

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIA HENRY, MICHAEL MAERLANDER,
BRANDON PIYEVSKY, KARA SAFFRIN, and
BRITTANY TATIANA WEAVER, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE
OF TECHNOLOGY, UNIVERSITY OF CHICAGO,
THE TRUSTEES OF COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK, CORNELL
UNIVERSITY, TRUSTEES OF DARTMOUTH
COLLEGE, DUKE UNIVERSITY, EMORY
UNIVERSITY, GEORGETOWN UNIVERSITY,
MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
NORTHWESTERN UNIVERSITY, UNIVERSITY OF
NOTRE DAME DU LAC, THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA, WILLIAM
MARSH RICE UNIVERSITY, VANDERBILT
UNIVERSITY, and YALE UNIVERSITY,

Defendants.

Case No.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, Sia Henry, Michael Maerlander, Brandon Piyevsky, Kara Saffrin, and Brittany Tatiana Weaver, individually and on behalf of all others similarly situated, bring this class action under Section 1 of the Sherman Act against Brown University (“Brown”), California Institute of Technology (“CalTech”), University of Chicago (“Chicago”), The Trustees of Columbia University in the City of New York (“Columbia”), Cornell University (“Cornell”), Trustees of Dartmouth College (“Dartmouth”), Duke University (“Duke”), Emory University (“Emory”), Georgetown University (“Georgetown”), Massachusetts Institute of Technology (“MIT”), Northwestern University (“Northwestern”), University of Notre Dame du Lac (“Notre Dame”), The Trustees of the University of Pennsylvania (“Penn”), William Marsh Rice University (“Rice”), Vanderbilt University (“Vanderbilt”), and Yale University (“Yale”) (collectively, “Defendants”).

I.

INTRODUCTION

1. Defendants are private, national universities that have long been in the top 25 of the *U.S. News & World Report* rankings for such schools. These elite institutions occupy a place of privilege and importance in American society. And yet these same Defendants, by their own admission, have participated in a price-fixing cartel that is designed to reduce or eliminate financial aid as a locus of competition, and that in fact has artificially inflated the net price of attendance for students receiving financial aid. Defendants participate in the cartel claiming the protection of Section 568 of the Improving America’s Schools Act of 1994 (the “568 Exemption”). This exemption from the antitrust laws, which otherwise prohibit conspiracies among competitors, applies to two or more institutions of higher education at which “*all* students admitted are admitted on a need-blind basis.” Section 568 defines “on a need-blind basis” to mean “without regard to the financial circumstances of the student involved or the student’s family.” 15 U.S.C. § 1 Note.

2. Defendants have not been entitled to the 568 Exemption. Under a true need-blind admissions system, all students would be admitted without regard to the financial circumstances of the student or student's family. Far from following this practice, at least nine Defendants for many years have favored wealthy applicants in the admissions process. These nine Defendants have thus made admissions decisions *with regard to* the financial circumstances of students and their families, thereby disfavoring students who need financial aid. All Defendants, in turn, have conspired to reduce the amount of financial aid they provide to admitted students. This conspiracy, which has existed (with slightly varying membership) for many years, thus falls outside the exemption from the antitrust laws.

3. Defendants are members of the so-called "568 Presidents Group," in which the members have agreed on "a set of common standards for determining the family's ability to pay for college," which the members describe as the "Consensus Approach." Based on the Consensus Approach, in approximately 2003 the 568 Presidents Group (the "568 Cartel") devised the Consensus Methodology, which is a common formula for determining an applicant's ability to pay. Under the Consensus Methodology, an applicant's ability to pay is a substantial determinant of the net price, which is the institution's gross tuition plus fees for room and board, less institutional grant aid, charged to the applicant for attendance.

4. In collectively adopting this methodology, and regularly meeting to implement it jointly, the 568 Cartel has explicitly aimed to reduce or eliminate price competition among its members. As a result of this conspiracy, the net price of attendance for financial-aid recipients at Defendants' schools has been artificially inflated. In short, due to the conduct challenged herein, over almost two decades, Defendants have overcharged over 170,000 financial-aid recipients by at least hundreds of millions of dollars, in violation of Section 1 of the Sherman Act.

5. Defendants' longstanding conspiracy would be immune from the antitrust laws only if they have all been complying with the 568 Exemption. In fact, however, at least nine Defendants (Columbia, Dartmouth, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, and Vanderbilt) have been members of the 568 Cartel and have not qualified for the 568 Exemption throughout the Class Periods (defined below).

6. Instead, these nine Defendants have considered the financial circumstances of students and their families in admissions—for example, by maintaining admissions systems that favor the children of wealthy past or potential future donors. At least some of these nine Defendants also take into account applicants' financial circumstances through a largely secretive practice known as “enrollment management.” And at least some of these nine Defendants have also considered applicants' need for financial aid by preferencing students who will not need financial aid in deciding on waitlist admissions.

7. The other seven Defendants (Brown, CalTech, Chicago, Cornell, Emory, Rice, and Yale) have been members of the 568 Cartel during at least parts of the last two decades. These seven Defendants may or may not have adhered to need-blind admissions policies, but they nonetheless conspired with the other Defendants. The 568 Exemption thus does not apply to them either. In addition, although such knowledge is unnecessary to show their liability, these seven Defendants knew or should have known that the other nine Defendants were not following need-blind admissions policies.

8. In critical respects, elite, private universities like Defendants are gatekeepers to the American Dream. Defendants' misconduct is therefore particularly egregious because it has narrowed a critical pathway to upward mobility that admission to their institutions represents. The burden of the 568 Cartel's overcharges falls in particular on low- and middle-income families

struggling to afford the cost of a university education and to achieve success for their children. In addition, unlike prior admissions scandals, such as Varsity Blues,¹ the 568 Cartel's systematic suppression of financial aid is the official policy of its participants.

9. The 568 Cartel has thus caused substantial injury damages to Plaintiffs and the other members of the proposed Class (defined below). Plaintiffs bring this lawsuit to end Defendants' conspiratorial conduct and to prevent future students from suffering the injury the ongoing conspiracy has inflicted. In addition, Plaintiffs do so under circumstances in which a reasonable person, like each of the Plaintiffs, would have been unaware of the harm resulting from Defendants' use of the Consensus Methodology.

10. Plaintiffs also seek to compensate the proposed Class of all U.S. citizens or permanent residents, and purchasers of tuition, room, or board on their behalf, who have (a) enrolled in one or more of the Defendants' full-time undergraduate programs, (b) received need-based financial aid from one or more Defendants, (c) paid to one or more Defendants tuition, room, or board not fully covered by such financial aid, and (d) first enrolled in one of the Defendants' full-time undergraduate programs during the relevant times (defined below) since 2003.

11. Parents, legal guardians, and other family members commonly pay or help to pay the cost of a student's tuition, room, and board. The proposed Class therefore includes both students and those who pay or commit to pay on behalf of students.

¹ "Varsity Blues" is law enforcement's code name for the investigation and prosecution of the college admissions bribery scandal, which involved allegations that certain universities gave admissions preference to the children of wealthy parents in exchange for bribes.

II.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331, 1332(d)(2), and 1337.

13. This Court has personal jurisdiction over each Defendant on multiple bases, including that each Defendant has (1) transacted business in the United States and in this District, including by recruiting, and advertising for, students residing in this District; (2) transacted business with Class Members throughout the United States, including those residing in this District; and (3) committed substantial acts in furtherance of an unlawful scheme in the United States, including in this District. Each Defendant has recruited, accepted, enrolled, and charged artificially high net prices of attendance to, and thus injured, individuals residing within this District. In addition, Defendants have held at least one meeting of the 568 Cartel in Rosemont, Illinois, which is within this District.

14. Venue is proper in this District under 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391(b), (c), and (d), because each Defendant transacted business, was found, had agents, and/or resided in this District; a substantial part of the events giving rise to Plaintiffs' claims arose in this District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in this District.

15. During the Class Periods, Defendants' conduct has had a direct, substantial, and reasonably foreseeable effect on interstate commerce in the United States and in this District. Defendants' conduct affects admitted students around the country, including through transactions with parties residing in different states. Defendants do business across state lines.

III.

THE PARTIES

A. Plaintiffs

16. Plaintiff Sia Henry attended Duke as a full-time undergraduate student from the fall of 2007 until she graduated in the spring of 2011. For each of these four years, she paid to Duke some of the costs of tuition, room, and board. She received need-based financial aid from Duke in at least two of her four years of attendance. Since graduating from Duke, and subsequently from Harvard Law School, Ms. Henry has dedicated her career to advocacy on behalf of prisoners, most recently as a Senior Program Specialist at Impact Justice. She resides in Atlanta, Georgia.

17. Plaintiff Michael Maerlander attended Vanderbilt as a full-time undergraduate student from the fall of 2015 until he graduated in the spring of 2019. For each of these four years, he received need-based financial aid from Vanderbilt and paid for some of the costs of tuition, room, and board. He resides in New York, New York.

18. Plaintiff Brandon Piyevsky attended Northwestern as a full-time undergraduate student from the fall of 2013 until he graduated in the spring of 2017. For each of these four years, he received need-based financial aid from Northwestern and paid for some of the costs of tuition, room, and board. He resides in Toledo, Ohio.

19. Plaintiff Kara Saffrin attended Northwestern as a full-time undergraduate student from the fall of 2014 until she graduated in the spring of 2018. For each of these four years, she received need-based financial aid from Northwestern and paid for some of the costs of tuition, room, and board. She resides in Chicago, Illinois.

20. Plaintiff Brittany Tatiana Weaver attended Vanderbilt as a full-time undergraduate student from 2003 until she graduated in 2007. For each of these four years, she received need-

based financial aid from Vanderbilt and paid for some of the costs of tuition, room, and board. She resides in Farmington Hills, Michigan.

B. Defendants

21. Defendants are private, national universities that have been members of the 568 Cartel (most since 2003, and some not continuously) and have been continuously ranked in the top 25 of the *U.S. News & World Report* rankings for national universities since 2003.

22. Each Defendant acted as the agent or joint venturer of or for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein. All Defendants are jointly and severally liable for the acts of all members of the 568 Cartel.

23. At least nine Defendants were continuously members of the 568 Cartel from 1998, implemented the Consensus Methodology from 2003 (or 2004, in the case of Dartmouth) through at least 2019, and practiced admissions policies that were not need-blind and thus were not covered by the 568 Exemption.

24. The remaining Defendants were official members of the 568 Cartel for different time periods and may or may not have followed a need-blind admissions policy, but nonetheless conspired with the other Defendants (and knew or should have known that the other Defendants were not following need-blind admissions policies).

Brown

25. Defendant Brown University is a private, non-profit institution with its principal place of business in Providence, Rhode Island.

26. Brown was established by a charter, approved by the Rhode Island legislature, as “College of Rhode Island” in 1764. The school was the third college in New England and seventh in America. The school’s name was changed to Brown in 1804. Brown is a member of the Ivy League, a consortium of eight elite universities.

27. Brown's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$204,200; 19% of undergraduates come from the top 1% of the country's income distribution, and 70% come from the top 20%; and only 4.1% come from the bottom 20% of the income distribution.²

28. Brown has an endowment of approximately \$6.9 billion.³

California Institute of Technology

29. Defendant California Institute of Technology is a private, non-profit institution with its principal place of business in Pasadena, California.

30. CalTech is one of the nation's leading research universities.

31. CalTech's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$146,300; 3% of undergraduates come from the top 1% of the country's income distribution, and 69% come from the top 20%; and only 2.9% come from the bottom 20% of the income distribution.⁴

32. CalTech has an endowment of approximately \$3 billion.

Chicago

33. Defendant University of Chicago is a private, non-profit institution with its principal place of business in Chicago, Illinois.

² *Economic Diversity and Student Outcomes at Brown University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/brown-university>.

³ Michael Nitezal, *Elite University Endowments Soar as Higher Ed Divide Grows*, FORBES (Oct. 15, 2021), <https://www.forbes.com/sites/michaelnitezal/2021/10/15/elite-university-endowments-soar-to-record-highs/?sh=724aa8932d5f>.

⁴ *Economic Diversity and Student Outcomes at the University of California Institute of Technology*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/california-institute-of-technology>.

34. Chicago was founded in 1890 by the American Baptist Education Society and oil magnate John D. Rockefeller, who later described the school as “the best investment I ever made.”

35. Chicago’s undergraduate study body is generally wealthy and privileged. The median family income of undergraduates is \$134,500; 10% of undergraduates come from the top 1% of the country’s income distribution, and 58% come from the top 20%; and only 5.5% come from the bottom 20% of the income distribution.⁵

36. Chicago has an endowment of almost \$12 billion.

Columbia

37. Defendant Trustees of Columbia University in the City of New York is a private, non-profit institution with its principal place of business in New York, New York.

38. Columbia was established as King’s College by royal charter of King George II of Great Britain in 1754. It was renamed Columbia College in 1784. In 1896, the campus was moved to its current location in Morningside Heights and renamed Columbia University. According to its website, “Columbia University is one of the world’s most important centers of research.” Columbia is a member of the Ivy League.

39. Columbia’s undergraduate student body, with the exception of its School of General Studies, discussed below, is generally wealthy and privileged. The median family income of undergraduates is \$150,900; 13% of undergraduates come from the top 1% of the country’s income distribution, and 62% come from the top 20%; and only 5.1% come from the bottom 20% of the income distribution.⁶

⁵ *Economic Diversity and Student Outcomes at the University of Chicago*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/university-of-chicago>.

⁶ *Economic Diversity and Student Outcomes at Columbia University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/columbia-university>.

40. Columbia has an endowment of approximately \$14 billion.

Cornell

41. Defendant Cornell is a private, non-profit institution with its principal place of business in Ithaca, New York.

42. Cornell was founded in 1865, as a private though land-grant institution of New York State. According to its website, Cornell has been described as “the first *truly* American university because of its founders’ revolutionary egalitarian and practical vision of higher education.” (Emphasis in original.) Cornell is a member of the Ivy League.

43. Cornell’s undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$151,600; 10% of undergraduates come from the top 1% of the country’s income distribution, and 64% come from the top 20%; and only 3.8% come from the bottom 20% of the income distribution.⁷

44. Cornell’s endowment is approximately \$10 billion.

Dartmouth

45. Defendant Trustees of Dartmouth College is a private, non-profit institution with its principal place of business in Hanover, New Hampshire.

46. According to Dartmouth’s website: “Founded in 1769, Dartmouth is a member of the Ivy League and consistently ranks among the world’s greatest academic institutions.” Dartmouth’s website also claims that “Dartmouth College educates the most promising students.”

47. Dartmouth’s undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$200,400; 21% of undergraduates come from the top

⁷ *Economic Diversity and Student Outcomes at Cornell University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/cornell-university>.

1% of the country's income distribution, and 69% come from the top 20%; and only 2.6% come from the bottom 20% of the income distribution.⁸

48. Dartmouth has an endowment of approximately \$8.5 billion.

Duke

49. Defendant Duke University is a private, non-profit institution with its principal place of business in Durham, North Carolina.

50. Duke's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$186,700; 19% of undergraduates come from the top 1% of the country's income distribution, and 69% come from the top 20%; and only 3.9% come from the bottom 20% of the income distribution.⁹

51. Duke has an endowment of approximately \$12.7 billion.

Emory

52. Defendant Emory University is a private, non-profit institution with its principal place of business in Atlanta, Georgia.

53. Emory was established by charter of the Georgia legislature in 1836.

54. Emory's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$139,800; 15% of undergraduates come from the top 1% of the country's income distribution, and 58% come from the top 20%; and only 6% come from the bottom 20% of the income distribution.¹⁰

⁸ *Economic Diversity and Student Outcomes at Dartmouth College*, N.Y. TIMES <https://www.nytimes.com/interactive/projects/college-mobility/dartmouth-college>.

⁹ *Economic Diversity and Student Outcomes at Duke University* N.Y. TIMES <https://www.nytimes.com/interactive/projects/college-mobility/duke-university>.

¹⁰ *Economic Diversity and Student Outcomes at Emory University* N.Y. TIMES <https://www.nytimes.com/interactive/projects/college-mobility/emory-university>.

55. Emory has an endowment of approximately \$9 billion.

Georgetown

56. Defendant Georgetown University is a private, non-profit institution with its principal place of business in Washington, District of Columbia.

57. According to its website: “Georgetown University is the oldest Catholic and Jesuit institution of higher learning in the United States.”

58. Georgetown’s undergraduate student body is generally wealthy and privileged. The median family income of undergraduate students is \$229,100; 21% of undergraduates come from the top 1% of the country’s income distribution, and 74% come from the top 20%; and only 3.1% come from the bottom 20% of the income distribution.¹¹

59. Georgetown has an endowment of approximately \$2.6 billion.

Massachusetts Institute of Technology

60. Defendant Massachusetts Institute of Technology is a private, non-profit institution with its principal place of business in Cambridge, Massachusetts.

61. MIT is regularly ranked in the top five in international rankings of the world’s best research universities.

62. MIT’s undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$137,400; 5.7% of undergraduates come from the top 1% of the income distribution, and 61% come from the top 20%; and only 6.2% come from the bottom 20% of the income distribution.¹²

¹¹ *Economic Diversity and Students Outcomes at Georgetown University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/georgetown-university>.

¹² *Economic Diversity and Student Outcomes at Massachusetts Institute of Technology*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/massachusetts-institute-of-technology>.

63. MIT has an endowment of approximately \$27.4 billion.

Northwestern

64. Defendant Northwestern University is a private, non-profit institution with its principal place of business in Evanston, Illinois. Northwestern was founded in 1853.

65. Northwestern's undergraduate student body is generally wealthy and privileged. The median family income of Northwestern's undergraduates is \$171,200; 14% of undergraduates come from the top 1% of the income distribution, and 66% come from the top 20%; and only 3.7% come from the bottom 20% of the income distribution.¹³

66. Northwestern has an endowment of approximately \$11 billion.

University of Notre Dame du Lac

67. Defendant University of Notre Dame du Lac is a private, non-profit institution with its principal place of business in South Bend, Indiana.

68. Notre Dame was founded in 1842. According to its website, Notre Dame is “[o]ne of America’s leading undergraduate teaching institutions.”

69. Notre Dame's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$191,400; 15% of undergraduates come from the top 1% of the income distribution, and 75% come from the top 20%; and only 1.6% come from the bottom 20% of the income distribution.¹⁴

70. Notre Dame has an endowment of approximately \$12 billion.

¹³ *Economic Diversity and Student Outcomes at Northwestern University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/northwestern-university>.

¹⁴ *Economic Diversity and Student Outcomes at Notre Dame*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/notre-dame>.

University of Pennsylvania

71. Defendant Trustees of the University of Pennsylvania is a private, non-profit institution with its principal place of business in Philadelphia, Pennsylvania.

72. Penn was founded in 1740 by Benjamin Franklin. As of 2014, Penn had 25 undergraduate alumni that were billionaires, more than any other university in the world.¹⁵ Penn is a member of the Ivy League.

73. Penn's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$195,500; 19% of undergraduates come from the top 1% of the income distribution, and 71% come from the top 20%; and only 3.3% come from the bottom 20% of the income distribution.¹⁶

74. Penn has an endowment of approximately \$20.5 billion.

Rice

75. Defendant William Marsh Rice University is a private, non-profit institution with its principal place of business in Houston, Texas.

76. Rice was founded in 1891 by Houston businessman William Marsh Rice.

77. Rice's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$160,800; 9.8% of undergraduates come from the top 1% of the income distribution, and 64% come from the top 20%; and only 4.9% come from the bottom 20% of the income distribution.¹⁷

¹⁵ Emily Jane Fox, *Top 20 Colleges with Most Billionaire Alumni*, CNN (Sept. 17, 2014), <https://money.cnn.com/2014/09/16/luxury/top-colleges-with-billionaire-undergraduates/>.

¹⁶ *Economic Diversity and Student Outcomes at the University of Pennsylvania*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/university-of-pennsylvania>.

¹⁷ *Economic Diversity and Student Outcomes at Rice University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/rice-university>.

78. Rice's total endowment is approximately \$8 billion.

Vanderbilt

79. Defendant Vanderbilt University is a private, non-profit institution with its principal place of business in Nashville, Tennessee.

80. Vanderbilt was founded in 1873 and named in honor of Cornelius Vanderbilt, who donated a founding gift. According to Vanderbilt's website, "the university's prominent alumni base includes Nobel Prize winners, members of Congress, governors, ambassadors, judges, admirals, CEOs, university presidents, physicians and attorneys, as well as professional sports figures playing in the NFL, NBA, Major League Baseball, the PGA and LPGA."

81. Vanderbilt's undergraduate student body is generally wealthy and privileged. The median family income of undergraduates is \$204,500; 23% of undergraduates come from the top 1% of the income distribution, and 70% come from the top 20%; and only 1.9% come from the bottom 20% of the income distribution.¹⁸

82. Vanderbilt has an endowment of approximately \$10 billion.

Yale

83. Defendant Yale University is a private, non-profit institution with its principal place of business in New Haven, Connecticut.

84. Originally chartered by the legislature of Connecticut as the Collegiate School in 1701 in multiple locations, the school was moved to New Haven in 1716 and renamed Yale in 1718, after a wealthy British merchant and philanthropist, Elihu Yale. It is the third-oldest university in the United States. Yale is a member of the Ivy League.

¹⁸ *Economic Diversity and Student Outcomes at Vanderbilt University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/vanderbilt-university>.

85. Yale's undergraduate study body is generally wealthy and privileged. The median family income of undergraduates is \$192,600; 19% of undergraduates come from the top 1% of the income distribution, and 69% come from the top 20%; and only 2.1% come from the bottom 20% of the income distribution.¹⁹

86. Yale's endowment of approximately \$42 billion is the second highest of any university in the United States.

IV.

MEMBERSHIP IN THE 568 CARTEL

87. The 568 Cartel was formed in 1998. Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, and Notre Dame have been members of the 568 Cartel since 1998 and first implemented the Consensus Methodology in 2003.

88. Dartmouth joined the 568 Cartel in 1998 and implemented the Consensus Methodology in 2004.

89. Penn and Vanderbilt joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2003, and evidently withdrew from the Cartel in 2020.

90. Yale joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2003, and evidently withdrew from the Cartel at the end of 2007. Yale has been a member of the 568 Cartel from 2018 to the present.

91. Rice joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2003, and evidently withdrew from the Cartel in 2009. Rice has been a member of the 568 Cartel from 2017 to the present.

¹⁹ *Economic Diversity and Student Outcomes at Yale University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/yale-university>.

92. Brown joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2004, and evidently withdrew from the Cartel in 2012.

93. Emory joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2003, and evidently withdrew from the Cartel in 2012.

94. Chicago joined the 568 Cartel in 1998, implemented the Consensus Methodology in 2003, and evidently withdrew from the Cartel in 2014.

95. CalTech joined the 568 Cartel in 2019 and implemented the Consensus Methodology the same year.

V.

DEFENDANTS' VIOLATION OF THE FEDERAL ANTITRUST LAWS

A. Defendants Have Colluded on Their Financial-Aid Practices

96. Defendants are competitors in enrolling highly selective undergraduate student bodies and providing an undergraduate education. People throughout the United States (and the world) apply for admission to Defendants' undergraduate programs.

97. Each Defendant annually sends out thousands of solicitations and mailings and receives thousands of admission applications that cross state lines, including thousands of applications from Class Members. Out-of-state students, including thousands of Class Members, make up a substantial percentage of each Defendant's undergraduate population.

98. Each Defendant annually receives millions of dollars that flow across state lines in tuition payments, grants, donations, and athletic ticket sales and sponsorships. Each Defendant markets its undergraduate programs and tickets for athletic events to the public across state lines.

99. The Defendants have engaged, throughout the Class Periods, in a continuing conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act. This violation is likely to continue unless the relief sought herein is granted.

100. This conspiracy consists of an agreement, understanding, and concert of action among Defendants, the substantial terms of which are to restrain price competition relating to their provision of financial aid for students, and thereby to increase the net price of attending these institutions (“the net price of attendance”).

101. The 568 Cartel generally meets in person as a group at least twice each year. In October 2017, for example, the 568 Cartel held one of its official biannual meetings at the Hilton Rosemont, in Rosemont, Illinois, near O’Hare International Airport. On information and belief, 568 Cartel members communicate with each other about matters related to the conspiracy through other means as well, such as telephone calls, video calls, emails, and messaging.

102. Defendants maintain a website for purpose of representing the 568 Cartel and its purposes to the public. The website of the 568 Presidents Group states: “This site serves as a resource . . . for visitors seeking to learn more about the Group.”²⁰ The website explains that the “568 Presidents Group is an affiliation of colleges and universities, all of which must admit students on a need-blind basis.” An FAQ section on the website adds: “It is referred to as a ‘Presidents’ group because it was formed by a group of 28 college and university presidents from need-blind schools in 1998.” The website also contains the form of a certificate of compliance whereby a member of the group can certify that “its admission and financial aid practices currently comply with the rules of Section 568 regarding ‘need-blind admission practices.’” These statements on the website mislead the public by representing that the 568 Cartel members’ practices are compliant with Section 568. The truth, as alleged further below, is the opposite.

103. The 568 Cartel fixes prices through a formula that is based on a “set of common standards for determining the family’s ability to pay for college.” The 568 Cartel calls this formula

²⁰ 568 PRESIDENTS GROUP, <http://www.568group.org/home/>.

the “Consensus Methodology.” This methodology assesses the income and assets of a given financial-aid applicant and their family to determine the applicant’s ability to pay and thus the financial contribution that the applicant and their family is expected to make. The applicant’s assessed ability to pay therefore is a key determinant in the net price of attendance. To the extent the 568 Cartel uses these standards and methodology to set a formula for setting prices only for a student’s freshman year, these prices substantially determine the prices for that student’s subsequent years at the same institution.

104. Members of the 568 Cartel began meeting sometime after the enactment of Section 568 in 1994. The 568 Cartel was officially formed in 1998.

105. Penn and Vanderbilt evidently withdrew from the 568 Cartel around June 2020; since then, their names have not been included in the list of member institutions on the Cartel website. But the determinants of the net price of attending Penn and Vanderbilt, during the Class Periods and for all currently enrolled students (other than incoming freshmen in 2021), were established while those institutions were participating in the conspiracy alleged here.

106. The net price of attendance for all currently enrolled students (other than incoming freshman in 2021) were fixed between the institution and the student while Penn and Vanderbilt were in the 568 Cartel.

107. As of July 2001, Dartmouth had not joined the 568 Cartel. According to Dartmouth’s then-Dean of Admissions and Financial Aid, Karl Furstenberg, as of 2001 Dartmouth had a “need analysis methodology that [was] perhaps more enlightened, more generous and more flexible than” that of the 568 Cartel, and Dartmouth was “actually doing more than this new

methodology would allow.”²¹ Not long after Mr. Furstenberg made these statements, however, Dartmouth decided to join the 568 Cartel and implemented the Consensus Methodology soon after the 2003-04 academic year.

108. The 568 Cartel monitors and enforces its combination and conspiracy in several ways, according to the Cartel’s website, including (but not limited to) such steps as (a) requiring each participating institution to submit a “Certificate of Compliance,” (b) requiring university professionals at each institution to receive “training . . . in the application of the Methodology,” (c) imposing a “common calendar for the collection of data from families,” and (d) conducting an annual or biannual meeting every year since 2007.

VI.

DEFENDANTS’ ANTICOMPETITIVE CONDUCT HAS RAISED NET PRICES

109. As higher-education insiders—including employees and officers of the institutions in the 568 Cartel—have acknowledged, the Cartel limits competition in financial-aid offers from supposedly competing schools, driving down aid packages and thereby driving up the net price of attendance for aid-eligible students.

110. Yale evidently withdrew from the 568 Cartel in 2008, for example, and did so because it determined that membership in the Cartel had restricted the amount of financial aid that Yale could provide to students. That is, Yale’s decision to increase financial-aid awards to eligible students prompted it to withdraw. In withdrawing, Yale stated that its “new, more generous aid

²¹ Shevani Jaisingh, *28 Colleges Alter Financial Aid Packages*, THE DARTMOUTH (July 17, 2001), <https://www.thedartmouth.com/article/2001/07/28-colleges-alter-fin-aid-packages>.

policy in [to become effective in] January [2009] means the University can no longer follow the consensus methodology.”²²

111. Yale’s then-Director of Student Financial Services, Caesar Storlazzi, concluded: “By leaving the 568 Group, Yale is now free to give families more aid than they would have gotten under the consensus methodology.”²³ Storlazzi stated that what is “not good” about the Cartel’s approach is that it has “one needs-analysis formula that everyone has to sign on to.”²⁴ The connection between Yale’s withdrawal and the effect on net prices was explicit: “In other words, the percentage of a family’s income and assets that Yale takes as a parental contribution is now lower than the percentage taken by 568 schools.”²⁵ (Yale evidently rejoined the Cartel in 2018, without fanfare.)

112. Other universities have similarly declined to participate in the 568 Cartel because it would limit the financial aid they could provide. Harvard’s then-Director of Financial Aid, Sally Donahue, said in 2008 that Harvard never joined the 568 Cartel because its financial-aid formula would have yielded financial-aid packages that were smaller than what Harvard wanted to award.²⁶ In 2015, one anonymous university president who refused to participate in the 568 Cartel described it as “an insider’s game” that belonged to a “bygone era.” Observing that some schools had left the 568 Cartel to offer more financial aid, this anonymous president opined that “the notion of a collective that would constrain money is counter to public policy.”²⁷

²² Caitlin Roman, *University Leaves Financial Aid Group*, YALE DAILY NEWS (Sept. 26, 2008), <https://yaledailynews.com/blog/2008/09/26/university-leaves-financial-aid-group/>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ The Education Conservancy, *Financial Aid: Examining the Thinking Behind the Policy* (June 2015), <https://www.educationconservancy.org/PresidentialThinking.pdf>.

113. Indeed, the website of the 568 Presidents Group states in relevant part: “The Consensus Approach . . . seeks to reduce much of the variance in need analysis results that has been experienced in recent years.” The website goes on to state that the “participating institutions believe that the Consensus Approach, when applied in a consistent manner, serves to diminish or eliminate . . . divergent results.”

114. The phrases “reduce much of the variance,” “consistent manner,” and “diminish or eliminate divergent results,” in the opaque world of higher-education pricing, are code words meaning that the purpose of the 568 Cartel is to reduce or eliminate competition between Cartel members over offers of financial aid to prospective students. And elimination of competition over financial-aid offers is simply a means of coalescing around a uniform *and lower* level of aid to all prospective students. The result of the 568 Cartel is thus not only to reduce the amount of total aid offered by each school, but also to reduce the total amount of aid offered to each prospective student at each Defendant school.

115. In addition, under antitrust principles, the fact that members of the 568 Cartel must agree on a common methodology for determining financial aid is itself evidence that the Cartel reduced such aid. Competitors would not reach such agreement, because they would be incentivized to increase aid and reduce net prices of attendance to attract students. In this case, that would mean the awarding of more financial aid and reduction of net prices of attendance for all students in the proposed Class.

116. The 568 Exemption allowed the 568 Cartel members to eliminate incentives to compete if all of the members admitted all students on a need-blind basis. Plaintiffs show herein, however, that by their own actions, Defendants did not satisfy this provision and thus were not

entitled to the exemption. Accordingly, Defendants are liable for the reduced aid and artificially high net prices of attendance for Class Members that resulted from their agreement.

117. Absent collusion, Defendants would compete on price for the students that they have decided to admit because these are the students that the admissions department has decided would satisfy the goals of the admissions process—among other things, to generate a diverse student body of high academic performers and student-athletes. Defendants view enrolling such students as critical to maintaining their prestige and influence and continuing to attract donations.

118. Given that a large percentage of families cannot afford an elite university education for their children without financial assistance, the 568 Cartel has enabled Defendants to maintain artificially inflated net prices of attendance, through artificially reduced financial aid, without losing admitted students to competitor schools.

119. In short, Defendants' anticompetitive activities have produced overcharges in the net prices of attendance for all Class Members.

VII.

ALLEGATIONS RELATED TO DEFENDANTS' AFFIRMATIVE DEFENSES

A. Most and Possibly All Defendants Do Not Employ "Need-Blind" Admissions Policies

120. During the Class Periods, at least nine Defendants—Columbia, Dartmouth, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, and Vanderbilt—have failed to conduct their admissions practices on a need-blind basis because all of them made admissions decisions taking into account the financial circumstances of applicants and their families, through policies and practices that favored the wealthy, including but not limited to those described below.

121. The other seven Defendants (Brown, CalTech, Chicago, Cornell, Emory, Rice, and Yale) may or may not have followed a need-blind admissions policy throughout the Class Periods,

but during at least some portion of the Class Periods, they conspired with the other Defendants to reduce financial aid and increase the net price of attendance for their students.

122. Section 568 defines “on a need-blind basis” to mean “without regard to the financial circumstances of the student involved or the student’s family.”

123. An admissions practice can be described as “need-aware,” as some admissions offices have used the phrase, if the institution considers an applicant’s inability to afford the full price of tuition, room, and board as a factor weighing against acceptance in at least some admissions decisions.

124. The language of Section 568, as well as its legislative history, makes clear that to qualify for the exemption, a school must follow need-blind admissions with respect to all applicants, including those on the waitlist. Section 568 is modeled on the settlement reached between MIT and the Department of Justice in a case against the predecessor to the 568 Cartel, which operated for decades until the early 1990s. It was known as the Overlap Group. The MIT settlement defined “need-blind admissions” to mean “admit[ting] all United States citizens to its undergraduate programs without regard to family financial circumstances, *other than admitted from a wait list.*” (Emphasis added.) In enacting Section 568, Congress generally followed the terms of MIT’s settlement, but it *omitted* the exception for waitlisted students.

125. Penn and Vanderbilt have considered the financial need of waitlisted applicants, despite Section 568’s requirement that “all students admitted” be admitted on a need-blind basis.

126. A former Penn admissions officer, Karen Crowley, conceded in 2009 that although it is “not an official practice,” admissions officers give preference to “full-paying student[s]” on the waitlist over those who need financial aid, especially when “endowments are down and cost-cutting is essential.” “If a full-paying student says he’ll definitely come, letting him in can be a

relief.”²⁸ On information and belief, Crowley’s concession was reflective of Penn’s own admissions practices.

127. In May 2021, college admissions consultant and former Associate Dean of Admissions at Penn until June 2008, Sara Harberson, acknowledged: “When I worked as the associate dean of admissions at the University of Pennsylvania, a need-blind institution, the office was not forthright about the fact that needing financial aid kept a student from being considered or admitted from the waitlist. Many need-blind universities are not open about their policies when it comes to whom they admit off the waitlist.”²⁹

128. Vanderbilt has admitted being need-aware with respect to waitlisted applicants through statements by its admissions officers. Vanderbilt has stated on its website, for example, that it “reserve[s] the right to be need aware when admitting waitlisted students.”³⁰ This concession was posted on April 13, 2018, by Kim Struglinski, who joined the Vanderbilt office of undergraduate admissions in 2015 and thus was a Vanderbilt employee at the time of the statement.

129. Vanderbilt has conceded it is need-aware for waitlisted applicants on other occasions. In 2013, a Vanderbilt employee named Carolyn Phippen stated that “we do reserve the right to be need-aware when admitting waitlisted students.”³¹ And in 2014, a Vanderbilt employee

²⁸ Kathleen Kingsbury, *Dirty Secrets of College Waitlists*, THE DAILY BEAST (Mar. 30, 2009, updated July 14, 2017), <https://www.thedailybeast.com/dirty-secrets-of-college-waitlists>.

²⁹ Sara Harberson, *How Colleges Play the Waitlist Game*, COURIER TIMES (May 17, 2021), <https://www.buckscountycouriertimes.com/story/opinion/2021/05/17/op-ed-how-colleges-play-waitlist-game-students-detriment/5071470001/>.

³⁰ Kim Struglinski, *Waitlist FAQ 2018*, VANDERBILT UNIVERSITY UNDERGRADUATE ADMISSIONS (Apr. 13, 2018), <https://admissions.vanderbilt.edu/vandybloggers/2018/04/waitlist-faqs-2018/>.

³¹ Carolyn Phippen, *I’m On the Wait List – Now What*, VANDERBILT UNIVERSITY UNDERGRADUATE ADMISSIONS (Apr. 12, 2013), <https://admissions.vanderbilt.edu/vandybloggers/2013/04/im-on-the-wait-list-now-what-2/>.

named Jay Watson addressed whether Vanderbilt would be need-aware for waitlisted students that year: “We do reserve the right to be need aware when admitting students from the wait list.”³²

130. Accordingly, in failing to conduct need-blind admissions as to waitlisted applicants, Penn and Vanderbilt do not qualify for the 568 Exemption.

131. Columbia engages in need-aware admissions practices that relate to applicants to its School of General Studies, which is an undergraduate program of Columbia. The School of General Studies is under the governance of Columbia’s President, Provost, Trustees, and Faculty of Arts and Sciences, just like Columbia College and equivalent to the School of Engineering and Applied Science.³³ This governance structure contrasts with Barnard College, which is independent of, but affiliated with, Columbia.³⁴

132. Columbia’s School of General Studies offers an undergraduate degree program for “nontraditional students” who have had a break of one or more year in their studies and for dual- or joint-degree students, who split their time as students between Columbia and other institutions, such as Sciences Po in Paris and Trinity College Dublin.³⁵ Students in the School of General Studies take the same courses with the same faculty and undertake the same majors as other undergraduates at Columbia. They receive a diploma from Columbia like other undergraduates.

³² Jay Watson, *Vanderbilt Admissions AMA*, VANDERBILT UNIVERSITY UNDERGRADUATE ADMISSIONS (Mar. 31, 2014), <https://admissions.vanderbilt.edu/vandybloggers/2014/03/vanderbilt-admissions-ama/>.

³³ Compare COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CHARTERS AND STATUTES (2017), art. XXII (Faculty of General Studies), with art. XI (Columbia College), art. XIV (Faculty of Engineering and Applied Science).

³⁴ See *id.*, art. XXIII.

³⁵ Columbia School of General Studies, *Dual and Joint Degree Programs*, <https://gs.columbia.edu/content/dual-and-joint-degree-programs>.

133. According to Columbia’s website, the School of General Studies comprises more than 2,500 undergraduate students, which is approximately 30% of Columbia’s undergraduate student population.³⁶ In addition, 68% of undergraduates enrolled in the School of General Studies take classes on a full-time basis.³⁷

134. Columbia concedes that “General Studies admissions are not need-blind.”³⁸ In fact, Columbia has used General Studies to generate revenue that supports other university initiatives, like campus expansions and new scientific research centers. Columbia’s Faculty of Arts & Sciences pays a nine-figure “common-cost tax” to the university.³⁹ But General Studies recruits and enrolls a less wealthy, more socioeconomically diverse student body than Columbia’s other undergraduate programs.⁴⁰ The burden of supporting Columbia’s preservation of prestige and financial accumulation therefore falls on those who can least afford it.

135. Accordingly, in failing to conduct need-blind admissions as to applicants for the School of General Studies, Columbia does not qualify for the 568 Exemption.

136. In sum, throughout the relevant Class Periods, Penn and Vanderbilt have considered the financial need of waitlisted students, and Columbia has considered the financial need of

³⁶ Columbia University, *Fall Headcount Enrollment by School, 2010-2019* (Jan. 13, 2020), https://opir.columbia.edu/sites/default/files/content/Statistical%20Abstract/opir_enrollment_history.pdf.

³⁷ Columbia School of General Studies, *Statistics and Facts*, <https://gs.columbia.edu/content/statistics-and-facts>.

³⁸ Eli Lee, *Public Health Professor Lisa Rosen-Metsch Appointed Dean of General Studies*, COLUMBIA SPECTATOR (Nov. 14, 2017), <https://www.columbiaspectator.com/news/2017/11/14/public-health-professor-lisa-rosen-metsch-appointed-dean-of-general-studies/>.

³⁹ Michael Ouimette, *Unfunded Mandate: Columbia College, Arts and Sciences, and the Bollinger Era*, COLUMBIA SPECTATOR (May 5, 2016), <https://www.columbiaspectator.com/lead/2016/05/05/unfunded-mandate-columbia-college-arts-and-sciences-and-bollinger-era/>.

⁴⁰ Jessica Spitz, *At a crossroads; The future of GS*, COLUMBIA SPECTATOR (Apr. 20, 2017), <https://www.columbiaspectator.com/news/2017/04/20/at-a-crossroads-the-future-of-gs/> (“[T]he population skews older and many are juggling jobs, raising families, and often do not have parents to rely on for tuition money.”).

students applying to the School of General Studies, in deciding whether to admit such students to attend their undergraduate programs on a full-time basis. The presence of these institutions in the 568 Cartel therefore extinguishes the 568 Exemption for all its members.

B. Certain Defendants' Enrollment Management Practices Are Not "Need-Blind"

137. Dartmouth and Notre Dame engage in need-aware admissions through "enrollment management." This is "the systematic integration of the functions of admissions, the relationship between tuition and fees (pricing) and financial aid, and student retention, along with the use of research to inform institutional policies and practices."⁴¹ It is a "managerial paradigm" that brings together admissions and other institutional functions "into a comprehensive institutional approach designed to enable college and university administrators to exert greater influence over the factors that shape their enrollments."⁴²

138. One of the key purposes of enrollment management is to limit the number of financial-aid-eligible applicants who are admitted to the institution to achieve financial and budgetary objectives. The effect of these practices is to disadvantage applicants based on their need for institutional financial aid.

139. Econometric modeling is central to enrollment management. As explained by Stephen Brooks, a higher-education consultant whose client list includes Columbia and Penn,⁴³ models draw on standard elements of college applications—academic ability, geography, demographics, interests, whether the student has requested aid, and more—to assess an applicant's

⁴¹ Don Hossler, *Origins of Strategic Enrollment Management*, in HANDBOOK OF STRATEGIC ENROLLMENT MANAGEMENT 5 (Don Hossler and Bob Bontrager, eds., 2014).

⁴² *Id.* at 4, 7-8.

⁴³ *Our Clients*, SHBrooks, <https://www.shbrooks.com/clients>.

likelihood of enrolling if offered admission.⁴⁴ These yield models, in turn, permit schools to forecast the revenue and cost implications of their admissions and financial-aid decisions.⁴⁵

140. One anonymous enrollment manager has said: “Good luck getting any institution to tell you exactly how they handle ability to pay as a driver in their admit decision. . . . What they will say is ‘We’re need blind.’ That’s bullshit. They would never tell you exactly how they do it, but they do it all the time.”⁴⁶

141. Indeed, these institutions know their practices are legally problematic, and thus they maintain a shroud of secrecy over them. For instance, author Jeff Selingo asked two dozen colleges or universities for access to their admissions practices. Nearly all refused, some because they were “worried about exposing how they shaped their class based on the financial need of applicants.”⁴⁷ Selingo also wrote: “Even at need-blind schools, admission eventually can come down to money. Those colleges control how much they spend on financial aid by recruiting heavily in rich high schools and admitting in early decision a significant proportion of students who tend to be wealthier. And even when schools are need-blind, admissions officers still see the zip codes and the occupations of parents when reviewing applications.”⁴⁸

⁴⁴ Stephen H. Brooks, *Using Campus-Based Financial Aid Strategically*, in HANDBOOK OF STRATEGIC ENROLLMENT MANAGEMENT 223-26 (Don Hossler and Bob Bontrager, eds., 2014); Stephen H. Brooks, *Econometric Modeling of Enrollment Behavior*, 26 J. Student Fin. Aid 7, 9-10 (1996).

⁴⁵ Brooks, *Using Campus-Based Financial Aid Strategically*, at 226; Brooks, *Econometric Modeling of Enrollment Behavior*, at 16-17.

⁴⁶ Matthew Quirk, *The Best Class Money Can Buy*, THE ATLANTIC (Nov. 2005) <https://www.theatlantic.com/magazine/archive/2005/11/the-best-class-money-can-buy/304307/>.

⁴⁷ Jeffrey Selingo, WHO GETS IN AND WHY: A YEAR INSIDE COLLEGE ADMISSIONS 13 (2020).

⁴⁸ *Id.* at 212.

142. Notre Dame also employs an “enrollment management model.”⁴⁹ Announcing in 2010 the hire of its associate vice-president for undergraduate enrollment, Don Bishop, Notre Dame praised his “innovative marketing and financial aid strategies” in prior enrollment-management jobs.⁵⁰ Announcing a new dean of admissions in 2019, Notre Dame touted her status as “a featured presenter at national enrollment management conferences and events.”⁵¹ In addition, Notre Dame has a partnership with a software company that develops data-visualization tools, touting “improved scenario analyses on all data associated with an applicant or prospective enrollee.”⁵² Notre Dame is thus using data analysis to shape need-aware admissions decisions.

143. In 2015, Dartmouth created the position of Vice Provost for Enrollment Management, announcing that it would permit the university “to use a wealth of newly available data to identify and recruit prospective students.”⁵³ In 2016, Dartmouth announced its hiring of Lee Coffin from Tufts University, a need-aware school.⁵⁴ At Tufts, Coffin operated under strict

⁴⁹ Jordan Cockrum and Natalie Weber, *Notre Dame, SMC communities evaluate opportunities, efforts for low socioeconomic students*, THE OBSERVER (Apr. 30, 2018), <https://ndsmcobserver.com/2018/04/efforts-low-socioeconomic-students/>.

⁵⁰ Dennis Brown, *Notre Dame alumnus Bishop appointed associate VP for undergraduate enrollment*, NOTRE DAME NEWS (Sept. 15, 2010), <https://news.nd.edu/news/notre-dame-alumnus-bishop-appointed-associate-vp-for-undergraduate-enrollment/>.

⁵¹ Joyce Lance, *Christy Pratt appointed director of admissions*, NOTRE DAME NEWS (July 1, 2019), <https://news.nd.edu/news/christy-pratt-appointed-director-of-admissions/>.

⁵² Leila Meyer, *U Notre Dame, SynGlyphX Partner on Enrollment Data Visualization Tool*, CAMPUS TECH. (Jan. 13, 2016), <https://campustechnology.com/articles/2016/01/13/u-notre-dame-synglyphx-partner-on-enrollment-data-visualization-tool.aspx?admgarea=news>.

⁵³ Dartmouth University, Office of Communication, *Search Has Begun for Undergraduate Admissions Leader* (Oct. 29, 2015), <https://news.dartmouth.edu/news/2015/10/search-has-begun-undergraduate-admissions-leader>.

⁵⁴ Bill Platt, *Lee Coffin to Lead Enrollment, Admissions, and Financial Aid*, DARTMOUTH NEWS (Feb. 4, 2016), <https://news.dartmouth.edu/news/2016/02/lee-coffin-lead-enrollment-admissions-and-financial-aid>.

budgetary limits.⁵⁵ He shaped the cohort of admitted students to bring revenues and costs in line. His admissions office sent tentative acceptances to the financial-aid office, which modeled the revenue and cost implications so that the admissions office would meet the university’s budgetary goals. As Coffin has acknowledged, “Shifting things at the end . . . happens every year.”⁵⁶

144. Dartmouth’s and Notre Dame’s use of enrollment management thus involves the resolution of admissions decisions *with* regard to the financial circumstances of the applicant or their family, in that such management (i) identifies relatively wealthy students, for the benefits (direct and indirect) that the school expects from their admission, and (ii) identifies relatively less wealthy students in order to limit the total amount of financial aid—and then acts upon that information to meet budgetary goals.

C. Many Defendants Consider Family Financial Circumstances in Giving Preference to the Children of Wealthy Past or Potential Donors, and Thus Do Not Adhere to a Need-Blind Admissions Policy

145. Many Defendants consider applicants’ “financial circumstances” through admissions preferences given to the children of wealthy past or potential donors, such that their chances of admission increase significantly. Such Defendants understand that these applicants—commonly known as “development cases” or “development admits”—have no need for financial aid and that their admission could generate a substantial financial return for the university.

146. Consequently, the development offices of such Defendants analyze and monitor these applicants and coordinate with the university presidents or admissions offices during the

⁵⁵ Carly Olson, *Crunching the Numbers*, TUFTS OBSERVER (Apr. 25, 2016), <https://tuftsobserver.org/crunching-the-numbers/> (“My responsibility as Dean is that I can’t spend more dollars than Tufts has. They give me a checkbook every year and they say spend all of it, but don’t spend more than that.”); *see also id.* (“This year, Coffin said admissions had \$19.7 million and 1,325 spots to consider when making their decisions.”).

⁵⁶ *Id.*

admissions cycle. In short, awarding special treatment to the children of wealthy prior and potential donors necessarily means some less privileged applicants are not admitted on account of their financial circumstances to make room for the wealthy.

147. Many Defendants also consider large donations, and even financial capacity in the absence of any donation history, as plus factors for admission. Assessing potential donations of an applicant's family necessarily involves considering the income, assets, and other financial circumstances of that family. Similarly, considering a family's past donations, pursuant to the agreement of the 568 Cartel, constitutes the consideration of family financial circumstances.

148. In considering the wealth and donation history of certain students and their families, moreover, such Defendants implicitly consider less privileged applicants' lack thereof. Because of the limited number of spots available in any given class, the advantage given to one group entails a disadvantage imposed on the other. Privileging the wealthy and disadvantaging the financially needy are inextricably linked; they are two sides of the same coin.

149. In addition, such Defendants are committed to maintaining admissions as a zero-sum game, by limiting growth in the number of undergraduate seats to maximize perceptions of exclusivity and prestige. Defendants' presidents and senior admissions and development officers know that the other Defendants routinely favor children from wealthy families and thereby fail to admit all students without regard to their financial circumstances or that of their families.

150. Dartmouth's former dean of admissions, Maria Laskaris, said in 2019: "The ultra-rich have an additional advantage in their ability to donate large sums of money to universities, which can boost their kids' chances of acceptance." According to Laskaris, admissions officers are

“made aware of” this factor because “colleges are always in fundraising mode.”⁵⁷ At Dartmouth, development officers meet with admissions staff to review a list created by the development office. Each year, up to 50 applicants may be considered through this special process, most of whom are admitted, accounting for 4-5% of Dartmouth’s student body.⁵⁸

151. An email exchange exposed by the Sony hack in 2014 illustrates Dartmouth’s efforts to evaluate and court wealthy potential donors.⁵⁹ Michael Lynton, CEO of Sony Pictures Entertainment, intended to visit Dartmouth with his daughter, a prospective student. Michael Lynton is not an alumnus of Dartmouth, and public records have not shown that Lynton had previously donated to Dartmouth. On the eve of his visit, Lynton received a solicitous email from Jeff Sassorossi, a 1975 Dartmouth graduate and then Dartmouth’s “Director, Special Projects & Reporting.” Sassorossi explained that his role at Dartmouth was “to serve as the liaison between the Advancement (Alumni Relations and Development) and Admissions. As such, I work with families as they go through the admissions process at Dartmouth.” Sassorossi offered Lynton and his daughter a personal tour of the campus. Sassorossi’s email also indicated that Lynton was being recruited to Dartmouth by Leon Black, a billionaire private equity investor, major Dartmouth benefactor, and former trustee.⁶⁰

⁵⁷ Jill Tucker, *In the College Admissions Game, Even the Legal Kind, Money Has Always Mattered*, SAN FRANCISCO CHRON. (Mar. 12, 2019), <https://www.sfchronicle.com/bayarea/article/In-the-college-admissions-game-even-the-legal-13683518.php>.

⁵⁸ Joseph Asch, *Donor Admissions: How It Works Now*, DARTBLOG (Sept. 29, 2014), <http://www.dartblog.com/data/2014/09/011686.php>.

⁵⁹ See Joseph Asch, *VIP Donor Preferences Cont’d*, DARTBLOG (Feb. 4, 2016), <http://www.dartblog.com/data/2016/02/012467.php>; Email from Jeff T. Sassorossi to Michael Lynton, Re: Dartmouth College Visit (Mar. 28, 2014), <https://wikileaks.org/sony/emails/emailid/132718>.

⁶⁰ See Peter Lattman, *Apollo’s Leon Black Donates \$48 Million to Dartmouth*, N.Y. TIMES DEALBOOK (Mar. 29, 2012), <https://dealbook.nytimes.com/2012/03/29/apollos-leon-black-donates-48-million-to-dartmouth>; Office of Communications, Dartmouth University, *Dartmouth Board Elects Three New Charter Trustees*, DARTMOUTH NEWS (June 13, 2011) (announcing Black was stepping down after

152. Despite these entreaties, Lynton’s daughter enrolled at Brown, which got the \$1 million donation from Lynton instead of Dartmouth.⁶¹ The opinion editor for the *Brown Daily Herald* described Lynton’s gift to Brown as “a \$1 million check to Brown with more strings attached than the Los Angeles Philharmonic. Anyone with a pulse can trace the probable outcome of this ‘philanthropy’—a prospective student connected to Lynton gets accepted to Brown!”⁶²

153. According to journalist Daniel Golden’s book, *The Price of Admission*, Duke “enrolled thousands of privileged but underqualified applicants with no prior ties to the university in the expectation of parental payback.”⁶³ According to Golden, Duke “accepted at least one hundred nonalumni children each year due to family wealth.”⁶⁴ In some years, between 3-5% of Duke’s student body consists of students “who would have been turned away without pressure from the development office.”⁶⁵

154. While serving as president of Duke, Richard Brodhead admitted that “it would be naïve to say that any university should pay no attention to a family’s ability to help the university,” explaining that a family’s ability to donate to Duke was a “plus factor” in admissions.⁶⁶ Jean Scott, a former director of undergraduate admissions at Duke, estimated that “a couple of hundred” applicants a year received special attention as children of prospective donors. Scott admitted that

two terms as trustee), <https://news.dartmouth.edu/news/2011/06/dartmouth-board-elects-three-new-charter-trustees>.

⁶¹ Chad Simon, *Simon '16: Pimp My University*, BROWN DAILY HERALD (Oct. 21, 2015), <https://www.browndailyherald.com/2015/10/21/simon-16-pimp-my-university/>.

⁶² *Id.*

⁶³ Daniel Golden, *THE PRICE OF ADMISSION* 54 (2006).

⁶⁴ *Id.*

⁶⁵ *Id.* at 57.

⁶⁶ Geoffrey Mock, *Brodhead Discusses Early Admissions, Developmental Admits*, DUKE TODAY (Sept. 22, 2006), <https://today.duke.edu/2006/09/admit.html>.

there “were certainly students who got in because they were a high priority” for fundraising. Scott also said that there “was more of this [fundraising-related] input at Duke than at any other institution I ever worked for.”⁶⁷

155. The longstanding dean of admissions for Georgetown, Charles Deacon, was asked by a reporter: “What about children of alumni and *potential* donors?” (Emphasis added.) In response, Dean Deacon candidly admitted: “On the fundraising side, we also have a small number of ‘development *potential*’ candidates. If Bill Gates wants his kid to come to Georgetown, we’d be more than happy to have him come and talk to us.” (Emphasis added.) Dean Deacon continued to point out that “not all those special cases end up being people who give a lot of money. We have children of Supreme Court justices, senators, and so on apply. We may give extra consideration to them because of the opportunities that may bring.”⁶⁸

156. In short, Georgetown admits a range of students based on their families’ wealth, prestige, and influence. Some of these students are given “extra consideration” based on their parents’ influence or political power, without any expectation of a financial contribution. On the other hand, some *are* given “extra consideration” on the basis of their “development potential”—namely, the ability of the family to make a financial contribution to the institution, and the likelihood that it will do so.

157. Indeed, Dean Deacon has also candidly admitted that Georgetown favors past donors, as well as potential donors, and has even admitted that Georgetown calibrates the extent of the admissions advantage to the size of the donation: “If you were very close to the edge and

⁶⁷ Daniel Golden, *How Lowering the Bar Helps Colleges Prosper*, WALL ST. J. (Sept. 9, 2006), <https://www.wsj.com/articles/SB115774251817757837>.

⁶⁸ Alvin P. Sanoff, *Getting In To Top Schools*, WASHINGTONIAN (Oct. 1, 2007), <https://www.washingtonian.com/2007/10/01/getting-in-to-top-schools/>.

the family's given to the annual fund every year or something, that might be enough of a tip to get you in. If you're a little farther from the edge, but the family has built Regents Hall, that might tip a little farther."⁶⁹

158. The former director of selection at MIT, McGregor Crowley, admitted in March 2019: "In truth, for every office of admissions there is a development office that builds a university's endowment through donations from alumni and wealthy individuals. And every year, regardless of what a college or university says publicly, a number of children of wealthy donors and alumni get a nod in their direction while other applicants are rejected."⁷⁰ In an interview with NBC News, Crowley admitted that "as for the children of prominent campus donors, . . . a college's development office might reach out to the dean of admissions to say, 'Hey, just so you know, Lisa's dad has been very generous to us in the past, or something.'" NBC News reported that according to Crowley: "Usually, that kind of information [about a family's financial contribution] is relayed to the most senior officials in an admissions office."⁷¹

159. At Northwestern, a separate admissions process exists for the wealthy and well connected. On April 24, 2019, *The Daily Northwestern* published an article with the headline: "Northwestern President Schapiro Says He Reads Applications of Some Legacy, Donor Students." As revealed in the article, in the 2018-19 admissions cycle, Schapiro personally reviewed the applications of about 550 students, including applications associated with wealthy donors. A

⁶⁹ Suzanne Monyak, *Legacy Status Tips Admission*, THE HOYA (Mar. 20, 2015), <https://thehoya.com/legacy-status-tips-admission-scales/>.

⁷⁰ McGregor Crowley, *Confessions of a Former MIT Admissions Director*, BOSTON GLOBE (Mar. 13, 2019), <https://www.bostonglobe.com/opinion/editorials/2019/03/13/confessions-former-admissions-director/qPQppf0AhpJIbIJ8mZ6q9L/story.html>.

⁷¹ Daniel Arkin, *The College Admissions Scandal is Just the Extreme Version of a System that Already Favors the Wealthy*, NBC, <https://www.nbcnews.com/news/us-news/college-cheating-scandal-two-ex-admissions-officers-explain-behind-scenes-n983796>.

Northwestern spokeswoman has further admitted that President Schapiro was “frequently involved in dealing with principal donors to the University.”⁷²

160. One of the student reporters who broke the story about Northwestern’s two-track admissions system later stated in a podcast interview: “[President Schapiro] also told us that he tries to work with the Dean of Admissions Christopher Watson, as much as he can. He brought up an example that if they both disagreed on an applicant that they try to work it out.”⁷³ President Schapiro is the boss at Northwestern, and the Dean of Admissions reports to him. The head of the university is using his discretion to make or influence numerous admissions decisions. Schapiro’s involvement in admissions decisions for applicants associated with wealthy donors was not public until revealed by reporting in 2019.

161. Penn also tracks past and potential donors, rewarding past donors and enticing potential donors by admitting their children. A former Associate Dean of Admissions, Sara Harberson, has described the university’s use of “tags” to track applicants that are “a high priority for the institution.” Penn tags the applications of “children of donors or potential donors,” among others, giving those applicants “the proverbial golden ticket.”⁷⁴ The university has “spots reserved”

⁷² Alan Perez and Gabby Birenbaum, *Northwestern President Schapiro Says He Reads Applications of Some Legacy, Donor Students*, THE DAILY NORTHWESTERN (Apr. 24, 2019), <https://dailynorthwestern.com/2019/04/24/campus/northwestern-president-schapiro-says-he-reads-applications-of-some-legacy-donor-students/?print=true>.

⁷³ Cassidy Jackson and Heena Srivastava, *The Weekly: University President Morton Schapiro Reveals Role in Admissions Process*, THE DAILY NORTHWESTERN (May 3, 2019), <https://dailynorthwestern.com/2019/05/03/multimedia/audio/the-weekly-university-president-morton-schapiro-reveals-role-in-admissions-process/>.

⁷⁴ Sarah Harberson, *The Truth about ‘Holistic’ College Admissions*, LOS ANGELES TIMES (June 9, 2015), <https://www.latimes.com/opinion/op-ed/la-oe-harberson-asian-american-admission-rates-20150609-story.html>.

for these “development cases,” whose “parents have already given significant money to the institution, or plan to.”⁷⁵

162. The director of admissions at Notre Dame for 36 years until his retirement in July 2019, Bob Mundy, made appearances at alumni gatherings during his tenure in office. Mundy’s biography at these appearances stated: “In his current position as Director of Admissions Operations, he oversees the 35 members of staff, and recruitment efforts that have included as many as 40,000 annual inquiries and a record-setting 16,500 applications for the 2011 class. Ultimately, the office is responsible for ‘delivering’ a freshmen class of approximately 2,000 students, while also satisfying the needs of various constituencies: i.e. alumni, athletics, *the Development Office*, etc.” (Emphasis added.)

163. The associate vice provost for undergraduate enrollment at Notre Dame, Don Bishop, acknowledged the significant influence that donations play in the Notre Dame admissions process. Indeed, he admitted that if someone gave \$15 million, then their children would be given “some special interest” during the Notre Dame admissions process.⁷⁶

164. A past president of Vanderbilt, E. Gordon Gee, stated in 2019 that any president under “truth serum” would concede that donor connections make a difference in admissions.⁷⁷

165. Defendants may independently choose to favor the children of the wealthy if they like, thereby disfavoring every other applicant. But if they make that choice, they cannot lawfully

⁷⁵ Vice News, *How Broken the College Admissions Process Is*, YOUTUBE (Mar. 13, 2019) (Harberson quoted at 5:20), https://www.youtube.com/watch?v=0v5yHnWCiLE&feature=emb_logo.

⁷⁶ Daniel Golden, *How Wealthy Families Manipulate Admissions at Elite Universities*, TOWN & COUNTRY (Nov. 21, 2016), <https://www.townandcountrymag.com/society/money-and-power/news/a8718/daniel-golden-college-admission/>.

⁷⁷ Jack Stripling, *It’s an Aristocracy: What the Admissions-Bribery Scandal Has Exposed About Class on Campus*, THE CHRONICLE OF HIGHER EDUCATION (Apr. 17, 2019), https://www.chronicle.com/article/its-an-aristocracy-what-the-admissions-bribery-scandal-has-exposed-about-class-on-campus/?cid2=gen_login_refresh&cid=gen_sign_in.

conspire on financial-aid policies. The law does not allow them to do both. Defendants must choose between continuing their wealth favoritism and need-aware admissions practices, on the one hand, and participation in the lucrative 568 Cartel, on the other.

D. The Section 568 Exemption Applies Only to a Group of Schools That All Employ “Need-Blind” Admissions Policies Within the Term’s Statutory Meaning

166. The 568 Exemption, as noted, precludes any school invoking it from taking account of “the financial circumstances” of a student or their family in making admissions decisions. Under the well-established rules of statutory construction, any contrary interpretation of the text of the 568 Exemption would be impermissible speculation as to Congress’s intent—in particular where any antitrust exemption is construed narrowly (with what courts have described as “beady eyes and green eyeshades”). Just as fundamental, the evidence of the purpose and overarching goal of the 568 Exemption, as reflected in its legislative history, compels this interpretation of the plain meaning of “need-blind” as defined in the statute.

167. The 568 Exemption replaced what had been a general temporary antitrust exemption. The 1994 legislative history of the enactment of Section 568 explains in relevant part: “This provision extends for an additional three years the temporary antitrust exemption for certain collegiate financial aid award analysis, which was originally enacted with the Higher Education Amendments of 1992 as a two-year exemption.” H.R. Conf. Rep. 103-761, 911-12, 1994 U.S.C.C.A.N. 2901, 3242-43. This report explained that, as noted above, Section 568 is modeled on the MIT-DOJ settlement: “The temporary exemption has also been revised in light of the ‘standards of conduct’ adopted as part of the settlement of the antitrust action between the Department of Justice and Massachusetts Institute of Technology in the case of *United States v. Brown University, et al.*, Civ. Action No. 91-3274 (E.D. Pa.), on December 22, 1993.” *Id.*

168. The referenced “standards of conduct” provided in relevant part: “Non-profit institutions of higher education may participate in the cooperative financial aid arrangements set forth below (‘Participating Schools’), provided that they practice need-blind admissions; that is, admit all United States citizens to its undergraduate programs without regard to family financial circumstances, other than admitted from a wait list.” *Letter from MIT lawyer Thane D. Scott about Overlap settlement*, <http://tech.mit.edu/Bulletins/overlp-ts.html>. This legislative history thus makes clear that Section 568’s language tracks the language in the “standards of conduct” precluding admissions *with* regard to “family financial circumstances.”

169. This legislative history further states that the 568 Exemption “applies only to institutions of higher education that admit students on a need-blind basis. The definition of ‘on a need-blind basis’ in subsection (c)(6) is based on language in the ‘standards of conduct’ adopted in the MIT settlement. However, there is one conspicuous difference between the statutory language and the MIT standards of conduct: the statute deletes the phrase ‘other than admitted from a wait list.’ *See also United States v. Brown University*, 5 F.3d 658 (1993).” H.R. Conf. Rep. 103-761, 911-12, 1994 U.S.C.C.A.N. 2901, 3242-43. This conference report further states:

The managers have decided against elaborating on the need-blind admissions standard in the statutory text. As should be obvious, however, evidence of a practice among admissions personnel at an institution of higher education of examining, discussing, or otherwise considering information relating to a student’s financial circumstances that is derived from such student’s financial aid application form, *or from any other document or record obtained for the purpose of ascertaining such financial circumstances*, before the decision is made regarding the student’s admission will substantially increase the institution’s burden of demonstrating that the school’s admissions policy is truly need-blind.

Id. (emphasis added). The report then specifies: “Prudence would counsel that schools wishing to make use of this provision *insulate their admissions, process and admissions personnel as*

completely as possible from such student financial aid information, until after the admissions process is complete.” Id. (emphasis added). Consistent with the statute, no exception is made for applicants on the institution’s waitlists.

170. This aspect of the legislative history thus reflects Congress’s intent that a “truly need-blind” admissions policy would not permit a school invoking the 568 Exemption to use the information that the 568 Cartel has used and continues to use to consider the financial circumstances of an applicant’s family for admissions purposes—including (i) the common application (which asks questions about the parents’ occupation for the purpose, at least in part, of ascertaining the financial circumstances of the applicant and their family); (ii) emails between development and admissions, as well as any “tags” that admissions uses to flag development prospects, obtained for the purpose of ascertaining the financial circumstances of the applicant and their family; (iii) any documents that admissions receives identifying one or both parents as donors, or regarding donation history, or identifying one or both parents as alumni; and (iv) the information integral to enrollment management.

171. The 2001 legislative history to the renewal of the 568 Exemption further confirms the following congressional goal and purpose: “No student who is otherwise qualified ought to be denied the opportunity to go to one of the nation’s most prestigious schools because of the financial situation of his or her family.” Report to Accompany H.R. 768, House of the Judiciary, *Need-Based Educational Aid Act of 2001* (Apr. 3, 2001). An admissions policy that admits certain students based on their wealth, in a zero-sum admissions arrangement, necessarily denies admission to at least some students “because of the financial situation of his or her family.”

172. In a separate part of the 2001 legislative history, Senator Barney Frank, one of the sponsors of the legislation, referenced that it arose out of litigation regarding the Overlap Group

(discussed above), and a practice in which “these schools strive to achieve what they call a needs-based admission policy,” and “what it meant was that they strove to admit young men and women *based on their ability to do the work of that school.*” Statement of Bernie Frank, Need-Based Educational Aid Act of 2001, 147 Cong. Rec. H1360-02, 2001 WL 321629 (Apr. 3, 2001) (emphasis added). An admissions policy that admits certain students based on their wealth as a relevant factor does not admit those students “based on their ability to do the work of that school.”

173. In sum, the scope of the 568 Exemption is rooted in the plain language of the statutory text, and in the statute’s legislative history, which shows that the statute’s plain text furthers the statute’s purposes.

VIII.

PLAINTIFFS’ DELAYED DISCOVERY OF THEIR INJURIES UNDER, AND DEFENDANTS’ CONTINUING VIOLATIONS OF, THE ANTITRUST LAWS

174. Defendants’ violations of the Sherman Act occurred each time Defendants engaged in conduct, further to the 568 Cartel, that harmed Plaintiffs and other Class Members. In the context of Defendants’ price-fixing conspiracy, such conduct and violations occurred each time Defendants have met to fine-tune their Cartel agreement and upon each transaction with any Class Member at an artificially inflated net price of attendance.

175. Defendants have engaged in continuing violations of the Sherman Act. The 568 Cartel has met at least annually since 2003 to discuss and fine-tune their Cartel agreement, and the Class Members have paid artificially high net prices to attend Defendants’ schools since that time as a result of the conduct alleged herein.⁷⁸

⁷⁸ In terms of formal membership, as noted above, Brown and Emory evidently left the 568 Cartel permanently in 2012; Chicago evidently left it in 2014; and Penn and Vanderbilt evidently left it in 2020. Some institutions have attended meetings of the 568 Cartel and exchanged information with the Cartel without being formal members, including certain institutions that never formally joined. (Plaintiffs reserve the right to name such institutions as defendants based on discovery in this case.)

176. The Class Members' claims accrued when they discovered they had been injured and who caused their injury. Plaintiffs discovered these facts only within the last two years.

177. Until that time, a person exercising reasonable diligence could not have discovered (a) the extent to which Defendants had failed to admit all successful applicants without regard to the financial circumstances of the student or the student's family, in violation of the 568 Exemption, or (b) that Defendants' use of the Consensus Methodology has disadvantaged and in fact caused financial injury to the Class Members.

178. A person exercising reasonable diligence could not have discovered the violations and injury at issue in part because Defendants have made incomplete and misleading statements that impeded discovery of those violations and the resulting injury.

179. Defendant have publicly stated and advertised, incompletely and misleadingly, that they admit students on a need-blind basis; and Defendants have claimed to be need-blind on hundreds of internet, marketing, and admissions materials and brochures.

180. Defendants and the other members of the 568 Cartel have maintained a website for the Cartel. The first words printed on the homepage of this website have been: "What is the 568 Presidents Group? 568 Presidents Group is an affiliation of colleges and universities, all of which must admit students on a need-blind basis." Under an FAQ on the same website, the 568 Cartel has made the following misleading claim: "It is referred to as a 'Presidents' group because it was formed by a group of 28 college and university presidents from need-blind schools in 1998."

181. Defendants that have not followed a need-blind admissions policy have made similarly incomplete and misleading statements, including on websites, during the Class Periods. Such Defendants have further misrepresented, as shown below, that they are "need-blind," within the meaning of that term under Section 568.

182. The website for Columbia has stated and continues to state: “Admission to Columbia is need-blind for US Citizens and Eligible Noncitizens, meaning the Office of Undergraduate Admissions considers your application without regard to your financial need.” Whether or not Columbia considers each application without regard to the student’s financial need, this notion of need-blindness is not consistent with the statutory definition that prohibits Columbia (so long as it participates in the 568 Cartel) from considering either financial need or financial wealth. Columbia’s redefinition of “need-blind” is not consistent with the statute. A university’s promise to disregard financial need is meaningless if the institution privileges wealth.

183. Other Defendants that have not followed a need-blind admissions policy have also engaged in definitional contortions. Dartmouth’s website, for example, has contained and continues to contain a glossary of admissions-related terms. As redefined by Dartmouth, an admissions decision is “need-blind” so long as it is not made with “knowledge of an applicant’s financial need.” If Dartmouth does make admissions decisions without knowledge of an applicant’s financial need, this is nevertheless insufficient for compliance with Section 568, which requires that *all* students be admitted without regard to the financial circumstances of the students or their families. Under Section 568, Dartmouth is not allowed to make admissions decisions with knowledge and on the basis that, an applicant has financial need, or does not have financial need, or is rich, or any other financial circumstance.

184. Duke’s website has also employed and continues to employ its own definitions, claiming that its “admissions policy is ‘need-blind,’ which means that applicants are accepted based on their merit, regardless of their ability to pay for college.” Duke’s redefinition does not mention whether *all* students “are accepted based on their merit, regardless of” their ability to donate money to Duke. In reality, not all students are admitted to Duke on the basis of merit at all.

185. MIT's website also has provided and continues to provide a glossary of admissions-related terms. As redefined by MIT, "need-blind" means that "[p]rospective students are not disadvantaged in the undergraduate admissions process because of their financial need." MIT's redefinition is contrary to the statutory meaning of "need-blind basis" and constitutes an admission that MIT considers the financial circumstances of certain applicants.

186. Northwestern's website has claimed and continues to claim that it "has a need-blind admissions policy for U.S. citizens and permanent residents; this means that financial aid is not a factor in determining admission. Applicants are encouraged to apply for financial aid." Northwestern's redefinition of "need-blind basis" is also contrary to the statutory definition and constitutes a further admission that Northwestern fails to conduct admissions without regard to the financial circumstances of all applicants and their families.

187. Penn's website has claimed and continues to claim another misleading definition of "need-blind": "Our need-blind policy means that your ability to pay is not considered in your admission decision." This is misleading because under Section 568, exempt institutions are prohibited from considering the financial circumstances of any applicant or any applicant's family, not just an applicant's "ability to pay."

188. The foregoing redefinitions of "need-blind" for purposes of Section 568 obfuscate that Defendants failing to follow need-blind admissions policies have made admissions decisions with regard to the financial circumstances of all applicants and their families.

189. In reality, the 568 Cartel was not, and has never been, composed of "need-blind schools" as that term is defined by the statute. The 568 Cartel's inaccurate public claim to being composed of "need-blind schools" had the effect of misleading a reasonably diligent person investigating whether the 568 Cartel's conduct gave rise to a cause of action.

190. The website for the 568 Cartel has contained and continues to contain the form of a certificate of compliance whereby a member of the Cartel can certify that “its admission and financial aid practices currently comply with the rules of Section 568 regarding ‘need-blind admission practices.’” Publicly posting this form of certification misleads any reasonably diligent person who inquires into whether members of the 568 Cartel are need-blind.

191. The website for the 568 Cartel has stated and continues to state: “This site serves as a resource both for the 568 Presidents Group member institutions wanting to keep up to date on the Group’s activities, *as well as for visitors seeking to learn more about the Group.*” (Emphasis added.) The 568 Cartel thus continues inaccurately to advertise on its website that all Cartel members are “need-blind” within the meaning of Section 568.

192. The 568 Cartel has publicly asserted that its activities were carried out for altruistic purposes. The website for the 568 Cartel, for example, has stated and continues to state that the purpose of the conspiracy is to agree on a financial-aid system that is “fair” and that the Consensus Methodology was adopted after consideration of ways to “improve the financial aid system so as to better serve the needs of families in their efforts to pay for college.”

193. Such assertions are false but would be viewed as credible by a reasonably diligent person investigating the 568 Cartel’s conduct. Actors sympathetic to the 568 Cartel have likewise published statements and conclusions that would have persuaded a reasonably diligent person investigating the Cartel’s conduct that they had not suffered financial harm.

194. Defendants further engaged in conduct that hindered a reasonably diligent person’s ability to discover the violations and injury at issue by consistently omitting, in public statements purporting to describe the reasons for net tuition price increases, any reference to price fixing or the use of the Consensus Methodology as bearing on increased net prices of attendance. Whether

or not such statements have accurately described *some* of the reasons for net tuition price increases, these statements have not acknowledged the effects of the use of the Consensus Methodology.

195. In targeting Class Members through the institution’s alumni magazine, for example, Dartmouth claimed in 2015 that rising tuition prices could be explained because “[j]ust as lattes cost more these days, so do markers and whiteboards and keeping the lights on. Healthcare costs and salaries are rising too—and hiring at the College has shot up more than enrollment.”⁷⁹ The feature article also listed “[l]ess sizeable but still significant drivers of cost includ[ing] compliance with a range of government regulations imposed to address issues such as crime, gender equity and accessibility, which have totaled millions of dollars.” The article quoted Dartmouth’s president Phil Hanlon as saying that these factors, although supposedly “not as much as financial aid” have ““been a driver for the last eight to 10 years.””⁸⁰

196. A Georgetown spokesperson explained away the institution’s substantial tuition increases by suggesting that “the growing cost ‘reflects the reality that many of our operating expenses continue to increase at rates higher than inflation.’”⁸¹

197. In 2008, an MIT news release incorrectly claimed: “During the past decade, the net tuition for undergraduates--what students and families pay after financial aid--has, on average, dropped by more than 15 percent when adjusted for inflation.”⁸² Such statements suggest to a reasonable person that MIT had lowered net prices of attendance over time. If MIT’s statement

⁷⁹ C.J. Hughes, *Why is Dartmouth So Expensive*, DARTMOUTH ALUMNI MAGAZINE, May-June 2015, <https://dartmouthalumnimagazine.com/articles/why-dartmouth-so-expensive>.

⁸⁰ *Id.*

⁸¹ Connie Parham, *GU Hikes Undergraduate Tuition 5.5 Percent*, THE HOYA (Feb. 22, 2008), <https://thehoya.com/gu-hikes-undergraduate-tuition-5-5-percent/>.

⁸² *MIT to be Tuition-Free for Families Earning less than \$75,000 a Year*, MIT NEWS (Mar. 7, 2008), <https://news.mit.edu/2008/tuition-0307>.

were true, moreover, the net price of attendance would have “dropped” even more if MIT had not participated in the 568 Cartel.

198. In 2009, John Affleck-Graves, then-executive vice president of Notre Dame, identified only food costs when asked to explain the institution’s 4.4 percent increase in tuition: “We are aware of the pressure families are under, and we wanted to be as conservative as we could be, . . . the difficulty for us this year is that we have seen an increase in a lot of our costs, like food And then we are faced with a difficult choice because we don’t want to decrease the opportunities we provide for the students, like study abroad and research opportunities.”⁸³

199. In 2017, Amy Gutmann, President of Penn, told *The Daily Pennsylvanian* that “as tuition goes up financial aid goes up even more.”⁸⁴ If this statement is true, it is also true that but for Penn’s participation in the 568 Cartel, financial aid would have gone up even more—and that President Gutmann did not speak to that fact.

IX.

CLASS ACTION ALLEGATIONS

200. The proposed Class, under Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), comprises all U.S. citizens or permanent residents, and purchasers of tuition, room, or board on their behalf, who have (a) enrolled in one or more of the Defendants’ full-time undergraduate programs, (b) received need-based financial aid from one or more Defendants, (c) paid to one of more Defendants tuition, room, or board not fully covered by such financial aid,

⁸³ Madeline Buckley, *University Increases Tuition for 2009*, THE OBSERVER (Mar. 4, 2009), <https://ndsmcobserver.com/2009/03/university-increases-tuition-for-2009/>.

⁸⁴ *Amy Gutmann’s Interview with The Daily Pennsylvanian*, THE DAILY PENNSYLVANIAN (Mar. 2, 2017), <https://www.thedp.com/article/2017/03/amy-gutmann-penn-transcript-interview>.

and (d) first enrolled in one of the Defendants' full-time undergraduate programs during these time periods (the "Class Periods"):

- Brown—from 2004 through 2012.
- CalTech—from 2019 to the present.
- Chicago—from 2003 through 2014.
- Columbia—from 2003 to the present.
- Cornell—from 2003 to the present.
- Duke—from 2003 to the present.
- Dartmouth—from 2004 to the present.
- Emory—from 2004 through 2012.
- Georgetown—from 2003 to the present.
- MIT—from 2003 to the present.
- Northwestern—from 2003 to the present.
- Notre Dame—from 2003 to the present.
- Penn—from 2003 to the present.
- Rice—from 2003 through 2009, and from 2017 to the present.
- Vanderbilt—from 2003 through 2019.
- Yale—from 2003 through 2007, and from 2018 to the present.

201. The Class excludes purchasers of tuition, room, and board the full cost of which was covered with institutional aid provided by such Defendant(s). Class Members also exclude Defendants and their officers, directors, management, employees, subsidiaries, or affiliates; and the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

202. Plaintiffs reserve the right to amend the Class definition, including with respect to the relevant time periods of membership in the 568 Cartel, based on discovery in this action.

203. The Class Members are readily ascertainable and identifiable because records of the relevant transactions should exist, because the Class Members' identities are known to Defendants, and because the members may be notified of the pendency of this action by forms of notice customarily used in class actions.

204. The Class Members are so numerous that joinder of all of them is impracticable; the number is unknown to Plaintiffs but, on information and belief, is over 170,000.

205. There are questions of law and fact common to the Class Members, including, but not limited to, the following:

- a. The scope and operation of the 568 Exemption;
- b. Whether Defendants' admissions practices fall under the 568 Exemption;
- c. Whether Defendants conspired as alleged herein;
- d. Whether the conspiracy harmed competition as alleged herein;
- e. Whether the conspiracy caused antitrust injury as alleged herein;
- f. The appropriate Class-wide measure of damages; and
- g. The common method for determining the damages of individual Class Members.

206. All or substantially all Class Members were injured by Defendants' unlawful conduct. A common formula exists that allows for determination of damages of individual Class Members and for excluding from recovery any individuals who may not have been damaged.

207. Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs and the other Class Members were damaged by the same common course of conduct by Defendants.

208. Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs' interests are aligned with, and not adverse to, those of the other Class Members.

209. Plaintiffs will continue to fully and adequately protect the interests of the Class Members. Plaintiffs have retained counsel competent and experienced in the prosecution of antitrust class action litigation, and with the necessary financial resources, to represent themselves and the Class.

210. Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting the Class as a whole.

211. Questions of law or fact that are common to the Class Members predominate over any questions affecting only individual Class Members.

212. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual Class Members would impose heavy burdens on the Court and Defendants and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. In contrast, a class action would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results. Absent a class action, it would not be feasible for the vast majority of the Class Members to seek redress for the violations of law alleged herein.

X.

ANTITRUST INJURY

213. Plaintiffs and the other Class Members have suffered antitrust injury due to Defendants' illegal conduct. They have suffered injury of the type that the antitrust laws were intended to prevent and that flows from that which makes Defendants' acts unlawful.

214. Defendants have conspired to reduce or eliminate price competition among 568 Cartel members on provision of financial-aid packages to Class Members, thereby depriving Plaintiffs and the other Class Members of a competitive marketplace.

215. As a result of Defendants' conspiracy to fix prices, Plaintiffs and the other Class Members were injured in the form of receiving artificially suppressed financial aid and paying artificially inflated net prices of attendance.

216. Plaintiffs and the other Class Members are naturally motivated to enforce the antitrust laws because they paid artificially inflated prices. There are no other persons who were more directly injured from, or more motivated to seek redress for, Defendants' misconduct than Plaintiffs and the other Class Members.

217. Absent Defendants' conspiracy, Defendants would have competed more aggressively to attract Plaintiffs and the other Class Members to their undergraduate programs, by offering all Class Members more generous financial aid and charging lower net prices of attendance than under Defendants' conspiracy.

218. If Defendants had competed with respect to financial aid, Plaintiffs and the other Class Members would have received more money in financial aid and paid lower net prices of attendance, as opposed to the artificially inflated net prices that Plaintiffs and the other Class Members paid due to Defendants' conspiracy.

219. Defendants' conspiracy is an illegal horizontal agreement to fix prices. By setting prices, through agreed-upon formulas, Defendants' price fixing directly and proximately caused antitrust injury to Plaintiffs and the other Class Members, who received less money in financial aid, and paid higher net prices of attendance, than they would have if Defendants had competed rather than conspired to fix prices.

XI.

THE RELEVANT MARKET

220. Defendants' price fixing is *per se* anticompetitive, obviating any market definition, including based on the direct evidence of anticompetitive effects. Defendants' conduct is also illegal under any rule of reasons or "quick look" analysis that may apply.

221. Plaintiffs thus further allege a relevant market, for undergraduate education at private national universities with an average ranking of 25 or higher in the *U.S. News & World Report* rankings from 2003 through 2021 (the most recent year in which Class Members applied to any of the Defendants). This is the Market for Elite, Private Universities.

222. This market does not include liberal arts colleges, which offer distinct products and are generally more like each other than elite, private universities. Reflecting industry recognition of these discrete classifications, both *U.S. News & World Report* and the *Carnegie Classifications* classify national universities and liberal arts colleges separately, given that liberal arts colleges are generally regarded as having different characteristics and services, including a smaller student body, smaller and less competitive athletic programs, fewer graduate programs, and less emphasis on research. In contrast, private, national universities tout themselves as offering such distinct services that the liberal arts colleges do not.

223. The Market for Elite, Private Universities has a rational relation to the interchangeability of use or cross-elasticity of demand with respect to the universities in the market. That is, within this market, sufficient cross-elasticity of demand exists such that a sufficient number of admitted students to two or more of these universities would respond to a small but significant increase in the net price by one university in the market by choosing to attend a lower-priced university in the same market that would make the price increase unremunerative.

224. The Market for Elite, Private Universities also has a rational relation to the cross-elasticity of demand with respect to elite, private liberal arts colleges. That is, the cross-elasticity between elite, private universities and elite liberal arts colleges in the United States is low, such that a hypothetical monopolist in the Market for Elite, Private Universities could impose a small but significant non-transitory increase in price (“SSNIP”) without losing so many students to elite liberal arts colleges as to render the SSNIP unremunerative.

225. Admission to elite, private liberal arts colleges is generally less selective than admission to elite, private, national universities. According to *U.S. News & World Report*, the average admission rate of the top 10 national universities is approximately 7%, whereas the average admission rate of the top 10 liberal arts colleges is approximately 14%.

226. A further factor differentiating private universities and liberal arts colleges is the yield rate—that is, the rate at which admissions offers are accepted. Among the private universities ranked in the top 25 by *U.S. News & World Report*, there is a strong correlation between the institution’s rank and yield rate. Among the liberal arts colleges, this correlation is much weaker (if it exists at all). The yield rate of both Harvard and Stanford, for example, is usually greater than 80%, whereas the yield rate for the most highly rated private liberal arts colleges—Williams, Amherst, and Swarthmore—is usually approximately 40%.

227. The Market for Elite, Private Universities does not include public universities. A handful of public universities have national rankings and selectivity comparable to that of the elite, private universities. Competition between public universities and elite, private institutions, however, is limited in the national market for students seeking financial aid, including the Class Members. The University of California-Los Angeles (“UCLA”) and the University of California-Berkeley (“UC Berkeley”), for example, do not provide need-based financial assistance to out-of-

state applicants. The University of Michigan-Ann Arbor (“Michigan”) has an official policy of prioritizing financial aid for residents. The University of Virginia (“UVA”) is required by law to matriculate at least two-thirds of its undergraduate student body from its pool of in-state applicants and charges a high average net price to out-of-state students to cross-subsidize in-state students, a pricing policy that is driven by political pressure that private institutions do not face.

228. Indeed, public universities and private universities make pricing decisions based on very different factors, with public institutions being subject to political pressures, state laws, and dependence on expropriations from state treasuries. Compared to elite, private universities, public universities such as UCLA, UC Berkeley, UVA, and Michigan have different pricing models and largely compete for different students. (Cornell includes four contract colleges, whose students comprise less than half of the university’s undergraduates, that charge lower tuition on in-state residents. Plaintiffs expect discovery to confirm that this fact does not exclude Cornell from the relevant market, including because Cornell does not largely compete for different students than the other universities in the relevant market.)

229. Schools in the Market for Elite, Private Universities compete with each other. Defendants are tightly packed in their average *U.S. News & World Report* rankings over the last 19 years (3.1, 5.1, 5.9, 6.4, 7.3, 8.0, 8.0, 10.7, 11.5, 14.8, 14.8, 16.7, 16.7, 18.1, 19.7, and 22.3).

230. Defendants have considerable market power, which they have exercised to increase the net price of attendance and to injure Plaintiffs and the other Class Members through the conduct alleged herein. Since 2003, Defendants have controlled, on average, approximately 74% of the number of undergraduate slots in the Market for Elite, Private Universities.

231. Competition in the Market for Elite, Private Universities is constrained by extremely strong brand preferences among consumers and high barriers to entry. Competition is

further constrained by the fact that such institutions limit the supply of available seats, which has the effect of generating scarcity and enhancing their prestige. Competition in the Market for Elite, Private Universities is further constrained by the fact that applicants cannot readily substitute one institution for another because an applicant's choice is limited to those universities to which he or she is admitted in a highly selective process.

232. The 568 Cartel does not have any pro-competitive impacts. Accordingly, if the rule of reason were to apply, it is not necessary to demonstrate reasonable and less restrictive alternatives are available. Unlike the Overlap Group, the 568 Cartel does not agree to allocate aid solely based on demonstrated financial need. Indeed, unlike the Overlap Group, several members of the 568 Cartel offer athletic scholarships and compete to have nationally ranked athletic teams every year.

233. Defendants have substantial endowments and the proven capacity to earn rates of return on those endowments that well exceed the minimum 5% distribution requirement of the tax laws. Defendants thus have ample resources to meet the financial needs of their students without reducing their endowments (if that were even imperative) and without colluding on a formula that results in artificially reduced financial aid, and that would in fact provide substantially more financial aid, and charge lower net prices of attendance, but for the 568 Cartel.

234. In addition, a reasonable and less restrictive alternative is for each member of the 568 Cartel to implement a fair formula unilaterally, as other elite, private universities have done, without entering into a conspiracy that overcharges students. In addition, no pro-competitive impact that Defendants may proffer justifies the significant overcharge caused by the conspiracy. If even relevant to any analysis under the rule of reason, moreover, there is no legitimate or significant procompetitive justification in Defendants' non-compliance with Section 568 or in

combining such non-compliance with the collective application of the Consensus Methodology to artificially reduce financial aid.

235. Colluding on common aid methodology under the 568 Cartel is not reasonably necessary to achieve the objective of awarding financial aid to admitted students. Instead, there are substantially less restrictive alternatives for helping to fund need-based financial aid—namely, and as noted, using a portion of the annual investment gains on Defendants’ endowments.

XII.

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

Sherman Act Section 1

236. Plaintiffs incorporate the preceding paragraphs.

237. At a time currently unknown to Plaintiffs, but at least as early as 2003, and continuing through the present, Defendants entered into a continuing agreement, understanding, and conspiracy in restraint of trade artificially to fix, raise, and stabilize and reduce the amount of financial aid paid to Class Members, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

238. In formulating and carrying out their agreement and conspiracy, Defendants did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth above, and the following, among others: Using an agreed upon formula or method for fixing, lowering, and stabilizing the amount of financial aid they offered and fixing, increasing, and stabilizing the net price of attendance.

239. The 568 Cartel has monitored and enforced its combination and conspiracy in several ways, according to the Cartel’s website, including (but not limited to) such steps as (a) requiring each participation institution to submit a “Certificate of Compliance,” (b) requiring university professionals at each institution to receive “training . . . in the application of the

Methodology,” (c) imposing a “common calendar for the collection of data from families,” and (d) conducting an annual or biannual meeting every year since 2007.

240. This conspiracy has had the following effects, among others: The net price of attendance has been fixed, increased, maintained, and stabilized at artificially high, non-competitive levels for all Class Members.

241. Plaintiffs and the other Class Members have been injured and will continue to be injured in their businesses and property by paying more for attendance at Defendants than they would have paid and will pay but for the combination and conspiracy.

242. Defendants are not entitled to the affirmative defense that they are exempt from the antitrust laws, because they do not satisfy the requirement that all students are admitted on a need-blind basis, for the reasons set forth above.

243. Defendants’ price-fixing is a *per se* violation of the Sherman Act; or, in the alternative, is a violation of the Sherman Act under the Rule of Reason or “quick look” analysis.

244. Defendants’ conduct has directly and proximately caused antitrust injury to Plaintiffs and the other Class Members. The artificially inflated net price of attendance that Plaintiffs and the other Class Members have paid to Defendants flows directly from Defendants’ price fixing and is the type of damage that the antitrust laws were designed to prevent.

245. Plaintiffs and the other Class Members are entitled to treble damages and an injunction against Defendants, preventing and restraining the violations alleged herein.

XIII.

REQUESTED RELIEF

Plaintiffs request the following relief:

- (a) That the Court determine that this action may be maintained as a class action under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and direct that notice of this action, as provided by Fed. R. Civ. P. 23(c)(2), be given to Class Members;
- (b) That the Court enter an order declaring that Defendants' actions, as set forth in this Complaint, violate the law;
- (c) That the Court hold Defendants jointly and severally liable for the injuries caused by each one of them and award Plaintiffs and the other Class Members actual damages and/or restitution in an amount to be determined at trial, such amount to be trebled as permitted by law;
- (d) That the Court award Plaintiffs and the other Class Members pre- and post-judgment interest on any recovery;
- (e) That the Court award Plaintiffs their costs of suit, including reasonable attorneys' fees and expenses;
- (f) That the Court award Plaintiffs a permanent injunction, under Section 16 of the Clayton Act, enjoining Defendants from continuing to illegally conspire regarding their pricing and financial-aid policies; and
- (g) That the Court award such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims so triable in this lawsuit.

/s/ Robert D. Gilbert

Robert D. Gilbert
Elpidio Villarreal
**GILBERT LITIGATORS &
COUNSELORS, P.C.**
11 Broadway, Suite 615
New York, NY 10004
Telephone: 646-448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com

/s/ Kyle W. Roche

Kyle W. Roche
Edward Normand
Eric Rosen
Peter Bach-y-Rita
ROCHE FREEDMAN LLP
99 Park Avenue, 19th Floor
New York, NY 10016
Tel: (646) 350-0527
kyle@rochefreedman.com
tnormand@rochefreedman.com
erosen@rochefreedman.com
pbachyrita@rochefreedman.com

/s/ Eric L. Cramer

Eric L. Cramer*
Caitlin Coslett*
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Phone: (215) 875-3000
ecramer@bm.net
ccoslett@bm.net

/s/ Elizabeth A. Fegan

Elizabeth A. Fegan
FEGAN SCOTT LLC
150 S. Wacker Dr., 24th floor
Chicago, IL 60606
Tel: (312) 741-1019
beth@feganscott.com

Robert E. Litan*

Daniel J. Walker*

BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006
Phone: (202) 559-9745
rlitan@bm.net
dwalker@bm.net

**Pro hac vice to be filed*