPM")  
18 agreements. Plaintiffs seek damages and equitable relief from Defendants under Section 1 of the  
19 Sherman Antitrust Act, 15 U.S.C. § 1, and under California Business & Professions Code  
20 §§ 16720, *et seq.*

21 2. The Online Retailer Defendants are among the dominant online travel companies  
22 that act as retailers for Room Reservations in California and the United States. Here, the Online  
23 Retailer Defendants conspired with the Hotel Defendants and agreed to impose an RPM scheme  
24 that would fix the retail price for Room Reservations at the price the Hotel Defendants were selling  
25 the Room Reservation ("Rack Rates") and restrain competition for Room Reservations  
26 ("Defendant Retailer-Hotel Agreements") in the market for online reservations. The Defendant  
27  
28

1 Retailer-Hotel Agreements included express terms to set, maintain, and enforce minimum prices at  
2 the Rack Rates.<sup>1</sup> The Defendant Retailer-Hotel Agreements restrained price competition by  
3 requiring the Defendant Hotel Defendants to impose, amend, enforce, and/or heighten enforcement  
4 of minimum resale price maintenance agreements with respect to price-cutting Online Retailers,  
5 and/or to prevent price-cutting Online Retailers from discounting Room Reservations or engaging  
6 in the profit-lowering effects of retail price competition for Room Reservations.

7 3. Pursuant to the Defendant Retailer-Hotel Agreements, the Hotel Defendants were  
8 charged with enforcing the RPM scheme against Online Retailers that competed or attempted to  
9 compete with the Online Retailer Defendants on price. Thus the Defendant Retailer-Hotel  
10 Agreements were part of an anti-competitive scheme under which the Online Retailer Defendants  
11 leveraged their substantial market power and dominance to induce the Hotel Defendants into  
12 agreeing to do one or more of the following: (a) impose minimum resale price maintenance  
13 agreements on the Retailers (“Hotel-Online Retailer Agreements”);<sup>2</sup> (b) enforce the Hotel-Online  
14 Retailer Agreements as to the Online Retailers; and/ or (c) refuse to supply or cut off supply to  
15 price-cutting competing Online Retailers.  
16

17 4. As a result of the concerted RPM scheme by the Online Retailer Defendants, each  
18 Defendant Retailer-Hotel Agreement with the major hotel chains including the Hotel Defendants  
19 provides that Room Reservations will not be sold to Plaintiffs and members of the Class for less  
20 than the Rack Rate. Because all of the Online Retailer Defendants have the same clause in most or  
21 all of their contracts, whether oral or written, **none** of the Online Retailer Defendants compete with  
22 any of the other Online Retailer Defendants on price, **and** the retail rates for Room Reservations  
23  
24

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25 <sup>1</sup> The Agreements are comprised of a combination of contracts and conspiracies, whether oral  
26 or written, express or tacit.

27 <sup>2</sup> Hereinafter, the Defendant Retailer-Hotel Agreements and Hotel-Online Retailer Agreements  
28 may be collectively referred to as the “Agreements.”

1 are set at Rack Rates and thus are virtually identical amongst the Online Retailer Defendants and  
2 each Hotel.

3 5. Defendant Sabre, which operates Travelocity.com and Booking.com, has admitted  
4 that this RPM scheme:

5 'is a standard industry practice,' said Nancy St. Pierre, as  
6 spokeswoman for Sabre Holdings, which operates Travelocity.com.

7 It's done in part 'so that the customer can have the confidence that  
8 they will get the best rate, that they don't have to go on 18 different  
9 sites,' she said.<sup>3</sup>

10 6. However, the Online Retailer Defendants' "best price guarantees" are nothing more  
11 than a cover for their conspiracy to fix prices, such that the Online Retailer Defendants do not have  
12 to compete on price but can offer the "best price" to their customers knowing that all of the Online  
13 Retailer Defendants will offer the *same* anti-competitive price. There is in reality no "best price"  
14 but instead there is a fixed uniform price.

15 7. Absent Defendants' anti-competitive and deceptive conduct, Plaintiffs and the other  
16 Class members would have paid less for each of the Room Reservations purchased during the  
17 Class Period. The direct consequence of Defendants' unlawful conduct was that Plaintiffs and  
18 other Class members paid overcharges on their purchases of Room Reservations throughout the  
19 Class Period. Plaintiffs thus seek damages and equitable relief under Sections 4 and 16 of the  
20 Clayton Act, 15 U.S.C. §§ 15(a) and 26, for violations of Section 1 of the Sherman Antitrust Act,  
21 15 U.S.C. § 1, and for violation of California's False Advertising Law, and Cal. Bus. & Prof. Code  
22 § 17500 *et seq.* In addition, a subclass of California residents who purchased Room Reservations  
23 brings a claim for violations of California Business & Professions Code Sections 16720, *et seq.*

24  
25  
26 <sup>3</sup> Karin Robinson-Jacobs, "Practice that holds rates steady among Hotel Defendants, travel sites  
27 coming under fire," Dallas Morning News (Nov. 16, 2010), reprinted at  
28 <http://hsmidfw.blogspot.com/> (last accessed August 15, 2012).

## II. PARTIES

### A. Plaintiffs

8. Nikita Turik is a resident and citizen of Chicago, Illinois. In January 2010, Mr. Turik purchased a Room Reservation at The Westin Beale Street Memphis through Travelocity.com. Mr. Turik has been damaged by the conduct alleged herein.

9. Eric Balk is a resident and citizen of Cedar Falls, Iowa. In June 2012, Mr. Balk purchased a Room Reservation at the Holiday Inn Express Hotel & Suites Bloomington, which is a brand owned by Defendant Intercontinental. Mr. Balk has been damaged by the conduct alleged herein.

### B. Defendants

10. Defendant Expedia, Inc. is a Delaware corporation with its principal place of business at 333 108th Avenue NE, Bellevue, Washington 98004.

11. Defendant Hotels.com LP is an affiliate of Expedia. Hotels.com LP is a Texas limited partnership with its headquarters located at 10440 North Central Expressway, Suite 400, Dallas, Texas 75231.

12. Defendant Travelocity.com LP is a Delaware limited partnership with its principal place of business located at 3150 Sabre Drive, Southlake, Texas 76092. Travelocity is owned by Defendant Sabre.

13. Defendant Booking.com B.V. is a company based in Amsterdam, the Netherlands, with its principal place of business at Herengracht 597, 1017 CE, Amsterdam, Netherlands. Booking.com B.V. owns and operates Booking.com, the leading worldwide online Room Reservations agency by room nights sold, attracting over 30 million unique visitors each month via the Internet from both leisure and business markets worldwide. Booking.com B.V. is a wholly owned subsidiary of Priceline.com Incorporated.

14. Defendant Booking.com (USA), Inc. is a Delaware corporation with its primary place of business located at 100 William Street, Suite 750, New York, New York 10038. Booking.com (USA), Inc. is a wholly owned subsidiary of Priceline.com Incorporated.

15. Defendant Priceline.com Incorporated is a Delaware corporation with its primary place of business located at 800 Connecticut Avenue, Norwalk, Connecticut 06854.

16. Defendant Orbitz Worldwide, Inc. is a Delaware corporation and its corporate headquarters are located at 500 W. Madison Street, Suite 1000, Chicago, Illinois 60661.

17. Defendant Sabre Holding Corporation, incorporated in Delaware, is headquartered at 3150 Sabre Drive, Southlake, Texas 76092.

18. Defendant Intercontinental Hotels Group Resources, Inc. is a Delaware corporation with its primary place of business located at 3 Ravinia Drive, Suite 100, Atlanta, Georgia 30346-2149.

19. Defendant Starwood Hotels & Resorts Worldwide, Inc. is a Maryland corporation with its principal place of business at One StarPoint, Stamford, Connecticut 06902. Starwood's hotels are primarily operated under the brand names St. Regis®, The Luxury Collection®, Sheraton®, Westin®, W®, Le Méridien®, Four Points® by Sheraton, Aloft® and Element®.

20. Defendant Marriott International, Inc. is a Delaware corporation with its principal place of business at 10400 Fernwood Road, Bethesda, Maryland 20817-1102.

21. Defendant Trump International Hotels Management, LLC, doing business as The Trump Hotel Collection, is a Delaware limited liability company headquartered at 725 Fifth Avenue, New York, New York 10022.

22. Defendant Hilton Worldwide, Inc. is a Delaware company doing business as Hilton Hotels & Resorts with its primary place of business located at 7930 Jones Branch Drive, McLean, Virginia.

23. Defendant Kimpton Hotel & Restaurant Group, LLC is a Delaware limited liability company with its principal place of business located at 222 Kearny Street, Suite 200, San Francisco, CA 94108.

### III. AGENTS AND CO-CONSPIRATORS

24. Various other persons, firms and corporations, not named herein as Defendants have participated as co-conspirators with the Defendants and have performed acts and made statements



1 in furtherance of the conspiracy. Some of these firms are as yet unidentified. The acts alleged  
2 against the Defendants in this Complaint were authorized, ordered, or done by their officers,  
3 agents, employees, or representatives, while actively engaged in the management and operation of  
4 Defendants' businesses or affairs.

5         25. Each Defendant acted as the principal, agent, or joint venturer of, or for, other  
6 Defendants with respect to the acts, violations, and common course of conduct alleged by Plaintiff.  
7

8         26. Whenever this complaint refers to an act, deed or transaction of a corporation or  
9 entity, the complaint is alleging that the corporation or entity engaged in the act, deed or  
10 transaction by or through its officers, directors, agents, employees or representatives while they  
11 were actively engaged in the management, direction, control or transaction of the corporation or  
12 entity's business or affairs.  
13

#### 14                     IV. JURISDICTION AND VENUE

15         27. Plaintiffs bring this action pursuant to Sections 4 and 16 of the Clayton Act, 15  
16 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit and reasonable  
17 attorneys' fees for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject  
18 matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15 (a), and 28  
19 U.S.C. §§ 1331 and 1337, because the action arises under the laws of the United States.

20         28. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28  
21 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is  
22 licensed to do business or is doing business in this judicial district.

23         29. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
24 this Court is proper pursuant to Northern District of California Local Rule 3-2(d) because a  
25 substantial part of the events giving rise to the claims arose in this District.  
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V. SUBSTANTIVE ALLEGATIONS

A. The Online Retailer Defendants Become Indispensable to the Hotel Defendants

30. As recently as 1997, the concept of an “internet travel company” or Online Retailer – an entity organized to effectuate travel plans, reservations and purchases via the worldwide web – was virtually unknown. In recent years, the internet travel industry has seen explosive growth. By some estimates, more than half of all hotel bookings in the United States are made online, many through internet travel companies owned by the Online Retailer Defendants.

31. Through their web portals, the Online Retailer Defendants allow consumers to rent hotel rooms in many different hotels throughout the country and the world. These companies offer their services to Hotel Defendants and consumers through several different business models, including the “Agency Model,” the “Merchant Model,”<sup>4</sup> and/or the “Wholesale Model.”

32. Under the Agency Model, Online Retailers charge a “service fee” to hotel operators on a transaction basis for booking customers into rooms at a given hotel and the consumer pays the hotel for the room directly. Under the Agency Model, the hotels should be setting – and the Online Retailers should be requiring -- a competitive price for Room Reservations to increase business and compete against other Online Retailers offering the same service.

33. Under the Merchant Model, the Online Retailers do not function merely as service providers collecting a fixed transaction fee from the hotels. Rather, the Merchant Model consists of two independent but related transactions whereby an internet travel company: (i) first purchases and takes title to inventories of hotel rooms at negotiated rates from the Hotel Defendants (“wholesale” rates); and (ii) then re-sells the rooms to consumers at higher retail, keeping the difference as profit. Under this Merchant Model, the Online Retailers should be competing on price by increasing or decreasing the margin added to the wholesale rates to set the retail rate.

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<sup>4</sup> The Agency Model and the Merchant Model are described in the 2002 annual report of Defendant Expedia, Inc. as filed with the Securities and Exchange Commission on Form 10-K on March 31, 2003, and the 2004 Annual Report on Form 10-K as filed with the SEC of IAC/Interactive Corp. (the parent company – at that time – of Expedia.com, Hotwire.com and Hotels.com), p. 9.

1           34.     The third model is the “Wholesale Model,” whereby smaller price-cutting Online  
2     Retailers obtain access to rooms through wholesalers. Wholesalers, or intermediaries between the  
3     Online Retailers and the hotels, work directly with Hotel Defendants to obtain last minute blocks  
4     of rooms that need to be filled. The wholesalers then make those rooms available to smaller Online  
5     Retailers at a wholesale rate. The Online Retailers then, like in the Merchant Model, re-sell the  
6     rooms to consumers at higher retail, keeping the difference as profit. Under this Wholesale  
7     Model, the Online Retailers should also be competing on price by increasing or decreasing the  
8     margin added to the wholesale rates to set the retail rate.

9           35.     Through the Agency Model and Merchant Model, the Online Retailer Defendants  
10    gained a dominant presence in the online sale of Room Reservations. The Online Retailer  
11    Defendants now hold more than a 50 percent market share in the internet travel business market.  
12    Just Expedia and its subsidiaries alone account for approximately 50% of the internet travel  
13    business market. Moreover, currently, the Online Retailer Defendants have become increasingly  
14    important to the Hotel Defendants’ business – generating as much as 50% of the Hotel Defendants’  
15    Room Reservation traffic. Thus, the Hotel Defendants believe that they need access to the Online  
16    Retailer Defendants’ distribution network.

17    **B.     The Online Retailer Defendants Use their Dominance to Impose the RPM Scheme and**  
18    **Prevent Discounting**

19           36.     As a result of their dominance, and knowing that the Hotel Defendants cannot afford  
20    to lose access to their distribution network, the Online Retailer Defendants devised an illegal RPM  
21    scheme to combat new or more efficient internet retailers, including those that obtained access to  
22    hotel rooms through the Wholesale Model, by exacting agreements from the Hotel Defendants that  
23    desired to sell Room Reservations through the Online Retailer Defendants to require, on penalty of  
24    termination and as a condition of doing business with the Online Retailer Defendants, that the Hotel  
25    Defendants ensure that competing online retailers refrain from discounting from the Rack Rate.

26           37.     The Defendant Retailer-Hotel Agreements are and were part of an overall agreement  
27    to impose and enforce the RPM scheme. For example, in 2004, multiple hotels, including  
28    Defendants Hilton and Kimpton, and Online Retailers, including Defendant Priceline, met together

1 in Las Vegas for EyeforTravel's second annual Revenue Management and Pricing in Travel  
2 conference.<sup>5</sup> At the conference, Defendants Hilton, Kimpton and Priceline discussed "rate parity"  
3 and "pricing strategies." In fact, Jimmy Shu, VP Revenue Management and Distribution at  
4 Kimpton led a presentation to "address the issues associated with adapting rate parity across all  
5 distribution channels...." EyeforTravel has annually sponsored these conferences, and the  
6 attendees have expanded to include nearly all of the Defendants.<sup>6</sup>

7 38. As part of the Defendant Retailer-Hotel Agreements, the Hotel Defendants  
8 demonstrated their compliance by requiring that competing online retailers agree to raise and  
9 maintain retail prices at the Rack Rate. As a further sign of their agreement with the Online  
10 Retailer Defendants, in some instances, the Hotel Defendants threatened Online Retailers with  
11 legal action and/or refused to allow Online Retailers, such as Skoosh.com, to sell Room  
12 Reservations if the Online Retailers refused to price fix and maintain resale prices at the Rack Rate  
13 in compliance with the RPM scheme. Further pursuant to their agreement with the Online Retailer  
14 Defendants, in some instances, the Hotel Defendants required the wholesalers to stop providing  
15 rooms to price-cutting Online Retailers, such as Skoosh.com, if they refused to price fix and  
16 maintain resale prices at the Rack Rate.

17 39. For example, Skoosh has publicly complained that it tried to sell discounted Room  
18 Reservations on its online travel site but was thwarted by the resale price maintenance scheme:

19 'We were openly discounting and hotels would email, call and  
20 threaten legal action,' Skoosh told the BBC.

21 'Either we'd have to raise prices or take the hotels off our list,' said  
22 Dorian Harris from Skoosh.<sup>7</sup>

23 <sup>5</sup> [http://www.hotel-online.com/News/PR2004\\_\\_2nd/May04\\_EyeForTravel.html](http://www.hotel-online.com/News/PR2004__2nd/May04_EyeForTravel.html) (last accessed  
24 August 17, 2012).

25 <sup>6</sup> <http://events.eyefortravel.com/travel-distribution-summit-north-america/past-attendees.php>  
26 (last accessed August 17, 2012).

27 <sup>7</sup> <http://www.bbc.co.uk/news/business-11330463> (last accessed August 5, 2012).

1           40. In fact, Skoosh has claimed that the Agreements have “created a Mafia-style  
2 atmosphere and an intolerable climate for new businesses. Skoosh has been directly threatened  
3 and, in turn, has defended its right to discount hotel prices.”<sup>8</sup>

4           41. Skoosh published a letter dated August 31, 2010, from its CEO to Online Retailer  
5 Defendant and Skoosh’s competitor Booking.com, complaining about Booking.com’s enforcement  
6 of the Defendant Retailer-Hotel Agreements. The letter states, in part:

7           Both personally, and even as a direct competitor, I was always a fan  
8 of Booking.com. Yours was one of the better hotel booking sites I  
9 always thought, with some innovative features. However, my rosy  
10 picture fast disappeared last winter when Skoosh started being  
11 pursued by your business partners insisting that we raise our hotel  
12 prices to the same as yours. I’m hoping you can find the time to  
13 address some of the points below and restore my faith in your  
14 company.

15           Some background then. Earlier this year we started getting some  
16 calls from angry and confused hoteliers insisting that we were selling  
17 their rooms too cheaply. I called them back to work out what was  
18 going on and they mostly told me that Booking.com had been on to  
19 them threatening all sorts of nonsense if they didn’t either remove  
20 their hotel from Skoosh or force Skoosh to raise its prices.

21           I wondered how this was all happening so quickly and then I did a  
22 little research and found that Booking.com has an active policy of  
23 maintaining the same prices for all companies across the internet. I  
24 even found a job ad of yours looking for ‘Rate Parity Associates’. It  
25 seems like you’ve got a whole team out there beaver away to ‘find  
26 any rate inconsistencies between Booking.com and their  
27 competitors.’ They’re doing a good job I have to say. The hoteliers  
28 you work with are certainly concerned. One wrote to ask me to close  
out their hotel on Skoosh: ‘just to avoid the penalty that  
[Booking.com] is threatening us about’.

Some were less friendly. Many of the hoteliers wrote letters to me  
threatening legal action. One of them had a colleague of yours on  
one line and me on the other. It seemed that your colleague was  
insisting that if we hadn’t removed their hotel from Skoosh by the  
end of the phone call Booking.com would cancel the contract with  
them. They were very scared.<sup>9</sup>

24           <sup>8</sup> <http://www.tnooz.com/2012/07/31/news/regulator-accuses-expedia-booking-com-and-Intercontinental-in-hotel-competition-infringement-probe/> (last accessed August 5, 2012).

25           <sup>9</sup> <http://dorian.skoosh.com/open-letter-to-kees-koolen-ceo-at-booking-com/> (last accessed  
26 August 5, 2012).

42. The fact that Booking.com has threatened to cut off the sale of Room Reservations for Hotel Defendants that do not enforce the RPM scheme is entirely consistent with the Rate Assured Hotel Program implemented by Booking.com's parent Defendant Sabre (which also owns Defendant Travelocity). Sabre's Rate Assured Hotel Program requires the Hotel Defendants to enforce the RPM scheme.<sup>10</sup>

## For Suppliers

## Sabre Rate Assured™ Hotel Program

## Are you *Rate Assured*?

*Sabre Travel Network* has already begun measuring properties to validate rate parity across properties prior to the official launch. So make sure your properties are rate compliant!

(b) If it is determined that a property is not providing rate parity in the program, it will essentially be placed on "Probation" status.

(c) If a property is not providing rate parity in the subsequent measurement, *Sabre* will consider the hotel “In Violation”...

43. In fact, Sabre, which owns Travelocity and Booking .com, also runs a division called “Sabre Hospitality Solutions,” which expressly markets and encourages hotels to adopt rate parity – in effect, the RPM scheme. *See, e.g.*, <http://www.sabrehospitality.com/blog/2011-10-27/how-hotels-can-leverage-ota-relationships-without-killing-their-pricing-strategy>; <http://www.sabrehospitality.com/blog/2011-11-30/three-top-trends-in-hospitality-marketing-and-distribution-to-consider-when-planning-for-2012>.

44. Thus, pursuant to the Defendant Retailer-Hotel Agreements, the Hotel Defendants are enforcing the RPM scheme on price-cutting competing online retailers. For example:

a. Defendant Hilton required Scoosh's wholesale supplier in the United States, AlliedTPro, to entirely cut off its contract with Scoosh as a result of Scoosh's discounting and

<sup>10</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed August 16, 2012).

1 Defendant Hilton's enforcement of the Defendant Retailer-Hotel Agreements. AlliedTPro wrote to  
2 Skoosh: "Trust me I would welcome the additional business but cannot risk our contracts with  
3 Hilton."<sup>11</sup>

4 b. Defendant Trump expressly admitted it was enforcing the Defendant  
5 Retailer-Hotel Agreements, emailing Skoosh:<sup>12</sup>

6 **From:** [REDACTED]  
7 **Sent:** 10 May 2010 18:27  
8 **To:** Dorian Harris  
9 **Subject:** RE: New inquiry was submitted on Skoosh.com

10 The simple answer is; if we do not maintain parity with all, we are threatened with poor placement on  
11 sites and worst case... removal of hotel from sales sites. That is the way the OTA's operate in USA.  
12 Expedia threatens if Travelocity gets lower rate and vice-versa. It is a vicious cycle if we get out of  
13 parity.  
14 I think the model in Europe is built to operate more competitively but that is not the model here.  
15 (Much as I wish it was the same as Europe!) I hope this helps you understand why we must be strict  
16 with what is offered on all websites.  
17 Thanks,

18 [REDACTED]  
19 Trump International [REDACTED]

20 c. Defendant Intercontinental wrote to Skoosh "demanding that Skoosh either  
21 raise[] its rates to the same as the hotels and its other distribution partners (a practice known in the  
22 industry as 'rate parity' \*\*\*) or remove the hotels entirely from our site."<sup>13</sup>

23 d. In 2003, Defendant Marriott announced "a sweeping overhaul of its transient  
24 pricing, bringing parity to all Marriott distribution channels – offline and online."<sup>14</sup> During the  
25 Class Period, Marriott was among the Hotel Defendants threatening Skoosh.com with legal action  
26 and/or the withdrawal of their Room Reservations if Skoosh.com did not maintain rate parity.

27 <sup>11</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed August  
28 15, 2012).

<sup>12</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed August  
16, 2012).

<sup>13</sup> <http://dorian.skoosh.com/open-letter-to-william-baer-arnold-porter-llp/> (referring to Holiday  
Inn New York) (last accessed August 16, 2012).

<sup>14</sup> <http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-Parity,-Curtails-Fixed-Consortia-Rates/?a=btn> (last accessed August 17, 2012).

1 e. Defendant Starwood enforces the RPM scheme. "In one email to a hotel  
2 discounter, an executive at Starwood, which runs Le Meridien, Westin, W and Sheraton hotels,  
3 said: 'Should a wholesaler decide to sell the rooms on a room only basis, he has to make sure that  
4 the per contract agreed minimum mark-up is guaranteed.' The employee said the 'violation' of  
5 Starwood's Best Rate Guarantee was 'really serious' and the breach was reported to the Brussels  
6 headquarters."<sup>15</sup>

7 45. Similarly, Kayak.com, which is a price comparison website, told Skoosh on several  
8 occasions that it had to "play the Orbitz game,"<sup>16</sup> i.e. maintain rate parity, or Kayak would no  
9 longer publish Skoosh's prices. Kayak apparently felt pressured to enforce rate parity on behalf of  
10 the Online Retailer Defendants because, for example, Orbitz accounted for 18.8% of Kayak's total  
11 revenues and Expedia and its affiliates accounted for 24.9% of Kayak's total revenues for the nine  
12 months ended September 30, 2010.<sup>17</sup> After Skoosh reported the RPM scheme to governmental  
13 authorities, Kayak stopped publishing Skoosh's prices on its price comparison site.

14 46. Each of these actions was taken directly because of the pressure the Online Retailer  
15 Defendants were placing on Hotel Defendants to protect the Online Retailer Defendants' margins  
16 by enforcing the RPM scheme. The Online Retailer Defendants enforced the RPM scheme  
17 because they feared losing access to the Online Retailer Defendants' website to sell their rooms if  
18 they did not. As one industry consultant explained:

19 'I don't know that there's been enough public questioning of  
20 this [rate parity] practice,' said Ashwin Kamlani, founder of Hotel  
21 Internet Help Inc., which helps independent hotels get more sales via  
22 cyberspace.

23 'The hotels enforce rate parity because they fear the consequences of  
24 not maintaining rate parity,' he said. 'They fear having their hotel  
25 dropped to page 6 or even pulled off their largest producing [online

26 <sup>15</sup> <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-inquiry-in-price-fixing-scandal.html> (last accessed August 17, 2012).

27 <sup>16</sup> <http://dorian.skoosh.com/open-letter-to-steve-hafner-c-e-o-kayak-com/> (last accessed August 17, 2012).

28 <sup>17</sup> <http://www.businessinsider.com/kayak-ipo-2010-11> (last accessed August 17, 2012).



1 travel agents] sites, which translates into a potentially significant loss  
2 of revenue.’<sup>18</sup>

3 47. Blink Booking, a mobile-only hotel booking service, echoed the claims of  
4 competing online retailers, saying: “We’ve long believed that the big online travel agents have  
5 been guilty of denying consumers the best prices – and that hotels’ hands are tied by price parity  
6 agreements. The online travel market may appear to offer plenty of choice and competition, but  
7 the reality is that there are lots of different shop windows selling the same rooms at the same  
8 prices – with those prices agreed through parity deals between the big groups and the big OTAs  
9 [online travel agents].”<sup>19</sup>

10 48. The Hotel Defendants knew that the Online Retailer Defendants would enforce the  
11 Agreements or refuse to sell the Hotel Defendants’ rooms. For example, in 2009, Defendant  
12 Expedia refused to list or sell Room Reservations from Choice Hotels. Expedia’s CEO and  
13 President Dara Khosrowshahi explained:

14 ‘...As far as the discussions that we’ve had with Choice, we are not  
15 doing business with Choice right now on a chain basis. We don’t  
16 have a vast majority of Choice hotels on our side,’ said  
17 Khosrowshahi....

18 ...he added, ‘First of all, our primary goal is to have the broadest,  
19 deepest set and highest quality set of inventory for the benefit of our  
20 customers. And this doesn’t signal any kind of change in our overall  
21 philosophy as far as how we work with our hotel partners and what  
22 we’re looking at. It’s not really an issue of economics; it’s more than  
23 issue of our wanting rate parity and inventory parity for our  
24 customers.’

25 ‘When our customers come to Expedia, we want them to know that  
26 they’re getting the best prices and certainly, we are insistent on that.  
27 And to the extent that Choice doesn’t want to work under those  
28 terms. We won’t be doing business with each other. Those are the

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24 <sup>18</sup> Karin Robinson-Jacobs, “Practice that holds rates steady among Hotel Defendants, travel  
25 sites coming under fire,” Dallas Morning News (Nov. 16, 2010), reprinted at  
<http://hsmidfw.blogspot.com/> (last accessed August 15, 2012).

26 <sup>19</sup> [http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html)  
27 [alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html) (last accessed August 16,  
28 2012).

1 terms that we work with our others strategic partners, they're  
2 comfortable where they were comfortable with it. So, its nothing  
3 usual from what I would say is typical practice for us in most of our  
4 other OTA competitors so to speak.<sup>20</sup>

5 49. Thus, the Online Retailer Defendants sought and received agreements from the  
6 Hotel Defendants that they would only sell to Online Retailers who would not discount the Rack  
7 Rate for Room Reservations, even if and when it reduced the Hotel Defendants' sales and/or profits  
8 by slowing sales of the Room Reservations.

9 50. More specifically, the Hotel Defendants agreed to work with the Online Retailer  
10 Defendants to implement and enforce the RPM scheme to ensure that pricing by competing Online  
11 Retailers be restrained.

12 51. The Online Retailer Defendants sought and obtained the agreement of the Hotel  
13 Defendants to impose and enforce "rate parity" – *i.e.*, restraint on price competition – solely for the  
14 Online Retailer Defendants' benefit and not for any legitimate pro-competitive reason.

15 52. The Online Retailer Defendants are driven to maintain their product and profit  
16 margins, as their margins are threatened by newer, more efficient internet retailers. That dominant  
17 retailers, like the Online Retailer Defendants, would react anti-competitively to threats to their  
18 pricing freedom, such as those posed by new or more efficient retailers, has been acknowledged by  
19 the United States Supreme Court.

20 53. The Supreme Court not only recognized that minimum resale pricing may be  
21 imposed by a dominant retailer for that retailer's benefit, but stated that such behavior violates the  
22 antitrust laws. Indeed, the Supreme Court cautioned that:

23 [r]esale price maintenance, furthermore, can be abused by a powerful  
24 manufacturer or retailer. A dominant retailer, for example, might  
25 request resale price maintenance to forestall innovation in  
26 distribution that decreases costs. A manufacturer might consider it  
27 has little choice but to accommodate the retailer's demands for  
28 vertical price restraints if the manufacturer believes it needs access to

29 <sup>20</sup> <http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers> (last accessed August 17, 2012).

1 the retailer's distribution network. See Overstreet 31; 8 P. Areeda &  
2 H. Hovenkamp, Antitrust Law 47 (2d ed. 2004) (hereinafter Areeda  
& Hovenkamp); cf. *Toys "R" Us, Inc. v. FTC*, 221 F.3d 928, 937-938  
(CA7 2000).

3 \*\*\*

4 As should be evident, the potential anticompetitive consequences of  
5 vertical price restraints must not be ignored or underestimated.

6 *Leegin Creative Leather Prods., Inc. v. PKS, Inc.*, 127 S. Ct. 2705, at 2719-20 (2007).

7 **C. The RPM Scheme Has Purposefully Resulted in "Rate Parity" for Room Reservations**  
8 **through the Online Retailer Defendants – Allowing the Online Retailer Defendants to**  
9 **Always Guarantee the "Best" (Albeit Same) Prices**

10 54. The RPM Scheme has achieved its illegal goal: Online Retailer Defendants do not  
11 compete on the basis of price for Room Reservations. Rather, all online sales of Room  
12 Reservations for the same rooms are at the Rack Rate.

13 55. Deposition testimony of Tim Gordon, Senior Vice President, of Priceline makes  
14 clear that each of the Online Retailer Defendants buys the rooms and sells the rooms to the public  
15 at exactly the same price:

16 Q. And in fact, sir, lets take a look at ALL22. And this is a  
17 printout I did back in September for a night's stay at the  
18 Hilton in San Antonio .... \$219 rate, taxes and then a total.  
19 And then if you will look through, I've printed out from the  
20 various websites of the defendants, same hotel, same night.  
21 Orbitz has its \$219.00 rate. Cheap Tickets has its \$219.00  
22 rate. Lowest Fare has a \$219.00 rate. Priceline, \$219.00 rate.  
23 Travel Now, \$219.00. Expedia, \$219.00. And Hotels.com,  
24 \$219.00. Every website lists this room on this night at the  
25 exact same room rate. And you know – you know, based  
26 upon the way the contracts work, that doesn't surprise you,  
27 does it?

28 A. No.

Q. And why doesn't that surprise you?

A. Because in general – and I can't be too specific because I  
don't know the exact terms of this agreement, but in general  
the contracts require us to take a net rate that they provide and  
mark it up by a specific amount. And they require us to mark  
it up by that amount.

Q. By that exact amount?

A. Yes.

1 Q. And your understanding is that you have best price guarantee  
2 from Hilton where they can offer your competitors more  
heavy discounts than they can offer Priceline, correct?

3 A. That is true.

4 \* \* \*

5 Q. All right. And so given the Most Favored Nations Clause that  
6 Hilton has, your understanding would be everybody – all  
7 these competitors are being provided this room at the same  
price and marking it up by the same amount resulting in the  
same retail rate, correct?

8 A. I believe that to be true.

9 56. In fact, a federal court in the Western District of Texas recently commented on the  
10 similarity of the business models and pricing structures of the Online Retailer Defendants:

11 After reviewing the record, it is clear that the Defendants not only  
12 engage in a common course of conduct, but that many of their  
13 business practices are virtually identical. These practices include but  
14 are not limited to the manner in which they contract with the Hotel  
15 Defendants, the manner in which they determine and assess  
16 cancellation policies and fees, the manner in which they determine  
17 the mark up and fees to arrive at an acceptable margin and retail/sell  
18 rate; and, the manner in which they calculate, assess and pay hotel  
occupancy taxes. The deposition testimony of the corporate  
representatives, standing alone, reflects an amazing similarity in  
practice, procedure and corporate methodology among all of the  
[Online Retailer Defendants]. Memorandum and Opinion on Class  
Certification, City of San Antonio v. Hotels.com, et al., No. SA-06-  
CA-381-OG (W.D. Tex) (the “San Antonio Class Cert Order”) at 18-  
19 (emphasis added).

19 57. The Court determined, based upon deposition testimony, that the margins of each of  
20 the Online Retailer Defendants were identical to the other Online Retailer Defendants:

21 Almost without exception, the net rate and sell rate for a given room  
22 on a given day are the same among the [Online Retailer Defendants]  
23 because the Defendants’ agreements with the Hotel Defendants all  
24 contain “parity” or “Most Favored Nation” clauses. This also makes  
the [ITC] margins the same. *Id. at 20, n21* (citations to deposition  
testimony omitted).

25 58. This rate parity is demonstrated by examples of hotel rooms available for  
26 reservation on the Online Retailer Defendants’ internet sites:

27 Holiday Inn San Diego on the Bay (9/29-9/30) posted 8/7/2012:

28 

Expedia Standard	\$186
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Hotels.com Standard	\$186
Orbitz Standard	\$186
Priceline.com Standard	\$186
Travelocity.com Standard	\$186
Booking.com Standard	\$186
Holiday Inn website Standard	\$186
Expedia Deluxe	\$235
Hotels.com Deluxe	\$235
Orbitz Deluxe	\$235
Priceline.com Deluxe	\$235
Travelocity.com Deluxe	\$235
Booking.com Deluxe	\$235
Holiday Inn website Deluxe	\$235

InterContinental Century City (9/29-9/30) posted 8/7/2012:

Expedia Executive Suite	\$375
Hotels.com Executive Suite	\$375
Orbitz Executive Suite	\$375
Priceline.com Executive Suite	\$375
Travelocity.com Executive Suite	\$375
Booking.com Executive Suite	\$375
Hotel website Executive Suite	\$375

InterContinental San Francisco (9/29-9/30) posted 8/7/2012:

Expedia Deluxe	\$333
Hotels.com Deluxe	\$333
Orbitz Deluxe	\$333
Priceline.com Deluxe	\$333
Travelocity.com Deluxe	\$333
Booking.com Deluxe	\$333
Hotel website Deluxe	\$333

San Diego Marriott (9/22-9/23) posted 8/7/2012:

Expedia Bayview	\$240
Hotels.com Bayview	\$240
Orbitz Bayview	\$240
Priceline.com Bayview	\$240
Travelocity.com	\$240
Booking.com Bayview	\$240

Hotel website	\$240
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LA Marriott Airport (9/29-9/30) posted 8/7/2012:

Expedia Deluxe	\$119
Hotels.com Deluxe	\$119
Orbitz	\$119
Priceline.com	\$119
Travelocity.com	No listing
Booking.com Deluxe	\$119
Hotel website	\$119

Marriott Marquis San Francisco (9/29-9/30) posted 8/7/2012:

Expedia Deluxe	\$389
Hotels.com Deluxe	\$389
Orbitz Deluxe	\$389
Priceline.com Deluxe	\$389
Travelocity.com Deluxe	\$389
Booking.com Deluxe	\$389
Hotel website	\$389
Expedia City View	\$414
Hotels.com City View	\$414
Orbitz City View	\$414
Priceline.com City View	\$414
Travelocity.com City View	\$414
Booking.com City View	\$414
Hotel website	\$414

Hilton San Diego (9/22-9/23) posted 8/7/2012:

Expedia Bay/City View	\$185
Hotels.com Bay/City View	\$185
Orbitz Bay/City View	\$189 (refundable)
Priceline.com Bay/City View	\$185
Travelocity.com Bay/City View	\$185
Booking.com Bay/City View	\$185
Hotel website	\$185

Hilton San Francisco (9/29-9/30) posted 8/7/2012:

Expedia King	\$459
Hotels.com King	\$459

Orbitz King	\$459
Priceline.com King	\$459
Travelocity.com Standard King	\$459
Booking.com Standard King	\$459
Hotel website	\$459

59. That the rate parity results from the RPM scheme is clear. The Online Retailer Defendants employ “market managers” who “monitor closely a hotel’s rates across all channels, and if a preferential rate was given to one over the other that hotel could face dire penalties.”<sup>21</sup> In fact, as Hotel Defendants started experimenting with price discounting by offering “tiered pricing,” the Online Retailer Defendants started to demand Hotel Defendants stop competing with online retailers on price.

60. An industry expert recounts that Hotel Defendants seeking to promote price discounts in order to have consumers buy directly from the hotel were met with the Online Retailer Defendants demanding price competition cease. According to the industry source, “Hilton, for example, is promoting like crazy to get the customer to book direct. ‘Book with us and get 500 extra points or free Internet.’” But this competition was unacceptable to the Online Retailer Defendants and contrary to the RPM scheme. “That’s where the [Online Retailer Defendants] were forced to become big proponents of rate parity.” So the Online Retailer Defendants ensured that the Hotel Defendants could not “undercut,” *i.e., price compete*, by entering into Defendant Retailer-Hotel Agreements and the RPM scheme.

61. As a result of the “success” of the RPM scheme, the Online Retailer Defendants are confident that all of the prices listed between them for the same room will be identical. Thus, they each offer a near identical “best price” guarantee – knowing it is the *only* price available even among competitors. Examples follow:

<sup>21</sup> HotelNewsNow.Com., June 25, 2012, Does rate parity limit revenue managers?

a. **Travelocity's Guaranteed Low Prices**



[http://leisure.travelocity.com/Promotions/0\\_TRAVELOCITY4818link1\\_main.00.html](http://leisure.travelocity.com/Promotions/0_TRAVELOCITY4818link1_main.00.html)

**Why Book With Us?**

Low Prices, Guaranteed

[http://leisure.travelocity.com/Promotions/0\\_TRAVELOCITY4818link1\\_main.00.html](http://leisure.travelocity.com/Promotions/0_TRAVELOCITY4818link1_main.00.html)

Guaranteed Best Price: If you find a lower rate, we'll pay the difference and send you \$50.

b. **Expedia's Best Price Guarantee**



Best Price Guarantee

Protect Your Trip

Hurricane Promise

No Expedia Fees

We're so confident you'll find the best price for your trip here on Expedia that we guarantee it. Find a cheaper trip within 24 hours of booking and we'll refund the difference and give you a travel coupon worth \$50.

c. **Booking.com Best Price Guarantee**

**Best Price Guaranteed**

We promise that when you book with us, you'll get the lowest possible price for your room. Guaranteed.

d. **Hotels.com Price Match Guarantee**

**Price Match**

The hotels.com Price Match Guarantee protects your pocket book and takes the worry out of booking a hotel room. After you book with hotels.com, if you find a lower publicly available rate online for the same dates, hotel, and room category, we will match the price and refund you the difference.



e. **Orbitz Low Price Guarantee**



**Orbitz Low Price Guarantee**

Look for our hotel and car rates backed by our Low Price Guarantee. We're so confident they're the lowest online, we're willing to put money on it.

**Hotel Low Price Guarantee Terms and Conditions:**

If you book a qualifying prepaid hotel rate on the Orbitz Web site, and then find the same room, in the same hotel, for the same dates, at a lower price online, before taxes and fees, we'll refund the difference and give you a \$50 discount on a future hotel booking.

62. Absent the RPM scheme, the Online Retailer Defendants could not offer the best price guarantees *unless* they engaged in price competition and discounted the Rack Rates.

53. The RPM Agreements, and the scheme in restraint of trade, have harmed competition in the relevant market(s) and caused prices to be higher in the relevant market(s) than the prices would have been without the Agreements.

64. In addition, the uniform adoption and enforcement of "rate parity" and most favored nation clauses by the Online Retailer Defendants is a horizontal *per se* price fixing agreement.

65. The Agreements were specifically intended to protect the Defendants from price competition – both from Hotel Defendants and other highly efficient retailers – offering the same inventory. Thus, Defendants agreed to restrain competition by mandating higher price levels and thereby neutering the competition or by eliminating the price cutting entirely. This scheme achieved its goals, and thereby substantially inflated prices to consumers like Plaintiffs.

**D. Investigation by Governmental Authorities**

66. This price-fixing conspiracy is evidently not confined to the United States. The British Office of Fair Trade ("OFT") recently issued a "Statement of Objections" alleging that Expedia, Inc. infringed competition through the very same price fixing agreements with respect to British hotel rooms. The *Telegraph* reported that Expedia admitted that "it has engaged in cartel conduct on breach of the law," and is "providing information on its rivals under a 'leniency deal'" with the British authorities.

1           67.     The British revelations leave no room for doubt: the Online Retailer Defendants are  
2 entering into contracts with the same Hotel Defendants in this country and to the same anti-  
3 competitive effect. The Agreements are part of an anti-competitive scheme under which the  
4 Online Retailer Defendants leveraged their substantial market power and dominance to induce the  
5 Hotel Defendants into agreeing to do one or more of the following: (a) impose minimum resale  
6 price maintenance agreements on completing Online Retailers; (b) enforce the price maintenance  
7 agreements as to the Online Retailers; and/ or (c) cut off supply to price-cutting Online Retailers.

8           68.     In sum, the Hotel Defendants did *not* and are *not* simply or unilaterally:  
9                 a.     refraining from selling to uncongenial retailers;  
10                b.     suggesting resale prices that were widely followed;  
11                c.     sanctioning, terminating or refusing to sell to retailers who failed to maintain  
12 a minimum resale price;  
13                d.     announcing and enforcing policies of sanctioning, terminating or refusing to  
14 sell to retailers who failed to maintain a minimum resale price; or  
15                e.     sanctioning, terminating or refusing to sell to other retailers following, or in  
16 response to, complaints by retailers such as the Online Retailer Defendants.

17           69.     Rather, the Agreements represent a conscious commitment to a common scheme,  
18 designed to achieve an unlawful objective, between the Online Retailer Defendants, the Hotel  
19 Defendants (including Intercontinental), and other online retailers.

20           70.     The Hotel Defendants did not act unilaterally or independently, or in their own  
21 economic interests, when:  
22                 a.     entering into the Defendant Retailer-Hotel Agreements;  
23                b.     seeking online retailers' acquiescence to, and compliance with, the terms of  
24 the Hotel- Online Retailer Agreements;  
25                c.     seeking to have retailers charge minimum resale prices; or  
26                d.     terminating or refusing to sell to online retailers for violating the  
27 Agreements. In fact, absent threatened penalties or sanctions by the Online Retailer Defendants, it  
28

1 would not be in the Hotel Defendants' economic interest to enter into, maintain, or enforce the  
2 Agreements.

### 3 **VI. MONOPOLY/MARKET POWER**

4 71. The relevant product market in this case is direct online retail sales of Room  
5 Reservations.

6 72. The relevant geographic market in this case is the United States and/or the State of  
7 California.

8 73. By virtue of their power to control prices and exclude competition in the relevant  
9 market(s), the Online Retailer Defendants at all relevant times possessed monopoly power in the  
10 relevant market(s). The Online Retailer Defendants and their subsidiaries hold over a 50 percent  
11 market share in the internet travel business market. Just Expedia and its subsidiaries alone account  
12 for approximately 50% of the internet travel business market. Moreover the Online Retailer  
13 Defendants possess a dominant share of the market(s) for online retail sales of Room Reservations.

### 14 **VII. MARKET EFFECTS OF AND ANTITRUST INJURY DUE** 15 **TO DEFENDANTS' ANTICOMPETITIVE CONDUCT**

16 74. The overall effect of Defendants' anti-competitive, exclusionary scheme has been to  
17 substantially foreclose and impair competition (and the threat of such competition) from  
18 lower-priced Room Reservations. As alleged above, had the Defendants not improperly foreclosed  
19 or stifled actual or potential competitors from competing in the market for Room Reservations,  
20 other actual or potential rival retailers would have achieved much greater sales than they actually  
21 did (or threatened to do), given the lower prices that they charged (or could have charged upon  
22 entry), and would have posed a far greater competitive threat to the Defendants. Additionally,  
23 absent the Defendants' exclusionary conduct, barriers to entry to the market would have been  
24 lower, which: (a) would have made it easier for existing or new competitors to enter or expand  
25 their positions in the market for Room Reservations, and (b) would have caused existing or  
26 potential competitors to be attracted to the Room Reservation market because of the supra-  
27 competitive prices that the Defendants were charging. As a result, absent the Defendants'  
28 misconduct, the Defendants would have rationally perceived that there was a greater threat of

1 potential competition in the relevant market if the Defendants did not reduce their  
2 supra-competitive prices.

3 75. The presence of unfettered competition from actual or potential competitors, which  
4 were selling lower-priced Room Reservations, would have forced the Defendants to lower the  
5 prices for their Room Reservations in order to remain competitive and/or to counter a perceived  
6 threat of additional entry.

7 76. During the relevant period, Plaintiffs and the other members of the Class purchased  
8 Room Reservations directly from the Defendants. As a result of the Defendants alleged illegal  
9 conduct, members of the Class were compelled to pay, and did pay, artificially inflated prices for  
10 the Room Reservations they purchased. Plaintiffs would have been able to, *inter alia*, purchase  
11 less-expensive Room Reservations had potential competitors been able to engage in unfettered  
12 competition. The prices that Plaintiffs and the other Class members paid for Room Reservations  
13 during the Class Period were substantially greater than the prices that Plaintiffs and the Class  
14 members would have paid absent the illegal conduct alleged herein because: (1) the prices of all  
15 Room Reservations were artificially inflated by the Defendants' illegal conduct; and (2) Class  
16 members were deprived of the opportunity to purchase Room Reservations from the Defendants'  
17 competitors at substantially lower prices. Thus, Plaintiffs and the Class have, as a consequence,  
18 sustained substantial damages in the form of overcharges.

## 19 II. CLASS ALLEGATIONS

20 77. Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiffs bring this  
21 class action on behalf of themselves and all members of the following class (the "Class"):

22 All persons and entities throughout the United States who paid for a  
23 room at a Defendant Hotel reserved through the Online Retailer  
24 Defendants. Expressly excluded are (i) room reservations made as  
25 part of a package deal; or (ii) room reservations made without  
26 disclosure of the name of the hotel until after paying for the room  
27 reservation.

28 78. Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiffs bring this  
class action on behalf of themselves and all members of the following subclass (the "California  
Class"):

1 All persons and entities throughout the State of California who paid  
2 for a room at a Defendant Hotel reserved through the Online Retailer  
3 Defendants. Expressly excluded are (i) room reservations made as  
4 part of a package deal; or (ii) room reservations made without  
5 disclosure of the name of the hotel until after paying for the room  
6 reservation.

7 79. Plaintiffs believe that the Class and California Class include thousands of  
8 consumers and businesses across the United States, though the exact number and the identities of  
9 the Class members are currently unknown.

10 80. The members of the Class and California Class are so numerous that joinder of all  
11 Class members is impracticable.

12 81. Common questions of law and fact exist as to all members of the Class and  
13 California Class and predominate over any questions affecting solely individual members of the  
14 Class and California Class. Nearly all factual, legal, and statutory relief issues raised in this  
15 Complaint are common to each of the members of the Class and California Class and will apply  
16 uniformly to every member of the Class and California Class. Among the questions of law and fact  
17 common to Class and California Class members are:

18 a. whether Defendants engaged in agreements, contracts, combinations, and  
19 conspiracies, which had the purpose and/or effect of unreasonably restraining competition and  
20 limiting purchaser access to competing and lower-priced Room Reservations;

21 b. whether Defendants unreasonably restrained trade;

22 c. whether Defendants' anti-competitive contracts, combinations, and  
23 conspiracies have caused Plaintiffs and the other members of the Class and California Class to  
24 suffer antitrust injury in the nature of overcharges;

25 d. whether Defendants' unlawful conduct caused Plaintiffs and other Class and  
26 California Class members to pay more for the Room Reservations than they otherwise would have  
27 paid;

28 e. the appropriate Class-wide measure of damages;

f. whether, and in what amount, Plaintiffs and the other Class and California  
Class members are entitled to recover treble damages, court costs, and attorneys' fees;

1                   g.       whether Defendants' anti-competitive conduct is continuing, thus entitling  
2 the Class and California Class to injunctive relief to promote unrestrained trade and free and fair  
3 competition.

4           82.     Plaintiffs' claims are typical of the claims of other members of the Class and  
5 California Class because Plaintiffs and every member of the Class and California Class have  
6 suffered similar injuries as a result of the same practices alleged herein. Plaintiffs have no interest  
7 adverse to the interests of the other members of the Class and California Class.

8           83.     Plaintiffs will fairly and adequately represent and protect the interests of the Class  
9 and California Class. Plaintiffs have retained able counsel with extensive experience in class  
10 action litigation. The interests of Plaintiffs are coincident with, and not antagonistic to, the  
11 interests of the other Class and California Class members.

12          84.     The questions of law and fact common to the members of the Class predominate  
13 over any questions affecting only individual members, including legal and factual issues relating to  
14 liability and damages.

15          85.     Plaintiffs and other members of the Class have suffered damages as a result of  
16 Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will retain  
17 substantial funds received as a result of their wrongdoing, and such unlawful and improper conduct  
18 shall, in large measure, go unremedied. Absent a class action, the members of the Class will not be  
19 able to effectively litigate these claims and will suffer further losses, as Defendants will be allowed  
20 to continue such conduct with impunity and retain the proceeds of its ill-gotten gains.

21          86.     A class action is superior to other available methods for the fair and efficient  
22 adjudication of this controversy because joinder of all Class members is impracticable. Moreover,  
23 because the damages suffered by individual members of the Class are relatively small, the expense  
24 and burden of individual litigation make it impossible for members of the Class to individually  
25 redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a  
26 class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the  
27 management of this action as a class action.

1                   **VIII. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT**  
2                   **CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS**

3                   87.     Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth  
4                   herein.

5                   88.     Plaintiffs did not discover and could not have discovered through the exercise of  
6                   reasonable diligence the existence of the claims sued upon herein until immediately prior to  
7                   commencing this civil action.

8                   89.     Any applicable statutes of limitation have been tolled by Defendants' affirmative acts  
9                   of fraudulent concealment and continuing misrepresentations, as the facts alleged above reveal.

10                  90.     Because of the self-concealing nature of Defendants' actions and their affirmative  
11                  acts of concealment, Plaintiffs and the Class assert the tolling of any applicable statutes of  
12                  limitations affecting the claims raised herein.

13                  91.     Defendants continue to engage in the deceptive practice, and consequently, unwary  
14                  consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore, Plaintiffs and  
15                  the Class submit that each instance that Defendants engaged in the conduct complained of herein  
16                  and each instance that a member of the Class purchased a Room Reservation constitutes part of a  
17                  continuing violation and operates to toll the statutes of limitation in this action.

18                  92.     Defendants are estopped from relying on any statute of limitations defense because  
19                  of their unfair or deceptive conduct.

20                  93.     Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants,  
21                  through a series of affirmative acts or omissions, suppressed the dissemination of truthful  
22                  information regarding their illegal conduct, and have actively foreclosed Plaintiffs and the Class  
23                  from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

24                  94.     By reason of the foregoing, the claims of Plaintiffs and the Class are timely under  
25                  any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling doctrine,  
26                  and fraudulent concealment.

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**IX. COUNTS**

**COUNT I**

**VIOLATION OF 15 U.S.C. § 1  
(AGREEMENTS UNREASONABLY RESTRAINING TRADE)**

95. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

96. The Agreements, and their enforcement, constitute contracts, combinations and conspiracies that substantially, unreasonably, and unduly restrain trade in the relevant market(s), and harmed Plaintiffs and the Class thereby.

97. The Agreements cover a sufficiently substantial percentage of relevant market(s) to harm competition.

98. The Defendants are liable for the creation, maintenance, and enforcement of the Agreements under a *per se*, "quick look" and/or rule of reason standard.

99. The Defendants possess market power.

100. The Agreements harm competition by artificially raising and stabilizing prices.

101. There is no legitimate, pro-competitive business justification for the Agreements or any of them that outweighs their harmful effect. Even if there were some conceivable justification, the Agreements are broader than necessary to achieve such a purpose.

102. Plaintiffs and members of the Class were injured in their business or property by the collusion and conspiracy alleged above which facilitated, enabled, assisted or furthered Defendants' substantial foreclosure and exclusion of competition in the relevant market(s).

103. Without limiting the generality of the foregoing, Plaintiffs and the other members of the Class have been forced to pay higher prices for Room Reservations than they would have paid in the absence of Defendants' unlawful conduct.



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**COUNT II**

**VIOLATION OF THE CARTWRIGHT ACT**

**(CALIFORNIA BUSINESS & PROFESSIONS CODE SECTIONS 16720, *et seq.*)  
(CALIFORNIA CLASS ONLY)**

104. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

105. Defendants engaged in price-fixing and a *per se* violation of the Cartwright Act.

**COUNT III**

**CALIFORNIA FALSE ADVERTISING LAW**

106. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

107. This Count is asserted against the online retailer defendants.

108. The Consumers Legal Remedies Act, Civil Code Section 1750 et seq. (hereinafter "CLRA") was designed and enacted to protect consumers from unfair and deceptive business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code Section 1770.

109. The CLRA applies to Defendants' actions and conduct described herein because it extends to the sale of goods or services for personal, family or household use.

110. At all relevant times, Plaintiffs and members of the Class were "consumers" as that term is defined in Civil Code Section 1761(d).

111. The transactions from which this action arises include transactions involving the sale or lease of goods or services for personal, family or household purposes within the meaning of Civil Code Section 1761.

112. Each of these defendants represent that their rates are the "Best Price" or a "Low Price," or similar words intended to convey to consumers that the consumer was obtaining a good deal.

113. These representations are false and misleading in that there is no "Best" or "Low" price, just a fixed and uniform price.

114. Plaintiffs were injured by overpaying for their hotel rooms.

#### COUNT IV

#### FOURTH CAUSE OF ACTION

#### (Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)

115. Plaintiffs incorporates and realleges, as though fully set forth herein, each of the paragraphs set forth above. This count is asserted against the online retailer defendants.

116. Defendants' use of various forms of advertising media to advertise, call attention to or give publicity to the sale of their goods and services, and other practices, as set forth above, which are not as advertised or as otherwise represented, constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, under Business & Professions Code Section 17500 *et seq.* These advertisements and practices have deceived, and are likely to deceive, the consuming public, in violation of those sections.

117. Defendants' business acts and practices, as alleged herein, has caused injury to the Plaintiffs who would not have paid as much for online rooms had they known the truth.

118. Plaintiffs and the Class are entitled to restitution and/or other equitable relief in light of the practices described herein.

119. Defendants' practices in connection with the marketing and sale of online rooms violate the CLRA in at least the following respects:

- a. In violation of Section 1770(a)(5), Defendants knowingly misrepresented the character, uses and benefits of the rooms;
- b. In violation of Section 1770(a)(9), Defendants have knowingly advertised the online rooms with the intent not to sell them as advertised; and
- c. In violation of Section 1770(14), Defendants knowingly misrepresented the legal rights, obligations, or remedies involved in the purchase and sale of online rooms.

120. Defendants' misrepresentations, failure to disclose, and knowing concealment of the prices for online rooms are misrepresentations, omissions, and concealments of material fact that constitute unfair and/or deceptive business practices in violation of Civil Code Section 1770(a) and

1 caused harm to Plaintiffs and Class members who would not have purchased and/or paid as much  
2 for their rooms had they known the truth.

3 121. In accordance with Civil Code § 1780 (a), Plaintiffs and members of the Class seek  
4 injunctive and equitable relief for violations of the CLRA. In addition, after mailing appropriate  
5 notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiffs will subsequently  
6 amend this Class Action Complaint to also include a request for damages. Plaintiffs and members  
7 of the class request that this Court enter such orders or judgments as may be necessary to restore to  
8 any person in interest any money which may have been acquired by means of such unfair business  
9 practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code §  
10 1780 and the Prayer for Relief.

#### 11 **FIFTH CAUSE OF ACTION**

##### 12 **(Violations of Cal. Bus. & Prof. Code § 17200 *et. seq.*)**

13 122. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the  
14 paragraphs set forth above.

15 123. This Court is asserted against the Online Retailer Defendants and the California  
16 subclass.

17 124. Defendants have engaged in unfair competition within the meaning of California  
18 Business & Professions Code Section 17200 *et seq.* because Defendants' conduct is unlawful,  
19 misleading, and unfair as herein alleged.

20 125. Defendants' business practices are unlawful because they violate the CLRA, as well  
21 as other statutes alleged herein.

22 126. The practices are misleading because they were likely to deceive consumers into  
23 believing that they are obtaining the "best price" or a "low price" for their hotel room.

24 127. Defendants' business practices, and each of them, are unfair because they offend  
25 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or  
26 substantially injurious to consumers, which harm greatly outweighs any benefit associated with the  
27 business practice, in that consumers are led to believe that the rooms they were paying for had  
28 qualities that it did not.

128. Plaintiffs have standing to pursue this claim because they have been injured by virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged herein. Plaintiffs would not have purchased their hotel rooms or paid as much for it had they known the truth.

129. Plaintiffs and the Class are entitled to relief, including full restitution and/or restitutionary disgorgement, to the greatest extent permitted by law, which may have been obtained by Defendants as a result of such business acts or practices, and enjoining Defendants to cease and desist from engaging in the practices described herein.

## RELIEF REQUESTED

**WHEREFORE**, Plaintiffs, on their behalf and on behalf of the Class, pray for judgment, as follows:

A. For an Order certifying this case as a class action against Defendants and appointing Plaintiffs as Representatives of the Class;

B. For money damages against Defendants and in favor of Plaintiffs and the Class on all claims asserted in this Complaint;

C. For costs of suit incurred herein;

D. For prejudgment interest to the extent allowed by law;

E. For penalties as allowed by law;

F. For permanent injunctive relief to enjoin further violations of the law; and

G. For such other and further relief as this Court may deem just and proper.

1 **JURY TRIAL DEMANDED**

2 Plaintiffs hereby demand a trial by jury on all issues triable of right by jury.

3 DATED: August 20, 2012.

4 HAGENS BERMAN SOBOL SHAPIRO LLP

5  
6 By: 

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