

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x  
MICHAEL KARAS, On Behalf Of ) No.  
Himself and All Others Similarly )  
Situating, ) CLASS ACTION  
)  
Plaintiff, ) COMPLAINT FOR VIOLATION  
) OF THE SECURITIES ACT  
v. ) OF 1934  
)  
PRICELINE.COM, INC., RICHARD S. )  
BRADDOCK, DANIEL H. SCHULMAN )  
and JAY S. WALKER, )  
) Plaintiff Demands A  
Defendants. ) Trial By Jury  
)  
-----x November 20, 2000

**NATURE OF THE ACTION**

1. This is a class action on behalf of a class (the "Class") of all persons who purchased or otherwise acquired the common stock of Priceline.com, Inc. ("Priceline" or the "Company") between July 24, 2000 and September 26, 2000 (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 ("1934 Act").

**JURISDICTION AND VENUE**

2. Plaintiff brings this action pursuant to the 1934 Act as amended (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the 1934 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

4. Venue is proper in this District pursuant to § 27 of the 1934 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in this District.

5. In connection with the acts, conduct and other wrongs complained of herein, the defendants used the means and instrumentalities of interstate commerce.

#### **THE PARTIES**

6. Plaintiff Michael Karas purchased Priceline common stock during the Class Period, as set forth in the certification attached hereto and incorporated herein by reference, and has suffered substantial damages as a result of the wrongful acts of defendants as alleged herein.

7. Defendant Priceline is a Delaware corporation with its principal executive offices located at 800 Connecticut Avenue, Norwalk, Connecticut. Priceline describes itself as a "Name Your Own Price" Internet pricing system where customers set the price for travel, automotive, home finance, and telecommunications products, as well as groceries and gasoline products.

8. Defendant Daniel H. Schulman ("Schulman") was at all relevant times Priceline's President and Chief Executive Officer, Chief Operating Officer and Director.

9. Defendant Richard S. Braddock ("Braddock") was at all relevant times Priceline's Chairman of the Board. Braddock sold 100,000 shares of Priceline stock during the Class Period at artificially inflated prices for total proceeds of \$2.4 million.

10. Defendant Jay S. Walker was at all relevant times Priceline's founder and vice chairman of the board. Walker sold 8 million shares of Priceline stock during the Class Period at artificially inflated prices for total proceeds of \$190 million.

11. The defendants referenced in ¶¶8 - 10 are referred to herein as the "Individual Defendants."

12. By reason of their management positions, and/or membership on Priceline's Board of Directors, and their ability to make public statements in the name of Priceline, the Individual Defendants were and are controlling persons, and had the power and influence to cause (and did cause) Priceline to engage in the unlawful conduct complained of herein.

**MOTIVE, OPPORTUNITY AND KNOWLEDGE**

13. Because of their Board memberships and/or executive and managerial positions with Priceline, each of the Individual Defendants had access to the adverse non-public information about the business, finances, markets and present and future business prospects of Priceline particularized herein via access to internal corporate documents, conversations or connections with corporate officers or employees, attendance at management and/or Board of

Directors' meetings and committees thereof and/or via reports and other information provided to them in connection therewith.

14. Defendants had a duty to promptly disseminate accurate and truthful information with respect to Priceline's operations and financial condition or to cause and direct that such information be disseminated and to promptly correct any previously disseminated information that was misleading to the market. As a result of their failure to do so, the price of Priceline common stock was artificially inflated during the Class Period, damaging plaintiff and the Class.

15. The Individual Defendants, because of their positions with Priceline, controlled the contents of quarterly and annual reports, press releases and presentations to securities analysts. Each Individual Defendant was provided with copies of the reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then false and misleading. As a result, each of the Individual Defendants is responsible for the accuracy of Priceline's corporate releases

detailed herein as "group-published" information and is therefore responsible and liable for the representations contained therein.

16. Each of the defendants is liable as a primary violator in making false and misleading statements, and for participating in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Priceline stock during the Class Period. All of the defendants had motives to pursue a fraudulent scheme in furtherance of their common goal, i.e., inflating the reported profits of Priceline and the trading price of Priceline stock by making false and misleading statements and concealing material adverse information. The fraudulent scheme and course of business was designed to and did: (i) deceive the investing public, including plaintiff and other Class members; (ii) artificially inflate the price of Priceline stock during the Class Period; (iii) cause plaintiff and other members of the Class to purchase Priceline stock at inflated prices; (iv) conceal and coverup the Individual Defendants' mismanagement of Priceline; (v) enable Priceline insiders to engage in profitable insider sales of their personally-held Priceline stock; and (vi) enable defendants to divest themselves of Priceline for the purpose of raising capital to invest in the Priceline WebHouse Club ("WebHouse") a closely-held licensee of Priceline launched in November 1999 whose owners include Walker, Liberty Media Corp., Vulcan Enterprises and the Goldman Sachs Group.

### CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of all persons who purchased the common stock of Priceline between July 24, 2000 and September 26, 2000, inclusive (the "Class Period"). Excluded from the Class are the defendants herein, members of each Individual Defendant's immediate family, any entity in which any defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party.

18. Because Priceline has millions of shares of common stock outstanding, and because the Company's common stock was actively traded, members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, plaintiff believes that Class members number at least in the thousands and that they are geographically dispersed.

19. Plaintiff's claims are typical of the claims of the members of the Class, because plaintiff and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

20. Plaintiff will fairly and adequately protect the interests of the Class members and have retained counsel who are

experienced and competent in class and securities litigation. Plaintiff has no interests that are contrary to or in conflict with the members of the Class plaintiff seeks to represent.

21. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

22. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether the Company's publicly disseminated releases and statements during the Class Period omitted and/or misrepresented material facts and whether defendants breached any duty to convey material facts or to correct material facts previously disseminated;

(c) whether defendants participated in and pursued the fraudulent scheme or course of business complained of;

(d) whether the defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;

(e) whether the market prices of Priceline common stock during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and

(f) whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

#### **FACTUAL BACKGROUND**

##### **Defendants Use WebHouse To Operate Priceline's Internet Gas And Grocery Business Off the Books**

23. Priceline was formed in July 1997 and launched on April 6, 1998. Less than a year later, in March 1999, the Company sold 10 million shares of common stock at a price of \$16 per share in an initial public offering that, according to the Company's public filings, "was widely regarded as one of the most successful IPOs in 1999."

24. According to its public filings, Priceline pioneered a unique e-commerce pricing system known as the "demand collection system" that purportedly enables consumers to use the Internet to save money on products and services while enabling sellers to generate incremental revenue. Using its "Name Your Own Price"



proposition, Priceline collects consumer demand, in the form of individual customer offers guaranteed by a credit card, for a particular product or service at prices set by the customer. Priceline then either communicates that demand directly to participating sellers or accesses participating sellers private databases to determine whether Priceline can fulfill the customer's offer. Consumers agree to hold their offers open for a specified period of time and, once fulfilled, offers cannot be canceled. The Company uses its "Name Your Own Price" proposition to sell a variety of products, including airline tickets, hotel rooms, car rentals, and long distance telephone calls.

25. Priceline purports to benefit consumers by enabling them to save money, while at the same time, benefitting sellers by providing them with an effective revenue management tool capable of identifying and capturing incremental revenue. Priceline claims that, by requiring customers to be flexible with respect to brands, sellers and product features, the Company enables sellers to generate incremental revenue without disrupting their existing distribution channels or retail pricing structures. For example, the Priceline claims that the airlines fly on average 700,000 empty seats a day, which they would be willing to sell through Priceline at cheaper-than advertised rates rather than leave empty.

26. The Company also operates WebHouse, one of several Priceline licensees. WebHouse is an independent company to which

Priceline licenses its name and business model in return for a royalty arrangement and a fully vested, non-forfeitable warrant to acquire a majority of the equity of the WebHouse that is exercisable under certain conditions. Although the Company realized only \$33,777 of royalty revenue in 1999, upon receipt of the warrant in the fourth quarter of 1999, Priceline recognized \$188.8 million of income representing the amount of the estimated fair value of the warrants, according to the Company's Annual Report for the fiscal year ended December 31, 1999. However, until the warrants are converted, the results of WebHouse financial results are not included in Priceline's financial results.

27. WebHouse purportedly allows customers to name their own price for retail items such as groceries and gasoline, on the internet, and to shop for them at discounts at participating local retail service stations and grocery stores. In a news release dated July 25, 2000 issued over PR Newswire, the Company claimed that Priceline WebHouse is "America's leading Internet service for groceries, with an average of 2 million different grocery items priced every week." The Company further stated that:

Because the company works with existing stores and doesn't have to build warehouses or purchase delivery trucks, the WebHouse Club is able to expand quickly across the nation with its local retail partners. Eight months after launching its grocery service, membership in WebHouse club has passed 1 million households, including 4 percent of all households in the New York metropolitan area.

28. However, since WebHouse is a privately held company and as such is not required to file reports with the SEC, and since Priceline does not include WebHouse operating results in its financial statements, WebHouse operating results are not known to the public and, consequently, Priceline investors are unable to independently gauge changes in the value of Priceline's convertible interest in WebHouse.

**Defendants, Facing Competition and Customer Attrition at Priceline, Cash Out to Invest in WebHouse**

29. Although Priceline purported to derive revenue from the sale of a wide range of products, at the commencement of the Class Period, the Company in fact derived 85% of its revenues from the sale of airline ticket sales, which generate 85% of total revenue and this line of business faced considerable competitive challenges.

30. On June 29, 2000, six major airline carriers announced plans to commence a new online ticket service called Hotwire.com ("Hotwire") that, like Priceline, sells cheap seats that would otherwise be left empty, but which gives customers greater flexibility than Priceline. Users of the Hotwire service designate when and where they want to fly and within hours, Hotwire would offer to sell airline ticket at a set price. A variety of other Web sites also offer cheap airline tickets, including Lowestfare.com, Cheap Tickets, Travelocity, and Expedia and many of these, unlike Priceline, do not require customers to commit to purchasing tickets

before knowing the exact scheduled time of departure, scheduled time of arrival and other material details relating to the airline ticket.

31. On news of the Hotwire announcement, the price of Priceline shares dropped 8%, or \$3.375, to close at \$36.813 down from the previous day's close of \$40.1875. The Company immediately shrugged off the threat represented by Hotwire; as reported in an Associated Press article dated June 29, 2000, defendant Walker, who launched the Company in 1998, said Priceline was not concerned about Hotwire and that, "We are not changing any of our revenue projections, profit projections or customer projections because of this." The following day, on June 30, 2000, Priceline's shares edged back to close at \$37.9844 and by July 20, 2000 were again trading at \$40.5625.

32. Unbeknownst to investors, defendants knew or recklessly disregarded the extent to which the Company was threatened by Hotwire and other internet businesses that sell discounted airline tickets. Defendants also knew or recklessly disregarded that contrary to their public statements, the Company was neither retaining existing customers nor attracting new customers but, on the contrary, was alienating large numbers of potential purchasers with the rigid bidding process that is essential to Priceline's business model.

33. Aware that its core line of business was failing, and that the Company had an accumulated deficit of \$1.2 billion, defendants were desperate to raise cash to bolster its newer businesses, and in particular, the WebHouse grocery and gasoline line of business, the success of which they considered to be key to the Company's survival.

34. To raise money without diluting the value of their substantial Priceline share holdings, defendants first pumped up the price of Priceline stock with claims such as the one released by the Company at the commencement of the Class Period, on July 24, 2000, that Priceline was "rounding the final turn and on the home stretch towards profitability." Then, less than a month later, on August 1, 2000, Walker sold a forward contract to sell 8 million shares of Priceline common stock to Internet investors Vulcan Ventures and Liberty Media at the artificially inflated price of \$23.75 per share for total proceeds of \$190 million, \$125 million of which will be invested in the WebHouse Club.

35. According to a Company Report by FleetBoston Robertson Stephens, Inc., because the transaction is in the form of a futures contract, which can be exercised no earlier than August 1, 2001, the transaction allowed Walker to divest himself of a substantial portion of his Priceline shares -- 12.4% -- for the purpose of reinvesting the proceeds in WebHouse, without depressing the value of his remaining Priceline holdings.

36. According to a Business Wire release dated August 1, 2000, in announcing the sale, Walker told analysts "This (the share sale) allows me to raise capital to invest in Webhouse without putting selling pressure on Priceline.com stock. "

37. In August 2000, insiders Braddock and N.J. Nicholas Jr. had divested themselves of an additional 300,000 shares of Priceline stock for proceeds of \$7,507,880. Then, on September 27, 2000, before trading commenced, the Company for the first time revealed that third-quarter revenue would fall short of analysts' expectations, due to weakness in sales of airline tickets. On news of the announcement, the Company's shares fell 42% on September 27, 2000, to close at \$10.75, down \$7.89 from the previous day's closing price of \$18.640 and down 54.7% from the \$23.75 share price paid by Vulcan Ventures and Liberty Media for Walker's 8 million shares.

**FALSE AND MISLEADING STATEMENTS  
DURING THE CLASS PERIOD**

**Schulman Claims Priceline Is "Rounding The Final Turn" And On "The Homestretch Toward Profitability"**

38. The Class Period commences on July 24, 2000. On that date, the Company announced its financial results for the second quarterly period ended June 30, 2000 by issuing a corporate release over the Business Wire. In the release, the Company announced that it lost \$4.52 million in the second quarter, but emphasized the narrowing of the loss, a tripling in sales and a huge increase in

revenues and gross profit. Specifically, the Company announced that net loss per share was \$0.01 in second-quarter 2000, compared to a net loss per share of \$0.10 in the second quarter of 1999. The Company also announced that second-quarter 2000 revenue was \$352.1 million, up 216% from second-quarter 1999 revenue of \$111.6 million, and that second-quarter 2000 gross profit was \$55.2 million, up 406% from second-quarter 1999 gross profit of \$10.9 million.

39. In the release, the Company also reported that it added 1.5 million new customers during the second quarter, bringing its total customer base to 6.8 million, and that a record 39% percent of offers made came from repeat customers. On the basis of these results, the purported addition of 1.5 million new customers, and the purported increase in repeat business, Defendant Schulman claimed the Company was on the verge of making a profit.

We believe we are rounding the final turn and on the homestretch towards profitability. We continue to attract record new customers, but even more importantly, our loyalty among existing customers is accelerating. Our repeat rate is up to 39%, up from 26% a year ago. Improving customer satisfaction is our number one priority, and we are focused on continually enhancing and expanding our products and services.

Priceline.com also saw strong growth across our verticals during the second quarter 2000, demonstrating the extendability and scale of our business model. Our leisure airline tickets service sold 1.29 million airline tickets in the quarter and is one of the single largest sellers of leisure airline

tickets in the U.S. Meanwhile, our hotel service sold 432,600 rental car days in the second quarter, its first full quarter of operation. In the second quarter, we also took our new car service and mortgage business national with promising results. We are also enthusiastic about the roll out of our long distance service, which generated strong gross profits and averaged about 240 minutes per offer during the quarter. We look for even stronger contributions from our non-airline verticals in the future. [Emphasis added.]

40. On July 24, 2000, Chief Financial Officer Heidi Miller said, "We could be profitable now, but we are investing in our growth," according to an article published by the Bloomberg financial service. Meanwhile, Schulman was appearing on CNBC, the financial news network, where he stated:

We had a great quarter. As you get closer to earnings, expectations get higher. We're making all the right tradeoffs for our long-term investors. Our net loss decreased from 10 cents a year ago to 1 cent this quarter. We're going to be a long-term growth company. We're going to do it profitably. For six straight quarters, we've improved our earnings performance and we see no reason to change that now. [Emphasis added.] At the same time, we're going to invest so that we create a growth company with sustainable earnings.

Priceline has a wonderful model. It allows consumers to trade their flexibility for tremendous savings. That type of model would play exceptionally well in a down-turned economy. We provide tremendous value to consumers, as is evident by the fact that we added 1.5 million new customers this quarter and 7 million to date. We think this model has tremendous staying power. [Emphasis added.]



41. Eight days later, on August 1, 2000, defendant Walker sold 8 million shares of Priceline stock for total proceeds of \$190 million and insider N.J. Nicholas sold 100,000 shares for proceeds of \$2,519,000. Nicholas sold another 100,000 shares the next day for proceeds of \$2,532,000. According to a Company report issued by Salomon Smith Barney, Walker sold the 8 million shares to Liberty Media and Vulcan Ventures and said that he intended to invest the proceeds in WebHouse Club, Priceline's grocery affiliate.

42. In the Company's Form 10-Q, filed with the SEC on August 14, 2000, the Company repeated its second quarter results and stated:

We believe our customer base grew during the three and six months ended June 30, 2000 as a result of our advertising campaign during the first half of 2000, and due to the availability of additional product inventory generated from adding three additional domestic air carriers during the fourth quarter of 1999 and two additional major rental cars companies during the second quarter of 2000. The growth in our customer base is also attributable to our continued expansion of our service into new vertical markets. [Emphasis added.]

43. The Form 10-Q included a section entitled "ADDITIONAL FACTORS THAT MAY AFFECT FUTURE RISKS" and that section in turn included a subsection headed: "We Are Dependent On the Airline Industry and Certain Airlines." The subsection identified, in general terms, factors that could adversely effect the company's business including the following: general economic downturns and

recessions, political instability, regional hostilities, increases in fuel prices, travel-related accidents and unusual weather patterns. The Company also stated that "the airlines could attempt to establish their own buyer-driven commerce service or participate or invest in other similar services established to compete with us."

44. The statements, contained in ¶¶37 -42, were each materially false or misleading when issued as they misrepresented and/or omitted the following adverse facts which then existed and disclosure of which was necessary to make the statements made not false and/or misleading, including:

- a. The Company was not "rounding the final turn and on the homestretch towards profitability." Rather, Priceline remained highly vulnerable to changes in airline fares, and in particular, to deeply discounted fares. Such discounts: (i) remove the incentive for fliers to search for cheap tickets on Priceline and consequently reduce sales; and (ii) reduce the Company's revenues and earnings from the sale of airline tickets.
- b. The Company's business model does not have "tremendous staying power." Rather, defendants knew or recklessly disregarded that the Company's model is fundamentally flawed because in many cases, it requires would-be customers to commit to purchasing airline tickets before

knowing the scheduled time of departure, the scheduled time of arrival, the exact cost of the ticket, whether the flight is direct, and/or other material details.

- c. Defendants knew or recklessly disregarded that increasing numbers of customers were dissatisfied with the Priceline bidding process and the Company's refusal to respond to their complaints of poor service and confusing terms. Consequently, a material amount of the Company's customers were not returning to the Company's website and the Company was experiencing declining repeat business.
- d. Loyalty among existing Priceline customers was not growing stronger and improving customer satisfaction is not the Company's "number one priority." Rather, contrary to defendants' representations during the Class Period, the Company was losing customers as a result of its rigid policies. As reported in an article in the Wall Street Journal dated September 26, 2000, which relied on information provided by the Better Business Bureau, at least 300 people filed service complaints against the Company. The article further reported that in June 2000, the Better Business Bureau met with Priceline executives to discuss customers' complaints and Priceline agreed to take the issue seriously. However, since there was no subsequent decline in the number of complaints, on

September 14, 2000, the Better Business Bureau revoked the Company's membership for failure to eliminate the underlying causes of the complaints. Customer complaints included misrepresenting products, not providing promised refunds and not correcting billing problems.

- e. The Company did not face the risk that "the airlines could attempt to establish their own buyer-driven commerce service or participate or invest in other similar services established to compete with us". Rather, at the time this statement was made, six major carriers already had announced plans to establish an online ticket service that would be more flexible than Priceline inasmuch as it will not require customers to commit to the purchase of tickets before knowing the time of the flight and airline carrier.

**THE TRUTH BEGINS TO EMERGE**

45. On September 21, 2000, the Wall Street Journal published an article in its Technology Journal under the headline "Priced out?" The article reported that Priceline's company spokesman, William Shatner, the actor made famous by his starring role in the Star Trek television series, had never actually used Priceline to buy airline tickets for himself and that Shatner planned to reveal this fact on 48 Hours, the CBS news magazine. The article continued as follows:

The TV show plans to disclose Priceline's dark side -- for example, that at least 300 people have filed service complaints against the Company and its "name your price" system for buying hotel rooms, groceries and more. Priceline couldn't confirm the number of complaints but a spokesman said 300 seemed low compared with the five million airline tickets it has sold.

Earlier this month, though, Priceline was kicked out of the Better Business Bureau for "failure to eliminate underlying causes of complaints" made by numerous customers, according to a report issued by the BBB in Connecticut. Customer complaints include misrepresenting products, not providing promised refunds and not correcting billing problems. The Priceline spokesman said the problem is that some customers don't understand how the service works and are disappointed by its restrictions.

In June the BBB met with Priceline executives to discuss customers' dissatisfaction, and Priceline agreed to take the issues seriously, according to the report. But the BBB said since that time there has been no decline in the number of complaints, so on Sept. 14, it revoked the Stamford, Conn., company's membership. [Emphasis added.]

46. Despite this alarming revelation, defendants refused to acknowledge that Priceline's business model was fundamentally flawed, making it impossible for the Company to maintain customer satisfaction, engender brand-name loyalty, and retain customers. Instead, defendants blamed Priceline's troubles on external factors.

47. Specifically, before the market opened on September 27, 2000, the Company issued a corporate release over Business Wire in

which it warned that, due to weakness in the sale of airline tickets, the Company would not make money in the third quarter, it expected third-quarter revenues to be in range of \$340 million to \$345 million compared to analysts' estimates of approximately \$360 million to \$380 million.

48. In the release, the Company stated that:

[R]evenues will be below the Company's expectations due to a shortfall in revenue from the sale of airline tickets, which it expects to be approximately \$0 million to \$25 million less than the Company recorded in the second quarter of 2000. Priceline.com said that, although customer offers for airline tickets and unit tickets are expect to be at or above second quarter 2000 levels, revenue from airline ticket sales decreased as a result of a decline in the percentage of offers accepted and a lower average offer price. [Emphasis added.]

We believe that our revenue disappointment this quarter is attributable to specific events affecting our airline ticket sales, including a second \$20 fuel surcharge imposed in early September by the airlines due to increased fuel prices, the high level of flight cancellations that negatively affected supply, and the introduction by the airlines of their own special sale fares in September which contributed to lower average offer prices for tickets. Finally, we believe that certain promotional strategies we pursued during August and September negatively impacted average ticket sale prices and did not result in targeted increases in ticket sales.

49. In a conference call with investors and the media, Schulman continued to lay the blame for Priceline's failure on

external factors, stating: "This is less about customer demand and more about average revenue per order."

50. Upon news of the announcement, the Company's shares plunged 42% to a 52-week low of \$10.75, in 4 p.m. trading, bringing its market capitalization down to \$1.8 billion from \$3.1 billion.

51. The revenue warning sent analysts scrambling to revise their forecasts for Priceline. Several securities research firms downgraded the stock, including Merrill Lynch, which cut its intermediate-term rating to ``neutral'' from ``accumulate.''

52. Credit Suisse First Boston analyst Heath Terry, stated in an article published in Forbes.com:

We had wondered if there was going to be some kind of fallout because of United's cancellations, but [Priceline management] previously told us they weren't having those kinds of problems. `So the stock drop wasn't too surprising. They're going to miss their numbers and they probably could have communicated that better to the Street.''

#### **UNDISCLOSED ADVERSE INFORMATION**

53. The market for Priceline common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Priceline common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until September 26, 2000, when defendants admitted that losses would be materially greater than they had led analysts to believe. Plaintiff and other members of the Class purchased or otherwise

acquired Priceline common stock relying upon the integrity of the market price of Priceline common stock and market information relating to Priceline, and have been damaged thereby.

54. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Priceline common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, including, inter alia:

- a. The Company was not "rounding the final turn and on the homestretch towards profitability." Rather, Priceline remained highly vulnerable to changes in airline fares, and in particular, to deeply discounted fares. Such discounts: (i) remove the incentive for fliers to search for cheap tickets on Priceline and consequently reduce sales; and (ii) reduce the Company's revenues and earnings from the sale of airline tickets.
- b. The Company's business model does not have "tremendous staying power." Rather, defendants knew or recklessly disregarded that the Company's model is fundamentally flawed because in many cases, it requires would-be



customers to commit to purchasing airline tickets before knowing the scheduled time of departure, the scheduled time of arrival, the exact cost of the ticket, whether the flight is direct, and/or other material details.

- c. Defendants knew or recklessly disregarded that increasing numbers of customers were dissatisfied with the Priceline bidding process and the Company's refusal to respond to their complaints of poor service and confusing terms. Consequently, a material amount of the Company's customers were not returning to the Company's website and the Company was experiencing declining repeat business.
- d. Loyalty among existing Priceline customers was not growing stronger and improving customer satisfaction is not the Company's "number one priority." Rather, contrary to defendants' representations during the Class Period, the Company was losing customers as a result of its rigid policies. As reported in an article in the Wall Street Journal dated September 26, 2000, which relied on information provided by the Better Business Bureau, at least 300 people filed service complaints against the Company. The article further reported that in June 2000, the Better Business Bureau met with Priceline executives to discuss customers' complaints and Priceline agreed to take the issue seriously. However, since there was no

subsequent decline in the number of complaints, on September 14, 2000, the Better Business Bureau revoked the Company's membership for failure to eliminate the underlying causes of the complaints. Customer complaints included misrepresenting products, not providing promised refunds and not correcting billing problems.

- e. The Company did not face the risk that "the airlines could attempt to establish their own buyer-driven commerce service or participate or invest in other similar services established to compete with us". Rather, at the time this statement was made, six major carriers already had announced plans to establish an online ticket service that would be more flexible than Priceline inasmuch as it will not require customers to commit to the purchase of tickets before knowing the time of the flight and airline carrier.

55. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Priceline's business, prospects and operations. These material misstatements and omissions had the cause and effect

of creating in the market an unrealistically positive assessment of Priceline and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **SCIENTER ALLEGATIONS**

56. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Priceline and its business practices, their control over and/or receipt of Priceline's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Priceline were active and culpable participants in the fraudulent scheme alleged

herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

57. The Individual Defendants engaged in such a scheme to inflate the price of Priceline common stock in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; (ii) enhance the value of their personal holdings of Priceline common stock; and (iii) enable Priceline insiders to engaged in profitable sales of their personally-held Priceline common stock.

58. Defendants clearly did not believe their bullish public statements about the Company. In August 2000, during the Class Period and immediately following a string of false statements regarding the Company's third quarter earnings and revenues, defendant Braddock sold 100,000 shares of Priceline common stock for proceeds of \$2,456,880 and defendant Walker sold 8 million shares of Priceline common stock for proceeds of \$190 million. In all, during the Class period, defendants sold 8.1 million shares of Priceline stock, generating proceeds of over \$192.4 million. Insider Nicholas sold an additional 200,000 shares of Priceline

stock during the Class Period, generating proceeds in excess of \$5 million. Thus beginning eight days after Priceline announced its false and misleading results for the second quarter, and at a time when defendants were touting the Company's prospects, insiders were divesting themselves of the Company's stock, selling a total of 8.3 million shares and pocketing proceeds in excess of \$197 million.

59. Insider trading by defendant Walker was especially suspicious in timing and amount inasmuch as he sold a huge bloc of Priceline shares on August 1, 2000, which was far in excess of his sales during he previous 12 months. The timing, the amount of the sales and the purchasers suggest that the Company made the above referenced misrepresentations for the purpose of attracting specific investors to the Company.

60. Specifically, as of March 10, 2000, Walker owned 64,068,933 shares of Priceline common stock.<sup>1</sup> During the 12-month period preceding August 1, 2000, Walker sold a total of 3,223,546 shares of Priceline common stock and acquired 2,104,517 shares of Priceline common stock, resulting in a net divestiture of 1,119,029 shares or roughly 1.7% of Walker's Priceline holdings as of March

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<sup>1</sup> This includes 49,923,929 shares held by Walker individually; 7,279,504 shares held by Walker Digital, LLC, a Delaware limited liability company controlled by Walker Digital Corporation, of which Walker is founder, chairman and controlling stockholder; 5,500,000 shares held by The Jay S. Walker Irrevocable Credit Trust, as to which Walker disclaims beneficial ownership; 1,000 shares held by an immediate family member, as to which Walker disclaims beneficial ownership; and vested options to purchase 1,382,500 shares.

1, 2000. Then, on August 1, 2000, Walker sold 8 million shares of Priceline common stock, constituting 12.4 percent of his holdings. According to a Company report issued by Salomon Smith Barney, Walker sold the 8 million shares, in the form of futures contracts exercisable no earlier than August 2001, to Liberty Media and Vulcan Ventures and said that he intended to invest the proceeds in Webhouse Club, Priceline's grocery affiliate.

61. Salomon Smith Barney reported as follows:

The size of this financing should remove the perception that Webhouse Club may be a financial overhang on Priceline. The method of financing also avoids the dilution and pressure on Priceline's share price which would have been caused by a new share issuance or sale of Mr. Walker's shares on the open market. Clearly this represents a strong vote of confidence in Priceline by two of the Internet's most prominent investors. While Webhouse is likely to require an additional 1-2 rounds of financing in 2001, efforts to finance the affiliate should not affect Priceline.

Paul Allen's Vulcan Ventures and Liberty Media, headed by John Malone, paid \$190M for a forward contract to purchase 8m shares of PCLN. The contract entitles them to take possession of the shares between August 1, 2001 and August 1, 2002. Jay Walker will retain ownership of the shares in the interim. In compensation for the illiquidity of their investments, Liberty Media and Vulcan Ventures also received options to purchase an interest in Walker Digital Corporation, at exercise prices based on valuations of between \$1.5b and \$1.8b. [Emphasis added.]<sup>2</sup>

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<sup>2</sup> According to newspaper reports, on September 11, 2000 Walker also sold a forward contract to buy 2 million Priceline shares at an aggregate price of \$50 million to His Royal Highness

62. As set forth in 16 above, WebHouse is a closely-held venture to which Priceline licenses its name and business model in return for a royalty arrangement and a fully vested, non-forfeitable warrant to acquire a majority of the equity of the WebHouse that is exercisable under certain conditions. Although the Company realized only \$33,777 of royalty revenue in 1999, upon receipt of the warrant in the fourth quarter of 1999, Priceline recognized \$188.8 million of income representing the amount of the estimated fair value of the warrants, according to the Company's Annual Report for the fiscal year ended December 31, 1999. However, until the warrants are converted, the results of WebHouse financial results are not included in Priceline's financial results. By selling the warrants to Vulcan and Liberty Media in the form of futures contracts, Walker divested himself of a substantial portion of his interest in the failing Priceline company without diluting the value of his remaining holdings.

63. Trading by insiders was as follows:

**DEFENDANT RICHARD S. BRADDOCK, CHAIRMAN OF THE BOARD**

DATE	SHARES	PRICE	PROCEEDS
8/16/00	28,000	\$25.52	\$692,160
8/15/00	72,000	\$25.31	\$1,764,720

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Prince Alwaleed bin Talal bin AbulAziz Alsaud, chairman of Kingdom Holding Co. Prince Alwaleed will be able to take title to the shares no earlier than September 8, 2001 and no later than September 8, 2002.

TOTAL	100,000	\$25.31-\$25.52	\$2,456,880
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**N. J. NICHOLAS, JR.**

DIRECTOR<sup>3</sup>

DATE	SHARES	PRICE	PROCEEDS
8/1/00	100,000	\$25.19	\$2,519,000
8/2/00	100,000	\$25.32	\$2,532,000
TOTAL	200,000	\$25.19 - \$25.32 (estimated)	\$5,051,000

**JAY S. WALKER, DIRECTOR, FOUNDER,**

AND VICE CHAIRMAN OF THE BOARD<sup>4</sup>

DATE	SHARES	PRICE	PROCEEDS
8/1/00	8,000,000	\$23.75	\$190,000,000
TOTAL	8,000,000	\$23.75	\$190,000,000

**STATUTORY SAFE HARBOR**

64. The federal statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Further, none of the statements pleaded herein which were forward-looking statements were identified as "forward-looking

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<sup>3</sup> This includes the sale and/or proposed sale of 200,000 shares by Gore Creek Trust, as to which insider N.J. Nicholas Jr. disclaims beneficial ownership.

<sup>4</sup> This does not include the forward contract to buy two million Priceline shares at an aggregate price of \$50 million sold by Walker to His Royal Highness Prince Alweed bin Talal bin AbulAziz Alsaud, chairman of Kingdom Holding Co.



statements" when made. Nor was it stated that actual results "could differ materially from those projected." Nor were the forward-looking statements pleaded accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from the statements made therein. Defendants are liable for the forward-looking statements pleaded because, at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the forward-looking statement was authorized and/or approved by an executive officer of Priceline who knew that those statements were false when made.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

65. At all relevant times, the market for Priceline common stock was an efficient market for the following reasons, among others:

(a) Priceline common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market ("NASDAQ"), a highly efficient market;

(b) As a regulated issuer, Priceline filed periodic public reports with the SEC and the NASDAQ;

(c) Priceline stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their

respective brokerage firms. Each of these reports was publicly available and entered the public marketplace; and

(d) Priceline regularly issued press releases which were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

66. As a result, the market for Priceline securities promptly digested current information with respect to Priceline from all publicly-available sources and reflected such information in Priceline's stock price. Under these circumstances, all purchasers of Priceline common stock during the Class Period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

#### COUNT I

#### **For Violations Of Section 10(b) Of The 1934 Act And Rule 10b-5 Promulgated Thereunder Against All Defendants**

67. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

68. During the Class Period, defendants Priceline and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Priceline

common stock; and (iii) cause plaintiff and other members of the Class to purchase Priceline stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants Priceline and the Individual Defendants, and each of them, took the actions set forth herein.

69. These defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Priceline common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued herein as controlling persons of Priceline, as alleged below.

70. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R.

§ 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

71. Priceline and the Individual Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects of Priceline as specified herein. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Priceline's value and performance and substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Priceline and its business, operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as

a fraud and deceit upon the purchasers of Priceline securities during the Class Period.

72. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) each of the Individual Defendants was a high-level executive and/or director at the Company during the Class Period; (ii) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and (iv) the Individual Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

73. These defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them. Such defendants' material

misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Priceline's operating condition, business practices and future business prospects from the investing public and supporting the artificially inflated price of its stock. As demonstrated by their overstatements and misstatements of the Company's financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

74. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Priceline's common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of Priceline's shares was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Priceline common stock during

the Class Period at artificially inflated high prices and were damaged thereby.

75. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true performance, business practices, future prospects and intrinsic value of Priceline, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Priceline securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

76. By virtue of the foregoing, Priceline and the Individual Defendants each violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

77. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

COUNT II

**For Violations Of Section 20(a) Of The  
1934 Act Against Individual Defendants**

78. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants.

79. The Individual Defendants were and acted as controlling persons of Priceline within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

80. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and,



therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

81. As set forth above, Priceline and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **BASIS OF ALLEGATIONS**

82. This complaint is pleaded in conformance with Federal Rules of Civil Procedure and the PSLRA. Plaintiff has alleged the foregoing based upon the investigation of plaintiff's counsel, which included a review of Priceline's SEC filings, securities analysts' reports and advisories about the Company, press releases issued by the Company and media reports about the Company.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on his own behalf and on behalf of the Class, pray for judgment as follows:

(a) Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

(b) Awarding plaintiff and the members of the Class damages in an amount which may be proven at trial, together with interest thereon;

(c) Awarding plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

(d) Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiff has an effective remedy.

(e) Such other relief as this Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury.

THE PLAINTIFF

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