

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

In Re: Priceline.com : **Master File No.**
Securities Litigation : **3:00cv1884(DJS)**

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This document relates to: :
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CONSOLIDATED AMENDED COMPLAINT.

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I. NATURE OF THE ACTION.

1. This is a securities class action on behalf of a class (the “Class”) of all persons who purchased or otherwise acquired securities of priceline.com, Inc. (“Priceline,” “PCLN” or the “Company”) between January 27, 2000 and October 4, 2000 (the “Class Period”), seeking remedies under the Securities Exchange Act of 1934 (“1934 Act” or “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a).

2. Priceline is a company that is and, at all pertinent times, has been a relatively small, niche player in the internet travel business, selling airline tickets, hotel rooms and rental cars through its “Name Your Own Price” system (“Priceline’s Business Model” or “Business Model” or the “Name Your Own Price’ System”). The “Name Your Own Price” System essentially permits consumers to establish an “offer” price to purchase airline tickets, hotel rooms and rental cars and, based upon the collection of excess capacity in those markets at certain times, Priceline seeks to locate suppliers to meet that “offer” price, thereby providing an acceptable and, at times, lower price for the item(s) purchased than otherwise would be available to consumers.

3. During the Class Period, Defendants misrepresented to the investing public that it was much more than a niche, online travel site and, rather, sought to convince the investing public that it constituted an entirely new business methodology, which was easily expandable to numerous other markets. The poster child of Priceline’s purported expandability was Priceline Webhouse Club, Inc. (“WebHouse”). By the beginning of the Class Period, however, Defendants knew that Priceline’s Business Model was not expandable, as demonstrated by the model’s failure in the case of WebHouse.

Nevertheless, Defendants affirmatively misrepresented the success of WebHouse to maintain Priceline's stock price, to convince the investing public that Priceline's Business Model was expandable and profitable and to attract investment for WebHouse as part of a sheer gamble that somehow WebHouse would become a sustainable business.

4. During the Class Period, Defendants materially misrepresented the true status of Priceline's Business Model and its acceptance in various markets. These misrepresentations caused Priceline's stock to trade at artificially high levels and enabled the Individual Defendants to sell more than a **quarter billion dollars** of Priceline stock. After reaping hundreds of millions of dollars of ill gotten gains, the Individual Defendants disclosed the truth about Priceline – that its efforts to expand its Business Model were a reckless gamble that had failed, and the stock price crashed. Defrauded investors were left holding a stock of diminished value in a small niche online travel company with, at best, a questionable future.

II. JURISDICTION AND VENUE.

5. Plaintiffs bring this action and this Consolidated Amended Complaint ("Complaint") asserts claims 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).

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

7. Venue is proper in this judicial district pursuant to Section 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 in this Complaint, including the preparation of and dissemination to the

investing public of false and misleading information, occurred in this judicial district. Priceline's home offices and principle place of business are located in this judicial district.

8. In connection with the acts, conduct and other wrongs complained of in this Complaint, the Defendants used the means and instrumentalities of interstate commerce, including, but not limited to, the national securities exchanges.

III. THE PARTIES.

A. Plaintiffs.

9. Plaintiff, Amerindo Investment Advisors, Inc., a New York corporation, purchased Priceline common stock during the Class Period, and has suffered substantial damages as a result of the wrongful acts of Defendants as alleged in this Complaint.

10. Plaintiff, Iliana Ilieva, an individual, purchased Priceline common stock during the Class Period, and has suffered substantial damages as a result of the wrongful acts of Defendants as alleged in this Complaint.

11. Plaintiff, Leisinger Pension Fund, a pension fund based in Switzerland, purchased Priceline common stock during the Class Period, and has suffered substantial damages as a result of the wrongful acts of Defendants as alleged in this Complaint.

12. Plaintiffs, Mark Weiss and Marilyn D. Engel, a married couple, purchased Priceline common stock during the Class Period, and have suffered substantial damages as a result of the wrongful acts of Defendants as alleged in this Complaint.

13. Plaintiff, Joseph Wilenkin, an individual, purchased Priceline common stock and options during the class period, and has suffered substantial damages as a result of the wrongful acts of

Defendants as alleged in this Complaint.

B. Defendants.

14. Defendant, Priceline, is a Delaware corporation with its executive offices and principal place of business located at 800 Connecticut Avenue, Norwalk, Fairfield County, Connecticut. Priceline describes itself as a “Name Your Own Price” patented Internet pricing system where customers set the price for goods and services, such as airline tickets, purportedly enabling consumers to achieve significant savings. The Company claims that its Business Model is based on the electronic collection of consumer demand (in the form of individual customer offers guaranteed by a credit card) for a particular product or service at a price set by the customer, which is then satisfied by communicating that demand directly to participating sellers or their private databases. Priceline’s Business Model originally was implemented in the airline ticket market by securing guaranteed inventory to meet the collected demand. Priceline’s common stock is traded on the NASDAQ National Market (“NASDAQ”) under the symbol “PCLN.”

15. Defendant, Deloitte & Touche, LLP (“Deloitte” or “Accountant Defendant”), is a “Big Five” accounting firm that maintains offices throughout the United States, including offices in Hartford, Stamford and Wilton, Connecticut and, at all pertinent times, served as Priceline’s auditor. Deloitte audited the 1999 year-end financial statement of Priceline.

16. Defendant, N.J. Nichols (“Nichols”), was at all relevant times, a director of Priceline. He currently serves as a director of Synapse Group, Inc., a privately held direct marketing firm co-founded by Walker and which conducted substantial business with WebHouse during the Class Period. Nichols sold 500,000 shares of Priceline stock during the Class Period.

17. Defendant, Daniel H. Schulman (“Schulman”), is Priceline's President and Chief Executive Officer (“CEO”). Schulman was Priceline’s Chief Operating Officer from June, 1999 until June 15, 2000, at which time he became Priceline’s CEO. Schulman also was a Director of the Company throughout the Class Period.

18. Defendant, Richard S. Braddock (“Braddock”), was, at all relevant times, Priceline's Chairman of the Board. Braddock joined the Company in July 1998 and served as Priceline’s first CEO from July 1998 through June 15, 2000. Braddock sold at least 100,000 shares of Priceline stock during the Class Period at artificially inflated prices for total proceeds of at least \$2.4 million.

19. Defendant, Jay S. Walker (“Walker”), was, at all relevant times, Priceline's founder and Vice Chairman of the Board. Walker also served as the CEO of Priceline WebHouse throughout the Class Period and controlled Walker Digital Corp. (“Walker Digital”), an invention and development company, which was instrumental in funding Priceline and WebHouse at their inceptions. Walker Digital owned 35% of Priceline and 34% of WebHouse as of November 1, 2000. Walker owned 34.1% of the stock of Walker Digital, rendering him a controlling shareholder of Walker Digital, according to Priceline’s 2000 Form 14A. As revealed therein, Walker was the founder of Walker Digital and serves as its Chairman of the Board. Priceline’s 2000 Form 14A also reveals that Walker Digital controls Walker Digital LLC. Walker directly sold at least 10,900,000 shares of Priceline stock during the Class Period at artificially inflated prices for total proceeds of at least \$286,000,000.00. Additionally, Walker, by and through Walker Digital and Walker Digital, LLC, sold an additional 2,500,000 shares of Priceline stock during the Class Period for proceeds of approximately \$123,441,500.

20. The defendants referenced in paragraphs 16 through 19 are referred to in this Complaint as the “Individual Defendants.” Unless otherwise indicated, “Defendants” refers collectively to Priceline and the Individual Defendants.

C. Controlling Persons.

21. By reason of their ownership of Priceline securities, management positions, and/or membership on Priceline's Board of Directors, each of the Individual Defendants was a controlling person of Priceline within the meaning of Section 20 of the Exchange Act throughout the Class Period. By virtue of their positions and power to control public statements, Schulman, Braddock and Walker each had the power and influence to control the actions of Priceline, as well as WebHouse, and to cause (and did cause) the Company and WebHouse to engage in the unlawful conduct complained of in this Complaint. Schulman, Braddock and Walker all received daily reports regarding the sales, revenues, new and repeat customers and other business performance, including number of offers by customers to purchase tickets or other items, for both Priceline and WebHouse. Schulman, Braddock and Walker also controlled the employees of Priceline. Priceline controlled the Individual Defendants and other officers of the Company. By virtue of their positions, relationships and power, Priceline, Walker, Schulman and Braddock all were controlling persons of WebHouse and its officers, employees and agents.

D. Alter Egos/Integrated Enterprise.

22. At all pertinent times, Priceline and WebHouse also have acted as the alter egos of each other, as an integrated enterprise and/or as a single entity. During the time of its brief existence, WebHouse maintained no independent corporate existence and, instead, was totally dominated by

Priceline. Specifically, WebHouse and Priceline shared (a) common employees, (b) common resources, including computer servers, internal e-mail, other communication systems and other equipment, (c) common office space, (d) common shareholders, officers and management, (e) a common logo and marketing campaign, and, (f) at all pertinent times, WebHouse was undercapitalized and received financial and other subsidization from Priceline without any expectation or requirement on the part of Priceline that WebHouse pay for such services and assistance.

IV. SUMMARY OF DEFENDANTS' COURSE OF CONDUCT.

A. The Basis For Priceline's Stock Valuation.

23. Priceline's initial public offering, conducted on March 30, 1999, was immensely successful. While PCLN stock was offered to the public at \$16 per share, within months, its stock had soared to over \$145 per share.

24. By the Summer of 1999, however, PCLN's stock price had declined to the \$60-\$70 per share range. The Individual Defendants knew that PCLN's stock only could justify this stock valuation if they were successful in expanding the Company's core business **and** convincing the investing public that Priceline was more than an on-line travel agency and, instead, was a successful business model that was expandable beyond its core businesses: i.e., the online sale of airline tickets and hotel and car rental reservations. If successful in expanding beyond the Company's core business, Priceline and the Individual Defendants hoped that the Company would realize its claim of unlimited potential, thereby maintaining or increasing its stock valuation.

B. Defendants' Efforts To Expand Priceline's Core Business.

25. To expand its core business (i.e., the sale of airline tickets), Defendants knew that they

needed to enlist the support and participation of other airline companies in Priceline's "Name Your Own Price" System beyond Delta Airlines ("Delta"), which had been Priceline's principal ticket supplier from the date of its inception and until the Summer of 1999. To attract additional airlines, after negotiations in the Summer and Fall of 1999, Priceline issued warrants to airline carriers for the purchase of PCLN shares. These warrants for the purchase of PCLN shares were similar to warrants that Delta had previously received in return for its agreement to provide airline tickets for use in the Company's "Name Your Own Price" System. Defendants knew that the issuance of these warrants would subject the Company to a massive one-time charge to earnings. As a result, after issuance of the warrants in or about November 1999, the Company was forced to incur a \$1.1 billion charge against income in its 1999 fourth quarter.

C. Defendants' Efforts To Demonstrate That Priceline's Business Model Was Expandable Beyond OnLine Travel Through The Creation Of WebHouse.

26. Defendants' efforts to demonstrate that the Company's business model was expandable beyond the online travel business focused on Walker's creation of WebHouse. WebHouse was established as a private, closely held, "off the books" affiliate and licensee of Priceline, which would allow consumers to "Name Your Own Price" for, among other things, groceries and gasoline using Priceline's patented system of purchasing goods and services. Although not revealed to investors, Defendants created WebHouse as a private, and allegedly separate, company so that they could conceal the monumental losses they knew WebHouse almost certainly would sustain. In fact, however, WebHouse and Priceline acted as alter egos of each other, as well as an integrated enterprise and single entity, and WebHouse maintained no true, independent corporate identity or existence.

27. The creation of WebHouse was designed to allow users to bid for groceries and gasoline online using Priceline's website, have their charge cards billed by Priceline, and then pick up their purchases at locally participating stores. The grocery stores and gasoline stations were to receive full retail price and, as Defendants explained the process to the press and analysts, as in the case of their airline ticket business, the manufacturers of the products sold and/or other sponsors were to cover the spread between users' discount prices and the retail prices.

28. WebHouse also was seen as an immediate benefit to Priceline since the Company licensed its business model to WebHouse. Under that licensing agreement, Priceline was to receive royalty payments from WebHouse, based on its revenues, and was to receive payments from WebHouse for providing various services. In addition, because WebHouse users could only access WebHouse through Priceline's website, WebHouse was portrayed as a seeding vehicle for increasing the number of users for the Company's core services. Finally, in exchange for the right to use Priceline's business model, WebHouse issued warrants to Priceline to acquire 137 million shares of WebHouse stock (a majority interest) at \$3.00 per share, which, **if** WebHouse were successful, would inure to the benefit of Priceline. As a result of the receipt of these warrants, in the fourth quarter of 1999, Priceline recorded a one-time **gain** of \$189 million, claiming that the supposed fair value of its WebHouse only equaled their cost. Consequently, by virtue of this one-time gain recorded in the 1999 fourth quarter, Defendants recognized income in this amount and offset a significant portion of the loss incurred in the same quarter as a result of issuing the airline warrants described above, thereby allowing Priceline to continue its trend toward profitability which was of paramount importance to the valuation of Priceline's securities. Additionally, Defendants carried the warrants as a \$189 million asset on

Priceline's balance sheets throughout the Class Period.

29. More importantly, WebHouse was created to confirm that Priceline's Business Model was expandable beyond its core products. This was critically important to Priceline because PCLN's shares had been and were valued based upon the assumption fostered by Priceline's representations that its "Name Your Own Price" System was revolutionary and easily expandable beyond the the Company's online travel business. It also was necessary for Priceline and the Individual Defendants to create WebHouse because, notwithstanding the success of Priceline's IPO, and all of the press attention Walker had generated for the "Name Your Own Price" System, Priceline had not signed any licensing deals with any independent third parties to demonstrate the alleged expandability of the Business Model.

30. By the beginning of the Class Period, at which time Priceline and the Individual Defendants had three months of WebHouse's operational data in hand, the Defendants knew that manufacturers and wholesalers were refusing to participate in WebHouse (and provide discounts) because, to do so, was contrary to efforts by the manufacturers and wholesalers to build, maintain and distinguish their brand names, for which they had spent tens/hundreds of million of dollars. The bidding process employed in WebHouse, whereby users were required to be flexible with respect to brand and accept one of several competing manufacturer's goods at a discount, was completely contrary to manufacturers' efforts to build brand loyalty and antithetical to the manufacturers' approach to marketing and driving sales.¹

¹Priceline did not encounter this difficulty with airline ticket, hotel and rental car reservation sales because (a) the airlines, hotels and rental car companies were only selling anticipated excess capacity which, absent a sale, would not be utilized, and (b) purchasers of airline tickets, hotel rooms and rental

31. Since manufacturers were not participating in WebHouse to any significant degree, it was necessary for WebHouse to directly subsidize the discount applicable to the majority of products sold by WebHouse. These subsidies grew from \$1 million per week when WebHouse began operations in early November 1999 to \$5 million later in the Class Period. As one former WebHouse employee acknowledged, WebHouse essentially was giving the groceries away by incurring a loss on virtually every sale. Thus, as revealed after the Class Period, WebHouse was subsidizing \$4.00 of the average \$13.00 per visit discount given to its users at grocery stores.² As a result of its representations that WebHouse was a separate, privately held company, Priceline conveniently avoided the necessity of reporting to investors the true financial condition and prospects of WebHouse or the dismal lack of participation by grocery manufacturers on the supply side of Priceline's Business Model.

32. Nevertheless, Defendants pushed forward with WebHouse fully aware that the only prospect of success by WebHouse was to induce manufacturers to overcome their reluctance to participate. To overcome that reluctance, Defendants believed that they needed to reach a "critical mass" of WebHouse users (regardless of cost to WebHouse), at which time manufacturers **might** conclude that the gain from the amount of potential sales would overcome the losses arising from the degradation of their brands, and the tens/hundreds of millions of dollars previously spent by these manufacturers to promote their brands. In essence, WebHouse was a multi-hundred million dollar

cars are primarily price driven as opposed to brand loyal.

²The more WebHouse expanded, the more it lost, and the closer it came to collapse. Consequently, Defendants were fully aware, by the beginning of the Class Period, that WebHouse was worthless and Priceline's warrants to acquire WebHouse stock also were worthless since the chances of WebHouse stock being worth more than \$3.00 per share (the strike price of Priceline's WebHouse warrants) was virtually nonexistent.

crap-shoot that Defendants believed was their only hope (albeit a minuscule one) of establishing the scalability of its Business Model to markets beyond online travel.

D. Defendants Engage In A Series Of Misrepresentations To Sustain WebHouse.

33. To fund this crap-shoot, Defendants knew that they would need to raise additional funding for WebHouse in amounts totaling many hundreds of millions of dollars. To convince investors, and to gather additional WebHouse users, Defendants needed to promote the fictitious picture that WebHouse was not just successful but wildly successful. For that reason, Defendants routinely touted the success of the Priceline Business Model by heralding WebHouse's expansion into new supermarkets and cities and concealed the fact that these expansions merely brought WebHouse that much closer to its financial demise, at which time investors would learn that Priceline's Business Model could not be successfully expanded to other markets. Additionally, Defendants, both directly and through WebHouse and its spokespeople, who were all controlled by Priceline, routinely represented that WebHouse's discounts were being paid by participating manufacturers and/or third party sponsors. The press and analysts, throughout the Class Period, focused heavily on WebHouse's purported success and Priceline's apparent success in expanding its Business Model into new markets by virtue of WebHouse.

34. In late February of 2000, in order to continue the "hype" regarding the scalability of the Priceline Business Model, Defendants began to tout WebHouse's move into the gasoline business. Like the grocery business, Defendants knew that this expansion also was doomed from the beginning because WebHouse (not the oil producers, third party advertisers or gas stations) was being forced to subsidize the vast majority of consumer discounts. In fact, after the Class Period, it ultimately was

revealed that Priceline was going out-of-pocket approximately 15-16 cents for every gallon of gas sold on WebHouse. Again trying to reach critical mass, Defendants portrayed WebHouse's gasoline business as a success and falsely misled the market and investing public into believing that Webhouse was recouping the discounts through third party advertising payments from local gas stations and gasoline producers. As with its foray into the grocery business, this simply was not the case. Furthermore, all too conveniently, since WebHouse was purportedly a separate, privately held company, there was no verifiable data from which the investing public could test Defendants' assertions.

35. Priceline also blatantly misrepresented that all appropriate adjustments had been made to its financial statements published during the Class Period. Deloitte similarly misrepresented that Priceline's financial statements had been presented in compliance with Generally Accepted Accounting Principles ("GAAP") and that it had followed Generally Accepting Auditing Standards ("GAAS") in conducting its year end 1999 audit of Priceline. In reality, as explained in detail in this Complaint, Priceline's financial statements materially overstated at least \$189 million of the Company's income throughout the Class Period, materially understated the one-time loss associated with issuance of the airline warrants in the fourth quarter of 1999, which was offset by the gain recorded on the acquisition of the WebHouse warrants, and materially overstated the value of the Company's assets by \$189 million throughout the Class Period.

E. Defendants' Belated Disclosure Of WebHouse's Failure And Priceline's Inability To Extend Its Business Model To Other Markets.

36. At the end of the Class Period, Defendants suddenly and without warning announced

that WebHouse was shutting down. At that time, Walker finally came clean and admitted that Webhouse had been covering the vast majority of the discounts and that he had been fully aware of the enormous risks involved in WebHouse from its inception. Numerous stories were printed in the press confirming that WebHouse, contrary to Defendants' statements issued throughout the Class Period, suffered from a lack of usage and that WebHouse and Priceline were beset, throughout the Class Period, by various operational problems with Priceline's computer systems. Although not revealed, these problems stemmed, in part, from the instability of Priceline's Alpha Platform (which also served Webhouse) and which had been plagued with instability since 1999. These computer problems increasingly affected Priceline's ability to service and respond to its customers. Upon Defendants' announcement, Priceline's stock price declined approximately 38%; numerous analysts noted the importance of the loss of Priceline's royalty revenue stream and questioned Priceline's ability to expand its Business Model beyond its core business. As a result, investors concluded that Priceline presented a much smaller, long-term company than had previously been thought. Their conclusions were demonstrated correct as Priceline, at or within weeks of the close of the Class period, announced the termination of various other efforts to expand the Business Model. Moreover, analysts noted, and Priceline admitted, that the Company's projections for profitability by the end of 2000 were now simply unattainable. As icing on the cake, the Company was forced belatedly to take a one time charge of \$189 million to write off the worthless WebHouse warrants.

F. Defendants' Misrepresentations Regarding Their Core Business.

37. Defendants also deceived investors, throughout the Class Period, regarding its core business -- airline tickets -- and the Company's prospects for profitability. At the beginning of the

Class Period, Defendants advanced their expected date of profitability for the Company from the previously projected second half of 2001 to the first half of 2001. Later, on March 6, 2000, Defendants led the market to believe the Company would be profitable in 2000. After the Company announced its second quarter results in late July, 2000, Schulman and Heidi Miller, the Company's CFO, projected profitability for the Company by the third or fourth quarter of 2000. After the airlines announced the launch of Hotwire, which would be the airlines' joint online discount ticket site, on June 29, 2000, Walker reiterated the Company's projections of profitability, openly dismissing Hotwire and asserting that it did not constitute a competitive threat.³

38. Defendants knew that their projections of profitability, which were extremely important to the market, were baseless given (a) the increasing online airline ticket competition, (b) the dwindling supply of airline tickets available to Priceline, (c) the number of repeat users and new customers of Priceline's airline ticket service was diminishing, (d) internal documents confirmed that Priceline's sales of airline tickets peaked in mid-March, 2000 and, thereafter, tailed off, and (e) Defendants had built into their projections the continued existence of Webhouse, and the expected flow of funds from Webhouse for Priceline's services set forth in the Webhouse agreements, as well as Defendants' ability to inappropriately push the massive expenses Priceline was facing as a result of its need to upgrade its computer systems on to WebHouse, thereby materially lowering Priceline's reported expenses.

V. DEFENDANTS' SCIENTER: KNOWLEDGE OR RECKLESS DISREGARD.

39. As alleged herein, Defendants acted with scienter in that all Defendants knew or

³In fact, internal Priceline documents confirm that, during the Class Period, Priceline's sale of airline tickets peaked at 120,000 tickets in the week preceding March 12, 2000 and, thereafter, declined.

recklessly disregarded that the public documents and statements, issued or disseminated by or in the name of the Company, as identified in this Complaint, were materially false and misleading when issued and made. Defendants knowingly and substantially participated, or acquiesced, in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. Defendants knew and/or recklessly disregarded the false and misleading nature of the information that they caused to be disseminated to the investing public regarding Priceline and WebHouse. 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 officers and other employees at the highest level of Priceline, including the Individual Defendants.

40. As a result of their Board of Directors memberships and/or executive and managerial positions with Priceline and their control over WebHouse, each of the Individual Defendants had access to the adverse non-public information about the business, assets, finances, markets and present and future business prospects of Priceline and WebHouse via access to internal corporate documents, internal computer databases, conversations and other communications with corporate officers or employees of both Priceline and Webhouse, attendance at management and/or Board of Directors' meetings and committees thereof and/or via reports and other information provided to them in connection with and as a result of their positions in the Company. Priceline maintained a sophisticated system of internal controls that was organized, directed and supervised on a daily basis under the supervision of the Individual Defendants. As part of that internal control system, the Defendants received, both before and during the Class Period, the following reports, among others, regarding the business operations of both Priceline and WebHouse:

a. Pricing Reports. These reports were not formally titled, but were referred to within Priceline and WebHouse by their subject matter. For example, these reports reflected grocery and gasoline prices for products sold through the WebHouse service. As many as sixty (60) separate pricing reports were prepared for WebHouse's/Priceline's Marketing Department on a daily and as-needed basis. These reports were provided to Walker, Schulman and Braddock. These reports contained information on, inter alia: (i) the number of orders that were processed by WebHouse and Priceline during a given time period; (ii) the amount of revenue derived from such orders; and (iii) the profit margin or lack thereof for such transactions;

b. Demographic Analyses. These reports were prepared on an ongoing basis throughout the Class Period and identified inter alia: (i) the identity of WebHouse's and Priceline's customers; (ii) what products the customers purchased; (iii) how much each customer purchased; and (iv) how often each customer purchased. These reports were provided to Priceline's and WebHouse's Executives, including Walker, and Priceline/WebHouse's Marketing Department. These internal analyses showed that only 10% of those who visited the WebHouse website actually purchased anything; only 25% of this 10% used the WebHouse service a second time; and that only 25% of that 2.5% (i.e., .625% of all visitors or less than 1 in 100) used the WebHouse service a third time.

c. Network Operations Center Reports. These reports were generated on a regular basis and identified, inter alia: (i) the number of customers who used the WebHouse and Priceline site(s) each hour; and (ii) the number of transactions completed each hour, each shift and each day.

d. Promotion Reconciliation Reports. These reports were available on a daily

basis and provided information on the financial impact of promotions which were run on the Priceline and WebHouse sites.

41. Numerous additional facts confirm Defendants' knowledge of the matters alleged herein. These facts include:

a. Defendants knew that WebHouse was likely to fail, and that the value of the WebHouse warrants on Priceline's books were grossly inflated. By keeping WebHouse off of Priceline's books, Defendants sought to conceal the monumental losses Defendants knew that WebHouse would be forced to incur, losses that were exacerbated by manufacturer and gasoline producer non-participation in Webhouse.

b. Despite Defendants' ambitious plans for WebHouse, Defendants knew or recklessly disregarded that WebHouse was never a viable entity. According to senior managers at Webhouse, during its incubation stage, senior WebHouse executives and Braddock expressed serious concerns to Walker regarding the viability of the WebHouse business model. Braddock's concerns were shared with senior Priceline management and its Board of Directors. Braddock's concerns were chiefly focused on the number of purchases that WebHouse would have to subsidize before WebHouse signed up enough manufacturers or suppliers to make the business a viable one. Braddock also expressed to Walker concerns regarding the technological capabilities of the WebHouse website. Senior management at WebHouse believed that as a result of Alpha/Oracle database problems and instability with Webhouse's Novus computer servers, the website was not going to be able to handle the anticipated demands. As such, Braddock expressed concerns to senior executive officers and Priceline Board members regarding the timing of the WebHouse launch. Walker rejected these

concerns outright, insisting that Priceline needed the “PR value” that would come with a WebHouse launch. Walker himself would later acknowledge, after the Class Period, that WebHouse had always been a “gamble.”

c. Defendants knew, from the time WebHouse was formed, that manufacturers had by and large refused to participate in WebHouse. In this regard, Defendants knew WebHouse was unlike Priceline’s airline ticket business where Priceline had proceeded with committed suppliers of discounted airline tickets. In contrast, WebHouse, aware that customers would not use the site unless it made brand products available, was forced to offer such products and underwrite the discounts even though manufacturers were unwilling to discount those products to WebHouse. Defendants knew that WebHouse’s business model was fatally flawed since manufacturers had refused to sacrifice brand loyalty by participating in WebHouse. While Defendants misled the public into believing that WebHouse was wildly successful, Defendants knew otherwise. After the Class Period, Walker was forced to admit that the plan for WebHouse, from the beginning, was to subsidize enough customer purchases so that manufacturers would overcome their reluctance to join WebHouse. As admitted by Defendants, and numerous newspaper stories reported, as a result of the absence of manufacturer participation, WebHouse was forced to fully subsidize most of its customers’ discounts. Webhouse’s subsidies equaled at least \$1 million a week at the beginning of the Class Period and climbed to approximately \$5 million per week during the Class Period. Thus, Defendants knew or recklessly disregarded that the Business Model was contrary to the concept of brand building and WebHouse’s business was destined to fail. Each expansion of WebHouse into a new city or supermarket chain further added to its losses, due to the massive amount of subsidizing it was forced to provide, and

brought WebHouse closer to collapse.

d. After the Class Period, Walker admitted that he was fully aware of the risks in WebHouse when it was formed and termed the venture a “gamble” from the beginning.

e. WebHouse’s Audit Committee was comprised of three directors, one of whom was Walker Digital’s appointee. Since Walker was a controlling person of Walker Digital, Walker had direct access to all information available to WebHouse’s Audit Committee.

f. Pursuant to agreements dated October 26, 1999 between WebHouse, Priceline and Walker Digital (the “WebHouse Agreements”), Priceline had the right to conduct semi-annual audits of WebHouse’s royalty payments and to verify the accuracy of WebHouse’s reports provided to Priceline pursuant to the WebHouse Agreements. Since royalties were to be paid based on revenue, Priceline had full access to all information demonstrating the fraud alleged in this Complaint.

g. By late Summer of 1999, Defendants knew that Priceline’s computer systems were not adequate to handle the traffic from the Company’s core businesses. Faced with the prospect of spending tens of millions of dollars to upgrade those systems, an occurrence which indefinitely would delay Priceline’s achievement of profitability, Defendants formed WebHouse and obligated it to pay for any improvements to Priceline’s computer systems which Defendants might term as necessary to WebHouse’s operations. Since WebHouse and Priceline shared the same computer systems and databases, WebHouse, as an “off the books” affiliate, provided a vehicle to transfer expenses to WebHouse and effectively hide Priceline’s true expenses, thereby manipulating and understating Priceline’s expenses throughout the Class Period.

h. Since Priceline employees were developing and generating reports on

behalf of Webhouse on a daily basis, and Webhouse's data was stored upon Priceline's computer system, Defendants actually had access to the financial and business performance of Webhouse on a daily basis.

i. According to news stories published after the Class Period, and as verified, in large part by Webhouse information technology personnel, Defendants had knowledge that Priceline's computer systems already were not adequate to handle Priceline's airline business even before WebHouse was formed. Defendants knew that the addition of traffic from WebHouse's grocery business further taxed Priceline's inadequate computer systems from almost the first day of WebHouse's operations. Thus, on Thursday and Friday of the week WebHouse commenced operations, Priceline's computers began to crash under the weight of the increased usage prompted by WebHouse and because of systemic database problems. By early January, 2000, the computers were routinely malfunctioning, causing the Company to hire programmers to work twenty-four hours per day in an attempt to resolve ongoing problems. In addition, it was necessary to delay normal maintenance upon Priceline's computers, which was necessary to ensure smooth operations in Priceline's core online travel business, in order to accommodate "traffic" from the WebHouse system. By April 2000, Priceline's computer systems were crashing as often as once per day and Defendants recognized that Braddock's pronouncements to Walker prior to the Class Period regarding the inadequacy of Priceline's computer systems to handle both Priceline's and WebHouse's businesses were correct. As a result, Defendants, at that time, decided that it was necessary to install new computer systems, costing up to \$200 million. Defendants also were aware that these computer problems were increasingly impacting Priceline's core businesses, resulting in numerous complaints being filed against Priceline

through the Summer of 2000, and ultimately prompting the Better Business Bureau to pull Priceline's membership, an act which received extensive publicity and prompted a further decline in demand for Priceline's services.

j. The Individual Defendants' sales of stock demonstrate that they did not believe their own contemporaneous, bullish public statements about the Company. During the Class Period, Braddock sold 244,650 shares of Priceline common stock for proceeds of \$9,975,422, Walker (directly and indirectly) sold 11,975,000 shares of Priceline common stock for proceeds of \$337,802,000, and Nicholas indirectly sold 500,000 shares of Priceline stock for proceeds of \$30,838,610. In all, during the Class Period, **the Individual Defendants sold, directly and indirectly 12,700,000 shares of Priceline stock for proceeds of over \$378,000,000.**

VI. DEFENDANTS' SCIENTER: MOTIVE AND OPPORTUNITY.

42. All of the Defendants had motives to pursue the alleged fraudulent scheme. The fraudulent scheme and course of business was designed to and did: (i) deceive the investing public, including plaintiffs and other Class members; (ii) artificially inflate the price of Priceline securities during the Class Period; (iii) cause plaintiffs and other members of the Class to purchase Priceline securities at inflated prices; (iv) conceal and cover up the Individual Defendants' mismanagement of Priceline; (v) enable Priceline insiders to engage in profitable insider sales of Priceline stock; (vi) conceal that the Priceline Business Model was not scalable and could not be extended to industries beyond Priceline's core businesses; (vii) conceal that WebHouse was not a viable entity, that the \$189 million in income recognized by Priceline at the beginning of the Class Period as a result of the licensing by Priceline of its Business Model to WebHouse was inappropriate, and that the \$189 million valuation of WebHouse

warrants received by Priceline prior to the Class Period and reported by Priceline as assets during the Class Period was grossly inflated, thereby causing the reported financial statements of the Company to be materially false and misleading throughout the Class Period; (viii) preserve and protect Priceline's sources of inventory for its core airline ticket business, since the airlines would be less likely to make tickets available to Priceline if the price of Priceline stock declined below the \$56 strike price of the airlines' warrants to acquire approximately 20 million shares of Priceline; (ix) prevent the airlines' warrants for the purchase of Priceline stock from dropping below their strike price because Defendants' knew that, if Priceline's stock dropped below the strike price, it would likely prompt the airlines to demand a revaluation of the number of shares covered by such warrants and the strike price of such warrants, which in turn, would have a detrimental effect on Priceline's financial results and stock price; (x) assist Walker and Priceline in obtaining various funds for WebHouse throughout the Class Period; and (xi) allow Priceline to obtain upgrades to its computer system by requiring WebHouse to foot the bill for all needed upgrades, avoiding any expense or debit to Priceline's balance sheet.

43. In particular, the following facts further demonstrate Defendants' motive for engaging in the alleged course of conduct:

a. Defendants knew that the Company's routes with Delta, which was Priceline's principal supplier through Summer of 1999, limited its growth potential. In fact, the President of American Airlines ("American") had openly discouraged other airlines from making tickets available to Priceline. At the time Defendants formed WebHouse, they were close to finalizing an agreement with various other airlines, including American, which would bring those airlines into the Priceline fold. These negotiations centered on the issuance of warrants by Priceline to these airlines, in exchange for

their cooperation in Priceline's airline business. Defendants knew, however, these warrants would require the Company to take a massive charge against earnings upon their issuance (in the fourth quarter of 1999, the Company was forced to record a \$1.1 billion charge in connection with granting the airline warrants). Defendants, through the establishment of WebHouse, and the creation of a fictitious \$189 million gain recognized upon the acquisition of the WebHouse warrants in the fourth quarter of 1999, sought to offset a significant amount of the write-offs they knew would be incurred by issuing the airline warrants;

b. While Defendants knew that Priceline's airline business could potentially be profitable, they also knew that Priceline's stock price had a built in expectation that the Company would move beyond being a potentially profitable online travel agent and expand its business into other areas. Defendants knew that Priceline needed to demonstrate that its model could move beyond its core businesses of airlines, hotels and rental cars and move into the broader e-commerce world. In Priceline's filings with the Securities Exchange Commission ("SEC"), at the beginning of and throughout the Class Period, Priceline repeatedly acknowledged that the Company's ability to report "significant profits" depended on its ability to expand beyond its core businesses. Simply put, to give the perception, albeit misguided, that Priceline's Business Model was a valuable commodity that was extendable to other markets, Defendants engaged in the desperate gamble of launching WebHouse even though, as Braddock secretly predicted prior to its launch, the venture would almost certainly fail;

c. Defendants were aware that, in early March of 2000, Priceline's sale of airline tickets had peaked at 120,000 tickets and was in decline;

d. As WebHouse's subsidies increased and its cash diminished, Defendants knew

that they needed to raise additional capital to “prop up” WebHouse by either inducing further investment from outsiders or permitting Walker to sell Priceline shares to funnel additional monies into WebHouse. To do either, Defendants needed to create the illusion that WebHouse was an operational success;

e. Defendants were aware that a continuing decline in Priceline’s stock price would have potentially devastating operational results. The airlines held options to acquire over 20 million shares, most with strike prices above \$56 per share. Defendants knew that the airlines would have less motivation to make tickets available to Priceline if the price of Priceline’s stock significantly declined below the strike price of the airlines’ warrants, which would cripple Priceline’s core airline business;

f. Moreover, the airline warrants had adjustment clauses, which allowed the airlines to demand changes in the number of shares and strike prices covered by the warrants so as to protect the value of the airline’s warrants. The airline warrants also provided for a right of readjustment in the event that Priceline failed to meet certain revenue targets. Defendants knew that a stiff decline in Priceline’s stock price or failure to meet revenue targets would prompt the airlines to demand a readjustment of such warrants, which would lead to dilution of PCLN stock, as Priceline would have to issue more warrants, and take additional charges against the Company’s earnings, as a result of the new issuance of warrants. One such charge is exemplified by the \$8.9 million charge Priceline suffered when it was forced on October 6, 2000, two days after Defendants announced the termination of Webhouse, to adjust its warrants previously given to Delta.

g. WebHouse, pursuant to the WebHouse Agreements, was obligated to pay

numerous fees to Priceline. Included in these fees were royalties on net revenues; compensation for marketing services; compensation for shared technology development services, pursuant to which Priceline could pass off to WebHouse a significant part, if not all, of its expenses incurred in upgrading its computer systems. These payments, which were seen as a way to push Priceline toward profitability throughout the Class Period, provided continuing motivation to deceive the investing public regarding WebHouse's operations.

h. As part of WebHouse Agreements, Walker Digital received a promissory note for \$14,592,185 from WebHouse, payable on April 26, 2000. Walker, who controlled Walker Digital, sought to keep WebHouse alive so that WebHouse could make this payment; and

i. As part of Priceline's November, 1999 airline warrant deals, Walker purchased two million shares of PCLN stock from Delta at \$62.50 per share for a total of \$125 million. Walker did so to compensate Delta for the dilutive affect that the warrants Priceline was issuing to six other airlines would have on Delta's Priceline warrants. Walker's basis in these shares motivated him to maintain the market price of Priceline's shares.

44. During the Class Period, Walker, directly and through Walker Digital and Walker Digital LLC, Braddock and Nichols, sold Priceline shares at prices artificially inflated by Defendants' course of conduct. Thus, the Individual Defendants sold at a minimum the following number of shares on the indicated dates:

DEFENDANT RICHARD S. BRADDOCK
CHAIRMAN OF THE BOARD⁴

⁴Additionally, Braddock filed Form 144 on May 22, 2000, reflecting the proposed sale of 500,000 shares of Priceline stock.

DATE	SHARES	PRICE	PROCEEDS
8/16/00	28,000	\$25.52	\$ 714,560
8/15/00	72,000	\$25.32	\$1,823,040
6/5/00	48,150	\$50.28	\$2,420,982
5/18/00	27,000	\$50.67	\$1,368,090
5/17/00	69,500	\$52.50	\$3,648,750
TOTAL	244,650	\$25.32-\$52.50	\$9,975,422

N. J. NICHOLAS, JR.
DIRECTOR⁵

DATE	SHARES	PRICE	PROCEEDS
3/9/00	32,600	\$91.07	\$2,968,882
3/6/00	97,400	\$80.72	\$7,862,128
3/6/00	170,000	\$87.98	\$3,648,750
TOTAL	500,000	\$25.19-\$91.07	\$30,838,610

⁵Not included in the above-referenced transactions is the acquisition of 200,000 shares by Gore Creek Trust on 8/1/00 at \$.80 per share which were immediately sold for \$5,051,000. In addition, Gore Creek Trust filed a Form 144 on March 10, 2000 reflecting the intent to sell 300,000 shares of Priceline stock.

JAY S. WALKER, DIRECTOR, FOUNDER,
AND VICE CHAIRMAN OF THE BOARD

DATE	SHARES	PRICE	PROCEEDS
9/11/00	2,000,000	\$25.00	\$50,000,000
8/1/00	8,000,000	\$23.75	\$190,000,000
TOTAL	10,000,000	\$23.75-\$25.00	\$240,000,000

WALKER DIGITAL, LLC⁶

DATE	SHARES	PRICE	PROCEEDS
6/8/00	25,000	\$45.62	\$1,140,500
6/6/00	25,000	\$47.06	\$1,176,500
6/5/00	50,000	\$49.46	\$2,473,000
6/2/00	50,000	\$45.00	\$2,250,000
6/1/00	75,000	\$40.55	\$3,041,250
5/31/00	25,000	\$38.15	\$953,750
5/30/00	50,000	\$37.16	\$1,858,000
5/25/00	50,000	\$39.20	\$1,960,000
5/24/00	50,000	\$34.45	\$1,722,500
5/18/00	325,000	\$48.12	\$15,639,000
5/16/00	250,000	\$54.35	\$13,587,500
TOTAL:	975,000	\$54.35-34.45	\$45,802,000

⁶During the Class Period, Walker owned 34.1% of the stock of Walker Digital, rendering him a controlling shareholder of Walker Digital, according to Priceline's 2000 Form 14A. As revealed in this Complaint, Walker was the founder of Walker Digital and serves as its Chairman of the Board and is the Corporation's controlling shareholder. Priceline's 2000 Form 14A also reveals that Walker Digital controls Walker Digital LLC, a Delaware limited liability company. Walker is founder, chairman and the controlling shareholder of Walker Digital, LLC.

WALKER DIGITAL CORPORATION

DATE	SHARES	PRICE	PROCEEDS
5/16/00	1,000,000	(Proposed)	Estimated \$52,000,000
TOTAL	1,000,000		\$52,000,000

COMBINED TOTAL FOR WALKER AND CONTROLLED ENTITIES

ENTITIES	SHARES		PROCEEDS
WALKER, WALKER DIGITAL CORPORATION, WALKER DIGITAL, LLC	11,975,000		\$337,802,000

Thus, in total, the Individual Defendants, directly or indirectly, sold 12,719,650 shares of Priceline stock at prices inflated by the alleged course of conduct for proceeds of \$378,616,032.

45. Insider selling by Walker individually and through Walker Digital and Walker Digital, LLC was suspicious in timing and amount. The sales by Walker Digital and/or Walker Digital, LLC began the day after affirmative pronouncements by the Company confirming its continuing move toward profitability, and on the same day, Defendants touted the addition of nine adaptive marketing partners and the diversification of its revenues. Walker sold \$190,000,000 (8 million shares) of Priceline stock, or 12.4% of his holdings, on August 1, 2000, just days after the senior executives of Priceline reiterated that Priceline would be profitable in the third or fourth quarter of 2000. Similarly, just as with Walker Digital or Walker Digital, LLC, Braddock's May 17 and 18, 2000 sales closely followed Priceline's May 15 and 16, 2000 affirmative pronouncements regarding the Company's continuing progress toward profitability and expanding Business Model. Nichols' March 6, 2000 sales

were on the same day Schulman touted the Company's "significant momentum" toward profitability. His August 1 and August 2, 2000 sale also followed closely Defendants' continuing assurances issued in late July of profitability in the third or fourth quarter. All sales conducted by the insiders grew increasingly suspicious throughout the Class Period since Defendants continued to receive daily information confirming the massive problems being encountered by Webhouse. The proximity of those sales, both in terms of good and bad news, makes these sales highly suspicious.⁷

VII. CLASS ACTION ALLEGATIONS.

46. Plaintiffs bring 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 securities of Priceline between January 27, 2000 and October 4, 2000 (i.e., the Class Period). Excluded from the Class are Defendants, 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.

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

⁷Since WebHouse also retained in excess of \$70 million in cash after it ceased doing business, upon information and belief, Walker was repaid additional monies either directly or through Walker Digital, thereby further increasing his profits from the August 1, 2000 disguised insider sales.

48. Plaintiffs' claims are typical of the claims of the members of the Class because plaintiffs and all of the Class members sustained damages arising out of Defendants' wrongful conduct complained of in this Complaint.

49. Plaintiffs 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. Plaintiffs have no interests that are contrary to or in conflict with the members of the Class that plaintiffs seek to represent.

50. 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.

51. 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 that were or had become false or incorrect;

- 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.

VIII. FACTUAL BACKGROUND.

A. Priceline's "Name Your Own Price" E-Commerce Pricing System.

52. According to its public filings, Priceline claims to have 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" system, 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. According to Priceline, the Company 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's principal markets for its Business Model, prior to the course of conduct alleged in this Complaint, were airline tickets, hotel

rooms and car rentals.

53. 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 participating sellers to generate incremental revenue without disrupting their existing distribution channels or retail pricing structures. For example, Priceline has claimed 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 leaving those seats empty.

B. Pre-Class Period Events And Disclosures: Defendants Embark Upon Their Course Of Conduct.

54. By late Summer of 1999, a number of factors convinced Defendants that Priceline needed to take steps to expand its Business Model to other markets to change investors' perceptions of the Company. Among other facts recognized by Defendants were: (a) investors began to question whether Priceline's business prospects justified its stock valuation; (b) Priceline was facing diminishing returns from its relationship with Delta, Priceline's principal supplier of tickets. Increasingly, Delta was pursuing its own internet ticket sales resulting in 3 ½ -4 ½ % of its ticket sales being generated from its own online website. Delta's online presence not only presented competition to Priceline but also resulted in less Delta ticket availability for Priceline. Delta's waning commitment to Priceline was demonstrated by the fact that it sold 1.8 million of its 18.6 million Priceline shares in October 1999; and c) Priceline was facing increasing competition from other

online airline ticket sellers. This competition decreased both the number of tickets to airlines would allocate to Priceline and the number of available consumers. Expedia, a one-stop travel shopping and reservations website sponsored by Microsoft was in the process of conducting its initial public offering, which was completed in mid-November, raising \$72.8 million to fund its expansion. In early October 1999, Travelocity, owned by Saber, a unit of American Airline's parent, AMR Corporation, announced a merger with Preview Travel, another large online travel agency. AMR had an agreement with Preview whereby Preview was given prime advertising on AMR's site. Moreover, in early November, 1999, Northwest, United, Delta and Continental announced that they would create their own website to compete against Priceline, Travelocity and Expedia. These airlines were reportedly preparing to spend \$100 million to fund the venture. Demonstrating the effect of these factors, when Priceline announced its third quarter 1999 results, according to the October 29, 1999 *Wall Street Journal*, Priceline cautioned investors that its revenue for the quarter to end December 31, 1999 was "expected to be flat sequentially from the third quarter."

55. Priceline was so concerned about these threats to its core business and, particularly, Expedia, and the manner that such competitive threats would be perceived by the investing public, that, on October 5, 1999, Priceline distributed a confidential memorandum to its employees requesting that no disclosures about Expedia be made to third parties, including investors, customers, vendors, suppliers, the press and the Wall Street community. Specifically, the October 5, 1999 Memorandum stated:

As many of you know, priceline.com is experiencing some competitive challenges in the market place. The most notable is the hotel matching service of Expedia, Inc. As Dan Schulman expressed to you in his

recent all employee letter, we are aggressively and carefully examining our options but we have not made any decisions on how priceline.com will or should proceed. While we go through this evaluation process and until a final decision is made publicly known, it is imperative that all personnel of priceline and its affiliated companies refrain from making any statements to third parties concerning Expedia or any other similar matter. Third parties include investors, customers, vendors, suppliers, the press and the Wall Street community. However, because of the extremely sensitive nature of the subject matter, third parties must also include your spouse, significant other and all other members of your immediate family. There are no exceptions. Failure to abide could have significant legal, financial and other adverse implications for priceline.com.

If you receive any outside questions or inquiries concerning Expedia or any other actual or potential competitor, please direct the caller to an attorney....You should not pursue any other discussions with the caller.

56. To counter its stock price decline and to better meet the growing online competitive threat to its core business, Defendants embarked on the course of conduct alleged in this Complaint. Initially, Defendants sought to shore up and expand Priceline's airline ticket business by inducing airline carriers, other than Delta, to participate in Priceline's business. To obtain the airlines' commitment, Priceline was forced, in mid-November 1999, to issue warrants to eight airlines for the purchase of 20.5 million shares of Priceline stock, most with an exercise price of \$56 per share.⁸

57. The existence and terms of these warrants motivated Defendants to engage in and perpetuate the alleged course of conduct. These warrants were subject to adjustments upon demand by the airlines to protect the value of the airline's warrants. Defendants, therefore, knew that any additional decline in Priceline's stock price would likely prompt airlines to demand the issuance of more

⁸As a result of these agreements, U.S. Airways received warrants to purchase 1.5 million PCLN shares; United, Delta and American each got warrants to purchase 5.5 million PCLN shares and Continental, Northwest, TWA and American West split warrants to purchase 2 million PCLN shares.

warrants at lower prices, further diluting Priceline's share price and prompting material charges to Priceline's earnings. Moreover, Defendants knew that the airlines continued willingness to provide tickets to Priceline would depend on their value judgment of whether they stood to gain more money by doing so, as opposed to selling them on their own websites. This decision, turned on the airlines' perceptions of the potential returns on their PCLN warrants. Maintaining Priceline's stock price above or beyond the strike price of the airline warrants, therefore, became a matter of preserving the Company's ability to continue to expand, or at least maintain, its core business of selling airline tickets.

58. Defendants also sought to convince investors that its Business Model could be expanded beyond its core business, thereby providing more predictable revenue streams and prospects of unlimited growth. The Company's SEC filings had routinely informed investors that the Company needed to expand beyond its core business to be successful. Defendants publicly acknowledged that, ultimately to be successful, Priceline would have to break its dependence on the travel business, which accounted for 92% of Priceline's revenues as of September 1999. The Company's Form 10-Q for the first quarter of 1999, filed on May 17, 1999 emphasized the importance of successful expansion of the Priceline Business Model:

Need to Sell New Products and Services
Priceline.com is unlikely to make significant profits
unless Priceline.com makes new or complementary
products and services and a broader range of existing
products and services available through the
priceline.com service.

59. In furtherance of Defendants' desire to convince investors of Priceline's unlimited potential, prior to the Class Period, Defendants routinely assured investors that the

Company's Business Model could be successfully expanded beyond its core businesses. For example:

a. The Company's September 1, 1999; September 3, 1999; October 4, 1999; October 12, 1999; and October 28, 1999 press releases informed investors that "Priceline.com's business model is horizontal and works in multiple industries...."

b. In a September 9, 1999 profile of the Company in *Fortune* magazine, Walker pronounced that Priceline "will reinvent the environmental DNA of global business." In commenting on the Company's Business Model, Walker proclaimed that it was "absolutely revolutionary" and that "it will restructure the P & L of the airline industry [and] [a] significant amount of the global economy will be priced this way."

c. Schulman, as the keynote speaker at the October 26, 1999 Information Technology Association of America's Strategic Solutions conference, and as reported the following day by the press, stated:

And with the availability of an easily used Web-based shopping system, "Customers will have the power, not the manufacturer or seller," he said.

Pricing will be impacted. "The whole cost structure is going to fundamentally change," he said. "There will be no manufacturer's suggested retail price."

Instead, consumers – using the wealth of information available online – will set the parameters on what they want to buy, Schulman said.

He called the process, which allows customers in different situations to get varying prices for the same item, "dynamic pricing."

60. The poster child for this expansion was WebHouse, a company formed by Walker,

with its principal investors being Walker Digital and Vulcan Ventures, two of the same investors that originally funded Priceline. WebHouse allowed customers to name their own price for groceries and, later, gasoline, and to shop for them at discounts at participating local grocery or gasoline stores. Defendants structured WebHouse so that its financial results would not be reported in Priceline's financial results. Defendants concealed that, at the time it was launched, WebHouse had failed to convince manufacturers of most of the products to be sold by WebHouse to subsidize the discounts WebHouse would give to its consumers. Consequently, Defendants knew that WebHouse would be forced to cover the difference. WebHouse did so on the reckless gamble that, if it signed up enough customers, manufacturers' perception regarding WebHouse would change.

C. The Company's Press Releases Tout Expandability Through WebHouse

61. Defendants heralded the launch of WebHouse, its entry into the online grocery selling business, and its purported successful expansion into various cities and supermarket chains. In almost every press release issued by the Company from October, 1999 through late January, 2000, the Company repeatedly touted WebHouse:

a. October 11, 1999 release:

The Company has also licensed its business system and brand to a privately held licensee, the priceline.com WebHouse Club, which will offer a name-your-own-price service for groceries in the New York metropolitan area beginning November 1st.

b. October 28, 1999 release:

While our financial results for the quarter were dominated by our travel businesses, we began to make significant progress in building out our horizontal

business model to three independent parties including Budget Rent A Car Corporation, PricelineMortgage, and Priceline WebHouse Club. Once our customers experience the satisfaction of getting their own price, our goal is to provide them with an expanding array of other name-your-price products and services.

- c. November 1, 1999 release:

The Company has also licensed its business system and brand to a privately held licensee, the priceline.com WebHouse Club, which is launching a name-your-own-price service for groceries in the New York metro area this week.

- d. November 3, 1999 release:

Priceline.com also licensed its business model to a privately owned company, Priceline WebHouse Club, which offers name-your-own-price retail goods, beginning with groceries in the New York metro area. The WebHouse Club launched this week. **In return for the WebHouse Club license, priceline.com will be entitled to ongoing royalty payments once a minimum sales threshold had been achieved and has received warrants allowing it to purchase a majority equity stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements.** (Emphasis added.)

- e. November 8, 1999 release:

Customers have asked the Company to add other name-your-price services for more frequently purchased products and services, including long distance and retail goods. By building repeat Web site traffic through these products, priceline.com will have the continuing opportunity to introduce customers to

other name-your-own-price services for leisure airline tickets, hotel rooms, new cars, home mortgages, groceries and more. For example, **when the priceline WebHouse Club, a privately held affiliate licensee of priceline.com, launched its name-your-price grocery service on the priceline.com Web site overall site traffic jumped 20% (Since WebHouse Club is a privately held priceline.com licensee, the results of WebHouse Club operations will not be included in priceline.com's financial statements).** (Emphasis added.)

f. November 9, 1999 release:

The Company also has licensed its business system and brand to a privately held affiliate licensee, the priceline WebHouse Club, Inc., which launched a name-your-own-price service for groceries **in the New York metro area this week.** In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority equity stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements. (Emphasis added.)⁹

g. November 23, 1999; November 26, 1999; November 30, 1999; December 1,

1999; December 3, 1999 releases:

Priceline.com also licensed its business model to a privately owned company, Priceline WebHouse Club, which offers name-your-own-price retail goods, beginning with groceries **in the New York metro area and greater Philadelphia areas.** In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the

⁹The Company's November 15, 17 and 22, 1999 releases contained disclosures that were substantially the same as the above quoted releases.

WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements. (Emphasis added.)

- h. December 7, 1999 and December 8, 1999 releases:

The company has also licensed its business system and brand to a privately held licensee, the Priceline.com WebHouse Club, **which offers Name Your Own Price (TM) groceries through 1,100 grocery stores in the New York metropolitan and greater Philadelphia area.** In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements. (Emphasis added.)

- i. December 9, 1999 release:

The company also licensed its business model to a privately owned company, Priceline WebHouse Club, that offers name-your-own-price service for groceries for shoppers in 1,100 grocery stores in the New York metro and greater Philadelphia area. **Since launching on November 1st, over 50,000 consumers have used the service to successfully name their price on over one million grocery items.**

In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements. (Emphasis added.)

- j. December 9, 1999 and two separate December 10, 1999 releases:

The company also licensed its business model to a privately owned company, Priceline WebHouse Club, which offers name-your-own-price service for groceries in the New York metro and greater Philadelphia areas. In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements.

- k. December 14, 1999 and December 16, 1999 releases:

The company also licensed its business model to a privately owned company, Priceline WebHouse Club, that offers name-your-own-price groceries **through 1,100 grocery stores in the New York metro and greater Philadelphia area**. In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements. (Emphasis added.)

- l. January 5, 2000 release:

During the 4th quarter, priceline.com added a record 972,000 unique customers (including the 80,000 unique customers who joined The WebHouse Club, a priceline.com licensee grocery service, during the quarter).(Emphasis added.)

- m. January 7, 10 and January 12, 2000 releases:

Priceline.com also licensed its business model to a privately owned company, Priceline WebHouse Club, which offers Name Your Own Price retail goods, beginning with groceries in the New York metro and

greater Philadelphia areas. In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of those warrants, the results of WebHouse Club operations will not be included in priceline.com's financial statements.

n. In two different releases dated January 17, 2000:

The company has also licensed its business model to a privately owned company, Priceline WebHouse Club, which offers name-your-won-price service for groceries for shoppers in 1,100 grocery stores in the New York metro and greater Philadelphia areas. In return for the WebHouse Club license, priceline.com has received warrants allowing it to purchase a majority stake in the WebHouse Club under certain contingent conditions. Prior to the exercise of this warrant, the results of WebHouse Club operations will not be included in priceline.com's financial statements.

62. Defendants' efforts to tout WebHouse reached frenzied proportions by virtue of a joint Priceline/WebHouse advertising blitz in which Priceline spent somewhere between \$25 - \$100 million in the Fall of 1999 hawking WebHouse. These television and radio advertisements featured, William Shatner, a/k/a Captain James Tiberius Kirk of the Starship Enterprise, who proclaimed:

“Just name your price [and get] up to one-half off almost everything you buy.”

“This is **BIG. REALLY BIG.**” (Emphasis added.)

D. Analysts Focus On WebHouse And The Company's "Expandable" Business Model.

63. Defendants' pronouncements had the desired effect. Analysts and investors were keenly focused on WebHouse and its implications for the Priceline business model and Priceline's business prospects:

a. On September 24, 1999, Robertson Stephens issued a report trumpeting WebHouse and recommended Priceline stock as a “Strong Buy”:

PRICELINE- A RISK FREE STEP INTO A NEW BUSINESS

Priceline announced the formation of an affiliated company that will be the first licensee of its patented, name-your-price business method. . . . **Sources of upside to Priceline include the ability to benefit from the considerable advertising we expect from the new company as it launches first in the NY/NJ/CT tri-state area during Q4 and later nationally.**

In addition, all consumers that receive a **WebHouse** Club card must go to priceline.com to activate them, which **should increase site traffic and create opportunities for Priceline to promote its existing travel, auto and financial products.** Further, **Priceline will receive high-margin royalties from PWHC establishing a licensing opportunity which we believe can be applied to other businesses.** We note that we believe **Priceline can enter new markets more quickly through licensing its patented demand collection system while also driving higher gross margin rates. Finally, while Priceline has no financial exposure or downside risk associated with PWHC, Priceline holds warrants to become PWHC’s majority shareholder.** So, we view this affiliated company as a positive for Priceline, despite the fact that it remains to be seen how many consumers will be willing to shop online before completing their shopping in the grocery store. (Emphasis added.)

b. On October 14, 1999, Morgan Stanley, reiterated its “outperform” rating for Priceline, proclaiming WebHouse to be a positive contributor to Priceline’s valuation:

priceline.com (\$76 outperform) is showing impressive operating momentum and we are anticipating strong results with the company's newer initiatives- new car sales, rental cars and groceries - the WebHouse initiative is expected to launch in the New York area on November 1st.

* * *

Key catalysts going forward will be continued momentum in [priceline's travel] segments as well as rollouts of priceline's car rental service in CQ4 and **WebHouse offering on November 1st in the New York Metro area. We are seeing increasing evidence of the applicability of priceline's business model to non-travel services, and we're on the lookout for more.** (Emphasis added.)

c. On October 6, 1999, Merrill Lynch recommended Priceline as a "Long-term Buy,"echoing the market's sentiment on the need for Priceline to successfully diversify its travel business in order to justify its stock valuation:

Long-term, **the most important component of the priceline story is the company's plan to significantly diversify its product offerings, gradually rendering airline tickets a small percentage of overall revenue. If the company is successful in these efforts – if hotels, mortgages, cars and other products blast off as steeply as airline ticket sales – it is possible that the company's growth will reaccelerate in the months and years ahead, as the other products kick in.** This would likely drive the stock higher. (Emphasis added.)

d. On November 15, 1999, Robertson Stephens rated the Company's stock a "strong buy" and once again focused on WebHouse as a beacon of Priceline's ultimate success:

We believe Priceline is at a stage similar to Amazon one year ago as **Priceline’s core travel business (think books) should become just one component to its business longer term.** Given the strong early reads on Priceline’s new services (WebHouse, cars, and mortgages), we recommend investors accumulate shares of Priceline in advance of announcements of new services and further evidence **that Priceline’s name-your-price business method is gaining traction with online shoppers.** Thus, we reiterate our Strong Buy rating.(Emphasis added.)

Robertson Stephens further justified its “strong buy” recommendation as follows:

INVESTMENT THESIS: **We believe there is a significant market opportunity for the company’s demand collection system of commerce.** We expect the stock could potentially appreciate driven by the company reaching milestones of traffic, revenues, new categories, deals, etc.(Emphasis added.)

- e. On November 19, 1999, Robertson Stephens supplemented its

recommendation:

BIG NEWS WEEK FOR PRICELINE- Priceline made several significant announcements this week which **we believe should help investors better appreciate the company’s open-ended opportunity to apply its demand collection system to a broad range of consumer and business applications.** (Emphasis added.)

- f. As Priceline reported rocketing membership in WebHouse, investors assumed that WebHouse was successfully executing the Priceline Business Model, i.e., that it had willing suppliers providing inventory to Priceline at discounted prices. On December 3, 1999, Robertson Stephens noted: **“we are impressed by Priceline’s ability to quickly sign major supplier**

agreements in multiple product categories from airlines to grocers.”(Emphasis added.)

g. On January 7, 2000, analyst Robertson Stephens expressed the market’s sentiment that Priceline’s supposedly successful affiliate expansions would have positive effects on Priceline’s earnings prospects:

Priceline.com pronounced better-than-expected Q4 results this week. Strong momentum in all of its businesses contributed to revenue of \$168 million, 10% above our estimate and up 10% sequentially. Although we raised our revenue estimates to reflect the company’s progress, our current estimates could prove conservative as many of **Priceline’s recently announced business relationships are just beginning to bud and we expect the company could launch new services in the near future. As a result, we anticipate revising earnings forecasts upwards as we gain better visibility.**(Emphasis added.)

h. Although untrue, Defendants repeated and successfully convinced analysts that WebHouse had successfully implemented the Priceline “Business Model”. On January 14, 2000, PaineWebber reported:

Priceline is able to hold the auction [of groceries] because participating grocery stores and manufacturers view these sales as incremental. The local grocery store receives the full retail price for the item from Priceline and gain any additional sales the added traffic may generate. **Manufacturers chose to participate, according to Priceline, because they are able to generate incremental volume in their brands .**

Manufacturers do not have to publicly state their prices nor guarantee availability. Thus, branded players are able to capture volume that may otherwise have been lost to lower priced branded product or private label.

The manufacturer determines the size of the discount and quantity of product available at each price point. **The manufacturer pays Priceline the discount amount plus a small fee for each of its items sold on the website.**

* * *

Priceline is already capturing significant volume. According to management, after only 10 weeks, Priceline's WebHouse Club was able to capture approximately 2% of the households in the New York area.(Emphasis added.)

E. The Press Focuses On WebHouse And The Company's "Expandable" Business Model.

64. Further demonstrating that Defendants' efforts to raise the public's interest in Priceline and WebHouse were a success, various stories were carried by the press explaining how WebHouse worked, how successful it had become and how manufacturers were paying the difference between retail price and the price paid by WebHouse users:

- a. On November 3, 1999, *The Houston Chronicle* reported:
The participating **manufacturers will be paying the supermarkets the difference between the regular price and the accepted offer. The manufacturers also pay WebHouse a transaction fee of 5 percent to 10 percent.** At this point, WebHouse Club has not identified any of the participating brands.(Emphasis added.)
- b. On November 4, 1999, the *Boston Globe* reported:

Bidding on established time-sensitive services such as airline tickets and hotel space, where prices can fluctuate based on demand and availability, is catching on. Now the site that started it all, Priceline.com, is adding price-bidding on home mortgages, cars, and even groceries.
- c. On November 10, 1999, *The Newark Star Ledger* reported:

On Priceline.com, Internet users have been naming their own prices for airline tickets, hotel rooms and cars. Now they can do the same for groceries.... "We know there are a lot of households that could really use a deal on groceries, so why not use the Internet to collect that demand, just like we did with our travel services," said Steve Mott, President of Priceline.com, which is based in Stamford, Conn. **Priceline representatives have visited some stores, such as the A&P in Bloomfield, handing out WebHouse Club**

membership cards and explaining the new shopping concept to customers According to Mott, the Web site has gotten more than 10,000 “hits”(number of times people have clicked onto the page) in its first six days of operation. **It’s a phenomenal growth,** he said. “That means there is a transaction roughly every eight seconds.”

d. On November 11, 1999, *Dow Jones* reported:

Priceline.com Inc. Thursday reported a 26.7% increase in week-to-week airline ticket offers in the New York metropolitan area and an 1.4% increase in major metropolitan areas nationally for the week ending November 6.

Priceline.com (PCL) attributed the surge in ticket offers to the launch of its WebHouse Club service in the New York-New Jersey-Connecticut tri-state area. The WebHouse Club allows customers to name their own price for items at local supermarkets.(Emphasis added.)

e. On November 12, 1999, *Dow Jones* reported:

Priceline.com said Friday that 220 Grand Union Co. supermarkets will begin participating in its service that lets consumers name their own price for groceries.

Priceline.com said with these additions, about 900 supermarkets are participating in WebHouse Club.

f. On November 15, 1999, *Dow Jones* reported:

Priceline.com Inc. Monday announced another supermarket chain will join Priceline WebHouse Club Inc.’s “name your own price for groceries” service, bringing the number of participating grocery stores in the New York metropolitan area about 1,000.

The Brooklyn-based Key Food Stores Co-Op Inc. will

begin accepting WebHouse Club member cards as soon as the companies' computer systems are fully integrated and tested.

Retail chains supporting the WebHouse Club include Great Atlantic & Pacific Co.'s (GAP) A&P, Waldbaums, and Food Emporium chains, ShopRite, FoodTown, Kind Kullen Grocery Inc. (KKGR), Gristede's Foods Inc. (GRI), D'Agostino, Super Food Mart, Grand Union Co. (GUCO), Pathmark Inc. and Ahold U.S.A. Inc.'s Stop & Shop.

g. The November 24, 1999 *Florida Today* reported:

Priceline is best known as the Internet company that dares online users to "name their own price" for airline tickets. And now the company is shaking up the food world with a new service that lets people bid for groceries online.

h. The December 9, 1999 *Washington Post* reported:

Reverse seller Priceline.com is going directly after local services, branching out last month from airline and hotel reservations into car sales and grocery delivery.

i. The December 13, 1999 *Las Vegas Review-Journal* reported:

The company has also expanded into new products, such as mortgages and cars and a grocery service.

j. The December 20, 1999 *Newsday* reported:

Reserve seller Priceline.com is going directly after local services, branching out last month from airline and hotel reservations into car sales and grocery items.

k. The December 20, 1999 issue of *Barron's*, in an interview with Mary Meeker,

Morgan Stanley's top internet analyst, reported:

Q: The Priceline story is about more than just airline tickets.

A: Absolutely.

Q: It's about hotels, groceries, financial services and other things.

A: Yes. I've been surprised at the number of people who have come up to me and told me that they've purchased paper towels, shaving cream and other groceries through their Website. People seem to like the idea of winning something, or beating the system.

l. The December 27, 1999 issue of *Time Magazine* reported:

Not every webhead is working against the established grocers. Priceline.com, the site that lets you name your price for airline tickets, is doing the same for groceries in Manhattan and Philadelphia; **it expects to go national by next May.**

m. The December 27, 1999 *Wall Street Journal*:

Priceline is forming Perfect YardSale as a separate company that is expected to bring an additional outside investors. The company took a similar approach to launching WebHouse Club, a name-your-price grocery shopping service.

n. January 4, 2000 *Baltimore Sun*:

The concept behind Priceline's grocery component is similar to its travel service discounts.

Manufacturers offer excess inventory at a discount, rather than taking a loss. They also use such discounts as a way to build customer loyalty to their brands.

“By going on the Web site, [consumers] are saying they’re brand neutral,” because they’re willing to change brands to get a better price, Padgett said.

“Manufacturers would love to get their products in those people’s hands. Those are the people they target with coupons.” (Emphasis added.)

o. January 14, 2000 *Newsday*:

In a telephone interview, Walker said he was sorry Merlis was dissatisfied and added that some steps have been taken to avoid confusion in the offer. Still, he said, he believes most people understand the service and are happy with it. “We’re not for everybody,” he said, “but we re for people who want to save money.”

Manufacturers, anxious to reach customers willing to flex on choice of brands, make payments to **Webhouse** that are used largely to make up the difference in prices for retailers, he said.

65. As a result, the Company’s press releases and statements to the press and analysts made clear that WebHouse was important to the Company not just because it demonstrated the ability of the Company to expand its Business Model beyond its core products but also because: (a) Priceline would obtain ongoing royalty payments from WebHouse; (b) Priceline stood to acquire a controlling interest in WebHouse if it succeeded; (c) because Priceline was recognizing an immediate \$189 million gain from the formation of WebHouse; and (d) WebHouse’s existence purportedly increased the number of purchasers of Priceline’s core products. Moreover, these statements led investors to conclude that WebHouse successfully penetrated the New York market and was expanding into other markets. Additionally, Defendants statements led the market to conclude incorrectly that manufacturers, as opposed to WebHouse, were paying for the discounts given to WebHouse users.

**IX. DEFENDANTS' FALSE AND MISLEADING
FINANCIAL STATEMENTS ISSUED DURING THE CLASS PERIOD.**

66. At the beginning of the Class Period, on January 27, 2000, in a press release that was also filed as a Form 8-K, Defendants announced the Company's financial results for its fourth quarter and year ended December 31, 1999:

Priceline.com Reports Record Fourth Quarter Financial Results

	Quarter Ended December 31, 1999 (1)	Quarter Ended December 31, 1998 (2)
Revenue	\$169.2 million	\$19.0 million
Gross Profit	\$24.1 million	\$2.3 million
Operating Loss	\$(12.7) million	\$(12.9) million
Net Loss	\$(10.0) million	\$(12.7) million

1. Excludes a non-cash charge of \$910.4 million of net warrant costs related to the issuance of warrants to certain of priceline's airline partners (**net of income from the receipt of a warrant to purchase shares in the Priceline WebHouse Club**), a non-cash charge of \$380,759 for supplier warrant charges, \$264,744 in option payroll taxes resulting from the exercise of non-qualified employee stock options, and the write-off of \$380,609 in deferred financing costs. (Emphasis added.)

67. The Company's 1999 results included a \$188.8 million one time gain attributable to the warrants received by Priceline from WebHouse pursuant to the WebHouse Agreements. Priceline used this gain to offset the one time loss recorded on the issuance of the airline warrants. The materiality of this gain is demonstrated by the fact that Priceline reported a net loss for the year 1999 of \$10,000,000, a net loss of \$13,567,000 for the first quarter of 2000 and a net loss of \$11,712,000 for the second quarter of 2000. Additionally, the Company's balance sheet for the period ended

December 31, 1999 carried the warrants as an asset valued at \$189 million. The materiality of this asset is demonstrated by the fact that Priceline claimed total assets of \$441,886,289 as of December 31, 1999, \$482,717,000 as of March 31, 2000, \$492,838,000 as of June 30, 2000.

68. The Company's 1999 Form 10-K, filed on March 31, 2000, described the \$189 million gain from the WebHouse warrants:

As an inducement to enter into a relationship with WebHouse Club, priceline.com received a warrant to purchase a majority of the shares of WebHouse Club common stock. The warrants are non-forfeitable, fully vested upon grant, exercisable in five years or earlier upon the occurrence of certain events, and do not require the performance of any additional services. **Upon receipt of the warrant in the fourth quarter, priceline.com recognized \$188.8 million of income representing the amount of the estimated fair value of the warrants, based on an independent valuation.** (Emphasis added.)

69. Also in its 1999 Form 10-K, Priceline described its relationship to WebHouse in its 1999 10-K filed on March 30, 2000:

Licensees WebHouse Club. The Company has licensed its patented Name Your Own Price(sm) business model and affiliated trademarks and software systems to Priceline WebHouse Club, Inc., which operates an Internet-based service for groceries and other retail products. Walker Digital Corporation owns 34.1% of the outstanding capital stock of WebHouse Club and the balance is owned by certain institutional and individual investors. Priceline.com owns a warrant that entitles it to purchase up to 137.5 million shares of common stock of WebHouse Club, or 77.5% of the fully diluted equity of WebHouse Club, at an exercise price of \$3.00 per share, upon the satisfaction of certain conditions. Unless and until that warrant is

exercised, WebHouse Club and its financial results will not be included in priceline.com's financial statements. In connection with the WebHouse Club transaction, Walker Digital granted to priceline.com an exclusive (in the field of retail commerce other than vending machines or restaurants) worldwide license to certain intellectual property, including patent and patent applications, useful in WebHouse Club's business. The Company exclusively sublicensed these intellectual property rights to WebHouse Club and granted to WebHouse Club an exclusive worldwide license to its buyer-driven commerce patent rights and other intellectual property for use in the sale of groceries, health and beauty items and household supplies by retailers, as well as a non-exclusive worldwide license to such intellectual property for use in Internet-based, buyer-driven commerce for the sale, by retailers, of other products or services. WebHouse Club pays priceline.com a sliding scale royalty descending from 1.0% of net revenues. In addition to the patent and technology license, priceline.com and WebHouse Club share certain information technology infrastructure, and priceline.com provides WebHouse Club with marketing and information technology services.

70. The Company's 1999 Form 10-K falsely assured investors that the Company's financial statements were assembled in compliance with Generally Accepted Accounting Principles ("GAAP"). Specifically, the Form 10-K contained the following clean opinion issued by Deloitte:

INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Stockholders of
priceline.com Incorporated:

We have audited the accompanying balance sheets of priceline.com Incorporated (the "Company") as of December 31, 1999 and 1998, and the related statements of operations, changes in stockholders equity, and cash flows for the years ended December

31, 1999 and 1998 and the period July 18, 1997 (inception) to December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. **An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.** We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 1999 and 1998, and the results of its operations and cash flows for the years ended December 31, 1999 and 1998 and the period July 18, 1997 (inception) to December 31, 1997 in conformity with generally accepted accounting principles.

Stamford, Connecticut
January 27, 2000 (Emphasis added.)

71. On April 24, 2000, Defendants issued a press release announcing "Record First Quarter Results" as follows:

For the first quarter of 2000, the Company reported a net loss of \$0.04 per share, compared to a net loss of \$0.12 per share in the first quarter of 1999, and a net loss of \$0.06 per share in the fourth quarter of 1999. Net loss per share, net loss, operating loss, gross

margin and gross margin percentages in this release exclude all net warrant costs, option payroll taxes, and certain other items as described in the notes to the table below.

Priceline.com reported revenue of \$313.8 million for the first quarter of 2000, a 535% increase over revenues of \$49.4 million in the first quarter of 1999 and an 85% increase over revenues of \$169.2 million in the fourth quarter of 1999. Priceline.com's gross profit grew even faster. Gross profit for the first quarter of 2000 was \$49.0 million, a 752% increase over first quarter 1999 gross profit of \$5.8 million and a 103% increase over fourth quarter 1999 gross profit of \$24.1 million. Gross margin for the first quarter of 2000 was 15.6%, the highest ever for priceline.com, compared to a first quarter 1999 gross margin of 11.6%. Operating expenses (excluding option payroll taxes) as a percent of revenue improved to 18.8%, a new low for priceline.com, compared to 46.5% for the first quarter of 1999.

Operating loss in the first quarter of 2000 was \$10.0 million, compared to an operating loss of \$17.2 million in first quarter 1999. Net loss in the first quarter of 2000 was \$7.3 million, compared to a net loss of \$16.8 million in the first quarter of 1999.

Although unrevealed, included in the Company's revenue for the first quarter were royalty payments received from WebHouse.

72. In Priceline's Form 10-Q for the first quarter of 2000, filed on May 16, 2000 and signed by Braddock repeated the above referenced financial results.

73. In Priceline's Form 10-Q for the first quarter of 2000, Defendants specifically assured investors that the financial statements contained therein were in compliance with GAAP by stating:

In the opinion of management, all adjustments,

consisting of normal recurring accruals considered necessary for a fair presentation, have been included in the accompanying unaudited financial statements.

* * *

The warrants to purchase shares of Priceline WebHouse Club are carried at cost which the Company believes is less than fair market value at March 31, 2000. Neither the warrants nor the underlying shares are publicly traded.

74. On July 24, 2000, the Company announced its financial results for the quarterly period ending June 30, 2000. 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. In addition, the Company continued to carry the WebHouse warrants as an asset valued at \$188.8 million on its balance sheets. Included in the Company's revenues for the quarter was an unrevealed amount of royalty payments or payments for services received from WebHouse.

75. In the Company's Form 10-Q, filed with the SEC on August 14, 2000, the Company again repeated its second quarter results, again, specifically assured investors that the financial statements therein were compiled in compliance with GAAP by stating:

In the opinion of management, all adjustments, consisting of named recurring accruals considered necessary for a fair presentation, have been included in the accompanying unaudited financial statements.

76. In contrast to Defendants' representations, for numerous reasons, the Company's financial statements did not contain all adjustments necessary nor were they compiled in compliance with GAAP. First, Priceline's financial statements were misleading because WebHouse and PCLN should have filed combined financial statements. Accounting Research Bulletin ("ARB") # 51, "Consolidated Financial Statements," describes situations in which corporations that are commonly controlled ("brother/sister relationships")¹⁰ should report on a "combined" basis:

"To justify the preparation of consolidated statements, the controlling financial interest should rest directly or indirectly in one of the companies included in the consolidation. **There are circumstances, however, when combined financial statements** (as distinguished from consolidated statements) **of commonly controlled companies are likely to be more meaningful than their separate statements.** For example, **combined financial statements would be useful where one individual owns a controlling interest in several corporations which are related in their operations. Combined statements would also be used to present the financial position and results of operations of a group of unconsolidated subsidiaries. They might also be used to combine the financial statements of companies under common management.**" (ARB #5 ¶ 22) (Emphasis added).

77. Here, Walker owned a controlling interest in Priceline and, through Walker Digital, owned a controlling interest in WebHouse. Moreover, WebHouse and Priceline were not just under common management, but were alter egos. Priceline, Walker Digital and Walker were able to completely control WebHouse:

- a. Walker Digital owned 34.1% of WebHouse and was, thus, a controlling shareholder of WebHouse. Through his control of Walker Digital, Walker also was a controlling shareholder of WebHouse.

¹⁰Here, as explained above and below, Priceline and WebHouse were closer than mere affiliates - they acted as alter egos, as an integrated enterprise and as a single employer.

- b. Of the seven WebHouse directors initially appointed, Walker Digital (which was controlled by Walker) and PCLN each were entitled to appoint one WebHouse board member. The WebHouse Agreements provided that, if Priceline exercised its WebHouse warrants, the WebHouse Board would expand to nine members, with Priceline being entitled to name five members and Walker Digital entitled to have one additional member.
- c. WebHouse's Bylaws provided that, even prior to Priceline's exercise of its WebHouse warrants, the approval of the WebHouse directors appointed by Priceline was required for these actions:
 - (i) any recapitalization, or business combination, or sale of all or substantially all of WebHouse's assets, for three years after the WebHouse Agreements;
 - (ii) any amendment, supplement or modification of WebHouse's Bylaws or Articles of Incorporation;
 - (iii) for three years after October 26, 1999, the filing of any Registration Statement for the sale of WebHouse securities in an Initial Public Offering;
 - (iv) any transactions with an affiliate of WebHouse other than at fair market value in the ordinary course of business;
 - (v) the dissolution of WebHouse; and
 - (vi) the voluntary initiation of an Insolvency Event in respect of WebHouse.
- d. All parties to the WebHouse Agreements agreed to vote their shares in accordance with Priceline's request on the above issues listed above;
- e. WebHouse's Audit Committee was comprised of three directors, one of which was the Walker Digital appointee. Since Walker controlled Walker Digital, Walker had the direct ability to control WebHouse's financial reporting;
- f. Pursuant to the WebHouse Agreements, WebHouse was required to submit all advertising and promotional materials, including website content, to Priceline for its prior approval;
- g. Priceline and WebHouse shared computers, computer programs, customer

- databases, employees and office space;
- h. Priceline's webpage was the exclusive link to WebHouse's webpage;
 - i. Walker was a founder of WebHouse and the original CEO of WebHouse. Repeatedly during the Class Period, Walker used words such as "our company," or "we" in describing WebHouse;
 - j. Upon Walker's investment of \$125 million in WebHouse in August 2000, Walker acquired 12.5% of WebHouse stock;
 - k. Pursuant to the WebHouse Agreements, WebHouse and Priceline shared technology development services;
 - l. Priceline and WebHouse, pursuant to the WebHouse Agreement, agreed to cooperate in conducting marketing activities so as to "co-brand" and "co-position[]" the companies' respective services. Thus, the two companies were to "develop and implement brand recognition and awareness strategies and campaigns which integrate and associate the Priceline name with WebHouse and its business." Priceline was to "list or name WebHouse and the goods and services offered by WebHouse in any advertising media wherein other Priceline services or affiliates are listed or named;"
 - m. Throughout at least March 31, 2000, Priceline was to provide WebHouse with "primary marketing services." As part of this duty, Priceline conducted a joint advertising campaign in Fall 1999, spending somewhere between \$25-\$100 million. In these advertisements, Priceline spokesman William Shatner heralded WebHouse's services saying that he had told you that "Priceline was going to be Big;"
 - n. As reported in the November 23, 1999 *Wall Street Journal*, WebHouse hired an executive recruiter who moved in at WebHouse in June 1999 for an extended period of time to find candidates for the senior level positions at WebHouse. According to that recruiter, "[w]hen he found promising candidates, he could saunter down the hall to inform WebHouse's founders, Jay Walker and Jonathan Otto, who is chief executive." The recruiter also pointed to the advantage of being able to sit in and listen when Walker and Otto were discussing changes in the [WebHouse] job descriptions. As is clear from this description, Walker was directing the hiring of WebHouse personnel;
 - o. Following the launch of WebHouse, Priceline officials visited participating

stores, handing out WebHouse Club membership cards and explaining WebHouse shopping to potential users;

- p. Personnel fluidly moved between the companies. During the Class Period, a number of Priceline individuals performed work on behalf of WebHouse without charging or otherwise accounting for their time and Priceline's CFO became WebHouse's CFO;
- q. WebHouse was financially responsible for upgrading Priceline's computer systems, even though they were jointly used;
- r. Priceline's press releases issued both before and during the Class Period and public filings during the Class Period regularly described WebHouse and WebHouse's marketing efforts (while conveniently omitting financial disclosures); and
- s. As disclosed, Walker made the decision to shut down WebHouse.

78. Since Priceline and WebHouse were commonly controlled, combined financial statements of these companies were likely to be more meaningful than separate statements. Consequently, pursuant to ARB #51, Priceline was required to report its results on a combined basis with WebHouse.

79. ARB #51 provides that, when combined financial statements are prepared, all intracompany transactions (and investments) between the combined entities are eliminated. In the case of Priceline and WebHouse, if the two entities were combined for financial statement purposes, both the \$189 million of warrant income and the \$189 million asset represented by Priceline's investment in WebHouse would have been "eliminated," and neither amount would appear in the financial statements. Thus, Priceline improperly recognized \$189 million in warrant income and improperly carried the \$189 million WebHouse warrant asset throughout the Class Period. Here, since Priceline and WebHouse

functioned as alter egos of each other and as an integrated enterprise, the valuation of the warrants and the recognition of an asset and revenue arising from that valuation was the ultimate sham transaction. In effect, Priceline granted itself an opportunity to acquire an interest in itself and then valued that opportunity at almost \$190 million.

80. Second, even if WebHouse and Priceline were not required to file combined financial statements, Priceline improperly recognized all of \$189 million warrants income during the fourth quarter of 1999. Any revenue recognition resulting from Priceline's licensing of its Business Model to WebHouse should have been recognized over the license's term. FASB Statement of Concepts #5, "Recognition and Measurement in Financial Statements of Business Enterprises" states in ¶83(b), "Revenues are not recognized until earned." ¶83(d) states:

"If ...rights to use assets extend continuously over time, revenues may be recognized as earned **as time passes.**" (Emphasis added)

81. Third, Priceline was not entitled to recognize income from the acquisition of the WebHouse warrants, because their value could not realistically be measured and their value was far below the \$3.00 exercise price at all times throughout the Class Period. There were no realistic prospects for the value of the WebHouse warrants increasing above the strike price during the five year warrant period. FASB Statement of Concepts #5 lists four fundamental criteria that should be met before an item is recognized on a financial statement:

An item and information about it should meet four fundamental criteria to be recognized and should be recognized when the criteria are met, subject to a cost benefit constraint and a materiality threshold. Those criteria are:

1. Definitions - The item meets the definition of an element of financial statements;
2. Measurability - It has a relevant attribute measurable with sufficient reliability;
3. Relevance - The information about it is capable of making a difference in user decisions; and
4. Reliability - The information is representationally faithful, verifiable and neutral.

Here, it is openly apparent that the value of the warrants was not measurable. WebHouse was, at best, a speculative crap-shoot and, at worst, a known business failure. While Defendants apparently obtained a “fairness” opinion on the value of the warrants when they were granted in October 1999, the estimate of the purported fair value set forth in that opinion was not representationally faithful, nor was it verifiable or neutral. At that time, WebHouse had no operational history, no income and, other than the license from Priceline and its seed capital, no assets. The reality of its business plan and WebHouse’s prospects for success were openly questioned by senior level executives at Priceline. Moreover, by the beginning of the Class Period, Defendants were aware that facts underlying the “fairness” opinion were no longer valid. As discussed in detail in this Complaint, from the beginning and throughout the Class Period, WebHouse was on a collision course with failure. FASB Statement of Concepts #5 demonstrates that the WebHouse warrant transaction was improperly recorded and Defendants’ failure to correct that error during the Class Period is powerful evidence of their unlawful motivation.

82. Fourth, at a minimum, Defendants were required to disclose the uncertainty of the WebHouse warrants value estimate and that it was reasonably possible that a change in that element could occur in the near term. Statement of Position 94-6, “Disclosure of Certain Significant Risks and

Uncertainties” issued by the American Institute of Certified Public Accountants (“SOP94-6”) requires companies to disclose “significant estimates” used in the financial statements. Disclosure of such an estimate should be made when :

a. It is at least reasonably possible that the estimate of the effect on the financial statements of a condition, situation or set of circumstances that existed at the date of the financial statements will change within the near term (within one year of the balance sheet date) due to one or more future confirming events; and

b. The effect of the change would be material to the financial statements.

SOP 94-6 provides that the disclosure should include both the nature of the uncertainty and an indication that it is at least reasonably possible that a change in the estimate will occur in the near term. The estimate of the fair value of Priceline’s “investment” in WebHouse is clearly a “significant estimate” since WebHouse shares had no ready market. In fact, in its summary of significant accounting principles, the Company stated that its investment in WebHouse is at “estimated fair value.” Given that the asset represented 42% of Priceline’s total assets, the significance of the admitted estimate should have been disclosed. As a result, a change in WebHouse’s financial status would be material to Priceline’s financial statements. Moreover, Defendants knew from the beginning of the Class Period that WebHouse was likely, if not certain, to fail in the near future.

83. Fifth, even assuming that there was a sufficient basis, based on the October 1999 fairness opinion, to record the original \$189 million transaction, Priceline was required to write the investment down to its fair value given that the investment value of the WebHouse warrants had decreased as of the reporting periods for which Defendants filed financial statements during the Class

Period. FASB #5 states:

An estimated loss from a loss contingency ...shall be accrued by a charge to income if both of the following conditions are met:

- a. Information available prior to issuance of the financial statements indicates that it is probably that an asset has been impaired....; and
- b. The loss can be reasonably estimated.

A loss contingency is defined in paragraph 1 of FASB #5 as “[a]n existing condition, situation or set of circumstances involving uncertainty as to possible gain ...or loss to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm...the loss or impairment of an asset or the incurrence of a liability.”

84. Pursuant to FASB #5, even if one of the two conditions set forth in ¶ 82 (a) and (b) above are not met, the Company was required to disclose the potential contingency in its financial statements when there “was at least a reasonable possibility that a loss or an additional loss may have been incurred.” The disclosure should have included an estimate or range of the possible loss or have stated that such an estimate could not be made.

85. The following facts confirm that the value of the WebHouse warrant asset was severely impaired:

- a. In the fourth quarter of 1999, WebHouse paid Priceline just \$33,777 in royalties. This fact demonstrates that WebHouse, which started operations on November 1, 1999, was a speculative start-up and did not deserve a valuation of over \$500 million;
- b. From its beginning, the WebHouse business model was destined for failure because WebHouse had obtained the participation of few, if any, manufacturers. Consequently, Defendants knew that WebHouse would have to subsidize the vast majority of discounts being given to its customers, rather

than the manufacturers, as was intended and as was critical if WebHouse was to have any chance at success. Consequently, the more WebHouse grew, the **less** its value would become throughout the Class Period -- because WebHouse literally was in the business of giving money away;

c. Defendants knew that, unlike airline tickets, there was no reasonable prospect of profitability for WebHouse because, inter alia:

- (i) The business plan of WebHouse involved routinely accepting users' bids, even if they were excessive, on the users' first visit in an effort to lure the user into future use. WebHouse intended to, and did, however, reduce the size of discounts given on subsequent visits. As a result, users' willingness to expend the substantial amount of time necessary to go online and bid for groceries predictably diminished as the bargains became smaller;
- (ii) Defendants knew the number of WebHouse customers using the system more than once was minuscule. Thus, WebHouse officials confirmed that only 25% of the original users used the system again, and, of those, only 25% used the system a third time. As set forth herein, after the Class Period, numerous reports were published for different grocery chains confirming the truly limited use of WebHouse;
- (iii) The lack of participation by manufacturers and the unwillingness of consumers to expend the significant amount of time necessary to obtain discounts from WebHouse meant that the marketplace created by WebHouse was illusory, requiring the continuous injection of outside capital and new customers, and had no prospect of ever becoming a self-sustaining enterprise;
- (iv) The Company's computer deficiencies required Priceline to use one pricing system, based on New Orleans prices, and, consequently, groceries and other items in many cities, such as New York, were given away at huge discounts (50-60%) - far more than planned;
- (v) WebHouse was not only subsidizing the discounts but, also, was covering bottle deposits and reimbursing manufacturers' coupons on top of those discounts;
- (vi) WebHouse also was paying the transaction fees assessed by the charge card companies (2-4% of the bills);

- (vii) Even though WebHouse routinely provided gas from the major oil companies, it did not secure the participation of most of the major producers, including Mobil, Exxon, Chevron, Sunoco, and Citgo. Defendants knew or recklessly disregarded the fact that the WebHouse program would be attractive to oil companies only if they were the only one participating because the purported attraction to participation was an increase in market share. If a number of companies chose to participate, no one company would be able to increase market share; and
 - (viii) while Priceline had planned on charging gasoline customers a \$3 per month charge to help defray the discounts, it never was able to charge this fee because Defendants recognized that doing so would further impair the Company's effort to increase the usage of WebHouse. At the end of August, even before the first collection of this fee was due to occur, Defendants abandoned the fee concept, thereby increasing WebHouse's losses.
- d. WebHouse had no operating history when it formed and its only asset was the licenses it obtained from Priceline;
- e. By the beginning of the Class Period, Defendants had, in hand, almost three full months of operating results for WebHouse. These results were made available to Walker, Schulman and Braddock, according to former WebHouse and Priceline personnel, on a daily basis. These results confirmed that WebHouse was heavily subsidizing the purchases of its customers in the amount of \$1 million to \$5 million per week; that WebHouse's need to subsidize was intensifying as it signed up additional users (reaching approximately \$5 million per week); that the vast majority of manufacturers were unwilling to participate in WebHouse's business because of the pervasive view that doing so would damage brand loyalty; and that Priceline's computer system was woefully inadequate to handle the increased traffic from WebHouse customers. Pursuant to the WebHouse agreements, WebHouse was obligated to pay for all upgrades in such equipment or software necessary for its business. By the beginning of the Class Period, Priceline was desperately fighting a losing battle to upgrade its systems, with computer programmers working around the clock. By April, Priceline had embarked upon a computer upgrade that would cost over \$100,000,000 which WebHouse would be responsible for paying. Yet, WebHouse was in no financial shape to fund this upgrade and doing so would precipitate its continuing financial demise;

- f. Pursuant to the Webhouse Agreements with Walker Digital, Webhouse was obligated to make a \$14,600,000 payment to Walker Digital on April 26, 2000, a payment which only could serve to further deplete the diminishing cash in Webhouse.

86. The Company, however, carried the full \$189 million on its balance sheets as of December 31, 1999; March 31, 2000; and June 30, 2000, before writing off the entire amount after Defendants announced that Priceline would be closing Webhouse at the end of the Class Period. In the footnotes for the March 31 and June 30, 2000 financial statements, Priceline directly misrepresented that the investment was carried at “cost,” which, in the Company’s opinion, was less than the fair value of the investment. Defendants had actual knowledge, by the beginning of the Class Period, that WebHouse was nothing more than a money-give away machine and had no realistic prospects for success. Throughout the Class Period, WebHouse’s financial position grew worse, not better, with the amount of its subsidies for its customers’ purchases growing to approximately \$5 million per week. Defendants clearly should have written off this asset, or at least written it down to its real fair value (i.e., close to zero).

87. Sixth, Defendants were obligated to disclose, as of the date of the financial statements, any material events subsequent to the reporting period for the financial statements. Thus, even if the WebHouse investment was not impaired on December 31, 1999, Defendants had an obligation to disclose any impairment to that asset which existed on March 17, 2000, when the Accountant Defendant issued its opinion on those financial statements. Similarly, Defendants had a subsequent event disclosure obligation for the March 31, 2000 financial statements for material events occurring prior to May 16, 2000 and for the June 30, 2000 financial statements for material events occurring

prior to August 14, 2000. As WebHouse's financial condition collapsed throughout the Class Period, disclosures of the impairment of the WebHouse warrants asset should have been made. To suggest that Defendants were unaware of an impairment in value of the WebHouse warrants by August 14, 2000 is simply fanciful.

88. Finally, investments in **marketable** securities should generally be carried at their fair market values pursuant to FASB #115. FASB #115 is only applicable for investments with readily ascertainable fair market values. If the investment is not marketable, accounting for the "investment" should be as follows:

- a. Greater than 50% interest in the Company: The investee should be consolidated with the Company,
- b. Between 20% and 50% - If the investor has the ability to exercise "significant influence over the investee," then the investor should use the "equity method." (APB #18)
- c. Less than 20% - Holdings of less than 20% of nonmarketable voting stock should be accounted for at cost. Cost is reduced for permanent declines in value.

At a minimum, Priceline was obligated to carry the WebHouse investment "at cost." Yet, there was **no** cost to Priceline for acquiring the warrants. Instead, it acquired them in exchange for permitting WebHouse to use its Business Model. As such, Priceline was not entitled to carry this investment as a \$189 million asset.

89. Deloitte knew and recklessly disregarded, or was reckless in not knowing, that the fiscal 1999 annual report to the SEC on Form 10-K misrepresented the future business prospects of the Company, contained narratives setting forth financial information which was based

upon material departures from GAAP, and contained financial statements which presented material misstatements of the Company's financial position and results of operation.

90. Deloitte's opinion, which stated that its audit of the Company's fiscal 1999 financial statements was conducted in accordance with GAAS, was false and misleading because the following GAAS were knowingly and/or recklessly violated:

- (a) General Standard No. 1 was violated, which standard requires that the examination is to be performed by a person or persons having adequate technical training and proficiency as an auditor. (AU Section 150, ¶ 2).
- (b) General Standard No. 2 was violated, which standard requires that in all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors. (AU Section 150, ¶ 2).
- (c) General Standard No. 3 was violated, which standard requires that due professional care is to be exercised in the performance of the examination and in the preparation of the report. (AU Section 150, ¶ 2).
- (d) Standard Of Field Work No 1 was violated, which standard requires that the work is to be adequately planned and assistants, if any, are to be properly supervised. (AU Section 150, ¶ 2).
- (e) Standard Of Field Work No 2 was violated, which standard requires that a sufficient understanding of the internal control structure is to be obtained to plan the audit and to determine the nature, timing and extent of tests to be performed. (AU Section 150, ¶ 2).
- (f) Standard Of Field Work No 3 was violated, which standard requires that sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under examination. (AU Section 150, ¶ 2).
- (g) Standard Of Reporting No. 1 was violated, which standard requires that the report shall state whether the financial statements are presented in accordance with generally accepted accounting principles. (AU Section 150, ¶ 2).

- (h) Standard Of Reporting No. 3 was violated, which standard requires that informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report. (AU Section 150, ¶ 2).

91. In its filings with the SEC, the Company was required to recognize and report income and expenses, as well as the assets on its balance sheet, in conformity with GAAP. The Company failed to do so. Pursuant to GAAS, Deloitte was, therefore, required to express an adverse opinion on the Company's financial statements. Deloitte violated GAAS in failing to express an adverse opinion on the Company's fiscal 1999 year-end financial statements.

92. Deloitte, as well as other Defendants, knew and recklessly disregarded, or were reckless in not knowing, the facts which indicated that the fiscal 1999 year-end financial statements of the Company which were disseminated to the investing public during the Class Period were false and misleading for the reasons set forth herein, and were presented in a manner which violated the principles of fair financial reporting and the above specified GAAP. In addition, those financial statements violated the principle that the quality of reliability and, in particular, of representational faithfulness leaves no room for accounting representations that subordinate substance to form. (Statement Of Financial Accounting Concepts No. 2).

93. The term "irregularities" is a technical accounting term. As noted in authoritative auditing literature (AU Section 316, ¶ 3):

The term irregularities refers to intentional misstatements **or omissions of amounts or disclosures in financial statements.**

Irregularities include fraudulent financial reporting undertaken to render financial statements misleading,

sometimes called management fraud, and misappropriation of assets, sometimes called defalcations. (Emphasis added)

94. GAAS states that: “[t]he auditor has the responsibility ...to plan his examination to search for errors and irregularities...” (AU Section 327, ¶ 5) and that "The auditor should...perform his examination with an attitude of professional skepticism..." (AU Section 327, ¶ 6).

95. Deloitte failed to comply with GAAS in that it failed to plan its examinations to search for errors and irregularities and it failed to perform its examinations with an attitude of professional skepticism.

96. Deloitte's opinion stated that the Company's fiscal 1999 financial statements "present fairly, in all material respects" and "in conformity with generally accepted accounting principles" the financial position of the Company at December 31, 1999 and the results of its operations and cash flows for the year then ended. This statement was materially false and misleading because:

- a. The accounting principles selected and applied did not have general acceptance.
- b. The accounting principles were not appropriate in the circumstances.
- c. The financial statements, including the related notes, were not informative of matters that affected their use, understanding, and interpretation.
- d. The financial statements did not reflect the underlying events and transactions in a manner that presented the financial position and the results of operations within a range of acceptable limits that were reasonable and practicable to attain in financial statements. (AU Section 411)

X. DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD.

A. Defendants' Statements Issued During The First Quarter Of 2000 In Priceline's Public Presentations, Public Filings And Press Releases.

97. By the beginning of the Class Period, January 27, 2000, Defendants were fully aware that the Priceline Business Model was not working in WebHouse. Based on Defendants' continuing receipt of real time information setting forth WebHouse's financial performance, Defendants knew that (i) manufacturers continued in their refusal to sign up with WebHouse; (ii) WebHouse was heavily subsidizing users' purchases, a practice which grew larger with each expansion of WebHouse into each new city and each additional grocery chain; (iii) WebHouse users were unlikely to use the service on a recurring basis, particularly since the amount of discounts afforded by WebHouse was intended to, and did, decline on successive visits by the same user; (iv) Priceline's computer systems were grossly inadequate to shoulder the burden of WebHouse's and Priceline's expansion and to which WebHouse was obligated to fund necessary replacements or repairs (an exorbitant expenditure which further depleted WebHouse's already inadequate capital); and, (v) WebHouse's business plan was destined for failure unless Defendants could deceive investors and the public into believing WebHouse was successful, thereby creating the ability to raise additional capital for WebHouse and continue to expand WebHouse in the vain hope that, through expansion alone, Defendants could vanquish all of WebHouse's serious deficiencies. Defendants also knew that the carrying value of the Company's warrants to acquire WebHouse stock was grossly inflated and, if the warrants had any value, it was minuscule at best.

98. Nevertheless, at the beginning of the Class Period, Defendants issued a press release in which Braddock trumpeted Webhouse's purported success and Priceline's continuing success in expanding its Business Model:

“Priceline.com had a strong year and a particularly

strong fourth quarter as we continued to deliver on our commitment to steadily reduce our operating losses and improve our operating margins on our way to profitability," said Richard S. Braddock, priceline.com's chairman and CEO. "This was a landmark quarter for priceline.com in terms of adding customers, increasing sales and margins, bringing on board new industry leading suppliers and partners and introducing new product initiatives."

Braddock continued, "Based on our performance so far this year, we are now comfortable that our revenues will increase sequentially from the fourth quarter of 1999 to the first quarter of 2000 at a rate of at least 30%. More importantly, we have established a target of \$1 billion of revenue for the year 2000, which is more than double our revenue in 1999."

Business Highlights

During the 4th quarter, priceline.com added a record 982,000 unique customers (**including the 80,000 unique customers who joined the Priceline WebHouse Club, a priceline.com licensee, in the 4th quarter**). In total, priceline.com had 3.8 million unique customers at the end of the fourth quarter. Nearly half became customers in the last 6 months.

During the fourth quarter, priceline.com continued to build a broad, horizontal e-commerce business and made substantial strides in solidifying and expanding its offerings into new vertical markets, as well as announcing several new Name-Your-Own-Price initiatives.

Also in the fourth quarter, priceline.com licensed its business model to Priceline WebHouse Club, a company that offers retail goods, beginning with groceries, on a Name Your Own Price basis. The service, which launched in November, has attracted over 125,000 customers in the New York area (or approximately 2% of all households) in

its first 10 weeks of operation. To date, the service has sold more than 4 million grocery items. (Emphasis added)

99. On January 27, 2000, Schulman appeared on CNBC. During this interview, as reported by the January 27, 2000 *Dow Jones Business News*, Schulman moved up the company's projections of profitability, a key focus of the market:

Priceline.com said it added nearly one million new unique customers in the fourth quarter, bringing its total customer base to nearly four million.

Chief Executive Dan Schulman said he also told analysts in a conference call that first-quarter and year-2000 results will be better than expected.

In a CNBC interview Thursday, Schulman said the company's sales target for 2000 is now \$1 billion and **that profitability will be achieved in the first half of 2001, instead of the second half.**

"Momentum is extremely strong right now," said Schulman. Priceline.com added almost a million customers in the fourth quarter, bringing its total customer base to more than four million.

"We're very bullish about our prospects for the year 2000, hence the reason we're raising our revenue estimates." Revenue will grow sequentially by more than 30%, said Schulman. (Emphasis added.)

100. Several days later, on January 29, 2000, Braddock appeared before the press in Hong Kong. Braddock continued to tout the company's purported prospects of attaining profitability and proclaimed the company's stock to be severely undervalued:

a. "I'd say our stock is undervalued by as much as 50%. It could comfortably be double what it is today."

- b. Analysts target Priceline's share price at \$190; and
- c. "We've made this public commitment that every quarter we're going to reduce our losses until we obtain profitability. We improve each quarter."

101. Defendant's projections received undisputed publicity in the press and from analysts. News stories reported on the Company's purported prospects for profitability:

- a. January 28, 2000 *National Post*:

Priceline.-com Inc., the Internet company that allows consumers to "bid" on everything from airline tickets to hotel rooms, **said yesterday it expects to reach profitability in the first half of 2001.** "We expect to continue to reduce operating losses throughout 2000," Richard Braddock, chairman and chief executive, said after the company reported it lost \$12.7-million (US) in the fourth quarter, compared with a loss of \$12.9-million in the 1998 quarter. (Emphasis added)

- b. January 30, 2000 *South China Morning Post*:

Priceline.com's chairman says his firm's shares, which have jumped 26 per cent so far this year, are way undervalued.

"I'd say our stock is undervalued by as much as 50 percent," Richard Braddock, Priceline's chairman and chief executive, said yesterday. **"It could comfortably be double what it is today."**

Mr. Braddock said some analysts target Priceline's share price at \$190.

“We’ve made this public commitment that every quarter we’re going to reduce our losses until we obtain profitability,” Mr. Braddock said. “We improve each quarter.” (Emphasis added.)

102. In virtually every press release issued by Defendants during the Class Period, regardless of its subject matter, Defendants restated the existence of WebHouse and described its business and the fact that it was utilizing the Priceline Business Model. Of the thirty-three Company press releases issued between January 30, 2000 and October 4, 2000, twenty-seven of them reiterated the information quoted above or provided even more detailed facts relating to WebHouse. The dates of these press releases are: January 27, January 31, February 2, February 3 (two), February 23 (two), April 4, April 10, April 20, April 24, April 27, May 3, May 15, May 24 (two), June 1, June 7, June 28, July 6, July 24, July 26, July 31, August 2, August 3, August 31, and September 11, 2000.

103. On February 23, 2000, Priceline issued a release announcing that its former Chief Financial Officer, Paul Francis, had become WebHouse’s Chief Financial Officer. Defendants also touted Priceline’s Business Model and the enormous potential of WebHouse:

Jay S. Walker, founder of priceline.com (NASDAQ:PCLN) and chairman of Walker Digital, announced today the appointment of Paul E. Francis to the board of directors of Walker Digital, the Stamford-based intellectual property laboratory that invented priceline.com's business model. Mr. Walker also announced that Mr. Francis has been named to the newly created positions of chief financial officer of Priceline WebHouse Club and non-executive chairman of Priceline Perfect YardSale.

* * *

"Now that the priceline.com business model is firmly established and the Company is growing at a rapid rate, I'm pleased that Paul has agreed to apply his entrepreneurial energies to these two new companies," said Mr. Walker. "Both WebHouse Club and Perfect YardSale will benefit greatly from Paul's experience in helping start-ups. In addition to working with Paul in both of these new ventures, I look forward to having him as a colleague on the Walker Digital board of directors."

"Priceline WebHouse Club and Perfect YardSale are both great business models with enormous potential," said Mr. Francis. "I look forward to working with the strong management teams already in place at these companies to help them realize their goals. I also look forward to working closely with Jay Walker on these companies and Walker Digital, as he continues to build the most innovative businesses in the Internet space." (Emphasis added)

104. On the same day, Defendants announced that Heidi Miller, the former CFO of Citigroup was joining Priceline as Senior Executive Vice President and CFO. Again, Defendants touted the purportedly expandable business model of Priceline:

"Priceline.com has clearly demonstrated that its business model works across a broad horizontal range of industries, and is on one of the fastest growth tracks in the e-commerce sector," said Mr. Braddock. **"Our challenge now is to rapidly scale the priceline.com business across multiple product segments and continents. To accomplish that, we have been steadily building one of the strongest management teams in the Internet industry.**

"Priceline.com represents the perfect e-commerce business," said Ms. Miller. **"It's not an e-tailer and it's not a niche player. It's a business platform that can sit on top of virtually any industry, whether it's**

consumer to business, business to business, or consumer to consumer. I'm really excited about the potential of this platform. I'm looking forward to working with the excellent management team Rick and Dan have assembled." (Emphasis added)

105. At the New York Internet Electronic Commerce Conference and Exposition, on March 1, 2000, Defendant Walker continued to tout the expandable nature of Priceline's business model. The following stories reported on his comments:

a. March 2, 2000 *Business Line*:

A second area to closely monitor is e-commerce. Jay Walker of Priceline.com came and spoke to P&G managers in Cincinnati three months ago. Today Jay Walker is selling 2 per cent of all airline seats and hotel rooms in the US through his site. Priceline has now started bidding for groceries, where consumers purchase groceries at the price they want to pay.

Jay Walker believes that in a few years' time Priceline will be as big as a retailer as Wal-Mart. And, at least the stock markets believe him because they have already valued Priceline in the same league as Wal-Mart.

b. March 1, 2000 *Newsday*:

Priceline.com, which enables customers to name their price for airline tickets, hotel rooms, groceries and other necessities, has plans to enter the business-to-business market online.

"Priceline is interested in every market," Jay Walker, vice chairman and founder, told a New York Internet conference yesterday. **"You can expect us to be in all business-to-business markets."**

Walker didn't elaborate. **But name-your-own-price**

telecom services, office supplies, electronics and advertising rates were among the business-to-business possibilities mentioned yesterday by Priceline chairman, Richard Braddock, who spoke at a San Francisco investment conference.

Priceline, which is expected to roll out these new pricing services in the second half of this year, would be entering an increasingly hot area of the Internet-connecting business buyer to business seller. (Emphasis added.)

106. At a PaineWebber Internet Conference, on March 6, 2000, Priceline executives led investors to believe that profitability would arrive even sooner than Defendants previously had projected at the beginning of the Class Period. While Priceline, in January 2000, had moved up the Company's breakeven target from the second half of 2001 to the first half of 2001, at this conference, Schulman informed investors that the Company was experiencing "significant momentum." Additionally, Braddock informed the audience: "[w]e are having an extremely strong quarter, and we are more than comfortable with the numbers that are out there. In 2000, Priceline could be profitable in travel alone."

107. Defendants' March, 2000 acceleration of the timing of the Company's projections of profitability, again, received extensive media coverage. Thus, the following news stores reported on Schulman's statements:

a. March 6, 2000 *Dow Jones Business News*:

Priceline expects its revenue in 2000 to rise to about \$1 billion from about \$500 million in 1999, Braddock said. The company also expects gross profit margins to reach 15% for the year.

The company had 13% gross margins in the fourth quarter.

Priceline's gross profits should grow at a higher rate than revenue, Braddock said, partly because the company has achieved better margins in its biggest segment, airline tickets. If Priceline still sold only airline tickets, it would now be profitable, he said. The company plans to launch 10 new product lines in 2000; it recently announced plans for a "name your own price" gasoline service.

b. March 15, 2000 *USA Today*:

So what's behind the new life at Priceline, known for its name-your-own-price airline tickets and kooky William Shatner ads?

Most point to its successful new ventures that play off its name-your-own-price schtick. Priceline users also can bid for groceries, hotel rooms, home mortgages, car rentals and new cars. Soon, consumers will be able to name their own price for credit cards, long-distance telephone service and gasoline.

Priceline President Dan Schulman says the name-your-own-price bidding system works with virtually any product or service. "Our scale is almost limitless," he says.

* Profits on the horizon. At a PaineWebber Internet conference March 6, Priceline executives hinted

profitability will arrive sooner than expected. Schulman says Priceline, which in January moved its break-even target up to the first half of 2001 from the second half, is experiencing “significant momentum.” At the conference, CEO Richard Braddock said, “We are having an extremely strong quarter, and we are more than comfortable with the numbers that are out there. In 2000, Priceline could be profitable in travel alone.”

c. March 29, 2000 *USA Today*:

One reason Priceline stock has soared is that it recently hinted to Wall Street analysts that it expects to break even sooner than its target of mid-2001.

108. In the Company’s Form 10-K, filed on March 30, 2000, which was signed by Braddock, Schulman, Walker, and Nichols, Defendants continued to emphasize the purportedly expandable nature of the Priceline Business Model:

Priceline.com believes that its unique business model can be applied to a broad range of products and services. The Company believes that this broad applicability of its business model, its first mover advantage, the strength of the priceline.com brand, its network of seller participants, its proprietary software systems and its intellectual property strategies provide it with significant competitive advantages. Priceline.com's strategy is to increase its revenues in existing products and services by improving product offerings, expand its Name Your Own Price(sm) service to new products and services and offer its services in international markets through investments in independent licensee companies.

* * *

Priceline.com's objective is to continue to expand the priceline.com business and to operate priceline.com's demand collection system as a leading source for the purchase of products and services on the Internet. The key elements of priceline.com's strategy are as follows:

* * *

Leverage the priceline.com Brand Over Numerous Products and Services. **Priceline.com intends to continue to leverage the priceline.com brand across numerous products and services to achieve significant revenue scale and growth.** In contrast to most e-commerce businesses that operate in one or two "vertical" markets, **priceline.com is a "horizontal" commerce system that can benefit both buyers and sellers across a broad range of products and services.** Priceline.com's strategy is to make available multiple product and service offerings at a single Web site under a common brand to take advantage of these market opportunities. **Priceline.com intends to expand directly in certain vertical markets and license its business model and name to independent licensees in other markets.** Priceline.com and its licensees have launched or expanded offerings in several new categories over the past twelve months and these efforts will continue. (Emphasis added)

109. Similarly, the Form 10-K contained the following disclosures heralding the Company's ability to expand its Business Model beyond those core products:

Broad Applications Across Multiple Markets. In contrast to many e-commerce companies that are building brands in vertical categories or groups of related categories, **priceline.com believes that its e-commerce business model has horizontal**

application to products and services in a wide range of industries. Priceline.com further believes that the broad applicability of the priceline.com service and the strength of the priceline.com brand afford it the opportunity to obtain substantial economies of scale and offer the potential for priceline.com to become a major new channel of distribution. (Emphasis added)

110. In this Form 10-K, Defendants again emphasized the critical nature of Priceline's need to continue to expand its product line beyond its core products by stating:

We Need to Sell New Products and Services
We are unlikely to make significant profits unless we continue to make new or complementary products and services and a broader range of existing products and services available through the priceline.com service or through services provided by our licensees.

111. The Form 10-K also reiterated the importance of WebHouse to the Company's continuing financial performance:

In 1999, priceline.com licensed its name and demand collection system to Priceline WebHouse Club, Inc. and agreed to provide certain services to WebHouse Club. WebHouse Club offers a Name Your Own Price(SM) service for groceries and has announced the planned offering of a service for gasoline. **Under the negotiated agreements, priceline.com receives a royalty based on a percentage of WebHouse Club revenues and compensation at fair value for certain services rendered.**

B. Defendants Continue Their Deception Through The Media: Misrepresentations Regarding WebHouse's Grocery Business.

112. From the beginning of the Class period through the remainder of the first quarter of 2000, defendants continued to barrage the press with statements heralding the continued expansion of WebHouse's grocery business, the fact that manufacturers were covering the subsidies afforded to WebHouse users, and the expandability of the WebHouse and Priceline Business Model. With each story, investors continued to solidify beliefs that Priceline's Business Model was succeeding in WebHouse. Thus, the following stories were carried in the press:

a. February 12, 2000 *The Milwaukee Journal Sentinel*:

Priceline.com Inc., the popular Internet site that lets consumers name their own prices for airline tickets and autos, will bring its online grocery pricing site - - Webhouse Club - - to Milwaukee next month.

Priceline launched Webhouse in New York in November. Since then, 175,000 households in the New York area have signed on as Webhouse members.

"We price 5,000 items per hour, 24 hours a day, seven days a week," Priceline spokesman Kevin Goldman said.

After 90 days, Webhouse members are charged \$3 per month during every month that they use the service.

Those charges bring in revenue that partially offsets the difference between what a customer pays for a grocery order and what Webhouse pays the participating grocer. Another source of revenue for Webhouse is manufacturers who pay to have products listed on the site. The site's third revenue source is sponsorships.

All sorts of companies, from record clubs to magazine publishers, pay to be listed.

b. February 19, 2000 *The Associated Press*:

Shoppers in Central Pennsylvania who want to save money on their grocery bills now have another option besides clipping coupons or looking for sale signs as they roam the supermarket aisles with their carts.

Beginning Sunday, people can choose prices on brand-name grocery products on the Internet and pick them up at participating stores.

Webhouse Club spokesman Robert Padgett said the service has already attracted 200,000 members, making it the fastest-growing of Priceline.com's Internet-related businesses, and is growing faster than other services that offer home delivery, which Webhouse Club does not.

Priceline Webhouse Club began offering the grocery service in New York City in November, and the service has expanded to Philadelphia, Washington, Baltimore and Detroit and also recently began in the Virginia Beach/Norfolk, Va., area. The company expects the service to be national by the Summer. (Emphasis Added.)

c. February 19, 2000 *The Harrisburg Patriot*:

Beginning tomorrow, central Pennsylvania shoppers will be able to select their own prices on brand name grocery products on the Internet, and then pick them up at participating Giant or Weis stores.

Priceline Webhouse Club, a privately held licensee of Priceline.com, began offering the grocery service in November to the New York City area. It has since expanded into the Philadelphia, Washington, Baltimore and Detroit markets, and recently entered the Virginia

Beach/Norfolk, Va., area. It expects to be national by the Summer.

Participating stores are able to benefit without much of a downside, [Webhouse spokesman] Padgett said. The stores continue receiving the full shelf price for the sold products, even if the customer isn't paying that price. **The difference will be made up by the manufacturer that has accepted the Webhouse Club price set by the customer.** (Emphasis added)

d. February 24, 2000 *New York Post*:

“Our challenge now is to rapidly scale the Priceline.com business across multiple product segments and continents,” said Braddock. “To accomplish that, we have been steadily building one of the strongest management teams in the Internet industry. Heidi has a unique combination of experience and skills that will help us to further accelerate the growth of our business, as she also understands the needs of the investment community.”

e. February 27, 2000 *Associated Press Newswires*:

Supermarkets in the Lehigh Valley are rushing to attract Internet-savvy shoppers, using Priceline's new grocery service, Webhouse Club.

Webhouse Club, which started Nov. 1 in the New York market, has about 200,000 members and aims to be nationwide by Summer, according to [Webhouse] spokesman Bob Padgett. The organization is a licensee of Priceline, known for its Internet discounts on airline tickets and hotel rooms.

f. March 5, 2000 *Sunday Mail*:

Webhouse, an American Internet company plans to introduce “dynamic pricing” to British stores. It invites customers to bid for their shopping. Here's how it

works.

Webhouse started up last November and has already amassed 250,000 customers in New York, New Jersey and Philadelphia.

It plans to cover the whole of the United States by the end of the Summer and then move into Britain.

Webhouse spokesman Robert Padgett says: "We have every intention of taking this to an international level and Britain is high on our agenda.

"Judging by how quickly we've expanded in four months, I would say the British haven's long to wait."

g.. March 13, 2000 *Capital District Business Review (Albany)*:

One of the hottest Internet trends - - "name your own price" - - has quietly slipped into the Capital Region. Area Grand Union stores have hooked up with the Priceline Webhouse Club, a Stamford, Conn.-based affiliated licensee of Priceline .com, to allow shoppers to buy discounted grocery items over the Internet and pick them up at local stores.

Robert Padgett, spokesman for the Webhouse Club, said the grocery business is the fastest-growing part of the Priceline.com businesses. He said the company has attracted 250,000 members in the four months since it launched and priced 10 million items. The company counts an item priced when a bid has been submitted and accepted.

Padgett said retailers continue to get paid the full price of an item. The Webhouse Club makes up the difference with the help of participating manufacturers who subsidizes the cost of their products and from sponsors who support the "half-price token" promotion.

The Webhouse Club's Padgett said the company was continuing to be able to attract manufacturers willing to offer discounts. The program attracts customers to new brands and, even selling at a discount, the manufacturers are still making a profit, he said. The company plans to take the program national this Summer.

h. March 14, 2000 *Telegram & Gazette Worcester, MA:*

A new partnership between Priceline.com and two area supermarket chains could mean savings of up to 50 percent for savvy Central Massachusetts shoppers, the companies claim.

Big Y Foods Inc. and The Stop & Shop Cos. Inc. have announced plans to participate in Priceline.com's new Webhouse Club online grocery shopping service.

"We deliver savings, not groceries," said Webhouse Club founder Jay Walker. "The immediate success of Priceline for groceries indicates that people are looking to the Internet as a way to save money on a variety of goods and services."

Priceline.com says the Webhouse Club is the fastest growing e-commerce service ever, growing from zero to 2 million grocery items in 60 days.

New members are signing up at a rate of more than 100,000 per month, according to the company.

i. March 16, 2000 *The Boston Globe:*

Priceline.com, the Web company known for its name-your-own-price airline tickets and offbeat ads featuring William Shatner of "Star Trek," is about to enter the grocery business in Greater Boston through an alliance with the Stop & Shop Supermarket Co.

In return for their extra time and effort, Webhouse

customers are rewarded with average savings of about \$13 on a \$35 order, Walker said.

“Our customer is anyone who wants to save \$10 to \$20 a week on groceries,” said Walker, adding that a value-conscious consumer who is fond of using coupons or shopping at a BJ’s Wholesale Club should like Webhouse.

Stop & Shop, a 202-store chain based in Quincy, is one of several supermarket chains to team up with Webhouse in the New York market. A “positive” initial response from customers persuaded Stop & Shop to offer the Webhouse service to customers in Connecticut, Western Massachusetts, and now Greater Boston, she said. (Webhouse is also available in such markets as Baltimore, Detroit, Philadelphia, and Washington, D.C.)

j. March 23, 2000 *The Patriot Ledger*:

Priceline.com, the two-year-old Web site popular with consumers who like setting their own prices on airline tickets and hotel rooms, has ventured into the grocery business. As of this week, the service is available at all 105 Stop & Shop in Massachusetts and Rhode Island.

So who’s paying for the savings? “The difference is made up by the sponsors or particular manufacturers,” Padgett said. “All supermarkets get full price for everything.” (Emphasis added)

k. March 26, 2000 *The Columbus Dispatch*:

Ohio caught the latest wave this month when Meijer introduced “Name Your Own Price” for online groceries in Toledo. The program will come to central Ohio by Summer.

Meijer hooked up with Priceline Webhouse Club, an offspring from the purveyors of cheap online air tickets,

on a concept that organizers guarantee will offer lower prices than those posted on grocery shelves.

Stamford, Conn.-based Priceline, made popular on television commercials with actor William Shatner of Star Trek fame, hamming it up for name-your-price air tickets, is boldly going where no one has gone before.

It started grocery bidding in New York last December and **plans to roll out gasoline bidding nationwide in mid-May**. Also on tap is name-your-price long-distance calling. Priceline offers its bid system for hotel rooms, rental cars, home mortgages and new cars for sale or lease.

“It’s a whole new concept that you can name your price for anything. It’s not a gimmick, it’s not bogus. This is for real,” spokesman Padgett said.

Priceline pays Meijer shelf prices for online customer purchases and makes up the difference with subsidies from food manufacturers and Web-site sponsors .

(Emphasis added)

1. March 27, 2000 *The Baltimore Sun*:

Since November, [Webhouse Club] says it has signed up more than 300,000 customers in Baltimore, Washington, New York, Philadelphia, Boston, Hartford, Detroit, Vermont and Southeastern Virginia. It’s headed into other markets as fast as it can, **with the ultimate aim of national penetration by the end of the year.**

Robert Padgett, a company spokesman, said its customers include 22,000 shoppers in the Baltimore area and another 25,000 in Washington and its suburbs.

Webhouse claims its users save an average of \$13 on a \$35 shopping bill.

The big question, of course, is who's paying for all this largess? The answer is complicated. First, it doesn't cost the supermarkets anything. Webhouse pays them the difference between your price and their retail price.

Webhouse, in turn, gets its money from three sources. After the first three months, it charges members \$3 a month if they use their cards, but that doesn't come close to making up the difference.

The company's major income so far comes from national brand manufacturers, who pay to have their products featured on the site. Padgett said Webhouse has signed up 24 national clients but won't say who they are or how much they pay. Their motivation is to get you to buy their cornflakes or soap instead of private-label and shopping-club brands by offering their wares at lower prices.

Webhouse also gets money from "partners" when you click on their token-disguised ads and offers, and soon the company plans to accept regular advertising. (Emphasis added)

m. March 30, 2000 *Greensboro News & Record*:

Priceline launched the grocery shopping service in November in New York, but it is now available in New York state, Philadelphia, Baltimore, Washington, Detroit and parts of Virginia and North Carolina. The company launched the service in the Triad on Wednesday and **expects to have partnerships with stores nationwide by Summer.** (Emphasis added)

Since November, 400,000 shoppers have enrolled in the Webhouse Club and purchased \$15 million worth of groceries, [Webhouse spokesperson] Littlefield said.

On May 20, Webhouse Club will begin allowing

shoppers nationwide to name their own prices for gasoline as well.

Webhouse Club will get a fee from manufacturers for referring shoppers.

113. Priceline continued to acknowledge Webhouse's importance to Priceline because Webhouse provided a diversification of Priceline's revenue streams away from airline tickets. For example, the March 21, 2000 *National Post* reported:

The company's share price plunged yesterday after an article in *Barron's* suggested that the Internet firm could feel the impact of competition from airlines and hotels, analysts said.

A Priceline spokesman said that the report was off base in suggesting that the company was threatened by hotel and airline industry Web initiatives.

The spokesman said that travel is becoming a smaller part of Priceline's overall business. The company, with actor William Shatner as its pitchman, is expanding into other products and services, including groceries, long-distance telephoning, credit cards and gasoline.

C. Defendants Continue Their Deception Through The Media: Misrepresentations Regarding WebHouse's Gasoline Business.

114. Defendants, on or about February 25, 2000, announced WebHouse's expansion into gasoline. Defendants misrepresented that Webhouse's gasoline service, which was to begin by the Memorial Day weekend, would be a national offering and that the discounts given to users would be covered by gasoline suppliers, advertising proceeds, and participating gas stations. As reported by the February 25, 2000 *Newsbytes News Network*:

In an interview with Newsbytes, Robert Padgett,

spokesperson for Priceline Webhouse Club, said that starting May 20, just in time for the Memorial Day Weekend, his company will launch a new service that will make it possible for drivers to ignore the price of gasoline at the pumps. Instead, drivers will be able to go to <http://www.priceline.com> on the Internet and name their own price for up to 50 gallons of gas a month. After locking in their price, drivers can get their gas at local major-brand gas stations selected by Priceline Webhouse Club.

Padgett confirmed that, unlike the Webhouse Club's online grocery service which is available in just a few areas, the gasoline service would be available in cities and towns across the US.

According to Priceline Webhouse Club, drivers can expect to save between 10 cents to 20 cents a gallon, and sometimes more. Priceline Webhouse Club claims that these savings are possible because it **gets money from several sources to lower the gas prices paid by its customers. For example, Priceline Webhouse Club says that local gas stations pay it a few cents per gallon to get the incremental business that will be coming to their stations. In addition, the Priceline for Gasoline service will carry paid online advertising, and that some of this ad revenue will be used to subsidize the reduced gasoline prices.**

Also, Priceline Webhouse Club says that, at the launch of its service, over 100 national sponsors will contribute to subsidizing customers' gas purchases in return for customers agreeing to try the sponsors' products and services.

Finally, Priceline Webhouse Club expects that the major oil companies will support the system with additional savings in return for getting new customers for their branded gasoline and related products, as well as for the oil companies' own

proprietary gasoline credit cards. (Emphasis added.)

115. The press was keenly focused on Webhouse's move into gasoline. Repeatedly, Webhouse spokespeople informed the press that the discounts to be given to Webhouse users would come from sources other than Webhouse. Thus, the following stories reported on Webhouse's gasoline expansion:

a. February 25, 2000 *The Associated Press*:

Priceline.com, the name-your-own-price Web site for travel, groceries and home mortgages, said Friday it is adding gas purchases beginning May 20.

"This is the perfect time for consumers to do something about the high cost of gas," said Jay Walker, the company's co-founder and chairman, who estimated that most motorists would save 10 cents to 20 cents per gallon.

Walker said the company can offer lower prices because participating gas stations will pay it a few cents per gallon to get new customers. (Emphasis added)

b. February 26, 2000 *The Hartford Courant*:

Priceline said it expects that the discounts in gasoline will be offset in part by the competition among gasoline suppliers for new business, and in part by advertising that will be placed on the Priceline Web site. (Emphasis added)

Priceline.com is ready to pump you up.

The Internet retailer, headquartered in Stamford, said Friday it will soon begin selling gasoline from its Web site.

Consumers can expect to save 10 to 20 cents per gallon using the new service, which will be called Priceline for Gasoline, company officials said.

Officials said the new service is expected to launch in May.

Priceline said it expects that the discounts in gasoline will be offset in part by the competition among gasoline suppliers for new business, and in part by advertising that will be placed on the Priceline Web site.

The new Priceline for Gasoline service is the latest in an expanding array of products and services available from Priceline. The company is already successfully using this reverse-auction model to sell airline tickets, hotel rooms, automobiles and mortgages.

The most recent previous addition to the Priceline lineup was the Webhouse Club for groceries. Priceline for Gasoline will operate under the Webhouse Club brand. (Emphasis added.)

c. February 26, 2000 *Sun-Sentinel Ft. Lauderdale*:

Priceline Webhouse Club can offer lower gas prices because participating local gas stations pay it a few cents per gallon to bring business to their stations, Padgett said.

The gas stations will be contributing very little to the difference in price and in exchange they will be getting more business, Padgett said.

The bulk of the price difference will be made up through advertising and sponsors on Priceline.com's Web site, Padgett said.

The service will be offered throughout Florida and other cities and towns across the United States.

Priceline Webhouse is negotiating with major oil companies and gasoline stations owned or operated by them, said Robert Padgett, spokesman with Priceline Webhouse Club, based in Stamford, Conn. (Emphasis added.)

d. February 26, 2000 *The Atlanta Journal*:

Sick of high gasoline prices? Priceline.com, the Stamford, Conn.-based company that lets users name the price they are willing to pay for airline tickets, hotel rooms, cars and home mortgages, said Friday it will add gasoline purchasing to its offerings.

The costs of offering discount gasoline will be offset by online advertising and by support from oil companies that expect to offer gas savings as a means of attracting new customers, Priceline says.

“It’s great timing based on the attention that the gas prices are receiving,” said Priceline spokesman Robert Padgett.

“We anticipate this offering will put 5 million new customers onto Priceline.com within the next two years,” Padgett said.

Details of the arrangement between Priceline.com and the oil and gas companies are still sketchy. Priceline won’t reveal which companies are willing to offer the discounted gasoline.

“Oil companies work with Priceline as long as we agree not to release their names, just like we never announced the names of participating airlines or hotels in our travel service,” the company says on its Web site. Oil companies may choose to announce their participation.

The costs of offering discount gasoline will be offset by online advertising and by support from

oil companies that expect to offer gas savings as a means of attracting new customers, Priceline says.

“We anticipate this offering will put 5 million new customers onto Priceline.com within the next two years,” Padgett said.

e. February 26, 2000 *The Star-Ledger*:

But the gas stations won't be expected to sacrifice their razor-thin profit margins if they sell gas online, said Robert Padgett of Norwalk, Conn.-based Priceline.

“Our sponsors will pay Priceline customers a credit that goes toward lower prices,” Padgett said.

Sponsors won't be gas-related firms, but will be “online furniture stores, pet stores, flower companies or anyone else looking to drive some business to their sites,” Padgett said.

Padgett said Priceline expects to sign up nationwide gas station chains that are owned by petroleum companies and retail chains, rather than independent retailers. Most of the savings will be paid for by sponsors and advertisers.
(Emphasis added)

f. February 26, 2000 *Denver Post*:

Priceline.com, the name-your-own-price Web site for travel, groceries and home mortgages, said Friday it is adding gas purchases beginning on May 20.

Analysts applauded the latest endeavor, saying it complements the company's product line.

It 'fits exactly in their sweet spot. If you buy gasoline from Priceline, you're more likely to buy groceries, you're more likely to buy airline tickets,' said Harry

Wells, of Adams, Harkness & Hill Inc. in Boston.

The 2-year-old company is expected to crack \$1 billion in revenues this year and turn its first profit in early 2001.

‘They are a juggernaut and on their way to profitability,’ said Wells.

g. February 28, 2000 *The Associated Press*:

Priceline.com, which uses a name-your-price system for airline tickets, hotel rooms, cars and home mortgages, announced today it is adding gasoline purchases beginning May 20. Motorists can name their price for up to 50 gallons of gas a month. After locking in their price in 60 seconds or less, drivers can get their gas at local major-brand gas stations selected by its licensed affiliate Priceline Webhouse Club.

The service will be offered in cities and town across the U.S.

“You can pick any gas station in your area, and we tell you which one after you give us a list of the stations you like,” Jay Walker, founder and co-chairman said during “The Early Show” on CBS this morning. “You’re going to save 10 to 20 cents a gallon on gas, and some customers will save more.”

“This is the perfect time for consumers to do something about the high cost of gas. It’s the battle of the titans - the global Internet vs. global gas prices,” said Walker.

He said the participating gas stations pay Webhouse Club a few cents per gallon to get business coming to their stations. More than 100 national sponsors also are expected come aboard for the promotion. (Emphasis added)

h. February 28, 2000 *The Wall Street Journal*:

Priceline.com Inc.'s Webhouse Club said it plans to let customers bid on as much as 50 gallons of gasoline a month over the Internet. Webhouse, Stamford, Conn., an Internet retailer closely affiliated with Priceline of Norwalk, Conn., said drivers can expect to save between 10 and 20 cents a gallon on gasoline through the new service, which follows Priceline's "name your own price" model. Consumers will purchase their gasoline at Webhouse's Web site, redeeming their purchases at gas stations through a special payment card. **Webhouse said the discounts will stem from small per-gallon fees paid by gas stations and oil companies that participate in the service. Webhouse will also use a portion of online advertising revenue on its gasoline site to reduce the prices customers pay.** (Emphasis added)

D. Priceline's Misrepresentations Regarding WebHouse Artificially Inflated The Price Of PCLN Stock Throughout The Class Period.

116. The market's emphasis on WebHouse's success and Priceline's purported expansion as a barometer for the valuation of Priceline was carried through to the beginning of and throughout the Class Period:

- a. On January 27, 2000, Robert Stephens reaffirmed its "Strong Buy"

recommendation for Priceline:

We continue to be impressed by Priceline's strategy of selectively entering new markets through partnership (like Webhouse Club) that are structured such that Priceline's investors reap the near-term benefit of high gross margin revenues and long-term benefit of consolidation of attractive business partners. Priceline's management indicated plans to enter several new businesses in 2000, including new insurance products, credit cards, additional international markets, vacation packages, and cruises. In addition, we believe Priceline could enter the B2B

space in the second half of this year, which by our estimates could prove an even larger market opportunity for Priceline than the B2C sector. What's all this mean to investors? **We believe it means Priceline (as their ads say) is going to get BIG, really big and really fast. In our view, investors dramatically underestimate the widespread applicability of Priceline's name-your-price business model in both the B2C and B2B sectors.** As a result, we believe Priceline could grow into a valuation several times its current levels and thus, **Priceline remains our single Strong Buy rated stock.** (Emphasis added.)

b.. On January 27, 2000, Prudential also issued an update on its "Strong Buy" recommendation which focused, in large part, on WebHouse and began with the headline "PCLN 4Q99 Results are Impressive And Expansion Continues at Dizzying Pace":

WebHouse Club's Grocery Business Continues to Gather Momentum: **The Company stated that it has signed up 125,000 WebHouse Club members and sold more than 4 million items in the New York area in its first ten weeks of operation. In addition, as the company continues to add 15,000 new customers per week, a full 82% of the buyers are repeat customers. Without a doubt, consumers have adopted Priceline.com as a great way to buy groceries.**

We find these results to be incredibly impressive, considering there are 40 major markets for groceries in the U.S. We calculate that Priceline could sign up 2.5 million customers (125,000 X 40 markets X 50% discount for market size compared to New York) in its first quarter of national operation, assuming similar success in other markets. **The company has already opened the Philadelphia, Baltimore, and Washington, D.C. markets, and has announced it will expand to an additional ten**

markets this quarter, with national exposure by the end of the second-quarter 2000. We anticipate the national exposure will come through a national grocery chain.

Priceline plans to charge consumers \$3 per month fee for membership, after the initial 90 days. This should help defray some of the costs associated with the discounted merchandise. In addition, we believe the company has a number of adaptive marketing agreements in the works.

However, the company has still not announced the participation of any brand manufacturers. Although we believe several smaller brands may have signed up with the company, WebHouse will have to sign up a major brand (i.e. Proctor & Gamble, Pepsi, etc.) to make investors confident that the business model will be viable in the long term. (Emphasis added.)¹¹

c. On January 27, 2000, Robertson Stephens reaffirmed its “strong buy”

recommendation for Priceline and focused on the success of Priceline’s affiliates such as WebHouse as a major factor in Priceline’s stock valuation:

Strong business momentum: We believe Priceline’s new marketing and business initiatives are attracting record levels of traffic to Priceline’s site. Specifically, management indicated WebHouse Club is the Company’s fastest-growing business to date.

* * *

We expect Priceline to continue its strategy of selectively entering certain new markets through

¹¹This Prudential update reflected the reality that Priceline and WebHouse effectively were one and the same company and that, notwithstanding Priceline’s representations that WebHouse had been structured to insulate Priceline financially from any potential operational or financial difficulties that WebHouse might encounter, the fortunes of Priceline and WebHouse were inextricably linked.

partnerships with other companies. To date, Priceline has received both licensing fees for its name-your-price business method and warrants to purchase major stakes in its business partners, effectively offering investors the near-term benefit of high gross margin revenues and long-term benefit of consolidation of attractive business partners.

* * *

In our view, investors dramatically underestimate the widespread applicability of Priceline's name-your-price business model in both the B2C and the B2B sectors. As a result, we believe Priceline could grow into a valuation several times its current levels and thus, Priceline remains our only Strong Buy rated stock. Currently trading 60% off recent highs, we recommend investors take advantage of recent share weakness in advance of potential share price appreciation that could achieve new highs.

- d. In raising its estimates for Priceline's performance, Robertson Stephens

emphasized:

We note that given we believe many of Priceline's new business initiatives are still in early stages of development, we believe our current estimates could prove conservative. (Emphasis in original.)

- e. Analyst Robertson Stephens reinforced the importance the WebHouse venture

played in Priceline's valuation insofar as it purportedly demonstrated the expandability of the Priceline

Business Model:

Believe the Commercials . . . Priceline is Big, Really Big!

We recently raised our revenue estimates for Priceline following the company's preannouncement of strong

revenues and smaller losses. Following this week's full release of Q4 results, which were slightly better than preannounced levels, we again raised our estimates, this time increasing our revenue and EPS outlook as a result of exceptionally strong business momentum and improved operating leverage. Specifically, we believe Priceline's new businesses are growing quickly, benefitting from the added traffic the other businesses bring to the site. **We continue to be impressed by Priceline's strategy of selectively entering new markets through partnerships (like WebHouse Club) that are structured such that Priceline's investors reap the near-term benefit of high gross margin revenues and long-term benefit of consolidation of attractive business partners.** Priceline's management indicated plans to enter several new businesses in 2000, including new insurance products, credit cards, additional international markets, vacation packages, and cruises. In addition, we believe Priceline could enter the B2B space in the second half of this year, which by our estimates could prove an even larger market opportunity for Priceline than the B2C sector. What's all this mean to investors? **We believe it means Priceline (as their ads say) is going to get BIG, really big and really fast. In our view, investors dramatically underestimate the widespread applicability of Priceline's name-your-price business model in both the B2C and the B2B sectors.** As a result, we believe Priceline could grow into a valuation several times its current levels and thus, **Priceline remains our single Strong Buy rated stock.** (Emphasis added.)

f. Other analysts confirmed the market's sentiment that the business success of Priceline, and thus its underlying valuation, hinged in large part on the momentum Defendants attributed to WebHouse. Specifically, on January 28, 2000, analyst First Union Securities issued a report reflecting this emphasis:

Current Business Momentum from Seasonality, New Inventory And New Traffic from WebHouse. . . The strength [in Priceline's sales] can be tied to stronger seasonal travel patterns, the addition of eight new airline partners that increase inventory and therefore closure rates, and site traffic generated by WebHouse Club. WebHouse Club has been an effective "off-income-statement" tool to generate traffic to the priceline Website.

g. On January 28, 2000, an analyst from Merrill Lynch, in rating Priceline a "long-term buy," also confirmed that the market's valuation of Priceline was dependent on the ability of the Company to expand beyond its core travel offerings:

The big question for long-term priceline investors is still how large the company will be able to get (especially the small sequential increase in offers). We believe the recent doubling of inventory access gives priceline more room to grow in the airline ticket business, though we expect this to be somewhat limited as the airlines more aggressively build out their own Internet sites. **The company continues to diversify its product offerings however, and its non-travel businesses are showing signs of momentum.**

* * *

Priceline's recent initiatives such as WebHouse Club and Perfect Yard Sale are structured such that priceline books a license fee representing a small percentage of these companies' sales, but because there is no equity stake, doesn't book any expenses. At the same time, priceline has an option to purchase an equity stake so that when the new companies do reach priceline's profitability trajectory, priceline can bring them in-house. Until then, small new streams of license revenue at 100% gross margin should slightly positively affect margins. (Emphasis

added.)¹²

h. On January 31, 2001, Analyst InternetFundManager.com LLC issued a report recommending Priceline as a “Buy.” This analyst reported:

STRATEGIES FOR GROWTH

Priceline’s strategy for growth centers primarily on using strategic partnerships to enter many industries and seize control of the market

* * *

In conjunction with strategic partnerships, Priceline’s strategy for growth relies on the rapid addition of new services in order to help brand the company name and further popularize existing services. Thus far, this strategy seems to be fruitful; in the same week that Priceline’s grocery service had its first 10,000 customer day, its airline and hotel services hit seven-day records. This gives credibility to the Priceline business model, which relies on the use of new services to generate revenue for pre-existing services.

* * *

Investment Opinion. Priceline’s strategy for growth and its unique “name your own price” commerce system appear to be successful. Through strategic alliances, the company has been capable of offering superior service in a variety of industries. In addition, Priceline’s patent-protected technology allows the company to maintain its uniqueness while gaining revenue through strategic licensing.

i. On February 28, 2000, PaineWebber issued a report on Priceline’s

¹²Perfect Yard Sale was a Priceline affiliate that used the Priceline Business Model to bring buyers and sellers together to participate in online auctions.

introduction of gasoline services through WebHouse titled “Expanding the Platform Again; Reiterate Buy.” Based on a February 25, 2000 interview with Walker:

Priceline announced a name-your-own-price service for gasoline, with savings expected to be \$0.10-0.20 per gallon. This service will be offered by WebHouse Club, the priceline affiliate that lets consumers name their own price for groceries, and will be launched in late May.

* * *

As with the other priceline services, the gasoline service will work with the oil companies, advertisers, and sponsors to support the savings; the gas stations themselves will not subsidize the discounts on gasoline.

* * *

What does WebHouse get out of it? A piece of the customer charges at the convenience stores; a piece of the billions of dollars spent on customer promotion each year; and millions of e-mail addresses and customer data that manufacturers want but can’t get – and will pay WebHouse to do targeted marketing for them. Priceline benefits indirectly by collecting licensing fees from WebHouse, which it pays Priceline in order to have access to its technology.

* * *

This is one more example of how the priceline technology can be deployed among a wide range of horizontal industries, with relatively little capital requirements. We reiterate our Buy rating on priceline and our \$95 price target, based on our DCF models.

* * *

HOW BIG IS THE OPPORTUNITY?

The gasoline market in the United States is huge, with an estimated 130 billion gallons of gas sold in 1999. At a current average price of \$1.40 per gallon, that's more than \$180b in sales. But profits aren't made by selling gasoline. The average profit per gallon of gas is about \$0.07 for the name brands, which generally covers the overhead of running a station (perhaps a little more depending on operating efficiencies). So how does a station make money? By driving in new customer traffic and by selling more stuff to existing customers. This is the real opportunity: selling products, such as convenience store (c-store) items like coffee and cigarettes, tuneups and carwashes. These are high margin services that the stations provide to keep customers coming to their location; it's not for the gasoline. Roughly \$23b was spent at gas station-owned c-stores last year, at an average product margin of 30%. Adding in car washes and tuneups, the market potential is even higher.

WHO PAYS FOR THE SUBSIDY?

Obviously, \$0.10–.20 per gallon is not going to disappear into thin air. Someone has to pay for it and it won't be the retailers/station owners that are already working on relatively thin margins. **Then who? The same companies that subsidize the existing priceline and WebHouse services: suppliers, advertisers, and sponsors. The oil and gas companies will provide promotional money to make up some of the difference between the price the customer pays and the price on the pump. In effect, these companies will redirect a part of their customer promotion budgets to WebHouse.**

* * *

So far, the stations seem to think it will work. The company has signed up about 5,000 oil company-owned stations so far, and should have about 10,000 by the launch in May – about 5% of total stations nationwide.(Emphasis added)

j. On March 2, 2000, Robertson Stephens reported on Defendants' representations made at its March 1, 2000 Tech 2000 conference, and reiterated its strong buy recommendation:

Management's Presentation at Tech 2000 Highlighted Scaling Business Model: **Following Priceline.com's presentation at the Robertson Stephens Tech 2000 Conference yesterday**, we believe Q1 business trends continue to be very strong, likely driving better-than-expected sales and gross margins levels. **We now look for the likelihood of the company achieving profitability potentially well in advance of the time frame currently implied in our model (2001).**

* * *

Investment Recommendation: We believe management's comments yesterday about the company's business momentum and its detailed discussion of the company's complex business model were positives. As we have commented in the past, we believe Priceline's story is more complex than most other eConsumer business models, such that **we have wondered whether the investment community has fully understood the open-ended growth opportunities that we believe lie ahead of Priceline**. (Emphasis added)

k. On March 7, 2000, PaineWebber reported on Defendants continuing representations to the market made at the March 6, 2000 Fourth Annual PaineWebber Internet Conference. PaineWebber reiterated its buy rating for Priceline and relayed the following based on conversations with Braddock and Priceline's then-CFO, Heidi Miller:

We had the opportunity to speak with Rick Braddock, CEO and Heidi Miller the company's new CFO, about priceline's strategy. We came away with the opinion

that the company is moving ahead with new initiatives much more rapidly than we had originally anticipated, and that a good deal of that progress has not yet been reflected in analyst estimates.

* * *

One of the most significant signs of progress in the priceline strategy is that suppliers and manufacturers are coming to the table much more aggressively to work with Priceline. (Emphasis added)

l. On March 7, 2000, Defendants held their first “Analyst Day” where securities analysts were invited to Priceline.com’s headquarters in Norwalk, Connecticut, to hear Defendants and other Priceline executive managers talk about the current operations and future prospects of Priceline. Defendants indicated that Priceline’s business outlook was strong. The next day, analysts in attendance issued a slew of positive reports on the Company based on the representations of Defendants and their agents. Defendants used this conference as a vehicle to assuage the doubts about the extensibility of the Priceline model to other industries and to confirm past representations about holding a steady course towards profitability.

m. Prudential reported on March 8, 2000:

WebHouse Club: The Missing Piece of the Grocery Puzzle Gets Filled

We believe that groceries could be Priceline’s next blockbuster product category, and it appears that consumers in New York (the first test market) are adopting PCLN’s savings model faster than we would have predicted. But clearly, the long-term economic model is unsustainable without the participation of brand manufacturers to help pay for the discounts.

Management for the first time confirmed the participation of 23 consumer product manufacturers. While the company is not releasing the names of its partners, **management did state that it included large manufacturers across a number of categories. In our view, Priceline may have provided the missing piece of the puzzle.**

Jay Walker, Founder and Vice Chairman of PCLN, stressed that **WebHouse Club (an affiliate company in which PCLN has warrants) is about retailing, not just groceries.** The premise of WebHouse's retailing model is that consumers "name their own price", in return for being flexible in some way (usually brand neutral), and pick-up the goods at the participating retail store. following the success of the grocery model, WebHouse Club has announced a May 20th launch of "name your own price" gasoline and an autumn launch of hard goods. Perfect YardSale, currently in beta-test in Atlanta, is scheduled for an April launch.

Following news of the gasoline product, 40,000 registered users signed up in the first hour after the announcement. We view the gasoline offering as a customer acquisition tool for PCLN, as we are not convinced that the variable profit in the gasoline value chain can support the \$0.10-0.20 discounts WebHouse will offer customers.

* * *

PCLN Continues to Expand Model

Management did not surprise the audience with any new initiatives, but the company did clarify PCLN expansion plans into eighteen new products and geographical areas, as shown in the table below.

Telecom	1Q00
Virtual Travel Packages	2Q00
Gasoline	2Q00

Perfect YardSale	2Q00
Small Business	2Q00
SE Asian JV	2Q00
European JV	2Q00
Australian JV	2Q00
International Travel	2H00
Cruise Packages	2H00
Credit Cards	2H00
Term-Life Insurance	2H00
Auto Insurance	2H00
Japan JV	2H00
Latin America JV	2H00
Electronics	2H00
Hard Goods	2H00

* * *

Investment Thesis

We continue to believe in the strength and viability of the PCLN business model. The company reiterated its commitment to investors to reduce operating losses each quarter. **We anticipate PCLN will reach modest operating profitability as early as 1Q01 and in full-year 2001.** (Emphasis added)

n. Analyst Mary Meeker of Morgan Stanley also attended the March 7, 2000

“Analysts Day” and issued a detailed report outlining the representations made by Defendants and other senior Priceline executives and the presentations made by the Company:

From Day 1, priceline.com set out to build a horizontal e-commerce model focused on allowing customers (initially consumers) to “name their own price.” Initially, priceline.com only offered airline tickets, but quickly began to add new product lines, and in fact is now, on average, adding a new line every 2-3 months (priceline.com has moved from airline tickets only up

through June 1998 to airline tickets plus hotel rooms plus new car sales plus home mortgages plus groceries plus used goods plus rental cars plus gasoline plus telecom as of March 2000).

Meeker further reported, in summary form, the direct representations made by Defendants and other Priceline senior executives:

Rick Braddock: Chairman & CEO

Priceline.com has been experiencing strong momentum in C2000 so far. The company plans to meet or exceed its previously issued guidance of \$1B in revenues for C2000, with gross margins exceeding 15%. The Company has raised its target for registered customers by year end 2000 to 10MM from 8MM, and expects its 4MM airline ticket sales target for C2000.

* * *

Priceline.com is making significant progress in establishing a horizontal business model and has created an executional framework that shortens timelines to entrance into new verticals. Finally, priceline.com has adopted and has been performing in a steady path towards profitability. The company expects to decrease its operating loss sequentially in every quarter until reaching profitability in H1:00.

Dan Schulman: President and COO

Priceline.com offers a business model that changes the rules in which business is conducted. In protecting its suppliers brands by making its customers give up brand choice and other benefits, priceline allows its suppliers to gain incremental revenue while protecting their brand image, while consumers benefit from lower prices than available through traditional retail channels. The company's proposition allows both buyers and sellers to benefit from its model.

* * *

Priceline is developing a broad, horizontal e-commerce platform, controlling the information between buyers and sellers and partnering with physical world companies to strengthen its competitive position.

Priceline is a virtual e-commerce company, carrying no physical inventory, distribution costs, warehouses, etc. This enables the company to expand rapidly into new markets and scale quickly. The company is experiencing strong momentum, and is currently expanding into 18 new markets or geographical locations.

The company's competitive advantages are: 1) Its unique idea, based on multiple patented business processes, strengthened by its first mover advantage, strong supplier networks, and mutually reinforcing vertical market presences; 2) Its loyal customer following, shown by strong satisfaction and repeat metrics, together with a large and rapidly expanding customer base; 3) A proprietary IT foundation – flexible, scalable and with customized marketing, sales and service; 4) Strong and growing brand recognition; and 5) World-class management.

* * *

Priceline's business model applies across various sectors of the economy, and the company has designed initiatives to expand or push into automobiles, B2B, C2C, financial services, international, retail, telecom and travel.

Tim Brier: President, Travel/Trey Urbahn: SVP, Travel

Travel has been the “proof of concept” and prototype for the evolution of priceline services, showing the evident benefits to both buyers and sellers of airline tickets.

Mitch Truwit: SVP of Corporate Development

Priceline.com's strategic approach to entering new regions includes: 1) Working with local partners and local management to source capital, local market knowledge and supplier relationships; 2) Leveraging priceline proprietary technology, infrastructure and brand awareness; 3) Not taking equity ownership initially so that international results do not impact priceline financials; 4) Purchasing warrants to acquire at least a 50% stake in the venture; and 5) Thinking of future financial implications such the possibility to garner licensing and service fees, create value through an IPO, and including the venture results in priceline financials if priceline exercises its rights to purchase equity in the venture.

Robert Mylod: Senior Vice President, Finance

Priceline's financial philosophy is: 1) to manage for exceptional revenue growth while maintaining strict financial discipline; 2) to continue to invest heavily in business expansion; 3) to maintain progress towards profitability; and 4) to consistently meet or exceed external expectations of financial performance.

Jay Walker: Vice Chairman & Founder

Priceline has established its licensed affiliates WebHouse Club and Perfect YardSale as independent companies. Each pays to priceline a licensing fee for the business model, intellectual property, brand name, and Web site position, and priceline owns warrants to take a majority ownership position under certain conditions.

* * *

WebHouse Club enables consumers to name their own prices for groceries. For consumers, the value proposition is significant savings – an average of \$13 per grocery shopping trip on a retail basket of \$35. For retailers, the value proposition is increased traffic to the store and full price payment on all items sold

through the service. WebHouse Club helps retailers potentially regain share from large discount retail stores. For manufacturers, the value proposition is incremental sales from brand-flexible customers and potentially regained share from generic brands. Key incremental data point – almost two-dozen manufacturers have directly participated in the program to date.

To date, WebHouse Club has experienced strong growth: 1) as of March 2nd, 250,000 members had joined; 2) as of March 3rd, 10MM items had been sold; and 3) 25 major supermarket chains now participate with more than 2,000 supermarkets participating in current markets. WebHouse Club should be available nationwide by the second half of C2000.

- o. Also on March 8, 2000, Analyst Gregory P. Konezny of USBancorp/Piper

Jaffray issued a report which echoed the same sentiments expressed to analysts by the Defendants on March 7, 2000 and reflected the consensus that for Priceline to succeed, it was imperative that the Business Model be expandable:

Priceline.com hosted its first analyst and institutional investor day yesterday at its corporate headquarters in Connecticut. This forum represented an excellent opportunity for management to explain the sometimes complex priceline.com story as well as spotlight management talent within the Company. . . .the key theme we came away with is that we are at the inflection point from validation of the priceline.com concept to rapid deployment of the priceline.com system across a large number of vertical and geographic markets. Put another way, the Company's air travel ticket business, which will approach \$1 billion in revenues alone this year, represents only a small fraction of the market potential for the priceline.com system. In addition, the extension of priceline.com's unique customer value proposition across multiple markets provides an opportunity for the Company to

transform the business from a transaction-oriented model to one based on extremely valuable long-term, one-to-one customer relationships. Based on a more aggressive timeline to broadly penetrating markets with the priceline.com system, we have increased our long-term revenue, profitability, and cash flow estimates. Since our 12-month target on PCLN shares is based on long-term free cash flow generation potential, we have increased our price target from \$90 to \$150 and reiterate our Strong Buy rating. We are maintaining our near-term fundamental estimates for now, but expect to raise them meaningfully following increased visibility provided by the release of the first quarter fundamental results.

* * *

When viewed collectively, the market opportunity addressable by priceline.com's system is in excess of \$12 trillion in the United States alone!

priceline.com's affiliate, WebHouse Club, which has licensed priceline.com's brand and technology and is independently owned and financed, continues to experience extremely rapid growth. Launched only about three months ago, the WebHouse Club has already amassed more than 250,000 customers and has sold more than 10 million grocery store items.

WebHouse plans to roll out its grocery buying concept nationwide and have complete coverage by the second half of this year. In addition, it is launching a name-your-own-price-for-gasoline program nationwide in May and plans to enter the hard goods retail market in the fall. (Emphasis added)

p. On March 8, 2000, First Union, raised its recommendation of Priceline stock from a "hold" to a "buy." The analyst explained that this upgrade was based on "the strong business momentum, accelerated product rollout, and new global initiatives" which outweighed the negatives of

Priceline's business.

q. Robertson Stephens' described Defendants' March 7, 2000 presentation as

“upbeat” and reiterated its strong buy rating:

We believe the recent resurgence in Priceline's stock (shares are up 22% over the past week) has resulted from many investors waking up to Priceline's open-ended growth opportunities. **We believe yesterday's presentations further highlighted how Priceline is still at the very beginning of an exciting growth stage.** Given we believe Priceline is rapidly evolving into one of the first eConsumer Omnibrands, we continue to strongly recommend purchase. (Emphasis added)

r. On March 24, 2000, Janney Montgomery Scott issued a “Buy”

recommendation on Priceline headlined “Poised for Growth”:

Now that Priceline.com has established its brand, it is starting to leverage it across new verticals. Without a doubt, Priceline.com has established a brand awareness among consumers. In fact, a survey by Opinion Research Corp. (OPI-\$9) in February 2000 ranked Priceline.com number four in brand awareness and number one in e-commerce. Its first major advantage with its unique buyer-driven model, its brand equity, supplier relationships, proprietary software systems and related technology infrastructure established over thirty months, along with a strong management team, gives priceline.com many opportunities to grow its business.

Over the next year, Priceline.com expects to grow its customer base from four million customers to 10 million. It plans to roll out telecom into the business-to-consumer market by the end of March, and begin a marketing push for this vertical in May with a focus on certain segmented markets such as college students.

Gas will also be sold through priceline.com this coming summer.

Priceline also plans to expand its travel services by offering virtual travel packages, travel insurance, cruises and someday timeshares. In the auto sector, it plans to expand into used cars and car parts. In financial services, auto insurance, term life insurance and credit card businesses are all on the agenda. On the retail front, the company is looking at the hard goods sector. Finally, Priceline.com plans to expand internationally, as evidenced by its most recent joint ventures.

s. On March 29, 2000, Hambrecht & Quist issued "Conference Highlights:

Value proposition predicated on name-you-own-price. Priceline.com has validated the premise that consumers will trade-off brands for a price savings and sellers (brand owners) will trade-off price to move more product. Selling airline tickets and hotel rooms on a name-your-price basis' (read: huge discounts) was Priceline.com's proof of concept demonstrating customer appeal and permission. **As the company has moved to more and more categories, management has further proven the viability and scalability of this operating model** (First Call consensus indicates that the company will be profitable in FY01). Francis revealed that this year projected revenues for just airline tickets (a category that is now two years old) is at \$800M to \$1B.

By the end of FY00, Priceline.com will be active in almost every sector of the U.S. economy. It was indicated that Priceline.com will apply to more areas of the U.S. economy than not - testimony to the widespread appeal of the name-your-own-price proposition. This week in fact, he said that Priceline.com would introduce long distance service in partnership with long distance carriers like Net2Phone on the heels of mortgages, and new cars.

* * *

New WebHouse Club affiliate makes first entree into retail goods. Perhaps the biggest idea from Priceline.com is its recently formed affiliated called WebHouse Club. The first focus is grocery, which began testing in NYC in November 1999 and now is in 4 additional markets including: DC, Philly, Boston and Detroit. The premise here is three fold: 1) consumers will be flexible about the brands they buy if they can save more (50% of U.S. consumers use coupons), 2) manufacturers will provide savings in order to generate incremental volume, and 3) consumers can redeem the savings achieved from WebHouse at their neighborhood grocer. The WebHouse Club strategy requires retail participation (retailers are signing on in increasing numbers) and fully leverages the existing supermarket infrastructure (there is no direct-to-consumer fulfillment onus).(Emphasis added)

117. The statements in the immediately preceding paragraphs were false and misleading because:

a. Defendants' statements that manufacturers were covering the difference between retail and WebHouse grocery prices (i.e., the discounts) were openly false and misleading because most of these amounts were absorbed by WebHouse.

b. Defendants knew that the vast bulk of the gasoline discounts would not be covered by third party advertising and sponsors. Given the absence of commitments from such advertisers or sponsors, their statements to the contrary were false. Thus, Defendants knew, when they announced WebHouse's gasoline service, on February 25, 2000, that WebHouse would have to pay the vast bulk of the gasoline discounts;

c. Defendants knew that Priceline's already over taxed computer systems could not handle the increased traffic from the gasoline business as it was routinely crashing already.

Defendants knew they could not complete the upgrades necessary by Memorial Day;

d. The twenty-three consumer manufacturers announced as having joined WebHouse in early March came nowhere close to covering the number of products being offered by WebHouse, nor of reducing, in any material respect, the degree of subsidizing being undertaken by WebHouse;

e. Defendants knew that WebHouse could not go national by Summer or the end of the year 2000 with groceries because the level of subsidiaries WebHouse was forced to absorb financially prohibited it from doing so;

f. While Defendants claimed they were continuing “to build a broad, horizontal e-commerce business” and that the business model was “firmly established,” Priceline had **not** “made substantial strides in solidifying and expanding its offerings into new vertical markets.” Thus, Defendants knew, or were reckless in not knowing, that Priceline’s business model was not expandable beyond its core businesses in airlines, hotel and rental cars. Specifically, Defendants knew that Priceline’s business which required consumers to be “brand flexible,” was antithetical to the accepted marketing and sales strategies practiced by grocery and gas manufacturers and suppliers. Consequently, grocery and gas manufacturers were not funding the discounts given to WebHouse customers as Defendants represented. In fact, contrary to Defendants’ statements that the Priceline model “is almost limitless,” it was clear to Defendants that Priceline was still a “niche player” with a business model restricted to the travel industry and had no prospects of tapping broader markets which some analysts pegged at \$12 trillion;

g. Defendants knew that, unlike airline tickets, there was no reasonable prospect

of profitability for WebHouse and that, the more it expanded, the greater its losses would be, since most manufacturers were unwilling to participate within the Priceline business model. The Priceline business model as applied in WebHouse did not have “enormous potential” and decidedly did not “benefit both buyers and sellers across a broad range of products and services;”

h. While Defendants touted the number of WebHouse users, and the number of grocery store items they had purchased, Defendants failed to reveal that this expansion was being obtained only as a result of WebHouse heavily subsidizing the discounts provided on its site at a rate of between \$1 - \$5 million per week throughout the Class Period, that WebHouse was suffering material losses and that such expansions only brought WebHouse that much closer to its demise. Defendants knew that the only prospect for WebHouse’s continued operations was to obtain continuous, additional rounds of financing, thus relying on a Paeans scheme of epic proportions;

i. While Defendants repeatedly heralded the supposed high return rates of customers to the WebHouse service, claiming that anywhere between 35% and 85% of current users at any given time were “repeat” customers, Defendants knew that the return rate of customers to WebHouse was dismal due, in large part, to the fact that WebHouse would systematically reduce the amount of discounts offered to customers each time they used the WebHouse service. Thus, as a customer’s use of the service increased, his or her discounts decreased, quickly resulting in diminishing returns which did not justify the added hassle required to effectively shop for groceries twice. In reality, less than 1% of people who visited the WebHouse site would to use the service more than twice.

j. The inability of the WebHouse project to successfully capitalize on the Priceline business model also jeopardized the royalty and service payments streaming from WebHouse back to

Priceline, thus undermining Defendants' claims that Priceline's expansion into new areas would provide income streams independent from the travel industry;

k. Priceline's stock was not "undervalued" during the Class Period as Defendants claimed and, was in fact over-valued as a consequence of the schemes alleged herein. Defendants knew that the \$190 price target suggested by some analysts and adopted by the Defendants was wildly unreasonable given the limited prospects of Priceline's business, the imminent failure of WebHouse and the foreseeable effect this would have on Priceline's stock price, and that the true value of Priceline stock was closer to the average closing price of Priceline stock since the close of the Class Period, which is less than 2.5% of this inflated \$190 figure;

l. Defendants violated GAMP, as set forth above, the Company's reported results for the fiscal year and quarter ended December 31, 1999 did not include all adjustments necessary for a fair presentation of the Company's results of operations pursuant to the rules and regulations of the Securities & Exchange Commission. The Company's reported results were overstated by approximately \$189 million a result of Defendants' improper recognition of revenue in that amount in the fourth quarter of 1999. Additionally, Defendants improperly transferred material expenses of Priceline to WebHouse's books and improperly recorded revenue from WebHouse, when WebHouse and Priceline should have been reporting on a combined, if not consolidated, basis;

m. Throughout the Class Period, Defendants knew that the computer systems utilized to serve the core Priceline customers were inadequate to meet the stress and demand incited by the additional users attracted by WebHouse's strategy of giving away money. Thus, Defendants knew that not only would the WebHouse customers be frustrated and thwarted from participating in the

WebHouse service due to regular crashes in the WebHouse databases, but Priceline's core business would also be effected because the airline ticket, hotel and rental car businesses all relied on the same systems and equipment to serve Priceline's customers, resulting in a general degradation in customer service for Priceline and WebHouse customers across the board;

n. Priceline was not "growing at a rapid rate" nor did it have "significant momentum." In fact, internal Priceline documents confirm that airline ticket sales peaked in mid-March and tailed off thereafter. Instead, as Defendants knew, Priceline's business was restricted to the travel industry and Priceline was beginning to feel pressure from competition which threatened Priceline's limited success in this core business;

o. Defendants had no basis for their projections that the Company would be profitable sooner than previously thought because:

(i) Defendants included in their projections continuing revenues from WebHouse pursuant to the WebHouse Agreements. By the beginning of the Class, Defendants were aware that continuing revenue from WebHouse was improbable, since the Priceline business model was failing in WebHouse. Additionally, Defendants knew or recklessly disregarded that Priceline was required to report its and WebHouse's results on a combined basis, which precluded the recognition of such intracompany transfers;

(ii) Defendants did not include in their projections the need to write off the \$189 million WebHouse asset. This write off, and the corresponding reduction to income, precluded profitability within the projected timetable;

(iii) Defendants' projections included a continuing expansion of the Priceline

business model in numerous other industries. Defendants knew, or recklessly disregarded, that the failure of WebHouse would preclude the Company's anticipated move into these other markets since Priceline's "brand" would be severely damaged and Defendants' ability to fund the move into these other areas would be improbable;

(iv) Defendants' projections built in expectations of increased usage of the Company's core products from WebHouse users. Defendants knew or recklessly disregarded that, once WebHouse failed, such cross-selling would cease;

(v) Defendants' projections significantly underestimated the degree of increasing competition from airlines' on-line ticket sales and other airline ticket sellers and the detrimental effect this would have on the Company's core operations;

(vi) Defendants knew that, in contrast to Defendants' projections of dramatically increasing airline ticket sales, Priceline's ticket sales tailed off after the week of March 12, 2000; and

(vii) Defendants' projections did not factor in the charges against income necessary to re-value the airline warrants, or employee warrants, which Defendants knew would likely occur once the truth was revealed and Priceline's stock declined.

E. Second Quarter 2000: Defendants' Fraud Continues.

118. On April 24, 2000, Defendants announced "Record First Quarter Results" as follows:

Priceline.com (Nasdaq: PCLN), the Name Your Own Price(SM) Internet pricing system where customers set the price for travel, automotive, home finance, groceries

and telecommunications products, today reported record first quarter financial results driven by the largest quarterly customer base increase in priceline.com's history and strong sequential momentum in both revenue and gross margin dollars.

Priceline.com reported that it added 1.5 million unique customers during the first quarter, bringing its total customer base to 5.3 million. **Priceline.com's independent licensees, primarily Priceline WebHouse Club(SM), generated over 300,000 additional new customers during the quarter.**

* * *

"Priceline.com's record-setting performance this quarter was anchored by several key metrics that underscore the uniqueness and scalability of our business, and the steady progress we continue to make toward profitability," said Richard S. Braddock, priceline.com's chairman and chief executive officer. "Our customer base grew by 1.5 million new customers and now stands at 5.3 million unique customers. Equally important is the fact that repeat use of our various services climbed 500 percent above levels achieved in the first quarter of 1999."

* * *

"Priceline.com has assembled a management team deeply experienced in building and running large-scale businesses," said Daniel H. Schulman, president and chief operating officer of priceline.com. "These executives know how to scale businesses rapidly and manage for profitability."

* * *

Priceline.com independent licensee companies grew during the quarter. Priceline *WebHouse Club(SM)*, a privately held priceline.com licensee, **significantly expanded its Name Your Own Price(SM) grocery**

service during the 1st quarter. After launching in the New York area, the service expanded during the quarter to cover the Philadelphia, Baltimore, Washington, DC, Boston and Detroit markets. By the end of the quarter, more than 400,000 families in total had become members of WebHouse Club(SM), purchasing over 20 million grocery items through over 3,000 participating major supermarkets. (Emphasis added)

119. On May 15, 2000, Defendants reinforced their rosy representations previously made to investors in the context of announcing the promotion of Schulman to President and Chief Executive Officer of Priceline:

"When I joined priceline.com two years ago as Chairman and CEO, my primary responsibility was to attract a great management team capable of **turning priceline.com into a profitable, multi-billion-dollar Internet company,**" said Mr. Braddock. **"As our performance emphatically indicates, we are well on our way to achieving those goals,** and we now have in place a senior management team that is recognized as one of the strongest, if not the strongest on the Internet.

"Rick Braddock was instrumental in infusing priceline.com with business discipline and a commitment to profitability," said Mr. Schulman. "When I arrived, priceline.com was well along in its evolution from startup to growth company. It was a highly focused company with a knowledge of how to build a major brand. My job of scaling the business was much easier because of the foundation Rick put into place. (Emphasis added)

120. In Priceline's Form 10-Q for the first quarter of 2000, filed on May 16, 2000, Defendants summarized the Company's transactions which had been assembled paralleling the

WebHouse deal:

We have announced several transactions pursuant to which third parties license the Priceline.com name and demand collection system for offering a particular product or service or for offering a number of products or services in a distinct international region. Pursuant to the licensee transactions, we generally receive a royalty under the license and may also receive fees for services and reimbursement of certain expenses. We also hold convertible securities and warrants entitling us to acquire a significant percentage of such licensee's equity securities upon the occurrence of certain events. Unless such securities or warrants are converted or exercised, the results of licensees will not be included in our financial results.

121. On June 28, 2000, as reported by *Dow Jones*, Priceline's head of European Operations again reiterated the Company's projection of profitability by early 2001:

"Analysts have forecast revenues of around \$1 billion by the end of the second year and we should be profitable by early 2001," [the newly appointed CO of Priceline Europe] Malamatinas told Dow Jones Newswires.

F. Defendants Continue Their Deception Through The Press.

122. Defendants, either directly through Priceline, or through WebHouse and its spokespeople, repeatedly touted WebHouse's purported growth in the grocery business. Routinely, Defendants represented that WebHouse made its money through manufacturer's discounts, fees charged to manufacturers on top of such discounts and through third party advertising:

a. April 6, 2000 *Cincinnati Post*:

Winn-Dixie of Jacksonville, Fla. has joined Priceline WebHouse Club, a division of Priceline.com, the

companies announced.

“[Robert] Padgett [a Priceline WebHouse spokesman] said the grocery service was first launched last November in New York City.

The number of brands offered has grown since then from 400 to 800, he said, and will keep expanding rapidly.

“We’ve since expanded into Philadelphia, Baltimore, Detroit, Boston and very recently into your neck of the woods (Cincinnati and other Winn-Dixie markets),” Padgett said.

b. April 6, 2000 *Augusta Chronicle*:

The company has spun off a new, privately held company call WebHouse Club to add groceries to its mix. (The service is available at Augusta – and Aiken-area Bi-Lo and Winn-Dixie supermarkets).

Since November, the company says it has signed up more than 300,000 customers, with the ultimate aim of national penetration by the end of the year.

c. April 7, 2000 *Atlanta Constitution*:

Winn-Dixie has linked the Priceline.com to offer name-your-price groceries.

Priceline.com launched its price-your-own groceries service last November in other parts of the country. Since it began, it has been used by 500,000 households, said Robert Padgett, Priceline.com’s spokesman in Stamford, Conn. “It was a quiet rollout,” he said. “We’re trying to catch our breath.”

“Last week, we priced our 20 millionth grocery item,” Padgett said, adding that 85 percent of the business is from repeat customers. Other

groceries that have signed on include Safeway, Giant and Bi Lo, which has a few participating stores in Georgia in places such as Canton, Monroe and Cartersville. (Emphasis added.)

- d. April 8, 2000 Louisville Kentucky *Courier-Journal*:

Customers of Winn-Dixie, and its Thriftyway stores in Northern Kentucky, can sign on to the Priceline site, connect to its WebHouse Club and choose one of several prices listed for about 800 grocery items.

For manufacturers, the WebHouse club is a bit like using coupons, offering discounts for people who are willing to try a certain product. But WebHouse spokesman Robert Padgett said it's better because the Internet site attracts new customers. (Emphasis added.)

- e. April 17, 2000 *Wall Street Journal*:

Priceline says its grocery service, now available in more than half a dozen U.S. cities, signed up its 500,000th customer last week.

It's tempting to greet this news by asking: What will those dot-com people think of next? But **that overlooks the real importance of the name-your-price model. Priceline's new offering is a harbinger of a revolution being wrought by the information economy: the disappearance of fixed retail prices.** (Emphasis added.)

- f. April 12, 2000 *Buffalo News*:

The latest twist in food shopping hit the Buffalo market this week when Wegmans Markets and Priceline.com "went live" with a partnership that touts lower grocery bills through Internet bidding.

Nationally, shoppers at some 30 chains have used

Priceline to bid on some 20 million items, according to Priceline spokesman Robert Padgett.

“We went from 10 million items as of March 6 to 20 million at the beginning of April, so we’re obviously seeing a major growth. And the best part is 85 percent of that is repeat business,” Padgett said. (Emphasis added.)

g. April 12, 2000 *Columbus Dispatch*:

Priceline—through arrangements with grocery manufacturers – guarantees that customers pay less for online purchases than what they would pay in the stores. Priceline spokesman Robert Padgett said customers average savings of up to 40 percent over in-store prices.

The service was launched last November in the New York and Boston areas and since has attracted more than 500,000 members, including 200,000 who signed up in March.

The service is available through 30 grocery chains with more than 3,000 stores in 17 Eastern states, Padgett said.

h. April 13, 2000 *Grand Rapids Press*:

The WebHouse Club has become the fastest growing site for Priceline. It had more than 250,000 members and sold 7.5 million grocery items as of February. (Emphasis added.)

i. April 21, 2000 *Business Journal of Charlotte*:

The grocery chains don’t lose money because the manufacturers cover the discounted cost of the merchandise. But they do have to put more effort into certain operations, such as labor to train employees about handling Priceline purchases. Priceline provides

software for the system.

Priceline WebHouse Club is a privately held licensee of Priceline.com. **The club had 565,000 members and priced 20 million grocery items as of April 1**, says spokesman Robert Padgett. (Emphasis added.)

j. April 23, 2000 *Washington Post*:

Priceline.com's grocery operation offers an example of how fast the traditional and nontraditional can merge. Started in November 1999, Priceline's WebHouse Club Inc., the grocery end of the operation, has **doubled the number of products on which consumers can bid. The number stands now at 800 brands in 200 categories.** They've signed up about 650,000 customers in a little over five months, said spokesman Robert Padgett.

"In most markets we have the top grocery chains as far as size and market share," said Padgett. **"We're in 17 states now, and we plan to be nationwide by the end of the year."** (Emphasis added.)

k. April 24, 2000 *Associated Press Newswires*:

The company said its first-quarter results were boosted by the largest-ever quarterly increase in customers. A record 1.5 million new customers were added in the quarter, bringing the company's total customer base to 5.3 million.

More than 800,000 of those who shopped the site in the first quarter were repeat customers.

Priceline attributed the growth in its customer base in part to the success of its licensee, Priceline WebHouse Club. More than 300,000 new customers signed up during the first quarter for the service that lets consumers name their own price of groceries online and then pick the goods up at their

local supermarket. (Emphasis added.)

1. April 24, 2000 Louisville Kentucky *Courier-Journal*:

At the store, you need to separate your Priceline purchases from your in-store items, then make two transactions when you check out. It's a minor annoyance, one more reason to ask yourself: "Is this really worth it?"

Robert Padgett, a Priceline spokesman, insists that it is. The average savings per shopping trip is \$15, he says, based on the company's data.

If you're wondering how Priceline's business model on grocery bidding works, here it is in a nutshell:

... Priceline has agreements with about two dozen manufacturers to sell their products below store prices.

"Without touching the retail prices, this is a way for them to drive sales the way they would with coupons," Webhouse's Padgett said.

In addition, Priceline's WebHouse Club, the name of the grocery operation that **will be nationwide by year's end, is starting to regionalize its offerings.**

* * *

This will also help the manufacturers, he said.

"They can say, 'We want to move more of this product in the Louisville area. We have a lesser supply in New York and we have an overabundance in Louisville, so maybe we'll drop our prices a little for the Kentucky residents to try to sell more.' **So manufacturers can work with us to move their product in different degrees, all the while giving the customers a lower price.**"

While the manufacturers are subsidizing the lower

prices for brand name products, other sponsors are picking up the tab for items that aren't brand-specific, such as meat, produce and milk.

“Because we have about 50 companies that are willing to kick in half the price of the groceries to acquire more customers, that’s another way we can offer the savings,” Padgett said. (Emphasis added.)

- m. On April 24, 2000 CNBC - Market Wrap reported Braddock’s spin on the

Company:

Steve: Some analysts are talking about moving break-even date from first quarter of 2001 where it is currently, to the last quarter of this year. Are you comfortable with a move like that?

Braddock: We have already had the analysts move their break-even point forward twice, since we went public last March and obviously, the results we have showed today are well in excess of their expectations. We are probably almost 40% higher on the top line and about 40% higher on the gross margin dollar line than the consensus analysts forecast. So, obviously, we are comfortable with moves like that.

Steve: And comfortable then with moving break-even target forward a couple months more?

Braddock: Well, it is into the end of this year, yes.

- n. April 25, 2000 *Scotland Evening News*:

Rick Braddock, Priceline’s chairman and chief executive officer said: “Our customer base grew by 1.5 million new customers and now stands at 5.3 million.

...”Priceline.com’s record-setting performance this

quarter was anchored by several key metrics that underscore the uniqueness and scalability of our business, and the steady progress we continue to make toward profitability.” (Emphasis added.)

- o. April 25, 2000 *National Post*, reporting on Defendants’ comments issued

during the Company’s conference call following the release of its first quarter 2000 results:

Priceline.com Inc., which allows customers to bid online and set their own prices for plane tickets, hotel rooms, gasoline and other goods, **said yesterday booming sales growth may help it turn a profit sooner than its forecasts of early next year.**

Priceline officials said the decreased loss is a direct result of sales surging more than sixfold.

Analysts also said the sales results, which blew away estimates of about \$230-million, show the company has a business model that’s poised for profit.

That growth could speed up when Priceline begins to make money, the company said.

“We continue on a steady and predictable path to that goal,” Mr. Braddock said.

The company soon plans to expand into the fast-growing market of matching up businesses and suppliers.

And customers are now scaling the walls towards online grocery price naming. According to Priceline, customers of its inhouse grocery service, WebHouse, are buying more than 125,000 grocery items daily in the New York City area alone. WebHouse also operates in Philadelphia, Baltimore, Washington, D.C., Boston and Detroit.

Gas is becoming popular in the United States as well....

Mr. Braddock says Priceline is considering 13 businesses-related product categories such as media buying, telecommunications services, small office equipment, freight and cargo, and health-care services, while still concentrating on products and services for consumers. That strategy has led to the construction of one of the most-popular Web sites in the world. (Emphasis added.)

p. April 25, 2000 *AFX News*:

Goldman Sachs analysts reiterated a 'recommended list' rating on the shares, saying the company's first-quarter revenue of 313.8 mln usd was "well ahead" of their estimate of 225 mln usd.

"The company has demonstrated it is more than just airlines," the Goldman Sachs analysts said.

"Priceline turned in an impressive quarter with a strong topline and operational performance as its path to profitability accelerates," [Donald Laftkin and Jennette] they said, "Priceline should be a core internet holding."

Pacific Crest Securities analysts raised their full-year revenue estimate to 1.3 bln usd from 1.0 bln and lowered their expected full-year operating loss to 31 mln usd from 37 mln previously.

They now expect the company to become profitable in the first quarter of 2001, ahead of their earlier expectation of profitability in the second quarter. (Emphasis added.)

q. April 26, 2000 *Evening Post*:

Manufacturers pay the grocery store the difference between a successful bid price and the shelf price. For them, Priceline.com is a promotion, just like a cents-off coupon. (Emphasis added.)

r. April 28, 2000 *Albany Times Union*:

Grand Union – or any of the other 30 participating supermarkets around the country – are paid full price by Priceline. **Product manufacturers pick up the tab for the difference.**

“Grocery stores like the service because they are still getting the full shelf price while giving their customers the discounts,” said Robert Padgett, spokesman for Priceline WebHouse Club. “They also make an Internet service available to their customers without having to make the upgrades themselves.” (Emphasis added.)

s. April 29, 2000 *Orlando Sentinel*:

The store make money because the WebHouse Club reimburses them the full price of the groceries. **The club itself is then reimbursed by the products’ manufacturers, which agree to sell their products at a discount to build market share .**

The WebHouse Club wouldn’t disclose sales, but it has enrolled upwards of 600,000 members since it started in November. The club estimates its members save about \$15 on each shopping trip. (Emphasis added.)

t. April 30, 2000 *Atlanta Journal-Constitution*:

What about the cost of the bargains to the retailers?

Analysts say the cost is being borne now by wholesalers and retailers in an effort to build the volume.... (Emphasis added.)

123. During May 2000, numerous additional stories of WebHouse’s purported successful expansion were published. Thus, the following stories appeared in the press on the referenced dates:

- a. May 1, 2000 *Money Magazine*:

The second new way to save on gas: Priceline (www.priceline.com). Yes, the company that lets you bid on airplane tickets - - and more recently, groceries - - is scheduled to start taking bids for gasoline by May 29.

- b. May 15, 2000 *US News & World Report*:

Food makers pay the difference between the discount and the store prices to Priceline to push their brands. (Emphasis added.)

- c. May 15, 2000 *Detroit News*:

The WebHouse Club says it has priced more than **30 million grocery items and has signed up more than 650,000 members since it first launched in New York on Nov. 1, 1999.** It also has expanded to Alabama, Boston, Baltimore, Florida, Louisiana, Mississippi, Tennessee and Washington D.C. The company plans to make its service available nationwide by September. (Emphasis added.)

- d. May 15, 2000 *Detroit News*:

Michigan motorists will be able to buy gasoline on the Information Superhighway soon. This Saturday, Priceline WebHouse Club will start mailing out one million cards for its online gasoline buying program in Michigan and 47 other states. . . .

“Most people should get the cards by mid-June,” said Robert Padgett, a spokesman for Stamford, Conn. - based Priceline WebHouse Club. **“We expect the service to be fully operational by the end of next month.”** (Emphasis added.)

The dot-com subsidizes the discounts with money it gets from local gas stations that pay the Club a few

cents per gallon to get its customers' business.

e. May 23, 2000 *Washington Times*:

The Norwalk, Conn. - based "name-your-own-price" Internet company started sending out the nearly one million gas cards to customers who have been signing up for the service since February.

The actual program, which lets consumers name their own discounted price for self-serve gas, is **expected to begin on June 20**, said Robert Padgett, a spokesman for Priceline WebHouse Club, an independent licensee of Priceline that handles the name-your-own-price grocery and gas service.

The incentive for gas companies and stations, said Mr. Padgett, is guaranteed customers. For competitive reasons, Priceline is not disclosing the names of any of the companies that have already joined the program.

Mr. Padgett said Priceline has gotten a lot of response, despite reports that the oil companies are not interested in the service.

"We're happy with the level of support we've gotten so far," he said.

With the gas program, Priceline is getting money from a couple of different revenue streams, including a fee that both the retailers and oil companies will pay to get those extra customers .

Web-site advertising and money from third-party sponsors will also generate revenue. Since the third-party sponsors want access to Priceline's customers to offer their products or services, they are willing to pay an extra fee. Priceline shoppers are offered "virtual credit" if they agree to try out one of the products or services. (Emphasis added.)

124. In June of 2000, Defendants picked up the pace of their deception regarding manufacturers' and oil companies' supposed reimbursement of WebHouse for the discounts given to its customers:

a. June 9, 2000 *St. Louis Post-Dispatch*:

Priceline.com Inc., which lets customers bid online for plane tickets, groceries and other items, said Thursday that Kroger Co. will join its WebHouse online service as it increases grocery sales across the country.

Shoppers in Kroger stores will be able to choose the price they want to pay for groceries on **Priceline.com's** Web site and pick them up at local supermarkets. The companies began offering the service in Michigan Thursday and plan to roll it out in the rest of Kroger's 1,300 stores in 31 states by late October. (Emphasis added.)

b. June 9, 2000 *Detroit News*:

WebHouse officials said the alliance dramatically raises its profile.

"It's a great deal for us and for consumers," said Caroline Mendoza, a Priceline WebHouse Club spokeswoman. "Previously we only offered our service in select regions. Now our online grocery service is available coast to coast." (Emphasis added.)

c. June 12, 2000 *Fortune*, describing Walker's appearance at an industry

conference in mid-May:

You might expect Walker to be a little nervous speaking to 14,000 potential investors when his company's stock is down 65% from its year high. He isn't. In fact, he ignores the obvious and spends most of the time explaining how he helped make the famed

name-your-price Netter into an estimated \$1-billion-a-year behemoth. **Walker makes sure to point out that he has yet to sell a single share of Priceline on the open market.** (Emphasis added.)

d. June 14, 2000 Lancaster, Pennsylvania *New Era*:

So far, the WebHouse Club has signed up 15,000 members in Harrisburg, Lancaster, Lebanon and York, says Priceline spokeswoman Caroline Mendoza. **Currently boasting 700,000 members and 4,500 participating stores in the Midwest, Northeast and Southeast, the club will eventually go national, she adds.**

Through agreements with manufacturers and revenue from advertisers, Priceline pays stores the difference between regular shelf prices and club prices, Mendoza says. (Emphasis added.)

e. June 22, 2000 *Seattle Times*:

Bidders will be linked to a closely held affiliate, Priceline WebHouse Club, where people can name their own price for as much as 50 gallons of gas a month. About 25,000 gas stations are participating, Priceline WebHouse said.

Priceline.com had said in February it would offer savings of as much as 20 cents a gallon beginning May 20. **A Priceline WebHouse spokesman denied that it delayed the start of bidding because oil companies balked at participation.**

“We wanted to make sure they (bidders) have a very positive shopping experience,” said Robert Padgett, Priceline WebHouse spokesman. **He said the company has invested \$25 million in the program and wanted to make sure the technology was working correctly.** Mailings to participants also took time, he said.

Priceline WebHouse expects as many as 5 million drivers will sign up to bid on gasoline in the first year, Padgett said. (Emphasis added.)

f. June 22, 2000 *Los Angeles Times*:

Priceline.com Inc., which lets customers bid on the Internet for plane tickets and other items, said Albertson's Inc.'s Jewel-Osco division will join its WebHouse online service in Chicago and Milwaukee. . . . Priceline WebHouse said it plans to offer purchases through 10,000 grocery stores by August, up from 5,000 now. (Emphasis added.)

g. June 22, 2000 *Chicago Daily Herald*:

The manufacturers who participate in the Priceline WebHouse Club make up the difference between Jewel's shelf price and the price the shopper picks, said Priceline spokeswoman Caroline Mendoza. (Emphasis added.)

h. June 22, 2000 *Chicago Daily Herald*:

Consumers, analysts and others will be paying close attention today when Priceline WebHouse Club debuts a service it claims will allow motorists to "simply ignore the price at the pump" and save as much as 20 cents per gallon.

"We have thousands of gas stations that have signed up and oil companies are participating," said Caroline Mendoza, a spokesperson for Priceline.com, the parent company of WebHouse.

Consumers may be able to save, but Priceline will be paying the full pump prices and is banking on several variables to generate the cash that will allow it to offer lower prices to customers.

A portion of that money is expected to come from

dealers paying “a few cents per gallon” marketing fee to generate new business through online advertising, Priceline said in February when the idea was announced.

Priceline also says more than 100 national sponsors will contribute to the savings “in return for customers’ agreeing to try their products and services,” and expects major oil companies to agree to discounts in return for new customers for gas and other products as well as their own proprietary gasoline credit cards.

“They are driven by their market share,” Mendoza explained. (Emphasis added.)

i. June 23, 2000 *San Francisco Chronicle*:

Robert Padgett, a spokesman for Priceline WebHouse Club, the affiliate handling the gas operation, said **about 1 million people had preregistered for the gas service before its official unveiling.**

“It’s a very viable business,” he said. “I believe Priceline has proven that.”

Padgett said average gas prices on Priceline are as much as 20 cents a gallon less than at the pump. **Priceline itself makes up the difference to participating service stations through a combination of fees paid by oil companies, advertisers and affiliated sponsors. (Emphasis added.)**

j. June 27, 2000 *Allentown Morning Call*:

Priceline’s WebHouse has signed marketing contracts with many of the nation’s leading oil companies and has thousands of gas stations available nationwide, (WebHouse spokesperson Caroline) Mendoza said.

She said oil companies benefit from the program because it attracts new customers for their products.

Gasoline brands available through the program locally include Gulf, Texaco, Sunoco, Citgo, Mobil, Exxon, Hess, Amoco, Getty, Shell and BP.

Under the terms of the program, Sacks and other station owners receive the full pump prices for all gasoline purchased by WebHouse customers.

The difference is made up with money from marketing contracts with oil companies, online advertisers and more than 100 national sponsors that contribute to customers' gas purchases in return for trying their products and services, Mendoza said. (Emphasis added.)

G. The Analysts Continue To Be Deceived.

125. In the Second Quarter, analysts were uniformly focused on the prospects and apparent success of WebHouse. Analysts' recommendations for Priceline stock centered on their belief in the successful performance of WebHouse as validating the Priceline Business Model, thereby justifying the valuation of Priceline stock. Analysts also relied on Priceline's apparent consistency in moving towards profitability as another important basis for recommending Priceline stock:

a. On April 6, 2000, Salomon Smith Barney initiated coverage of Priceline with a Buy rating and a \$130 price target:

Buyer-Driven Commerce Will Be A Large Transaction Category: We believe that buyer-driven commerce will account for an incremental \$22.5 billion in consumer e-commerce in 2003, up from \$1.5 billion in transactions in 1999. Priceline accounted for approximately 40% of this overall activity between its \$482 million in revenue and the value of

its incremental fee based businesses.

A Burgeoning Array of Categories: Priceline offers airline tickets, hotel reservations, home mortgages, new cars, long distance services and groceries, and over the course of 2000, is going to expand into a variety of horizontal and vertical categories, including gas, rental cars, insurance, banking and consumer electronics. It will also be extending its "Name your own price" methodology into the B2B arena.

* * *

Risks. . . the methodology risk falls along the lines of the communal conclusion that "this system doesn't work." Clearly the repeat purchase dynamics of the airline business, now above 40%, coupled with the wildfire adoption of WebHouse Club suggests that a core group of consumers like naming their own price.

* * *

WebHouse Club: The extendability of Priceline's commerce model is best exemplified by its WebHouse Club grocery offering. WebHouse Club enables users to name their own price, or discount, on brand-name grocery items on the Web, and get fulfilled during the course of shopping at their grocer. **Priceline has agreements with makers of branded consumer food products, such as General Mills, that provide it with Web-based coupons allowing it to get grocery product for as much as 50% off. The discount, like all coupon discounts, is being paid for by the manufacturer.** (Emphasis added.)

b. On April 10, 2000, E*Offering issued a research report on Priceline which rated the stock a strong buy, and listed the top "Ten Reasons to Buy Priceline.com.":

4. Highly Scalable Model. Clearly, one of the main drivers of priceline's operating and stock performance is its ability to successfully enter new markets and cross-sell existing customers on new service offerings. Significantly, PCLN's business model is proving highly scalable....

6. **WebHouse Call Option Appears "In the Money."** In order to take advantage of a large number of brand extension opportunities, priceline.com began licensing the priceline.com name and business

model. **One of the early success stories is the Priceline WebHouse Club, which began operations with “name your price” groceries in the New York metropolitan area in November of 1999....** Under the WebHouse agreement, priceline receives a royalty fee on revenues, and it received a warrant to purchase 137.5 million shares, or 77.5% of WebHouse Club, at 43 per share. Currently, the minority investment is not included in PCLN’s income statements. One of the most significant aspects of the agreement is the seamless integration of customer bases between priceline and the WebHouse Club - allowing for the cross-selling of services across multiple markets. We believe the **WebHouse relationship allows priceline to test its unique pricing model in more traditional “retail” categories, thus limiting financial risk while providing significant upside opportunity.**

To date, the WebHouse Club grocery service has been an unmitigated success, with nearly 500,000 household members purchasing approximately 20 million grocery items, making it the fastest growing service in the priceline.com family. . . . **Significantly, in late May, the priceline WebHouse Club will launch its second line of business - selling gasoline on the Internet.** This eagerly anticipated service has received national attention and significant consumer interest with the cost of gasoline at a 10-year high in the United States. (Emphasis added.)

- c. On April 20, 2000, Merrill Lynch reiterated its long term Buy recommendation:

Long-term, it will be critical for priceline to demonstrate 1) that it can continue to grow its airline business without having to essentially buy ticket inventory with equity . . . , and 2) that it can significantly diversify its product offerings away from airlines towards hotels, mortgages, cars, the WebHouse Club model and other products. . . .

One way to gauge the transferability of priceline’s model to other businesses, in our opinion, will be to watch the rollout of WebHouse Club. The company has signed up about 500,000 members in its first four months, with penetration of 3-4% of all families in the New York area, and over 85% of the purchases made by repeat users. **If these and other new efforts continue to blast off so steeply, the company’s growth should continue to accelerate in the months and years ahead. This would likely drive the stock**

significantly higher over the long term. (Emphasis added.)

d. On April 20, 2000, Robertson Stephens commented on the Company's representations to investors both at the Robertson Stephens Tech 2000 conference and Priceline's the Analysts Day:

Recent market initiatives have fueled strong traffic growth: Following management's presentations at our at our Tech 2000 conference in early March and at the Company's analyst day the following week, we believe all of Priceline's business areas are experiencing strong growth as a result of the company's highly successful marketing campaign which began near the beginning of the quarter.

* * *

We believe consumer interest in the company's affiliated company, WebHouse Club, has been an important driver of traffic to the Priceline site which has converted into sales across multiple categories.

* * *

INVESTMENT THESIS: We believe there is significant market opportunity for the company's demand collection system of commerce. We expect the stock could potentially appreciate driven by the company reaching milestones of traffic revenues, new categories, deals, etc. (Emphasis added.)

e. On April 24, 2000 Prudential Securities rated Priceline a Strong Buy:

Priceline.com added an incremental 300,000 new customers through its affiliate, Webhouse Club, increasing total combined new customers to 1.8 million for the quarter.

Grocery Shoppers Continue To Flock To Webhouse Club: Webhouse Club added an additional 300,000 members during the quarter and expanded geographically to Philadelphia, Baltimore, Washington, D.C., Boston, and Detroit. To date, Webhouse has sold more than 20 million items to more than 400,000 families (mostly in the New

York region). **The company plans to expand its grocery product offering nationally by the end of 2000.** We continue to believe that after travel, **groceries will be Priceline's next blockbuster product category.**

Webhouse Club disclosed last month that it has 23 food brand suppliers signed up, and we expect management to disclose the names of these brands shortly.

Operating Losses Are Expected To Continue To Decrease, Profitability On The Horizon: The company stated that it intends to maintain its commitment to reduce operating losses each quarter. **We anticipate PCLN will reach break-even or even modest profitability (ex non-cash charges) in fourth-quarter 2000, as well modest profitability in full-year 2001.**

Priceline.com Maintains Strong Balance Sheet: The company ended the quarter with a healthy balance sheet. **As of March 31, 2000, Priceline.com had total assets of \$482 million, which included \$149 million of cash and short-term investments and \$189 million in warrants for Webhouse Club.** The company has no debt.

We Reiterate Our Strong Buy Rating And Maintain Our \$100 Price Target. (Emphasis added.)

f. On April 24, 2000 Robertson Stephens reported:

Blowout Q1 Results Reflect Scalability of the Name-Your-Price eCommerce Platform; Upwardly Revising Revenue and EPS Estimates, Expect Break-Even by Year-End or Two Quarters Ahead of Plan; Reiterate Strong Buy

- **Strong business momentum: We believe Priceline's Q1 results highlight the scalability and leverage inherent in an eCommerce platform business model.** In comparison to eCommerce platforms Amazon and eBay, **we are amazed by how quickly Priceline has achieved critical mass and visible leverage in its operating model.** We believe the company's impressive growth reflects consumer validation of the name-your-price shopping format and demonstrates the open-ended growth opportunities of Priceline's eCommerce platform.
- Cumulative Webhouse Club customers grew 333% to 390,000 in Q1 versus 90,000 at the end of Q4.

INVESTMENT IMPACT

. . . Near term, we look for strong early reads on the national launch of Priceline's telecom service **as well as Webhouse Club's continued national expansion and scheduled May 20 launch of name-your-price gasoline as potential positive catalyst.** We continue to view Priceline as our best investment pick in the eCommerce space and strongly recommend purchase. (Emphasis added.)

g. On April 24, 2000, Merrill Lynch rated the Company as a Long Term Buy

and reported:

License fee revenue is growing quickly, primarily from Webhouse Club, albeit still in a tiny percentage of total revenues. (Emphasis added.)

h. On April 24, 2000, Salomon Smith Barney rated Priceline a "Buy" and reported:

* Priceline added 1.5 million customers (1.8 mn including Webhouse Club),

These results represent a significant acceleration of Priceline's business model. The company has reached a critical mass and is benefitting from powerful momentum in all its lines of business and enjoying considerable economies of scale.

Customer additions were helped by cross marketing with Priceline's licensees, particularly the successful grocery affiliate, Webhouse Club, which added 300,000 customers independently of Priceline. **We believe the company is on track to achieve its target of an additional six million new customers in 2000.**

Lines of Business Continue to Expand:

Priceline's Webhouse Club expanded its Name Your Own Price service to cover the Philadelphia, Baltimore, Washington D.C., Boston, and Detroit markets.

Reiterating Buy Rating: We reiterate our Buy (1H) rating and our \$130 target price. The engine of growth remains in high gear for a handful of consumer e-commerce companies that have achieved critical mass. Priceline is at the forefront of these companies, as its method of commerce expands customers and categories at an impressive rate. While the stock won't be able to reverse the course of the overall market in and of itself, we are confident that Priceline's robust fundamentals will be reflected in the stock price over the next several quarters. We believe Priceline is a core e-commerce holding.

It will also be extending its “Name your own price” methodology in to the B2B arena. **Priceline operates one of the most scalable models**; it does not fulfill physical inventory, its benefits from the network effect of critical mass, and the principal capital expenditures are technology and brand. It’s licensing arrangement with Webhouse Club to use the Priceline brand and commerce system provides it with a successful customer acquisition vehicle that does not impact the parent companies’ financial statements. We have a Buy rating (1H) on Priceline with a \$130 price target, which we arrive at through a discounted cash flow valuation methodology.

Webhouse Club: The extensibility of Priceline’s commerce model is best exemplified by its Webhouse Club grocery couponing offering. Webhouse Club enables users to name their own price, or discount, on brand-name grocery items on the Web, and get fulfilled during the course of shopping at their grocer. Priceline has agreements with makers of branded consumer food products, such as General Mills, that provide it with Web-based coupons allowing it to get grocery product for as much as 50% off. The discount, like all coupon discounts, is being paid for by the manufacturer. The store captures the retail price; the difference is being footed by the manufacturer, which is able to sell an incremental product and maintain share against discount brands without compromising its published pricing scheme. The winners are the consumers, who save around 30% on regularly purchased grocery items; the store, which captures the full value of the purchase, and the manufacturer, which is able to retain market share versus discount and store brands . (Emphasis added.)

- i. On April 24, 2000 Jannet Montgomery Scott LLC rated Priceline a “Buy”

and reported:

Repeat customers totaled 830,000 for Priceline.com or comprised 35.4% of the total offers. The repeat usage for the Webhouse Club was much higher (approx. 85%) given the higher frequency of buying groceries versus airline tickets. Although no specific information was given regarding cross-promotions among verticals, we believe it is fair to say that as the company adds new verticals, more cross-selling opportunities should exist. Additionally, customer acquisition costs should decrease with this expansion.

We reiterate our BUY with a target price of \$125 per share.

- j. On April 25, 2000, a PaineWebber Research Note rated Priceline as “Buy” and

reported:

* We maintain our Buy rating and \$125 price target on PCLN shares, . . .

We believe the improving repeat business metrics are due mainly to improved customer satisfaction and crossover sales from Webhouse Club members, who have a very high frequency of use.

k. On April 25, 2000 U.S. Bancorp Piper Jaffray rated Priceline a “Strong Buy” and reported:

We continue to believe that the Priceline.com business system is a horizontal e-commerce model with strong applicability in both B2C and B2B markets. Over the next 12 months, we expect to see a number of major announcements supporting this thesis. **Management explicitly stated that they expect to launch 18 new geographic or vertical businesses within the next year.**

l. On May 19, 2000 Wit SoundView reiterated its prior “Strong Buy” recommendation on the Company and reported:

PCLN: Update on Webhouse Club’s Anticipated Gasoline Service Launch

Several recently published articles pertaining to Webhouse Club’s upcoming launch of its ‘name-your-price’ service for gasoline have indicated that many of the major oil companies are hesitant to participate. **Following our discussions with Priceline’s management, we would note the following. Unlike previous launches, Priceline does not need the support of the oil companies in order to introduce the service. Potential advertisers and affinity partners have expressed an extremely high degree of interest in participating in the service. The overwhelming strong demand from consumers has prompted Webhouse Club to delay the national launch of the gasoline service by approximately one month (until late June/early July).** Our current revenue projections for Priceline exclude any contribution from the launch of the gasoline service and remain unchanged. We maintain our strong buy rating on the common shares of Priceline.

‘name-your-price’ service into additional vertical market segments further legitimizes the horizontal scalability of Priceline’s demand collection platform. **As Priceline continues to meaningfully expand its product and service offerings and increase its brand equity across multiple categories, we believe that the company should be able to aggregate a significant (consumer and business) user base.** (Emphasis added.)

m. On May 19, 2000 PaineWebber reiterated its “Buy” rating and reported:

* We continue to believe that Priceline is attractive, and maintain our Buy rating and \$125 price target on the stock, based on our DCF analysis. The market value has come down significantly in recent weeks, and we believe that much of this is due to concerns about the company’s strategy. **With profitability on the very near horizon and new product areas being added at a rapid pace, we believe that the strategy is solid and will be proven out over the next several quarters.** (Emphasis added.)

n. On May 26, 2000, E*OFFERING rated the Company as a “Strong Buy”:

* **We believe Priceline Webhouse Club call option continues to move further into the money.**

Importantly, our discussions with management indicate that Priceline.com consciously turned down the marketing dial on two fronts in April, which likely impacted traffic.

Secondly, due to the overwhelming demand for the Priceline Webhouse Club grocery service, its Webhouse subsidiary also tempered advertising to control growth as systems are scaled to meet demand.

Priceline Webhouse gas service on track. There continues to be much skepticism regarding Priceline.com’s subsidiary Webhouse Club (which is 77.5% owned by privately held, Walker Digital, Inc.). Specifically, recent criticism points to the not yet launched “name your own price” gasoline service-citing an apparent lack of participation from oil companies (suppliers). To date, two out of the three constituents: consumers and gas retailers have reacted positively to the upcoming service with nearly one million buyers signed up to receive the Priceline.com gas card. **Moreover, our discussion with Webhouse management indicates that there will be participation from oil companies.** Clearly, as witnessed by the evolution of Priceline.com’s other services, we believe that significant consumer demand will fuel (pardon the pun) a networking effect that leads to greater supplier and retailer participation. Currently, gas cards are being sent to consumers in specific regions of the country with the service expected to launch in the next 4-6 weeks. **Webhouse option continues to increase in value. Based on the early success of Webhouse Club’s grocery business and our expectations of a successful gasoline launch, we continue to believe Priceline.com holds an attractive call option on Webhouse.** Under the Webhouse agreement, Priceline.com receives a royalty fee on revenues and holds a warrant to purchase 137.5 million shares, or 77.5% of Webhouse Club at \$3 per share. To date,

the Webhouse grocery service has been an unmitigated success with more than 700,000 families using the service-with a 70+ percent repeat usage rate-to purchase over 30 million grocery items from over 4,000 grocery stores. Most importantly, our discussion with management indicates that participation from consumer package goods (CPG) companies continues to grow-further increasing the value of the system. **With rapid consumer acceptance and more inventory coming on line, management is now fine-tuning the profit model by managing growth and gross margins (just as Priceline.com did early on in its air travel business.**

Reiterate STRONG BUY Rating. (Emphasis added.)

- o. On June 8, 2000, Merrill Lynch Accumulate reiterated its Long Term Buy

recommendation:

Investment Highlights:

- **We met with Priceline.com management. The June quarter appears strong. Priceline remains one of the strongest B2C companies and should turn profitable in Q4. We are raising estimates and maintaining our rating.**

* * *

With more comfort with 2Q earnings and more visibility into the company's long term prospects, we are raising estimates for 2Q, 2000 and 2001.

* * *

Long-term, we believe Priceline must still prove that it can wean itself from dependence on the airline ticket business (although with 700,000 empty airline seats per day and Priceline selling about 20,000 on a good day, there should still be plenty of room to expand its relationships with the airlines). **Based on the early results from several of the new vertical initiatives (hotels, rental cars, new cars, mortgages groceries, telecommunications), it appears to be on its way to doing this. Other new verticals include gas from Webhouse Club, travel packages coming in the Fall, more small business products such as printing or freight services.** (Emphasis added.)

- p. On June 23, 2000 Thomas Weisel Partners Merchant Banking initiated coverage of Priceline with a "Strong Buy" recommendation and reported:

- We are initiating coverage of Priceline.com with STRONG BUY rating. We

believe that the Company's "name your own price" selling model has broad application across numerous product categories and should drive rapid top-line growth. We expect the Company to reach \$1.4 billion in sales in 2000 and \$1.7 billion in 2001.

- **A process that can be applied to countless markets.** We expect Priceline.com to continue to realize considerable growth as it launches new categories and addresses international markets. Currently, Priceline.com offers multiple services in seven categories (air, hotels, rental cars, telecom, auto, mortgages and B2B). By the end of 2000 we expect a "name-your-own-price" alternative in over 11 categories, addressing markets that we believe in aggregate total close to \$15 trillion.
- **Undervalued.** Trading at 4.3x and 25.4x our 2001 revenue and gross profit estimates, respectively, PCLN shares still trade at a discount to other leading e-commerce companies, particularly given the enormous addressable market and favorable margin trends of the business. Our 12-month price target is \$85, which we reach using a discounted cash flow analysis (applying a 17% discount rate and 25x terminal multiple).

A TRULY DYNAMIC PRICING MODEL

- **We believe the Company's innovative transaction process has broad application across numerous product categories and services.** Priceline.com is already addressing markets that in aggregate transact trillions of dollars annually.

The Internet has spawned a host of new pricing dynamics, from auctions and reverse auctions to aggregated buying sizes. Each provides a new way of transacting over the Internet. Like these different pricing models, we believe that Priceline.com's "name your own price" process will be broadly applied to countless product categories and services. **The Company already targets 7 categories**, which in aggregate we believe represent a \$3 billion market opportunity. The Company expects to cover 11 categories by the end of 2000.

- **A Clear Path to profitability:** We believe that an enormous top-line growth opportunity combined with improving gross margins, effective customer acquisition and improving repeat customer rates have paved a clear path to profitability. **We now expect Priceline.com to reach this goal by 1Q01—almost one year ahead of expectations at the time of the**

Company's IPO in March, 1999. (Emphasis added.)

q. On June 29, 2000 Lehman Brothers Equity Research rated Priceline as

“Outperform” and reported:

Although the stock has been pulled down by negative market sentiment, we continue to believe that Priceline has a unique and highly scalable business model that should be differentiated from other online retailing and advertising based models.

In our opinion, Priceline (similar to eBay) has been the victim of negative market sentiment surrounding Amazon and other e-tailers, which has pulled the stock down significantly over the past week. We continue to believe that Priceline has a unique and highly scalable business model that should be differentiated from other struggling online retailers and advertising based models. With breakeven less than two quarters away and excellent momentum in the company's core airline business, we believe the stock has upside in the near term.

Combined we believe that these markets represent over \$12 million in total sales. While it is difficult to predict how widely Priceline.com's unique pricing model can be applied, we do anticipate some success given today's consumer acceptance of the “name-your-own-price” process.

H. Priceline's Core Business Is Threatened: Defendants Deny That Fact.

126. On June 29, 2000, six major airline carriers announced plans to commence a new online ticket service called Hotwire.com ("Hotwire") that would compete with Priceline. Like Priceline, Hotwire would sell cheap seats that would otherwise be left empty but, unlike Priceline, Hotwire would give customers greater flexibility in choosing their flights. Specifically, users of the Hotwire service would designate when and where they wanted to fly and within designated hours, and Hotwire would offer to sell the airline ticket at a set price. 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.

127. On June 29, 2000 CNBC broadcast an Interview with Chairman Jay Walker:

CNBC: You have told folks, it is my understanding, that you re pretty unfazed by this development.

WALKER: This really is not big news as far as Priceline is concerned. You know this company Hotwire has gotten the airline to give them retail fares, they are a consolidator. And much like cheap tickets or the airlines own E.Saver Fares, consumers can go almost anywhere on the net to see published fares or see discount price. The nice thing is once you get discount price no matter where you go you can still go Priceline.com and name your own price.

* * *

CNBC: What about airline tickets and beyond travel in fact to other categories that have you gotten into and they say might at some point get into present a bigger threat in that space?

WALKER: **You know, we have not changed a single one of our revenue estimate for this year or next year. We have not changed a single number about our profitability.** When you are leader in the space, you know when you are AOL and everybody announces they are doing ISP, of course they are going to announce that they are coming after you. So I am not surprised that Hotwire is going to say guess what we are going to do everything, but you know building a consumer franchise is a very expensive position, we have invested over 100

million dollars in technology 5,000 retail stores in our Webhouse Club affiliate. I got to tell you saying you are going to do something is one thing going out and actually building is another.

CNBC: You mentioned the revenue and earnings forecast so I will pin you down on it. **The consensus here is you will lose 3 cents in this quarter on revenue of about 333 million dollars and that will you turn profitable in the first quarter of 2001. You comfortable with that, do you think you can move any of those dates.**

WALKER: **I think we are very comfortable.** Priceline has consistently had strong demand we have narrowed our loss every quarter. I think as company we have been very disciplined in growing in the business and yet moving towards profitability. I feel real will good about where we are headed here Hotwire or not Hotwire.

The press was keenly focused on Walker's continuing projections of profitability and denial of a competitive threat from Hotwire.

128. Notwithstanding the internal memoranda previously distributed within Priceline acknowledging that such internet travel sites (e.g., Expedia) constituted direct, competitive threats, Walker publicly dismissed the competitive threat posed by Hotwire:

a. June 30, 2000 *Seattle Times*:

"This is not a Priceline competitor. It's not the name-your-own-price service," said Jay Walker, a founder and vice chairman of Priceline. "We get the customer first and then go to the airline and say we want the seat at this price. We do this more than 100,000 times a week."

Walker said Hotwire is just another move in the consolidation of the traditional travel reservations.

b. June 30, 2000 Ft. Lauderdale *Sun Sentinel*:

"They're [Hotwire] not going to affect us," Walker

said. "Airlines have talked to us numerous times about whether or not we'd like to be a consolidator."

UAL, AMR, Delta, US Airways, Continental, Northwest, American West and Trans World Airlines Inc. own warrants to purchase shares in Priceline.com.

Walker said he didn't expect the airlines to lessen their participation in Priceline.com. He said the company is selling more than 100,000 U.S. air tickets a week, of the 3.5 million empty seats carriers have weekly.

c . June 30, 2000 *Florida Times-Union*:

Priceline Vice Chairman Jay Walker, who launched the company in 1998, said the company isn't concerned about Hotwire. "**We are not changing any of our revenue projections, profit projections or customer projections because of this,**" he said. Priceline hopes to be profitable by the end of this year.

129. Demonstrating the importance the market attributed to Priceline's move into non-airline businesses, even after the announcement of Hotwire, PaineWebber issued a report maintaining a "buy" recommendation on Priceline, because travel related revenues were expected to be less of a growth driver.

130. The statements set forth above were false or misleading for the following reasons:

a. As the second quarter progressed, it became even clearer that the vast bulk of the gasoline discounts would not be covered by gasoline producers, third party advertising and sponsors. Given the absence of commitments from such gasoline producers, advertisers and sponsors, Defendants' statements to the contrary were false. While Defendants represented that Webhouse had signed marketing contracts with many of the nation's leading oil companies, Webhouse had *not* signed

up the vast majority of such companies, including many of those listed as being brands available through Webhouse;

b. Defendants knew that Priceline's already over taxed computer systems could not handle the increased traffic from the gasoline business as it was routinely crashing already.

Defendants secretly postponed the introduction of Webhouse's gasoline service to June 20, then later to the beginning of August, because they could not complete the upgrades necessary to Priceline's computer systems;

c. The twenty-four consumer manufacturers participating in Webhouse came nowhere close to covering the number of products being offered by Webhouse, nor of reducing, in any material respect, the degree of subsidizing being undertaken by Webhouse most manufacturers continued to refuse to participate in Webhouse. Thus, Proctor & Gamble and Lever Brothers never participated and, throughout most of the Class Period, neither did Kellogg nor Hershey;

d. Defendants knew that Webhouse could not go national by the end of the year 2000 with groceries because the level of subsidiaries Webhouse was forced to absorb financially prohibited it from doing so and because of Priceline's computer system would not permit this level of expansion;

e. While Defendants claimed "Priceline.com's record-setting performance this quarter was anchored by several key metrics that underscore the uniqueness and scalability of our business, and the steady progress we continue to make toward profitability," as demonstrated by Webhouse, Priceline was *not* successfully expanding the Priceline business model into other areas. In fact, contrary to Defendants' statements that the Webhouse venture was a "very viable business,"

Webhouse continued to move closer to “failure as the level of its subsidization continued to increase. Contrary to Defendants’ hype over launching at least 18 additional extensions of the Priceline model by the end of 2000, Defendants were aware that Priceline was still a “niche player” with a business model restricted to the travel industry and had no prospects of tapping broader markets which some analysts pegged at \$12 trillion;

f. Defendants knew that, unlike airline tickets, there was no reasonable prospect of profitability for WebHouse and that, the more it expanded, the greater its losses would be, since most manufacturers were unwilling to participate within the Priceline business model which required consumers to be “brand flexible,” a notion which was anathema to brand name product manufacturers which rely upon brand loyalty, product placement and advertising mind-share to generate incremental sales in the inelastic grocery and gas markets. The Priceline business model as applied in WebHouse did not have “enormous potential” and decidedly did not “benefit both buyers and sellers across a broad range of products and services;”

g. While Defendants touted the number of WebHouse users, and the number of grocery store items they had purchased, Defendants failed to reveal that this expansion was obtained only as a result of Webhouse heavily subsidizing the discounts provided on its site at a rate of between \$1 - \$5 million per week throughout the Class Period, that Webhouse was suffering material losses and that each expansion, both geographically and of product offering, brought Webhouse that much closer to its demise. Defendants knew that the only prospect for WebHouse’s continued operations was to obtain continuous, additional rounds of financing, thus relying on a Ponzi scheme of epic proportions;

h. While Defendants repeatedly heralded the supposed high return rates of

customers to the WebHouse service, claiming that anywhere between 85% and 35% of current users at any given time were “repeat” customers, Defendants knew that the return rate of customers to WebHouse was d vastly overstated, in large part, to the fact that WebHouse would systematically reduce the amount of discounts offered to customers each time they used the WebHouse service. Thus, as a customer’s use of the service increased, his or her discounts decreased, quickly resulting in diminishing returns which did not justify the added hassle required to effectively shop for groceries twice. In reality, only one out of every hundred people who visited the WebHouse site would to use the service more than twice. Moreover, Webhouse’s repeat rates, which was higher than Priceline’s repeat ticket purchaser rate, since people regularly shop for groceries, and occasionally shop for airline tickets, was being used by Defendants to mask a decline in the repeat rate of airline ticket purchasers;

i. The inability of the WebHouse project to successfully capitalize on the Priceline business model also jeopardized the royalty and service payments streaming from WebHouse back to Priceline, thus undermining Defendants’ claims that Priceline’s expansion into new areas would provide income streams independent from the travel industry;

j. Defendants violated GAAP, as set forth above. The Company’s reported results for the quarter ended March 31, 2000 did not include all adjustments necessary for a fair presentation of the Company’s results of operations pursuant to the rules and regulations of the Securities & Exchange Commission. The Company’s reported results were overstated by approximately \$189 million a result of Defendants’ failure to write off the Webhouse warrant at the end of the first quarter of 2000. Additionally, Defendants improperly transferred material expenses of Priceline to Webhouse’s books and improperly recorded revenue from Webhouse, when Webhouse

and Priceline should have been reporting on a combined, if not consolidated, basis;

k. Throughout the Class Period, Defendants knew that the computer systems utilized to serve the core Priceline customers were inadequate to meet the stress and demand incited by the additional users attracted by WebHouse's strategy of giving away money. Thus, Defendants knew that not only would the WebHouse customers be frustrated and thwarted from participating in the WebHouse service due to regular crashes in the WebHouse databases, but Priceline's core business would also be effected because the airline ticket, hotel and rental car businesses all relied on the same systems and equipment to serve Priceline's customers, resulting in a general degradation in customer service for Priceline and WebHouse customers across the board;

l. Priceline's business was not "strong" nor did it have "significant momentum." In fact, internal Priceline documents confirm that airline ticket sales peaked in mid-March and tailed off thereafter. Instead, as Defendants knew, Priceline's business was restricted to the travel industry and Priceline was beginning to feel pressure from competition which threatened Priceline's limited success in this core business. Additionally, throughout the Class Period, Priceline's repeat business was declining. During the first quarter, Priceline received twenty-two bids for every one hundred customers who had placed an offer with it previously; in the second quarter, the ratio dropped to eighteen of every one hundred previous customers; and in the third quarter dropped to sixteen per one hundred prior customers. Defendant Walker fraudulently dismissed the competitive threat posed by Hotwire. Airlines had already begun to reduce ticket availability to Priceline and Priceline's ticket sales had been declining since mid-March;

m. Defendants had no basis for their projections that the Company would be

profitable sooner than previously thought because:

(i) Defendants included in their projections continuing revenues from Webhouse pursuant to the Webhouse Agreements. By the beginning of the Class, Defendants were aware that continuing revenues from Webhouse was improbable, since the Priceline business model was failing in Webhouse. Additionally, Defendants knew or recklessly disregarded that Priceline was required to report its and Webhouse's results on a combined basis, which precluded the recognition of such intracompany transfers;

(ii) Defendants did not include in their projections the need to write off the \$189 million Webhouse asset. This write off, and the corresponding reduction to income precluded profitability within the projected timetable;

(iii) Defendants' projections included a continuing expansion of the Priceline business model in numerous other industries. Defendants knew, or recklessly disregarded that the failure of Webhouse would preclude the Company's anticipated move into these other markets since Priceline's "brand" would be severely damaged and Defendants' ability to fund the move into these other areas would be improbable;

(iv) Defendants' projections built in expectations of increased usage of the Company's core products from Webhouse users. Once Webhouse failed, such cross-selling would cease;

(v) Defendants' projections significantly underestimated in the degree of increasing competition from airlines' on-line ticket sales and other airline ticket sellers and the detrimental effect this would have on the Company's core operations;

(vi) Defendants knew that, in contrast to Defendants' projections of dramatically increasing airline ticket sales, Priceline's ticket sales tailed off after the week of March 12, 2000;

(vii) Defendants' projections did not factor in the charges against income necessary to re-value the airline warrants, or employee warrants, which Defendants knew would likely occur once the truth was revealed and Priceline's stock declined.

n. Walkers' claims that he had never sold any shares on the open market were false and misleading because Walker was accomplishing massive sales of Priceline stock throughout the Second Quarter by using the predicate ruse of two business entities (Walker Digital LLC and Walker Digital Corp.) which Defendant Walker controlled. Although Walker touted the fact that he had never sold shares of Priceline, he was simultaneously engaged in a surreptitious plot to dump hundreds of thousands of Priceline shares. During the Second Quarter, Walker was able to palm off at least 975,000 shares of Priceline stock for proceeds of over \$45,000,000.00 through Walker LLC alone. In addition, Walker Digital Corp registered to sell 1,000,000 restricted shares during Second Quarter for proceeds of \$52,000,000.00 and, on information, sold those shares for \$50,000,000 to Saudi Prince Alwaleed bin Talal.

o. During the week prior to March 12, 2000, Priceline had peaked in its sale of airline ticket (120,000 tickets) and hotel rooms (40,000) and Priceline no longer was increasing sales in this core business.

I. The Company's False And Misleading Statements During The Third Quarter.

131. In the Company's July 24, 2000 press release announcing its second quarter results, Priceline 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, 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.... We look for even stronger contributions from our non-airline verticals in the future.
(Emphasis added.)

132. The Company's press release, under the heading "Business Highlights," touted the revenues received from WebHouse and WebHouse's growth, both in terms of number of users and products offered:

Priceline.com's second quarter results also included increased payments from Walker Digital Corporation and Priceline WebHouse Club. Walker Digital contributed toward legal fees and expenses related to various patent litigations. WebHouse Club, a priceline.com independent licensee, paid priceline.com for information technology and other services rendered and the quarter also reflected the costs of providing those services.

WebHouse Club continued to grow during the second quarter. More than three-quarters of a million households are now using WebHouse Club's services, which include groceries and the recently launched gasoline service. These customer counts are not included in priceline.com's total customer base of 6.8 million.

133. During the Company's conference call held after the earnings were released, Schulman again made current statements about Priceline's profitability:

We firmly believe that we've rounded the final bend and we're on the homestretch to **profitability**. (Emphasis added.)

Schulman told the participants that Priceline could have been **profitable** in the second quarter, and could be in the third quarter. He claimed, however, that profits were to be invested in new platforms and technology. In the conference call, Walker claimed that "[w]ithin the next ninety days, consumers throughout the entire U.S. will be able to save up to half off on their groceries by using the Priceline WebHouse Club." (Emphasis added.)

134. On July 24, 2000, AFX News reported the following comments from Schulman:

"We are going to look at trade-offs between growth for the future and bottom-line profitability," CEO Schulman added. "We have committed and continue to commit that we... generate sequential positive bottom-line results going forward."

Schulman also played down investor concerns over competition prompted by the emergence of rival Hotwire, which is to launch its service in the fall: "This is not the first time we have faced competition. The hulabaloo around Hotwire is just that. [Priceline] is a powerful consumer proposition."

135. On July 24, 2000, Chief Financial Officer Heidi Miller reiterated Schulman's statements set forth above. She claimed, "[w]e 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. 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.)

136. Schulman's and Miller's statements concerning "profitability" were particularly important to investors since, when made, the investing community was keenly focused on profitability. Analysts believed the high valuations associated with Internet companies would be justified only if the companies were moving toward profitability. Thus, as reported in the press on July 9, 2000:

"Given we believe Priceline will be one of only two profitable consumer companies by the end of the year, we expect shares of Priceline could strongly rebound in the second half of 2000 as investors increasingly focus on those eConsumer business models with proven track records and attractive long-term prospects," said Lauren Cooks Levitan, an analyst with brokerage Robertson Stephens.

Shawn A. Milne, who follows Priceline for E*Offering, an online investment banking firm, rated Priceline a "strong buy" in a recent report based on its "huge market opportunity driven by a highly scalable operating model, significant brand strength and management strength."

Milne also expects that during the second half of the year, the stock has "significant appreciation potential" because Priceline should cut its losses and may even turn a profit in the fourth quarter.

He said the WebHouse Club's grocery business, which is about to expand nationally as a result of an agreement with Kroger, the country's largest supermarket chain, has been "an unmitigated success."

As of late May, Milne said, more than 700,000 families had used. The rate of repeat usage was more than 70 percent, he said.

He also expects good returns when gasoline companies begin offering fuel on the Web site. Even before the gas service is launched, Milne said, one million customers had signed up for a Priceline gas card.

137. In response to the Company's press release and comments on its second quarter results, the press and analysts issued the following stories and reports which focus on Priceline's expected profitability:

a. The July 24, 2000 Dow Jones *Business News* reported:

Priceline said it added 1.5 million customers in the second quarter, increasing its customer base to 6.8 million. More than 960,000, or 39%, of Priceline's offers came from repeat customers, compared with 26% in the year-earlier quarter.

"We believe we are rounding the final turn and on the homestretch towards profitability," said Daniel H. Schulman, president and chief executive officer, in a prepared statement.

b. The July 24, 2000 *Associated Press* reported:

The company said its second-quarter results were boosted by a record number of repeat customers. Thirty-nine percent of users were repeat customers, up from 26 percent in the second quarter of 1999.

Priceline also added 1.5 million new customers, bringing the total customer base to 6.8 million.

"We believe we are rounding the final turn and on the

homestretch towards profitability,” said Daniel H. Schulman, president and chief executive officer.

c. The July 24, 2000 *AFX News* reported:

Thomas Weisel analyst Tim Fogarty said he expects the company will “better” his estimate of a loss per share of 4 cents, noting **the expected “strong” second-quarter results would prompt him to raise his estimates for upcoming periods are likely to allow Priceline to reach profitability in the second half.**

CSFB’s Heath Terry agreed Priceline will likely become profitable in the fourth quarter, “and begin to rapidly grow net income from there.”

“We believe Priceline is on its way to becoming part of a select group of leading consumer internet companies,” Terry said.

Robertson Stephens also agreed that the company will likely in the fourth quarter “if not sooner” become profitable and will be “one of the only two profitable eConsumer companies at the end of the year” together with eBay Inc.

“We expect shares of Priceline could strongly rebound in the second half of 2000 as investors increasingly focus on those eConsumer business models with proven track records and attractive long-term prospects,” Singer said.

d. The July 24, 2000 *AFX News* further reported:

Priceline.com said it may reach profitability by the third quarter of this year – three months ahead of Wall Street’s current expectations.

Speaking during a call following the release of the company’s second-quarter earnings, chief financial officer **Heidi Miller said projections of reach**

profitability by the third quarter of this year would not be “overly aggressive.”

The group’s performance to date show the company is on the “home stretch” towards profitability, chief executive and president Dan Schulman said.

f. The July 25, 2000 *National Post* reported:

The company said that it is comfortable with analyst predictions that the firm will be profitable by year-end.

138. On the heels of the positive statements contained in the Company’s July 24, 2000 press release and Defendants’ comments to the press and/or analysts, on August 1, 2000, as set forth below, Walker sold a forward contract for 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 would purportedly be invested in the WebHouse Club. Under the terms of this sale, Walker would retain record ownership of these shares until at least September 8, 2001. In announcing the sale, Walker told analysts “This allows me to raise capital to invest in WebHouse without putting selling pressure on priceline.com stock.” Even after supposedly investing \$125 million in WebHouse, Walker garnered a \$65,000,000 cash profit on his sale which represented an \$21,000,000 premium over the amount he would have received for those 8 million shares based on the closing price of PCLN stock on October 5, 2000, the day Defendants announced they were closing WebHouse.

139. The market viewed Walker’s sale as a confirmation of Priceline’s Business Model. Thus, the August 2, 2000 *National Post*, reported :

“This validates Priceline’s business model with two high-profile and successful investors,” said David Zale, an analyst at Sands Brothers, who has a “buy” rating on the Priceline.com shares.

140. Similarly, the August 2, 2000 *Los Angeles Times* reported:

“It’s a great stamp of approval for Priceline because of the caliber of the investors and, over the longer-term, it will remove some of the pressure on the share price,” said Tim Albright, analyst with Salomon Smith Barney.

It did. Priceline shares rose for the first time since July 20, closing up \$1.31, or 5.5%, at \$24.94 on Nasdaq.

141. Although unrevealed, when Walker sold his 8 million shares, he knew, as a result of the daily sales and revenue information he received, that WebHouse was on the verge of failure and desperately needed a cash infusion. Walker further knew that should the market learn the truth regarding WebHouse’s financial condition, his Priceline stock would lose tremendous value, given the Company’s need to write down its WebHouse warrant asset, its loss of royalty revenues from WebHouse, and the doubt this would cast on Priceline’s ability to expand its Business Model beyond its core businesses. Assuming Walker did, in fact, invest \$125 million in WebHouse at that time, the sale of Walker’s Priceline stock at artificially high levels allowed him to sell at a premium supposedly to fund his pet project, WebHouse; allowed him to continue the desperate attempt to deceive manufacturers (and thus investors) that WebHouse was successful; and injected capital into WebHouse, much of which would be recycled back to Priceline.com under the guise of management fees and service charges, and reimbursement of expenses for computer upgrades, then known to cost over \$100 million. In fact, due to WebHouse’s depleted financial position, vendors had refused to work further on the computer upgrades.

142. Just as Walker dumped his shares, insider Braddock also divested himself of an additional 100,000 shares of Priceline stock for proceeds of \$2,537,600. On August 1 and 2, 2000, Nicholas (acting as trustee for the Gore Creek Trust, whose beneficiaries are his wife and children) sold another 100,000 shares of Priceline common stock at \$25.32 per share, reaping proceeds of \$2,532,000.

143. In Priceline's Second Quarter Form 10-Q filed on August 14, 2000, Defendants 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.)

144. On August 7, 2000, WebHouse issued a press release announcing the grand opening its gasoline business. Defendants continued to lead investors to believe that WebHouse had lined up sources to cover the discounts its customers would be given:

Priceline for Gasoline Celebrates Grand Opening

Priceline for Gasoline Now Open to All Customers After 250,000
Charter Customers Price 6 Million Gallons in Five Weeks

-No \$3 monthly processing fee. Fee eliminated because of strong support by gas stations nationwide

-250,000 charter customers price 6 million gallons at average savings of 12 cents a gallon in five weeks

–Priceline Gasoline cards have now been mailed to all 1.2 million charger customers; remaining 500,000 will arrive in homes by the end of this week

–Service now open to all consumers who visit www.priceline.com to lock-in savings of up to 10-20 cents a gallon off pump price

After saving its charter customers an average of 12 cents a gallon on their gasoline purchases, Priceline for Gasoline announced that, effective at Noon today, it is now available to all consumers as soon as they come to the priceline.com Web site. Priceline for Gasoline also announced that because of strong support from over 5,000 gas retailers nationally, it will eliminate the \$3 monthly processing fee to consumers.

In July, the first 250,000 charger customers priced over 6 million gallons of gasoline at an average savings of 12 cents a gallon off the pump price.

“Priceline for Gasoline is now open to everyone,” said T. Scott Case, president of Priceline for Gasoline. “Following the enthusiastic response from our charger customers, we are pleased to make our service available to the general public so everyone can save. In addition, due to the strong acceptance from gas stations nationwide, we have eliminated the originally announced \$3 monthly processing fee.”

About Priceline Webhouse Club

Priceline for Gasoline is a service of the Priceline Webhouse Club, a privately held licensee of priceline.com {Nasdaq: [PCLN](http://www.nasdaq.com) - [news](http://www.nasdaq.com)) that allows consumers to name their own price for retail items and shop for them at discounts at local retail stores. The company’s grocery service, which launched in New York City in November 1999, already has more than 1 million members throughout the northeast, southeast and Midwest, who save an average of \$10 to \$15 on each shopping trip. The grocery service is currently available in 10 major markets and is expected to be available to consumers nationwide by fall.

145. On August 8, 2000, Webhouse issued a release announcing its expansion of the grocery business into Texas. Defendants again deceived investors by representing that sources other

than Webhouse were covering the discounts being enjoyed by Webhouse's customers:

Priceline Webhouse Club is able to provide discounts in part because of support from major brand manufacturers. To date, over 140 brands are supported by manufacturers in the Priceline for Groceries system. Each week an average of five brands are added to the Webhouse Club system. Customers do not know which national brand will accept their price because Priceline for Groceries shields the specific brand name until after the customer's price is accepted, thereby protecting the price integrity of the manufacturer.

Discounts are also supported by more than 100 sponsor programs in which consumers receive Webhouse Club Half-Price Tokens – giving them discounts of up to half-off – by agreeing to try a sponsor's product or service. Each week, the Webhouse Club is adding on average of four sponsors to the program.

Priceline Webhouse Club recently launched its new Name-Your-Own-Price service for gasoline. Priceline for Gasoline is fast and easy. Customers select three or more local gas stations and name their price for up to 50 gallons of gas and, if their price is accepted, Webhouse designates which station on their list they should go to in order to get their gas. Priceline for Gasoline support the discount from money paid to it by thousands of independently owned and operated gas stations representing almost every major brand.

These participating gas stations pay Webhouse Club in order to have Priceline send new customers to their stations. When customers use their Priceline Gasoline Card at the pump, the retailer gets the full pump price, but the consumer gets the savings that he or she pre-paid for online with Priceline. In addition to buying gasoline, these new customers often purchase convenience store items, such as food, candy, soda and tobacco products as well as service station products and car washed. In addition to support from gas stations, third-party sponsors and other companies contribute to Priceline Webhouse Club customers' gas purchases.

J. Defendants Continue To Deceive The Press and Investors.

146. In an effort to defray increasing rumors about manufacturer and gasoline company non-

participation in WebHouse, Defendants stepped up the pace of their deception to convince the market otherwise. During the third quarter, the following news stories were published confirming Defendants continued deception regarding WebHouse's operations.

- a. As reported in the July 10, 2000 issues of the Raleigh, North

Carolina News & Observer:

So I phoned Priceline's founder, Jay Walker.

"Who's bankrolling this thing?" I asked. That's the question we always ask in my house when we're not quite sure what's going on.

"The manufacturers," Walker said. "And they'll do it forever," The groceries handle Priceline sales as if the shoppers had coupons – purchasers are subsidized by manufacturers or Priceline itself.

The reason, Walker said, is this. By agreeing to accept more than one brand, a Priceline shopper demonstrates a fickle nature. **"The manufacturers would rather not give you a discount, of course, but if you prove that you're willing to switch brands, they're willing to pay to keep you,"** Walker said.

- b. Similarly, as reported in the July 23, 2000 *Chicago Sun Times:*

Priceline.com WebHouse Club gets money three different ways, says spokesman Robert Padgett. It gets the manufacturers to make up the difference in price paid to the retailer. It gets bonuses from the manufacturers for directing customers its way. And it collects fees from other program sponsors, such as magazine subscription companies. (Customers who agree to special offers on these additional products can earn "half-price tokens" to be used to bid even lower on items.)

Also, after the first 90 days, consumers are charged a \$3 monthly processing fee during months when they buy food or gas. (Emphasis added.)

- c. The August 9, 2000 *Dallas Morning News* reported:

Priceline.com introduces its name-your-own-price grocery service for Texans on Wednesday.

Customer will get a discount on the prices, and **the difference is subsidized by 24 manufacturers that allow WebHouse Club to price items below average supermarket prices.** It's a marketing ploy "to increase market share and get their product to customers who are brand-flexible," Mr. Padgett said. (Emphasis added.)

- d. The August 31, 2000 *New Orleans Times-Picayune* reported:

Priceline can offer the low prices because manufacturers agree to sell their products below store prices to generate sales and to increase market share, Priceline spokesman Robert Padgett said.

They pay a fee every time Priceline.com directs a customer to one of their products. Advertisers pay a fee whenever customers agree to try their products or services. Sponsors pay for the electric half-price tokens in exchange for customers trying their products and services, Padgett said. (Emphasis added.)

- e. The August 6, 2000 *Sarasota Herald-Tribune*:

Winn-Dixie receives the full market price for the groceries that each customer buys. It's Priceline.com that takes the hit, but **WebHouse Club spokesman Robert Padgett said the company still makes money on the transactions.**

Several dozen manufacturers partner with Priceline.com to provide products at less than supermarket prices, allowing Priceline.com to sell the products for less. Also, visitors to the Priceline.com Web site are bombarded with ads for products ranging from long-distance service to magazine subscriptions.

“The manufacturers are a big revenue source for us, because we’re diverting customers to their brands,” Padgett said. (Emphasis added.)

f. The September 10, 2000 *Boston Globe* reported:

I still wonder how Priceline turns a profit. The company pays the gas stations their full pump prices and makes its money, not by selling gas, but by selling its customers.

Padgett said that 5,000 of the 30,000 stations listed on the Web site have agreed to pay Priceline between 25 cents and \$2 for every customer delivered to them. The 5,000 stations, apparently hoping to boost their sales volume and sell other items to gas customers, are given preference in referrals.

Sponsors also pay Priceline an undisclosed fee for every referred customer. (Emphasis added.)

g. September 21, 2000 *Associated Press Newswires*:

Priceline WebHouse Club makes money from banner advertising and obtains low prices on groceries from manufacturers who wish to win customers willing to use different brands, Padgett said. (Emphasis added.)

147. Based on Defendants’ continuous touting of WebHouse’s expansion, the press continued to be keenly focused on WebHouse and its apparent success. As a result, during the third

quarter 2000, the following affirmative stories were printed:

- a. July 13, 2000 Minneapolis/St. Paul *Star Tribune*:

The system is already available at more than 5,000 sores in the Northeast, Southeast, Southeast and Midwest. **It is expected to be available nationwide by year's end.** (Emphasis added.)

- b. August 21, 2000 *Capital District Business Review*:

Officials at Priceline Web-House Club, the affiliated licensee of Norwalk, Conn.-based Priceline.com that offers the discount gas service, **said 250,000 consumers bought more than 6 million gallons of gas at an average savings of 12 cents per gallon in July.**

Gas stations always get the full pump price, and Priceline WebHouse makes money.

One way Priceline WebHouse makes money and subsidizes the discounts is by getting oil companies and, independent gas station dealers to pay a marketing fee. Companies and stations that pay the fee have more business directed to them from the Priceline network. (Emphasis added.)

- c. August 12, 2000 *Los Angeles Times*:

The savings aren't paid for the Ralphs or any of the participating merchants, **but by the manufacturers themselves**, who trade a discount in exchange for the opportunity to showcase their product and reach new customers. (Emphasis added.)

- d. September 8, 2000 *Los Angeles Daily News*:

Priceline expects 4 percent to 5 percent of Los Angeles households to by using its service by early 2001, said Robert Padgett, Webhouse

director of corporate communications. (Emphasis added.)

e. September 16, 2000 *Arizona Republic*:

The WebHouse grocery business has 1.5 million members and is adding 100,000 members a week. It has more than 7,000 affiliated supermarkets across the country. (Emphasis added.)

f. September 23, 2000 *Dallas Morning News*:

On Friday, the 83-store Coppell-based grocery store chain started participating in the Priceline WebHouse Club program that lets shoppers name what they'll pay for grocery items online, then pick up the order at the store.

Retailers are paid the full price, and the difference is subsidized by 24 manufacturers that allow WebHouse Club to price items below average supermarket price.

148. Analysts continued, throughout the third quarter of 2000, to accept Defendants' projections of profitability in the near future and the apparent success of the Company in expanding its Business Model:

a. On July 24, 2000, Salomon Smith Barney rated

Priceline stock a "Buy":

Webhouse Club: Webhouse Club, Priceline's unconsolidated grocery affiliate, continued to grow, having attained more than 750,000 active customers. These customers are not included in Priceline's customer count. Webhouse Club recently enjoyed a successful launch of Name-Your-Own Price gasoline, selling three million gallons in the first three weeks. No news was revealed regarding supplier relationships, financial statements, or any other operating metrics.

b. On July 24, 2000, Analyst Streetadvisor reiterated its

“Buy” recommendation:

In a company conference call, management sounded bullish. More than once, Dan Schulman, the CEO, stated, “**We are on the home stretch towards profitability.**” He pointed out four investment areas that Priceline would concentrate on going forward: the customer franchise, enhancing existing verticals, building out new verticals, and building a global powerhouse.

c. On July 24, 2000 Robertson Stephens reported:

Reports Better-than-Expected Q2 Results; We Anticipate Break-Even Next Quarter, or One Quarter Early; Reiterate Strong Buy Rating

* * *

* Repeat business accounted for 39% of all purchase offers (1,000,000 repeat customer offers), up from 35.4% last quarter and 26% for the same period one year ago. **We believe Priceline’s improving repeat purchaser rate reflects high customer satisfaction levels and indicates better long-term customer acquisition economics.**

* * *

Priceline’s ability to generate repeat business at positive incremental gross margins provides us with greater confidence the company can show increased operating leverage in future quarters and possibly break-even ahead of our previous expectation for Q4.

* * *

One critical factor in determining the potential scalability and leverage in Priceline’s business model is the company’s ability to diversify its shopping method into other vertical categories....

- d. On July 25, 2000, Analyst Thomas Weisel Partners reiterated its “Strong Buy”

recommendation:

As we have stated before, Priceline.com’s “name-your-own-price” process is applicable to more than just the airline industry. It has been successfully applied to the hotel and rental car business as well as a new car sales, mortgage products, groceries and now gasoline and telecom. While growth varies in each category, we believe that over the long term, Priceline.com will capture a portion of each of these markets as well as a wealth of other markets where individual buyers are flexible in their purchase desires and suppliers have either excess or perishable inventory.

- e. On July 25, 2000, US Bancorp Piper Jaffray rated Priceline as a “Strong Buy”:

Priceline.com’s strong and differentiated value proposition for consumers has created significant customer loyalty, which was demonstrated by the record level of repeat customers during the quarter. Despite strong new customer additions, 39% of all offers were made by repeat customers, up from 36% last quarter and 26% last year.

* * *

We continue to believe that the Priceline.com business system is a horizontal e-commerce model with strong applicability to both B2C and B2B markets. To this point, the Company continues to aggressively extend its business system into new markets during the quarter and in recent weeks, Priceline.com recently announced a national launch of its telecom product, a marketing alliance with American Express Small Business Services for a B2B portal currently under development and a partnership with General Atlantic Partners, LLC to form Priceline.com Europe. Going forward, we expect additional product launches in the insurance and energy verticals, among

others, within the next several months.

- f. On July 25, 2000 PaineWebber Inc. rated Priceline a “Buy” and reported:

We believe stronger than anticipated top-line growth was driven primarily by strong performance in the core travel services business (including rental cars) and better than expected contributions from the company’s new telecom business as well as higher licensing revenues received from affiliates like Webhouse.

* * *

Priceline added 1.5 million customers during the quarter to reach a cumulative customer count of 6.8m. We note that this cumulative customer count does not include the approximately 750,000 customers that Webhouse has to date. In addition, 39% (960,000) of the company’s offers were from repeat customers, up from 35% in Q1. We believe the improving repeat business metrics are due mainly to improved customer satisfaction and crossover sales from Webhouse Club members, who have a very high frequency of use.

- g. On July 25, 2000, E. Offering rated Priceline a “Strong Buy”:

* Priceline.com Inc. (PCLN - STRONG BUY, \$31-1/8) continues to invest in new services and markets while the success of recent product launches underscores scalability of service platform.

* Raising forward estimates, we expect the back half of FY00 to be profitable. We are maintaining our STRONG BUY rating, heading into a seasonally stronger period.

* * *

Priceline’s Webhouse Club also demonstrated strong growth in the quarter with more than 750,000 households using its services. Specifically, Webhouse

Club gas services sold more than three million gallons of gasoline in its first three weeks of operation.

h. On August 1, 2000 Prudential Securities reported:

- Jay Walker, founder of Priceline.com, sold a forward contract on 8 million PCLN shares and will use the approximate \$125 million after-tax proceeds to fund growth at Webhouse Club.
- Once the transactions are complete, PCLN's warrants would convert to approximately 55% of Webhouse Club's shares. Mr. Walker stated that Webhouse Club's private valuation is over \$1 billion.

Webhouse Club valued at over \$1 billion. Once the transactions are completed, PCLN's warrants, would convert to approximately 55% of Webhouse Club's fully diluted shares (when converted). We note that prior to Webhouse Club's second round of financing earlier this year, PCLN's warrants would have converted into 80% of Webhouse Club's shares. At the private market valuation of the upcoming third round of financing, PCLN warrants will be valued at more than \$500 million.

Finally, some metrics on Webhouse Club. We were concerned that PCLN management had distanced itself from privately held affiliate Webhouse Club, and recently disclosed no metrics to measure the progress of the business. In our view, groceries could be Priceline.com's next blockbuster category (after travel), and without an understanding of how that business is progressing, we are left to assume the worst. Mr. Walker detailed progress at Webhouse Club on the demand side (consumers) as well as on the supply side (manufacturers, retailers, and sponsors).

* * *

...but the supply side and positive gross margins will take time. We have been concerned that consumer product goods manufacturers were hesitant to fund a significant portion of Webhouse Club's consumer discounts. The news here was positive, with a dose of reality. Priceline's airline segment attained critical mass, and positive gross margins, relatively quickly after Delta was enticed to join as a supplier. However, Webhouse Club's grocery business has signed up at least 25 CPG companies that cover 120 branded products, including brands in seven of Webhouse Club's top ten requested categories.

Yet, despite the strong sponsorship, the manufacturers are only funding approximately 50% of the consumer discounts. Mr. Walker believes this amount will increase

overtime, and also believes that corporate sponsorship fees, and consumer membership fees will make up the difference. For the first time, we heard of possible fees charged to participating retailers, although we are uncertain whether retailers will continue to participate if fees are involved. **Mr. Walker stated that he expects both the grocery and gasoline businesses to be gross margin positive by year-end 2000.** (Emphasis added.)

i. On August 1, 2000 Salomon Smith Barney rated Priceline as a “Buy” and

reported:

The seller, Jay Walker, PCLN’s founder, intends to use the \$125m in after-tax proceeds to invest in Webhouse Club, Priceline’s grocery affiliate. This transaction values Webhouse at approximately \$1b.

Webhouse Club details were revealed: the affiliate has 1m grocery (growing by 100k/week) and 200k gas customers, offers 120 branded products in almost 7,000 supermarkets and receives fees from 5,000 gas stations.

Webhouse Club is investing heavily in infrastructure, but is intended to be gross margin positive in gas and groceries by 4Q00.

Webhouse Club Details:

We received additional visibility on the progress at Webhouse Club. The affiliate has shown rapid growth and, according to Mr. Walker, should achieve positive gross margins in both groceries and gasoline by the end of the year.

We received additional clarity on Webhouse Club’s business model. We believe revenue is generated by product placement and advertising deals with manufacturers. As it exists currently, it appears participating manufacturers have been willing to underwrite coupons of 10-15% with additional coupon discounts underwritten by PCLN. Manufacturers enter

into 1-2 year contracts. Priceline did not indicate the names of participating manufacturers, indicating the companies would prefer to remain anonymous.

We do not know the magnitude of Webhouse's revenues or losses, although we believe that the current financing should last into 2001.

- j. On August 1, 2000 US Bancorp Piper Jaffray issued a report rating Priceline a

“Strong Buy”:

The amazing growth of the Webhouse Club with consumers and the level of participation from both manufacturers and retailers support the long-term viability of the Webhouse Club business model.

Manufacturer participation in the Webhouse Club has also been strong with direct manufacturing relationships representing more than 120 brands for the grocery buying service. More than 7,000 supermarkets have been integrated into the system including major chains such as Krogers, Safety, Albertson's, and Ahold. On the gas buying service side, more than 50,000 stations accept the Webhouse Club card. We expect additional manufacturers, retailers, sponsors, and consumers to join the Webhouse Club as it continues to roll out its business model nationally.

* * *

Strong Buy With Price Target Of \$75. We strongly believe that Priceline.com is a differentiated e-commerce platform that is applicable to a variety of consumer and business vertical markets. We believe the positive business developments within the Webhouse Club are supportive of the horizontal nature of the Priceline.com opportunity.

- k. On August 1, 2000 Robertson Stephens reiterated its “Strong Buy”:

- ***We are encouraged by Webhouse Club's recent growth in both groceries and gasoline:*** Since launching in November of last year, Webhouse Club has signed up over 1 million members and is currently adding approximately 100,000 new customers per week. Webhouse Club's new name-your-price gasoline service currently has over 200,000 active customers, as well as an additional 800,000 pre-registrants which should receive their cards as the service is rolled nationally. We believe both businesses could be gross margin positive by year end, following a similar scaling trend to Priceline's travel products.

* * *

Webhouse Club does not identify the manufacturers with which it partners in order to prevent potential brand dilution that occurs with ordinary coupons or in-store promotions. We estimate Webhouse Club currently has deals with manufacturers covering 120 different brands that provide for a savings of 10-15% off retail prices. We believe each of these deals are between 1 and 2 years in length. On the gas side, we estimate nearly 5,000 gas stations have already agreed to pay fees each time Priceline directs one of its customers to their gas station. Currently, 50,000 stations can accept the PWHC gas card through their affiliation with the Voyager Network.

* * *

BUSINESS IMPACT

Webhouse Club Is the Real Deal

We believe that when Priceline first licensed its patented business method to Webhouse Club, many investors were skeptical that consumers would shop for groceries in a two-step format: 1) name their price for grocery items on the Web, and 2) visit participating stores to pick up their groceries. Given Webhouse Club's early successes in the New York City area, which we view as a difficult and complex consumer market, we believe Webhouse Club has silenced the critics and is quickly emerging as a major player in the attractive online grocery market. We believe gasoline could be an even bigger hit with consumers. Further, we believe Webhouse Club's early success reflect how Priceline's eCommerce platform is applicable in several additional categories.

We are encouraged by Webhouse Club's recent growth in both

groceries and gasoline: . . . We believe both businesses could be gross margin positive by year end, following a similar scaling trend to Priceline's travel products.

We also believe the name-your-price shopping could prove popular as new broadband applications such as interactive television are rolled out. While we believe it is still too soon to quantify the impact from these new potential grown areas, we believe Priceline's strategic relationships should prove highly valuable longer term and represent upside potential to our current estimates.

* * *

As a result, we believe Priceline's licensing arrangement with Webhouse Club provides investors in Priceline with high potential reward with minimal risk. In exchange for licensing its name-your-price shopping method, Priceline receives a fee on each Webhouse Club transaction and has warrants for approximately 55% ownership in the company following the 3rd round of financing. In addition, Priceline reaps the benefits of increased site traffic from Webhouse Club's high velocity sales and branding from related advertising. (Emphasis added.)

1. On August 1, 2000 PaineWebber Inc. issued a report rating Priceline a "Buy"

and reported:

Jay Walker held a conference call with investors and analysts this morning to discuss his stock transaction with Liberty Media Corp.. And Vulcan Ventures. He also gave an update on the Webhouse Club, the privately-held Priceline affiliate for retail products such as groceries and gas.

* * *

Similar to the **Priceline** model, Webhouse Club needs buyers, suppliers, retailers, and third party sponsors to make its business work. Thus far, we believe the company is progressing well on all of these fronts.

* * *

MANUFACTURERS

Currently, Webhouse Club has long-term agreements with over 120 different brands in the grocery store. Webhouse Club can increase market share for certain brands. This is done by directing consumers to a particular brand that pays Webhouse a fee, thereby supporting a portion of the customers savings.

Webhouse typically enters into one and two-year contracts with its manufacturing partners, which are currently providing 10-15% of the subsidies that customers receive. Is this sustainable? Webhouse believes so. Manufacturers typically give warehouse clubs 20-25% unit discounts over grocery stores in order to move more product, and coupon discounts average 15-20%.

Last week the company signed 10 new brands, and we expect the momentum to continue as manufacturers realize the benefits of working in the Webhouse system.

* * *

REITERATE BUY ON PRICELINE

Webhouse being valued at \$1b or more, and **Priceline** able to own 55% if it chooses, that could be worth at least \$3-\$4 per **Priceline** share if the valuation stays where it is.

Most importantly, we believe the financial transaction announced today gives **Priceline** investors a sign of confidence - - which could help stop the recent slide in the stock.

- m. On August 2, 2000 E. Offering Corp. rated Priceline as a “Strong Buy” and

reported:

Moreover, Priceline is adding roughly 10 brands per week and expects to complete its product coverage in the next 90 days. Importantly, these supplier relations are providing product at roughly 10-15% off the retail shelf price- -forming the base for **Priceline** to drive positive gross margins by the end of the year. **Finally, management indicated that the grocery service is being well received across all geographic markets- -gaining roughly 2-4% market share (4% in New York City and Detroit) in the first 90 days, with an 88% repeat usage rate.**

n. On August 22, 2000 Salomon Smith Barney rated Priceline stock a “Buy”:

Met with Priceline’s CEO Dan Schulman yesterday.

We sense that the travel business is stronger than expected, that the communications businesses will ramp PCLN’s profitability in 2H 00, and that financial services impact 1H 01.

o. On September 19, 2000 Prudential Securities reported:

- [CFO Heidi] Ms. Miller also stated that she would expect that more than 50% of the company’s contribution margin would come from non-air categories within approximately two years.

149. The statements contained in the immediately preceding paragraphs 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. Contrary to Defendants’ repeated representations that grocery and gas manufacturers were footing the bill for Webhouse’s customers’ discounts, these suppliers were not

funding the discounts given to Webhouse customers. Defendants knew that Priceline's business model was not extendable to, or viable, in the market for groceries or gas and that the Priceline business model which required consumers to be "brand flexible", was antithetical to the accepted marketing and sales strategies practiced by grocery and gas manufacturers and suppliers. Thus, contrary to Defendant Walker's statement the manufacturers would subsidize Webhouse discounts "forever", the fact was that most manufacturers would never agree to participate in such subsidies;

b. As the second quarter progressed, it became even clearer that the vast bulk of the gasoline discounts would not be covered by gasoline producers, third party advertising and sponsors. Given the absence of commitments from such gasoline producers, advertisers and sponsors, Defendants' statements to the contrary were false. While Defendants represented that Webhouse had signed marketing contracts with many of the nation's leading oil companies, Webhouse had *not* signed up the vast majority of such companies, including many of those listed as being brands available through Webhouse;

c. While Defendants repeatedly touted Webhouse's expansion, Defendants failed to reveal that this expansion was obtained only as a result of Webhouse heavily subsidizing the discounts provided to customers. By the third quarter, these subsidies were approximately \$1 - \$5 million per week. Defendants failed to reveal that Webhouse was suffering material losses and that each expansion, both geographically and of product offering, brought Webhouse that much closer to its demise. Defendants knew that this increasing level of subsidization, as well as the nationwide launch of Webhouse's gasoline service brought Webhouse increasingly nearer to its financial demise. Webhouse was not "making money" in its grocery business. Instead, Defendants knew that the only prospect for

Webhouse's continued operations was to obtain continuous, additional, rounds of financing, thus relying on a Ponzi scheme of epic proportions;

d. The twenty-four consumer grocery manufacturers participating in Webhouse came no where close to covering the number of products being offered by Webhouse, nor of reducing, in any material respect, the degree of subsidizing being undertaken by Webhouse. Most manufacturers continued to refuse to participate in Webhouse. Thus, Proctor & Gamble and Lever Brothers never participated and, throughout most of the Class Period, neither did Kellogg nor Hershey;

e. Defendants knew that Webhouse could not go national by the end of October 2000 with groceries as stated by Walker on July 24, 2000, because the level of subsidiaries Webhouse was forced to absorb financially prohibited it from doing so and because of Priceline's computer system would not permit this level of expansion;

f. Contrary to Webhouse's statements through its spokespeople, Padgett and Mendoza, manufacturers did not view the Webhouse as superior to coupons; the repeat rate for Webhouse users was far less than 85%; Webhouse's business model and certain losses it would incur in attempting to go nationwide, precluded Webhouse from having any real prospect of doing so; manufacturers were not "subsidizing" the lower prices for brand name products; the purported advantages to manufacturers touted by Padgett were not accepted by the vast majority of manufacturers; Priceline was *not* "happy with the level of support we've gotten so far;" Priceline was *not* paying stores the difference between club and retail prices through agreements with manufacturers and revenue from advertisers; major oil companies were not being "driven by their market share" to agree to the discounts in return for new customers; the Webhouse gasoline business was "not a very

viable business;” Priceline was not making up the difference in price “through a combination of fees paid by oil companies; advertisers and affiliated sponsors; and the difference in gasoline price was not being made up “from marketing contracts with oil companies, online advertisers and more than one hundred national sponsors;”

g. 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 the deeply discounted fares being offered by other online airline ticket sites and by the airlines themselves who were not only operating their own site, but jointly launching Hotwire. Such discounts: (i) removed the incentive for fliers to search for cheap tickets on Priceline and consequently reduced sales; and (ii) reduced the Company's revenues and earnings from the sale of airline tickets. Moreover, airlines were cutting back on the number of tickets being offered to Priceline. 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 Priceline. 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, and had begun to reduce the number of tickets they would make available to Priceline, which was hurting sales;

h. Additionally, demonstrating the materially false nature of the Company's “homestretch” statements is the absence of any reasonable basis for the Company's projections, demonstrated by the following:

i. Defendants included in their projections continuing revenues from Webhouse pursuant to the Webhouse Agreements. By the third quarter, Defendants were aware that continuing revenues from Webhouse was extremely improbable, since the Priceline business model was openly failing in Webhouse. Additionally, Defendants knew or recklessly disregarded that Priceline was required to report its and Webhouse's results on a combined basis, which precluded the recognition of such intracompany transfers;

j. Defendants did not include in their projections the need to write off the \$189 million Webhouse asset. This write off, and the corresponding reduction to income precluded profitability within the projected timetable;

k. Defendants' projections included a continuing expansion of the Priceline business model in numerous other industries. Defendants knew, or recklessly disregarded that the failure of Webhouse would preclude the Company's anticipated move into these other markets since Priceline's "brand" would be severely damaged and Defendants' ability to fund the move into these other areas would be improbable;

l. Defendants' projections built in expectations of increased usage of the Company's core products from Webhouse users. Once Webhouse failed, such cross-selling would cease;

m. Defendants' projections significantly underestimated in the degree of increasing competition from airlines' on-line ticket sales and other airline ticket sellers and the detrimental effect this would have on the Company's core operations;

n. Defendants knew that, in contrast to Defendants' projections of dramatically

increasing airline ticket sales, Priceline's ticket sales tailed off after the week of March 12, 2000; and

o. Defendants' projections did not factor in the charges against income necessary to re-value the airline warrants, or employee warrants, which Defendants knew would likely occur once the truth was revealed and Priceline's stock declined;

p. 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, many of which were prompted by the continuing inadequacy of Priceline's computer systems to handle both Webhouse and Priceline's businesses. Media reports, including a July 24, 2000 segment on *Good Morning America*, focused on "horror stories" of Priceline customers who had very negative experiences with Priceline's airline ticket purchasing system and poor customer service. In an October 8, 2000 article in the *Chicago Tribune*, Harris Interactive pollster Lori Iventosch-James stated the Priceline's customer satisfaction was "extremely low" and that the Company's model "makes it difficult to satisfy customers and fosters disloyalty." 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;

q. Loyalty among existing Priceline customers was not growing stronger and improving customer satisfaction was 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. In September of 2000, Connecticut Attorney General Richard Blumenthal also opened a consumer fraud investigation of Priceline after receiving more than 100 complaints. While Priceline booked only one percent (1%) of all flight traffic in 1999, 35% of the complaints lodged against travel agents with the U.S. Department of Transportation in that year were against Priceline. Throughout the Class Period Priceline's repeat business was declining thus during the first quarter Priceline received twenty-two bids for every one hundred customers who had placed an offer with it previously; in the second quarter the ratio dropped to eighteen of every one hundred previous customers; and in the third quarter dropped to sixteen per one hundred prior customers;

r. Defendants knew, or were reckless in not knowing, that Priceline's business model was not expandable beyond its core businesses in airlines, hotel and rental cars. Specifically, In contrast to Defendants' statements, Webhouse's operations demonstrated that the Priceline business model did not have "tremendous staying power," was *not* rapidly scalable across multiple product segments, nor had Priceline demonstrated that its business model worked across a broad horizontal range of industries. In fact, contrary to Defendants' statements, Priceline was still a "niche, player" with a business model restricted to the travel industry and had no prospects of tapping broader markets which some analysts pegged at \$12 trillion;

s. Defendants knew that, unlike airline tickets, there was no reasonable prospect of profitability for Webhouse and that, the more it expanded, the greater its losses would be, since most manufacturers were unwilling to participate in the Priceline business model which required consumers to be “brand flexible”, a notion which was anathema to brand name product manufacturers which rely upon brand loyalty, product placement and advertising mind-share to generate incremental sales in the inelastic grocery and gas markets. The Priceline business model as applied in Webhouse did not have “enormous potential” and decidedly did not “benefit both buyers and sellers across a broad range of products and services;”

t. While Defendants repeatedly heralded the supposed high return rates of customers to the Webhouse service, claiming that anywhere between 85% and 35% of current users at any given time were “repeat” customers, Defendants knew that the return rate of customers to Webhouse was dismal due, in large part, to the fact that Webhouse would systematically reduce the amount of discounts offered to customers each time they used the Webhouse service. Thus, as a customer’s use of the service increased, his or her discounts decreased, quickly resulting in diminishing returns which did not justify the added hassle required to effectively shop for groceries twice. In reality, only one out of every hundred people would to use the service more than twice;

u. Defendants had no reasonable basis for any valuation of their warrants, and certainly had no reasonable basis for claiming that such warrants were worth in excess of \$500,000,000, or for claiming that Webhouse’s private valuation was over \$1 billion, given Webhouse’s actual performance, which was known to Defendants as a result of their daily receipt of detailed reports setting forth Webhouse’s financial results;

v. Defendants had no basis for informing the market that either Webhouse's gasoline or grocery business would be profitable, let alone that both the grocery and gasoline business would be profitable. Webhouse was then on the verge of collapse, with certain vendors having shut off deliveries due to its lack of funds. The Priceline business model was a demonstrated failure by the time Defendants issued these pronouncements;

w. The inability of the Webhouse project to successfully capitalize on the Priceline business model also jeopardized the royalty and service payments streaming from Webhouse back to Priceline, thus undermining Defendants' claims that Priceline's expansion into new areas would provide income streams independent from the travel industry;

x. Defendants violated GAAP, as set forth above, the Company's reported results for the quarter ended June 30, 2000 did not include all adjustments necessary for a fair presentation of the Company's results of operations pursuant to the rules and regulations of the Securities & Exchange Commission. The Company's reported results were overstated by approximately \$189 million a result of Defendants' improper recognition of revenue in that amount in the fourth quarter of 1999. Additionally, Defendants improperly transferred material expenses of Priceline to Webhouse's books and improperly recorded revenue from Webhouse, when Webhouse and Priceline should have been reporting on a combined, if not consolidated, basis;

y. Throughout the Class Period, Defendants knew that the computer systems utilized to serve the core Priceline customers were inadequate to meet the stress and demand incited by the additional users attracted by Webhouse's strategy of giving away money. Thus, Defendants knew that not only would the Webhouse customers be frustrated and thwarted from participating in the

Webhouse service due to regular crashes in the Webhouse databases, but Priceline's core business would also be effected because the airline ticket, hotel and rental car businesses all relied on the same systems and equipment to serve Priceline's customers, resulting in a general degradation in customer service for Priceline and Webhouse customers across the board. Moreover, Webhouse's precarious finances hindered its ability to meet the demands placed on the Priceline system by Webhouse customers and, vendors had refused to work further on the computer upgrades;

z. Defendants knew that they were unable to assess the \$3 per month charge from the gasoline users. As announced, this charge was not to be assessed until after three months of usage. Aware that Webhouse needed to retain such customers as part of Defendants' misguided effort to convince gasoline producers to join (due to the purportedly huge number of users), Defendants knew that this fee would have to be, and was, abandoned. Thus, at the end of August, Defendants abandoned plans to assess the \$3 per month fee, bringing Webhouse that much close to its demise.

K. The Truth Begins To Unfold.

150. On September 15, 2000, however, the first glimpse of problems at WebHouse surfaced. At that time, WebHouse announced that it was cutting forty full time workers and, over the next several months, one hundred more positions held by free-lance computer consultants would be terminated. Nonetheless, WebHouse spokesman Kevin Goldman deceived investors by representing that these termination were designed to facilitate future expansion. As reported in the September 15, 2000 Associated Press Newswires:

The reductions at the Greenwich-based WebHouse Club are part of a reorganization to help keep costs in line and make room for future expansion, said company

spokesman Kevin Goldman.

The company which was launched last November had about 425 permanent positions. **Goldman stressed that the company is not under a hiring freeze, and still has open positions to fill, especially in information technology.**

“It’s clear that there are many, many start-up companies that are doing what they can to make sure that their money is being spent as efficiently as possible,” said Sara Farley, who follows Priceline.com for PaineWebber.

“This seems to be consistent with a lot of different layoffs we’ve been hearing about in the industry, with a lot coming from temp employees not necessarily on the payroll. Those are variable expenses and a good way to cut costs,” said Farley.

151. One week later, news of Priceline’s customer service problems began to surface.

Although unrevealed, these problems were increasingly being experienced throughout the Class Period as a result of WebHouse’s overtaxing of Priceline’s computer systems. Thus, on September 21, 2000, the *Wall Street Journal* reported that:

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 issue 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

152. The *Journal* and other news sources also reported, on September 22, 2000, that "48 Hours" would carry a story the following Thursday on Priceline which would examine why more than three hundred customers had filed complaints against Priceline. In response, Priceline's stock fell \$1.88/share, sinking to a fifty-two week low.

153. More bad news was to follow. On September 27, 2000, Priceline announced that its third quarter revenue would miss analysts' estimates due to disappointing airline-ticket sales. Nonetheless, Schulman touted the Company's prospects. As reported in the September 27, 2000

AFX New:

The company attributed its disappointing quarter to specific events affecting airline ticket sales, including a second 20 usd 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.

"Although the fourth quarter is seasonally Priceline's weakest quarter, we believe we are positioned to continue to generate strong sequential growth in revenues when we enter the seasonally strong spring season next year," he said.

154. Moreover, Schulman sought to distract investors' focus from the revenue shortfall purportedly prompted by weak airline ticket sales, by heralding the Company's progress in expanding its Business Model into other areas. Thus, the September 28, 2000 edition of numerous papers

reported:

Priceline.com's chief executive, Daniel Schulman, said in a statement that the company was disappointed by the third-quarter shortfall, **but that "our growth in non-airline revenue and continued high level of customer purchase offers, as well as offers coming from repeat customers, speaks to the progress we are making."**

Priceline.com has been rapidly expanding its "name your own price" concept into several other areas, such as rental cars, hotel rooms, long-distance telephone calls, gasoline and groceries.

155. The Company's announcement that its third quarter revenues would fall short of analysts' expectations, prompted some analysts to question management's credibility, whether it could be profitable and whether WebHouse was valuable:

a. On September 27, 2000 Lehman Brothers Equity Research issued a report downgrading Priceline from "Outperform" to "Neutral" and reported:

Second quarter results were choppy and it now appears we have a fundamental issue.

This quarter's shortfall highlights: 1) the difficulty in forecasting Priceline's business, 2) the lack of traction in new verticals, 3) that despite the "name your own price" feature, Priceline is essentially a travel agency - and is subject to the same set of challenges that this competitive business presents.

Given our valuation and fundamental concerns - we recommend investors lighten up on positions, even at these lower levels.

* * *

What happened to hyper growth? **As a newly public company that promised to take over the world with its “name your own price” retail format, we were not expecting a revenue miss in their 4th public quarter.**

* * *

Management credibility: This news does not bode well for Priceline’s new CEO and CFO. 2Q results were extremely choppy - but not an outright miss. We are hoping it was just a bump in the road. **It now appears that there is a fundamental problem. The old regime, Rick Braddock and Jay Walker have been aggressively selling shares, which also raised several red flags. Finally, management’s decision to not take questions on the conference call was less than comforting for investors who bought into their enthusiasm throughout the quarter.**

* * *

Our Other Concerns Remain

Webhouse Club - Option Value May Be Smaller Than Originally Hoped

Further, Webhouse Club, which was originally anticipated to be the next big thing - appears to be vulnerable. Webhouse Club, an affiliate of Priceline, extends Priceline’s business models into retail goods (currently groceries and gasoline).

However, we see no clear path to profitability for Webhouse Club as we believe they are currently financing the heavy discounts on the site - with minimal participation from suppliers. In fact, the company was forced to recently alter its business strategy to provide “exclusives” to brands - providing further evidence of the executional challenges which lie ahead.

Priceline currently receives licensing fees from

Webhouse Club and has warrants to take an ownership position of a majority of the company in the future. Thus, Priceline can participate in an upside in Webhouse Club's model without taking on any of the direct investment risks. **However, we believe that much of this upside was embodied in Priceline's share price.** With little confidence in Webhouse Club's ability to monetize this business, we believe the company is already fairly valued.

156. In light of the Company's announcement of a revenue shortfall, analysts began to question whether the Company's Business Model was transferrable to industries other than the Company's core products:

In an analyst call, Priceline President and Chief Executive Officer Daniel H. Schulman said airline ticket sales were on par with second-quarter volume but revenue would be down \$20 million to \$25 million. He also said that revenue from other areas would be up 20%. Some analysts found both of these figures disappointing and questioned whether the company's business model was transferrable to products other than airline tickets.

"The No. 1 issue facing this company is that the brand really isn't extendable beyond travel," said Lehman's Ms. Becker.

157. *USA Today*, on September 29, 2000, reported that the Company's repeat business was declining:

The company is getting less business from repeat customers, says Tom Courtney, analyst for Banc of America Securities.

Priceline got 22 bids in the first quarter from every 100 customers who had placed an offer with its previously. In the second quarter, that ratio dropped to 18 for

every 100 previous customers, and Courtney expects it to go to 16 when Priceline reports third-quarter results Nov. 2.

“This shows deterioration,” Courtney says.

158. The Company, however, denied *USA Today*'s information:

But Priceline has disputed any indication that its repeat business is sliding, saying 39% of its offers came from previous customers in the second quarter, up from 26% in the first quarter.

O. The Truth is Disclosed/WebHouse's Demise And The Write Off Of WebHouse Warrants Is Revealed.

1. The Previously Undisclosed Problems With WebHouse's Operations Surface.

159. It would not be until October 5, 2000 that investors were informed of the true state of WebHouse's affairs. On that date, in a press release issued prior to the opening of the U.S. markets, Defendants announced that Priceline would be winding down WebHouse's operations over a ninety-day period. The release stated:

The WebHouse Club announced a 90-day wind-down of operations because management determined it would be unlikely to raise the substantial capital next year that would be required to complete its business plan and achieve profitability. WebHouse Club said that its cash reserves of approximately \$50 million, as well as \$20 million of additional working capital, would be more than sufficient to satisfy all obligations to customers, employees and suppliers.

Jay S. Walker, the founder of WebHouse Club, said, “**In scale and scope the WebHouse Club was a business opportunity with great potential but with real risks. Specifically, it required a large capital commitment to create a national network of retail gas and grocery stores, broad participation by packaged goods manufacturers and third-party marketing partners, and substantial information technology systems....**

Mr. Walker added, "In light of the weakness of the current capital market environment, **the WebHouse Club executive team has reluctantly concluded that it was unlikely to be able to raise the additional capital the WebHouse Club would need to achieve the necessary scale and our goals of profitability.** Accordingly, we have determined that the prudent course of action is to wind down our operations on an orderly basis while fully satisfying all of the WebHouse Club's obligations to customers, employees and suppliers." (Emphasis added.)

160. In a desperate attempt to distance Priceline from its inextricable relationship with WebHouse, Defendants issued another release on the demise of WebHouse on October 5, 2000, purportedly to state Priceline's "response" to the demise of WebHouse:

NORWALK, Conn.--(BUSINESS WIRE)--Oct. 5, 2000--In response to WebHouse Club's decision to discontinue operations, priceline.com (NASDAQ: PCLN) has released the following statement: WebHouse Club is a separate company that licensed priceline.com's business model and offered groceries and gasoline on the priceline.com Web site.

Priceline.com received a warrant in WebHouse Club and recorded a non-cash gain of \$189 million in the 4th quarter 1999. **The Company will take a non-cash loss for the full carrying value of the warrant in the 3rd quarter 2000.**

Priceline.com was informed today that Perfect YardSale Inc., another separate priceline.com licensee that offered used merchandise to consumers on the priceline.com Web site, has decided to cease operations. Perfect YardSale, in operation for less than a year, has a very small base of business.

The Company will review its operations in the fourth quarter to maximize efficiencies and to remove the costs associated with providing services to WebHouse Club and Perfect YardSale, **for which priceline.com received reimbursement of \$4.3 million in the 2nd quarter 2000. Priceline.com also will cease to receive royalties from these licensees, which totaled \$361,000 in the 2nd quarter 2000.**

Going forward with its core businesses, priceline.com will intensify its focus on customer and supplier satisfaction. To that end,

priceline.com's product development, customer service and marketing teams are revamping its Web site and processes to incorporate both consumer and third-party feedback. The teams are also looking at new ways to ensure that customer questions or issues are promptly and fairly addressed. The Company anticipates that these enhancements will roll out later this quarter. (Emphasis added.)

161. Upon the revelation of this news, Priceline's stock declined precipitously by 38 percent to close at 5 and 13/16 on October 5, 2000. It never has recovered and currently trades at less than \$4.50 per share. In fact, Priceline's stock has averaged less than \$4.50 per share since the close of the Class Period.

162. With the announcement of WebHouse's demise, the press questioned the Company's ability to expand its Business Model beyond its core business. Thus,

a. The October 5, 2000 *Dow Jones Business Wire* reported:

Word of the WebHouse closure prompted Salomon Smith Barney analyst Time Albright to reduce his investment opinion on Priceline to "neutral" from "buy."
The analyst said the announcement calls into question the theory that Priceline's name-your-own-price model of online commerce could be extended to a wide range of products and services.

"What we see with the closing of WebHouse is that (the business model) is not as extensible as we hoped it was," Mr. Albright said. "What we're looking at now is a travel business. As a travel business, Priceline is getting squeezed by fuel on the buy side and lower fares, which are driven by aggressive discounting by the airlines."

b. The October 6, 2000 *Washington Times*:

Investors are now wondering whether Priceline's name-your-own-price device can work beyond

selling cheap airline tickets.

“This shows Priceline’s model won’t work right now to sell hard goods,” says Heath Terry, analyst at Credit Suisse First Boston. Profits from Priceline’s model can’t cover the costs of dealing with physical goods, he says.

c. The October 6, 2000 *Newsday*:

WebHouse accounted for about one-third of the traffic to Priceline’s Website, and helped it attract customers who would buy airline tickets and other services, analysts said.

d. The October 6, 2000 *Atlanta Constitution*:

Other analysts wondered whether the closing of WebHouse and Perfect YardSale indicates that **Priceline.com cannot expand its name-your-own-price model beyond travel and mortgage arenas, where it is also being squeezed by competition.**

e. As reported in the October 7, 2000 *Desert News*:

Priceline said Thursday it would close the Priceline WebHouse Club affiliate, which sold groceries and gasoline on the Priceline Web site and licensed Priceline’s business model. **This throws doubt on the company’s ability to expand beyond its established travel businesses.**

f. The October 9, 2000 *Journal Record* noted:

But Ken Cassar, a senior retail analyst for the Internet research firm Jupiter Communications, said the business model of companies like Priceline and Carclub may not be the magic charm Wall Street once believed.

“I certainly do not believe that it will revolutionize retail

pricing as we know it, which is really what the markets though a year ago,” he said.

The system does not work as well on smaller-ticket items, because consumers are required to do too much work to justify the savings, he said.

“Travel may well be the only category it works in,” Cassar said. (Emphasis added.)

163. Moreover, in direct contrast to the numerous statements issued by Priceline, Walker, WebHouse and WebHouse’s spokespeople throughout the Class Period, Defendants now admitted that manufacturers were not subsidizing grocery purchases to any significant extent, that oil producers were not participating in WebHouse, that WebHouse had been heavily subsidizing its customers’ purchases since day one of WebHouse’s existence, and that WebHouse had been beset by undisclosed problems during the Class Period. Thus, the following stories were published:

a. *Wall Street Journal*, October 6, 2000:

One year ago, Priceline.com founder Jay Walker hoped to use his name-your-own-price system to sell more than just airline tickets. “There is no category we won’t be in,” he predicted at the time.

Now there are at least two categories Mr. Walker won’t be in.

The main problem: Consumers could name their own price for groceries and gasoline - - but WebHouse Club couldn’t. Consumer-products companies weren’t willing to give Mr. Walker the discounts he needed, so he ended up subsidizing all the toothpaste and paper towels shoppers bought.

The cost of those subsidies, along with expensive

computer systems, ate up most of the \$363 million that WebHouse Club had raised from investors during the past two years .

Priceline, based in Norwalk, Connecticut, will take a \$189 million one-time charge related to stock warrants it holds in closely held WebHouse Club. Priceline, which licenses its name and name-your-own-price model to WebHouse Club, also stands to lose royalty revenues on grocery and gasoline sales. For the company's past fiscal quarter, those revenue totaled \$361,000.

b. Additionally, as reported by *The Wall Street Journal*, WebHouse was heavily subsidizing its customers' gasoline purchases:

WebHouse Club was turned down by Exxon Mobil Corp. and Tosco Corp., which has 6,000 branded "76" and Circle K gasoline outlets. Tosco says it chose not to participate in WebHouse Club's gasoline program because the company didn't think consumers would use it.

"Gasoline is patly a convenience purchase. People don't want to search across town to save \$2 a month," said Jefferson F. Allen, Tosco's President and Chief Financial Officer.

WebHouse Club convinced about 40% of the gas stations that did participate to help subsidize sales in return for getting new customers and some advertising. **On average, WebHouse Club subsidized about 15 cents per gallon, while the gas station picked up an additional six to ten cents per gallon, Mr. Walker says.**

c. The October 16, 2000 *Wall Street Journal Europe* further reported:

That was the problem at WebHouse. **Priceline founder Jay Walker persuaded grocers to buy into**

the idea but failed to find suppliers willing to give consumers big discounts. He would up subsidizing the groceries and eventually ran out of money.

d. The October 6, 2000 *Washington Times* reported:

[As Smith Barney Analysts stated] **“So in a way it’s a victim of its own marketing success - the more volume they got the more money they lost.”**

e. October 6, 2000 *New York Post*:

WebHouse Club was affiliated with typical dot-com problems. **It raised money by the truckload but had trouble paying for computers, and this Summer was cut off by the company that sold it its high-end Unix servers.**

f. October 6, 2000 *Florida Times Union*:

In WebHouse’s statement announcing its closure, Walker said that WebHouse had been a gamble from the start.

g. October 6, 2000 *Baltimore Sun*:

But grocery retailers said yesterday that they believed that WebHouse largely was covering the difference between retail and discount prices in an effort to prove to manufacturers that the concept would work to bring them more business.

A WebHouse spokeswoman didn’t know how many manufacturers actually were covering the costs of such discounts, or whether WebHouse was footing the entire bill. (Emphasis added.)

164. Defendants now openly acknowledged that they were aware of the risks with WebHouse’s business plan of subsidizing purchases from the beginning. Thus:

- a. As reported in the October 5, 2000 Newsbyte News Network:
[A Webhouse] **spokesman said that Priceline was aware of the risks associated with the WebHouse model, indicating that the company decided to license the business as a separate entity for that very reason.**
- b. The October 6, 2000 issue of *The Atlanta Constitution* reported:
“Nobody believed in the business more than me,”
[Walker] told Dow Jones News Service. **“We knew the risks going in....”**
- c. Similarly, the October 6, 2000 issue of *Newsday* reported:
Walker, acknowledging WebHouse was more of a gamble, said in a statement: “In scale and scope, the WebHouse Club was a business opportunity with great potential but with real risks.” (Emphasis added.)

165. Moreover, the importance of Priceline’s charge to earnings as a result of the write-off the Priceline warrants also did not escape the press. The October 6, 2000 *National Post* noted:

Priceline WebHouse Club will shut down in the next 90 days and money-losing Priceline.com **will take a related US\$189-million charge in the third quarter....**

“There will be a tremendous hit to [Priceline.com’s] income statement,” said David Zale, a Sands Brothers analyst. His “buy” rating on the stock is under review. (Emphasis added.)

166. The October 7, 2000 *Tulsa World* also reported:

“This erodes longer-term potential licensing revenues and equity value that Priceline can realize,” wrote PaineWebber Inc. analyst Sara Farley,

who downgraded the shares to “neutral” from “buy.”
(Emphasis added)

167. Furthermore, analysts noted that the demise of WebHouse would have a detrimental effect on Priceline’s standing with consumers. The October 1, 2000 issue of the *Albany Times Union* explained:

Analysts said the demise of WebHouse Club is bound to hurt Priceline in the eyes of customers and investors.

“They can claim that it is a separate company, they can say that people are going to be able to separate one from the other, but at some level this significantly impacts the Priceline brand,” said Heath Terry, an analyst at Credit Suisse First Boston.

168. Similarly, the October 6, 2000 *Washington Times* reported:

Although closing the WebHouse and Perfect YardSale subsidiaries does not hurt Priceline directly, **it damages the Priceline brand and questions the viability of the company’s other ventures, analysts said.**

169. In addition, the October 6, 2000 *San Francisco Chronicle* reported:

But analysts say Priceline is likely to suffer from WebHouse Club’s closing anyway.

“It’s definitely bad news,” said Jeff Siegel, an analyst with New York’s Innovative Research Associates. **The grocery service, “was serving as a tremendous magnet to get people to go to the site,”**

170. *Newsday*, on October 6, 2000, reported:

The move stunned analysts, who noted that WebHouse launched its gasoline service only two months ago. WebHouse's private standing concealed the difficulty of launching new services.

171. Furthermore, numerous stories were published documenting the limited amount of use customers were making of WebHouse:

a. October 6, 2000 Norfolk, Virginia *Virginia Pilot*:

“The amount of business we were doing in it has steadily decreased over the last few months,” said Ron Dennis, President of Norfolk-based Farm Fresh, which implemented the program in February. “I think that customers found it much more difficult to use than it was worth taking the time to do. It’s unfortunate and I’m sure there’ll be some disappointed consumers.”

b. October 6, 2000 *Washington Times*:

Locally, most grocery chains used Priceline’s name-your-own-price service.”

“It was largely a novelty for our consumers, and novelty wears off,” said Craig Muckle, a spokesman for Safeway. “I guess it just sort of ran its course.”

c. October 6, 2000 Syracuse, New York *Post-Standard*:

“For us, it was less than one-tenth of 1 percent of our transactions,” said [Wegmans’ spokesperson] Hyatt.

d. October 6, 2000 *San Francisco Chronicle*:

The management of Ralph’s grocery stores in California was also surprised at the news. Ralphs started offering the WebHouse Club service in its Cala Foods, Bell Markets and Foods Co. stores in the Bay Area last month, and the chain invested in newspaper ads and

signs promoting the savings.

Ralph's spokesman Terry O'Neill said customer complaints about the termination of the service were not widespread because **WebHouse Club was not well known among many customers. In fact, a manager at one San Francisco Cala Foods store said that not a single customer had claimed WebHouse Club discounts there.**

e. October 6, 2000 *Cleveland Plain Dealer*:

Tops [Friendly Markets in Cleveland] spokesman Brian LaValley **said the service wasn't popular with its customers.**

"It was about a half-percent of our sales in the Cleveland area," he said. **"It really didn't catch on."**

f. October 6, 2000 *Orlando Sentinel*:

Mickey Clerc, spokesman for Winn-Dixie Stores, said grocery sales through WebHouse Club were growing slowly, but **"it was never a significant part of our business."**

g. October 6, 2000 *Baltimore Sun*:

"It was a very small part of our business. Less than 1 percent of our customers were using it," said **Barry F. Scher, a spokesman for Giant Food.**

Bill White, President of Metro Food Markets and Shoppers Food Warehouse, said WebHouse was insignificant in increasing customers and sales. (Emphasis added.)

172. As a result of Defendants' disclosures regarding WebHouse's closing and Walker's

admissions regarding subsidization, numerous analysts lowered their rating of Priceline, noting that its Business Model was not scalable:

- a. On October 5, 2000 Thomas Weisel Partners downgraded its rating of

Priceline and reported:

WEBHOUSE CLUBBED; DOWNGRADING TO MARKET PERFORM

- Priceline's Webhouse Club, the service that allowed customers to "name their own price" for gasoline and groceries, will be terminating business in the next 90 days. **We are downgrading PCLN to MARKET PERFORM** on this disappointing news, as it is now even more unclear how applicable the Priceline "name your own price" process is to new verticals. In addition, the company's Q3 pre-release of a shortfall in revenues in its core airline business provides us with no comfort.

* * *

- While Webhouse is not consolidated into the Priceline.com's operating results, we had expected the increased traffic from more than two million. Webhouse Club customers to fuel continued growth in the company's core business.

* * *

- Our decision to downgrade PCLN to a MARKET PERFORM rating is based on our concern over the scalability of the Priceline.com business model.

- b. On October 5, 2000 US Bancorp Piper Jaffray downgraded Priceline to

"Neutral" and reported:

Downgrading PCLN To Neutral From Buy; Extensibility Of Business Model Remains In Question; Licensees Webhouse And Perfect Yardsale Shutdown; No Estimate Changes; Lowering 12-Month Price Target From \$18 to \$12

- c. On October 4, 2000 Jefferies & Company, Inc. reported:

We are downgrading our rating of PCLN to Hold from Buy.

* * *

Given this shortfall, we do not see a major catalyst until the

seasonally strong Spring season. Our previous Buy rating was based on upside potential from fee-based revenue (versus transactional revenues, which include airlines). Although fee-based revenues may have been strong – resulting in little change to the company’s 3Q00 EPS guidance, now at (\$0.01), off our previous expectation of \$0.00 – we nonetheless cannot ignore this airline-revenue shortfall. Thus, while the catalyst we were looking for appears to be in place, **we are blindsided by the weakness in airline ticket sales. In fact, our meeting with management at the very end of August indicated to us that the first two months of the quarter were off to a great start and that September was historically the strongest month of the quarter.** However, September did not conclude strongly for airline ticket sales, and we believe this will remain an issue as we enter the seasonally weak 4Q. Thus we do not foresee the possibility for significant upside surprises until the seasonally strong Spring period.

- d. On October 5, 2000 PaineWebber Inc. downgraded Priceline to “Neutral” and

reported:

Priceline.com: Webhouse Affiliate Closing Operations – Downgrading to Neutral

* * *

* More importantly however, this erodes longer-term potential licensing revenues and equity value that **Priceline** can realize, as licensing fees would likely have grown as Webhouse grew and the company was carrying warrants to acquire about 55% of Webhouse.

* * *

In addition, although **Priceline.com** has no ownership in its affiliates such as Webhouse, their failure to perform could negatively affect the **Priceline.com** brand and possibly, future performance.

- e. On October 5, 2000 Sanford C. Bernstein & Co., Inc. issued a report

stating:

Priceline.com announced this morning that it is closing Webhouse, its

grocery and gasoline 'name your own price' operation, over the next 90 days. The company had announced 10% layoffs at Webhouse several weeks ago, but had indicated that things were going well.

- f. On October 5, 2000 Lehman Brothers, Inc. reiterated its "Neutral" rating for

Priceline and reported:

Investment Conclusion

For **Priceline**, we see this as a negative for the following reasons: 1) Confirms our belief that the brand is difficult to extend beyond airlines. We continue to believe that **Priceline** is nothing more than an online travel agent. 2) **Priceline** was not funding its expansion yet was benefitting from Webhouse Club's aggressive marketing and strong customer traffic. 3) To many, the real value in **Priceline** was its option value in Webhouse Club if it chose to exercise its warrants. This option value is now zero. 4) Another red flag has been raised regarding management credibility. Jay Walker, **Priceline's** founder and the founder of Walker Digital, has sold \$240 million of **Priceline** shares (at a price between \$23.75 and \$25 per share) over the past two months supposedly to 'fund Webhouse Club'. On the surface, now appears that he may have been selling for other reasons.

- g. On November 1, 2000 Sanford C. Bernstein & Co., Inc. reported:

Priceline's October 5 announcement that Webhouse, their gasoline and grocery division, would be closing within 90 days, suggests longer-term issues related to Priceline's ability to grow its business beyond airline tickets. Effects of the Webhouse closing on Priceline include a one-time non-cash loss in of \$189mm to offset the same non-cash gain from Q4 1999 loss of service fees and royalties, and potential operating. More importantly for the future, the closing could hinder Priceline's ability to expand its customer base, and suggests that its business model is less scalable than previously thought.

* * *

The company did not take questions on the pre-announcement call, and did not have a call for the Webhouse closing announcement. Management has engaged in spin control via the media on Webhouse, talking about how funding issues were the company's Waterloo, but we think investors may want to probe this and other issues. We expect that there may be some investors who will use the call to question the platform nature of the company's model, which certainly seems to be a valid question.

- h. On November 3, 2000 Prudential Securities reported:

PCLN amends the terms on Delta's warrants...Management stated that the company will amend the terms of outstanding warrants held by supplier Delta Airlines. The amended terms include a resetting of the strike price to current market price (from \$56.63), and a reduction in the number of shares underlying the warrant to 4.675 million (from 5.5 million). **Clearly, in our opinion, PCLN was under pressure to amend the strike price on the deep out-of-the-money warrants, in order to retain Delta as a preferred supplier.** In response to several questions on the conference call, management stated that it does not intend to amend the terms of warrants held by other major airlines; however, we believe the other major airlines will try to negotiate terms that match those given to Delta.

With groceries shut down, valuation becomes an issue We believed that Priceline's next blockbuster category after travel may have been groceries. However, while demand for Webhouse Club's "name your own price" groceries was strong, the company couldn't convince suppliers to pay for all of the discounts. The demise of Priceline's groceries and gasoline product offerings mean that the company is left with its core travel business, as well as several smaller category opportunities, such new cars, mortgages, and telecom services. Even if we assume that travel demand continues to grow, the question is, "How large could Priceline's travel business ultimately become?"

- i. On November 3, 2000 Lehman Brothers Equity Research reported:

The core airline business has been weak the last two quarters and appears to be losing share. Revenue from airline ticket sales declined roughly \$20 million from the second quarter, meanwhile other leading online travel agencies Expedia and Travelocity reported solid third quarter results. . . . We believe management credibility has been weakened due to insider selling by Jay Walker and Rick Braddock and poor forecasting. Furthermore, Heidi Miller's resignation added further salt to the wound. . . . We continue to be disappointed by the lack of extendability of this model. In particular, the closing of Webhouse Club provided clear evidence that Priceline's "Name Your Own Price" strategy is struggling to gain acceptance outside of the travel categories. . . .

173. The October 18, 2000 *Wall Street Journal* contained the following extended revelation of WebHouse's ongoing problems, and Defendants' knowledge of these problems throughout the Class Period:

On Wednesday, September 27, **Priceline.com** Inc. founder Jay S. Walker stopped being a billionaire. In his glass-walled office overlooking a pond and a willow tree in Greenwich, Connecticut, he watched on a tiny television screen as Priceline stock plummeted 42% and his paper fortune fell along with it to \$580 million (682.4 million euros).

One of Mr. Walker's first thoughts: "Suddenly I'm on the high wire, but I don't have a safety net." Initially, he hoped for a rebound. But after a few days, he realized, "Someone had taken the net, rolled it up and put it away."

His biggest anxiety was that one-year-old **Priceline WebHouse Club Inc.**, an ambitious attempt to extend Priceline's name-your-own-price online service to

cover groceries and gasoline, **was losing more than \$5 million a week.**

With WebHouse, Mr. Walker set out to prove that the Priceline model could be used to sell all kinds of products and services. **Instead, he unwittingly proved that an aggressive growth strategy - - \$363 million invested in a year - - isn't enough to turn a hot Internet idea into a successful reality.**

Continually bobbled by technological glitches and the reluctance of manufacturers to cooperate in selling their goods through the site, WebHouse now seems to have been doomed from the start. Some former employees also fault Mr. Walker for backing the managerial prowess to see his vision through.

Priceline is paying the price. With WebHouse a washout, investors are treating Priceline as any other Internet travel agency and valuing it as such. On October 5, the day WebHouse announced that it was shutting down, Priceline shares fell 38% to \$5.81 on the Nasdaq Stock Market.

Mr. Walker himself recognized WebHouse's outsized ambitions in an internal memo he wrote last month. **The WebHouse project, he wrote, was like "deciding to build a rocket to go to the Moon and then designing, building and flying it in just one year - - for just \$600 million."**

WebHouse was launched in November last year in New York City with a splashy 15 million TV-advertising campaign starring Priceline's established spokesman, Mr. Shatner. Consumers liked what they saw. In the first week, more than 15,000 customers logged onto the Priceline Web site to check out the new WebHouse service, and word quickly spread about the amazing deals shoppers were getting on bananas, rice and ketchup.

But WebHouse had signed up only a handful of

manufacturers, with brand names like Nestle, Heinz, Kellogg and Hershey.

Many others were leery of the idea because they didn't see how it would attract new customers. Some also feared that WebHouse could erode their brand as associating it with discount items. "Frankly we don't understand how this system could every make sense for manufacturers like us, or for our retail partners," PepsiCo Inc. President and Chief Operating Officer Steve Reinemund wrote in an internal memo dated July 21. **"For manufacturers, Priceline essentially amounts to a permanent promotion. . . . Simply put, Priceline's approach will inevitably lower margins for both manufacturers and retailers."**

The upshot was that on goods sold without manufacturer participation, **WebHouse ended up eating the customer discounts at rates of \$4 to \$5 per grocery order and, later, 15 cents to 16 cents a gallon on gasoline. Almost from the start, these subsidies were costing WebHouse \$1 million a week or more.**

Technology problems hurt, too. Because of a technical glitch that wasn't fixed until June, consumers in downtown Manhattan were paying the same on milk at their local grocer as a customer in suburban Long Island, where retail prices of milk are much lower. The computer system could handle only one pricing system per region, and WebHouse ended up paying the difference. Also because shoppers paid with credit cards, WebHouse lost 2.5% on each sale to processing fees. Mr. Walker now says that he should have teamed up with a credit-card issuer early on to avoid those fees.

By January, even with teams of programmers working around the clock - - they slept on cots strewn around the office - - the site was having

serious trouble handling the legions of shoppers streaming into it. Mr. Walker dispatched his top technical lieutenant, Scott Case, to build a new system. In the meantime, WebHouse canceled plans to launch a drugstore service in January.

But Mr. Walker continued to push for a national rollout of grocery retailers. Without a nationwide network, he figured, manufacturers would remain reluctant to participate. So WebHouse added a new regional grocery chain to the site every month on average, though technology shortcomings meant that it didn't always go smoothly.

174. On November 2, 2000, *Dow Jones* reported that Priceline would be cutting twenty-five full time jobs and eighty consulting positions. After the close of the market, Priceline revealed that it would be restructuring, and cutting eighty-seven jobs or 16% of its workforce, necessitating charges to earnings in the fourth quarter. Among other charges was a charge for adjusting employee stock option compensation, necessitated by Priceline stock's decline. Additionally, the Company disclosed that it would be taking a charge of \$9 million in the fourth quarter relating to the repricing of the Delta warrants. Priceline also announced that Heidi Miller, its high profile CFO had resigned. Priceline also noted that October ticket revenues declined 20% from September. Shares of Priceline fell 27% in after hour trading. Schulman acknowledged that this decline was prompted by:

high gasoline prices, increasing competition from individual airlines rolling out their own online services, and from "significant negative publicity" associated with recent troubles at the company and its various licensed affiliates.

175. On the other hand, an analyst at Jupiter Media Matrix who tracked Priceline stated:

as Priceline has earned an enormous number of customer complaints about shoddy service and lousy response times, the company still suffers from a reputation for poor customer service.

176. On November 3, 2000 Merrill Lynch rated Priceline as “Neutral” and reported:

The repriced Delta warrant Delta warrant is particularly worrisome. Many critics have maintained that airlines are still just experimenting with Priceline and, therefore, that the company will have to continue to effectively buy inventory with equity. In our opinion, the repricing lends credence to this view. We would not be surprised to see other airlines renegotiate their warrants, leading to future charges and dilution.

* * *

Supply The other question regarding Priceline, that has become a much bigger concern as of late, is “supply”. As much as strong “demand” is important, the growth in Priceline’s model, particularly given its continued dependence on airline tickets, will be largely dependent on the quality and quantity of its inventory. We are increasingly concerned about Priceline’s continued dependence on the airline segment of the business and were discouraged by the announcement in the quarter that it has amended the terms of Delta’s warrant. We view this as a problem because: 1) we think it supports the theory that Priceline will effectively have to pay the airlines to continue to get inventory in the future and 2) we believe, this increases the likelihood that other partner airlines will renegotiate the terms of their warrants, which will cause additional dilution.

177. On November 6, 2000, *Barrons* reported on the repricing of the Delta warrants: Delta got 5.5 million warrants, as did United Airlines. On Thursday,

Priceline said the Delta warrants will be repriced to around \$5 from \$56. Priceline's problem is that other airlines are likely to demand a similar deal, resulting in further potential dilution. Blodget says the repricing of the Delta warrants "lends credence" to the view held by Priceline's critics that airlines have the upper hand with the company and that Priceline effectively has to "buy inventory with equity." This also suggests that Priceline's reported gross margins are overstated because of the warrant costs.

178. On November 8, 2000, the *Newark Star Ledger* noted the sharp dichotomy between Priceline's touting of WebHouse during the Class Period and the ultimate impact on shareholders:

Remember those kitschy TV ads featuring Star Trek star William Shatner, a.k.a. Captain James T. Kirk, promoting Priceline.com's name-your-own-price concept?

"It's going to be big," he promised time and again. "Really big."

Maybe he meant big as in "letdown."

Investors certainly feel that that way.

* * * *

Since July, bad news has been pursuing Priceline like a Klingon, triggering not just doubts about the company's core business, but about its ability to survive.

Indeed, the big question now is no longer what went wrong, but what hasn't?

For Timothy Villano, president of Connecticut-based Aquila Advisors, the death knell rang loud and clear back in July, when Priceline.com was trumped by several airlines who decided to set up their own Web site, Hotwire.com, to sell their own vacant airline seats at a discount.

179. On November 8, 2000, the head of Priceline's auto-services business announced her departure, indicating the inapplicability of Priceline's business model to auto sales:

The head of Priceline.com's auto-services business left the troubled name-your-own-price Internet company on the same day its chief financial officer quit.

But Priceline didn't announce Maryann Keller's departure last week when it said CFO Heidi Miller was leaving.

Keller's departure was first reported by The Wall Street Journal on Wednesday. **The former auto analyst told the newspaper she thinks the experiment of selling cars online has failed.**

"For car buying, the Internet is an idea whose time has not yet come and many never," she added.

Keller said she left after she was asked to lay off half her 23-person staff. Priceline said last week it was cutting 16 percent of its 535-member work force.

180. On November 13, 2000, *Fortune* carried an extended story on Priceline, noting that incredulous nature of the \$500 million valuation given WebHouse by Priceline, how Priceline and WebHouse were viewed as one in the same, and how Priceline directors recklessly chose to ignore WebHouse's financial operations, instead, entrusting Walker to monitor WebHouse's performance:

That the capital burden was falling on Walker and Webhouse, and not on Priceline, was the result of an imperial decision made in the fall of 1999. Though Priceline had built its growth on airline tickets, the company had always known it would have to broaden its line of merchandise to be really successful. Besides expanding on its own, Priceline figured it could leverage its Website by doing joint ventures and alliances with suppliers of goods and services, and by licensing its patents to affiliates. It may seem odd – though why should it in this exotic establishment? – that the first affiliate should be one set up by Walker himself. But that was the decision: He would personally form a new company to sell groceries.

Braddock says Priceline was busy then with other projects, especially technology upgrades, and gave almost no thought to selling groceries itself. Priceline, however, did keep a corporate

opportunity if Walker's venture went well. It had, and still has, a warrant to buy 77% of Webhouse for \$413 million, a figure that implies Walker thought the value of the business could grow to above \$500 million.

Priceline Webhouse Club put its grocery business on Priceline's website last November and later added gasoline. From the start, it was irrelevant that the products had the Webhouse label attached to them; consumers simply thought they were dealing with Priceline. This was highly significant. Priceline may not have taken on the business risk of selling groceries and gasoline, but it has put its brand name on the door. And as any business person who has made an alliance knows, that was a business risk as well.

That isn't how they saw it at Priceline – not for several months anyway. Braddock says Priceline executives gave Webhouse “virtually zero” surveillance, letting Walker run it. At Priceline board meetings, says one director, Walker's report about the new venture would be a kind of tag along, coming up last on the agenda. Even then, what the directors had their ears mainly tuned to were the flowing reports of how many customers – eventually three million – were using Webhouse. So there were big losses. Who cared?

181. *Fortune* also reported how Walker had used \$40 million of the proceeds he obtained from his August and September sales to repay a \$40 million loan he had previously taken out to purchase Webhouse stock:

We can count the cash cost of these problems, too, over the 11 short months of Webhouse's existence. If the \$390 million put into the operation is entirely used up before Webhouse closes, the rate of spending will have been about \$35 million a month—a burn rate conjuring up the Great Chicago Fire. Walker himself put up almost half the \$390 million, including around \$135 million he contributed after selling Liberty, Vulcan, and the prince their \$240 million of stock. He says he is prepared to put another \$15 million of his take into Webhouse to wind down its operations, and he also used \$40 million to pay off a loan that he took out earlier this year to buy Webhouse stock. He implies that the rest of his proceeds, \$50 million, will be used to pay taxes on the gains he realized from his Priceline sales.

182. In the Company's Form 10-Q for the quarter ended September 30, 2000, filed with the SEC on November 14, 2000, the Company revealed that it was forced to take a \$9 million charge for re-pricing warrants held by Delta, one of Priceline's largest investors:

During the fourth quarter 2000, the Company amended the terms of warrants held by Delta Air Lines, Inc. and, as a result, will record a non-cash charge of approximately \$9 million in the fourth quarter 2000. In connection with the amendment, the Company reduced the number of shares underlying the warrant to 4.675 million shares from 5.5 million shares and reduced the strike price from \$56.63 per share to \$4.71875 per share.

183. Also in Priceline's Form 10-Q for the quarter ended September 30, 2000, Priceline revealed a dramatic shift in its publicly stated business strategy. Thus, while Defendants had pointed to the expandability of the Priceline Business Model into other areas of commerce as the beacon of the Company's success throughout the Class Period, after the demise of WebHouse, Defendants were forced to admit that:

We believe that our success will depend in large part on our ability to achieve profitability, primarily from our travel business, to continue to promote the priceline.com brand and to offer other products and services on the priceline.com website. We intend to continue to invest in marketing and promotion, technology and personnel within parameters consistent with attempts to improve operating results. Our goal is to reduce operating losses and improve gross margins in an effort to achieve profitability. Our limited operating history makes the prediction of future results of operations difficult, and accordingly, we cannot assure you that we will achieve or sustain revenue growth or profitability.

184. This Form 10-Q revealed the amount of payments received from WebHouse:

On October 5, 2000, the Priceline WebHouse Club, Inc. and Priceline Perfect YardSale, Inc., privately-held licensees of ours, separately announced that they would be ceasing operations. We received a warrant in WebHouse Club and recorded non-cash income of \$189 million in the fourth quarter 1999. As a result of WebHouse Club

ceasing operations, in the third quarter 2000, we recorded a non-cash loss of \$189 million to write off the full carrying value of the warrant. For the three and nine month periods ended September 30, 2000, we received royalties from WebHouse Club in the amount of \$423,000 and \$1.0 million. For the three and nine months ended September 30, 2000, we were reimbursed \$3.0 million and \$8.7 million, respectively, by WebHouse Club and Perfect YardSale for costs we incurred in connection with providing information technology and other services to them. We are in the process of reviewing our operations to reduce any costs associated with providing services to WebHouse Club and Perfect YardSale and evaluating the overall impact of no longer providing certain services to WebHouse Club and Perfect YardSale, which have ceased their operations.

185. Demonstrating the materiality of the WebHouse operations to Priceline, the Defendants also admitted in their Form 10-Q that:

We believe our demand for travel products has also been adversely affected by negative news concerning our revenue shortfall, WebHouse Club and Perfect YardSale ceasing operations and service concerns. As a result, we expect that our revenues for the three months ended December 31, 2000 will be significantly less than our revenues for the three months ended September 30, 2000.

M. Priceline Effectively Admits That Its Business Model Is Not Scalable.

186. On or about December 7, 2000, as reported by *Dow Jones Business Wire*, the Company announced that it was postponing its move into business-to-business, term-life insurance and cellular telephone services; that it was discontinuing its previously announced expansion into Japan; and that it had reduced its workforce by 11%:

Priceline.com Inc said it will “indefinitely postpone” the introduction of three new offerings to its “Name Your Own Price” service and announced it has reduced its work force by 11%.

The company also said it has discontinued talks with Japan’s Softbank Corp. about launching a Japanese version of its service.

The elimination of 48 jobs, which Priceline (PCLN) said late Thursday, has already been made, comes just a month after the beleaguered online-commerce firm said it would eliminate 87 jobs. Two months ago, Priceline was forced to shutter its grocery and gasoline venture Webhouse Club, Inc., which resulted in 375 layoffs.

The company now has about 400 workers, and the rounds of job cuts will be reflected through fourth-quarter charges.

Priceline has put off its planned entry into business-to-business, term-life insurance and cellular-telephone services. The company said it will continue to offer its services for airline tickets, hotel rooms, rental cars, home finance, long-distance phone service and new cars. Priceline customers submit their own bids for the various items and the company's system either accepts or rejects the bids.

In a prepared statement, Priceline said putting off the new ventures relieves the company of "significant financial and operations burdens." President and chief executive *Danial Schulman* added the company is focusing "on achieving profitability with our core businesses."

Spokesman Bruce Ek said the announcement shouldn't come as a surprise, as company officials said in a conference call last month it would cut costs where ever possible. "This is what we said we were going to do," he added.

187. The announcement of Priceline's further contraction again leg the press to note how the company's business model could not be executed into other e-commerce fields:

Priceline.com Inc's decision to focus on its core air ticketing business confirms what many investors have feared for some time now – that the name-your-won-price internet retailer is struggling to find ways to boost growth, analysts said.

They said the move not only proves that the company's business model cannot be easily extended into other markets, it also leaves the e-tailer dangerously exposed to a volatile airline sector which offers few fresh opportunities.

Priceline said yesterday it will "indefinitely postpone" plans to move into business-to-business, term life insurance and cellular telephone service, while also revealing that talks aimed at expanding into Japan have collapsed.

The announcement was accompanied by news that it is cutting its workforce by a further 11 pct.

"These recent events have validated our prior concerns as to whether the company's business model can be exported to new categories and/or new geographies," said Tim Fogarty, an analyst with Thomas

Weisel Partners.

188. On December 17, 2000, the *Harrisburg Patriot News* published an interview with Steven Mott, the former head of Webhouse, in which Mr. Mott discussed how the discount grocery model used in Webhouse was flawed:

A former Priceline.com executive says the company moved too fast for its own good, especially when it added groceries to its name-your-own-price offerings.

“Speed can kill,” said Steve Mott, former head of Priceline.com’s Webhouse Club division. “In many cases, you compound your problems by moving too fast.”

189. With the subsidies from Webhouse gone, Priceline was forced to increase its licensing fees from other licensees. Rather than pay this increase, My Price, the Australian licensee announced it would shutdown. Thus, on December 18, 2000, Priceline announced that it has canceled its plan to move into Australia and New Zealand *Newsbytes News Network* reported:

Having sacked many of its employees in the US and signaled a retreat into its core business, it comes as no surprise that loss-making consumer e-commerce service Priceline.com [NASDAQ: PCLN] is now to cancel its plan to launch in Australia and New Zealand.

The launch Down under, through an Australian company called myprice Pty Ltd., was in the cards for almost a year. It will no longer go ahead.

Priceline.com began laying off workers in November following the company’s posting of a \$1-million third-quarter loss. It has scaled back expansion – both geographically and in the diversity of its consumer offerings – in an effort to climb to a profit.

190. The *Australian Business Intelligence* reported on December 19, 2000:

Australian start-up, Myprice.com.au, has collapsed. The Internet company, created in March 2000, shut down on 17 December 2000 after its major backer, Priceline.com, increased leasing charges for the use of its technical platform. Priceline had charged about \$US50,000 (\$A91,000) per month and increased fees to \$US91,00 a month. Priceline said it had underestimated the cost of supplying its services to

Myprice.

191. On December 28, 2000 Walker announced his resignation from Priceline's Board so as to focus on Walker Digital. *Dow Jones Business News* reported:

Priceline.com announced that Jay S. walker, who founded the company and its vice chairman, will leave the board, effective Dec. 31.

Priceline said late Thursday that Mr. Walkers is leaving in order to focus on Walker Digital LLC, including the licensing of its intellectual property portfolio and commercialization of several related services.

Mr. Walker recently assumed the position of chief executive at Stamford, Conn.-based Walker Digital, his closely held new-business incubator. Walker Digital invented Priceline's business model.

Priceline shares suffered in October when Mr. Walker's effort to extend the name-your-own-price concept into groceries and gasoline failed after burning through \$363 million in about one year. Before it was shut down, some Priceline directors had encouraged Mr. Walkers to abandon that effort.

Since then, Priceline has aimed to distance itself from Mr. Walker's other entrepreneurial efforts, such as Walker Digital, a think tank that laid off the majority of its staff last month.

Mr. Walker told the board of his decision last week.

He told *The Wall Street Journal* he wasn't pressured to leave by anyone on Priceline's board. "My contribution to the board of directors of Priceline was never a particularly important one," Mr. Walker added. "I don't feel that my additional contribution is important compared to what I've got to do at Walker Digital."

192. On or about January 4, 2001, Priceline announced that it had canceled plans to create a company to sell auto insurance over the Internet. *The Wall Street Journal* reported:

Priceline and W.R. Berkley agreed in August to create Priceline Auto Insurance, and offer it through Priceline's Web site. Priceline would have received an annual licensing fee based on generated revenue.

Priceline's cancellation of the W.R. Berkley agreement is the latest in a series of canceled agreements and ventures for the company.

In October, Priceline terminated its grocery and gasoline venture Webhouse Club Inc., cutting 375 jobs. In December, the company said it ended talks with Softbank E-Commerce Corp, a unit of Japan's Softbank Corp., to provide its name-your-own-price service in Japan.

The terminations are part of a broad program to refocus Priceline's efforts on its core travel business.

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194. In describing the Company's disappointing fourth quarter 2000 results, Defendant Schulman stated that Priceline's results were hurt by seasonal weakness and the decision of Jay Walker to close Webhouse.

195. On January 9, 2001, Salomon Smith Barney issued a "neutral" recommendation on Priceline, stating:

The shuttering of Webhouse Club, closes growth opportunities that investors had factored into Priceline's outlook, and without these other businesses Priceline is just a travel business.

196. The February 19, 2001 issue of *Newsday* reported further statements by the head of Webhouse acknowledging the fact that it was entirely predictable that Webhouse would encounter problems due to its plans to rapidly expand:

For Steve Mott, president of Priceline.com's Webhouse Club, a dot-com based in southern Connecticut that closed in October, speed was a killer: "We expanded much faster than our technology platform could support," he said, explaining that a platform set up to handle airline ticketing-borrowed from its parent, Priceline-couldn't quite handle grocery sales, which produced 20 to 30 times the traffic.

The problem: Instead of testing the platform in one market, building a loyal set of customers over time, then expanding it city by city, Webhouse Club started out serving three states, expanding to 42 states within the course of a year and hired more than 700 employees.

The bottom line: While the company created \$220 million in revenues, it spent \$370 million to do it, Mott said.

197. On February 20, 2001 the Company reported a pro forma loss for its quarter ended December 31, 2000 of \$.015 per share, for more than the \$.06 per share loss expected by analysts. Priceline stock took a \$66.8 million charge against earnings, \$37.3 million of which was non cash, for restructuring and special items associated with the Company's turnaround plan. The Company recorded a \$9.2 million charge for loans it forgave to top Priceline executives.

NO STATUTORY SAFE HARBOR.

198. The 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. The specific statements pleaded herein were not specifically identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made,

the particular speaker knew that the particular forward-looking statement was false, and/or 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**

199. 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, a highly efficient market;
- b. As a regulated issuer, Priceline filed periodic public reports with the SEC and the NASD;
- 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 that were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

200. 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 Priceline and the Individual Defendants**

201. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

202. 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 plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Priceline common stock; and (iii) cause plaintiffs 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.

203. 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 SEC 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 and Webhouse, as alleged below.

204. 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, Defendants 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.

205. 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.

206. Each of the Individual Defendants' primary liability, and controlling person liability, arises from, *inter alia*, the following facts: (i) each of the Individual Defendants was a high-level executive and/or director at the Company and/or Webhouse 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 and Webhouse'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 and Webhouse's management team, internal reports, and other data and information about the Company's and Webhouse's financial condition and performance at all relevant times; (iv) the Individual Defendants were aware of the Company's and Webhouse's dissemination of information to the investing public which they knew or recklessly

disregarded was materially false and misleading; (v) Priceline and/or Walker controlled or had the ability to control Webhouse and its spokespeople for the reasons set forth above; and (vi) Priceline and Webhouse were alter egos.

207. 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. Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Priceline's and Webhouse'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 the Company's and Webhouse's 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.

208. 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, plaintiffs and the other members of the Class acquired Priceline common stock during the Class Period at artificially inflated high prices and were damaged thereby.

209. At the time of said misrepresentations and omissions, plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs 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, plaintiffs 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.

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

211. As a direct and proximate result of defendants' wrongful conduct, plaintiffs 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 Priceline And Individual Defendants

212. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants and Priceline.

213. The Individual Defendants were and acted as controlling persons of Priceline and Webhouse within the meaning of Section 20(a) of the Exchange Act as alleged herein. Priceline was and acted as a controlling person of Webhouse 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 and Webhouse's operations and/or intimate knowledge of the Company's and Webhouse's actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making and actions of the Company and Webhouse, including the content and dissemination of the various statements which plaintiffs contend are false and misleading. Moreover, each of the Individual Defendants received or had access to daily reports relating to Priceline's and Webhouse's finances and business prospects, in addition to sales and revenue information and thereby had access to critical information. The Individual Defendants also controlled other employees of Priceline and the spokespeople of Webhouse. Moreover, each of the Individual Defendants was provided with or had unlimited access to copies of the Company's and Webhouse's reports, press releases, public filings and other statements alleged by plaintiffs 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.

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

215. As set forth above, Priceline and the Individual Defendants each violated Section 10(b) and SEC 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, plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

COUNT III

Under Section 10(b) of the Exchange Act and Rule 10b-5 Against Deloitte

216. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

217. Deloitte served as Priceline's auditor and principal accounting firm commencing prior to the Class Period and continuing at all relevant times. Deloitte acted in this capacity pursuant to the terms of contracts it had with Deloitte that required, *inter alia*, Deloitte to: (i) audit Priceline's financial statements in accordance with GAAS; (ii) report the results of audits and quarterly reviews to Priceline and its Board of Directors' Audit Committee; and (iii) issue Audit Reports regarding the conformance of the Company's financial statements with GAMP, which were incorporated into SEC filings and other reports distributed to shareholders and members of the public; and (iv) assist in the preparation and review of Priceline's quarterly financial statements which were included in the Company's filings with the SEC.

Deloitte's Role in Each False and Misleading Financial Statement

218. As detailed above, Priceline's filings with the SEC throughout the Class Period were continually false and misleading. Deloitte played a pivotal role in the creation of all of these filings.

219. Deloitte provided an unqualified Independent Auditor's Report for Priceline's fiscal year ended 1999 which was included in the Company's 1999 Form 10-K for the fiscal year ended December 31, 1999. This unqualified audit opinion and report violated GAAS and greatly enhanced

and facilitated the fraud alleged herein.

220. The financial statements audited by Deloitte failed to make required disclosures, and thereby violated, *inter alia*, at least the following provisions of GAMP:

a) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other uses in making rational investment, credit and similar decisions (FASB Statement of Concepts, No. 1, Paragraph 34).

b) The principle that financial reporting should be reliable and that it represents what it purports to represent. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, Paragraph 58).

c) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, Paragraphs 95, 97).

221. In addition, Deloitte conducted reviews of the Company's Form 10-Qs, prior to their being filed with the SEC. Thus, Deloitte, along with Priceline, created the false and misleading Form 10-Qs challenged herein.

Deloitte's Audits Violated GAAS

222. As set forth herein, Deloitte represented, in its audit opinion, that it performed its audit in a manner consistent with GAAS. Such representation was materially false, misleading and without reasonable basis.

223. Deloitte violated GAAS by, among other things, failing to expand or otherwise properly conduct its audits with respect to the value of assets carried on balance sheets and the relationship between Priceline and Webhouse and the effect that relationship should have had on Priceline's financial statements.

224. GAAS, as approved and adopted by the ACIPA, defines the conduct of auditors in performing the reporting on audit engagements. Statements on Auditing Standards (“SAS”) are endorsed by the AICPA as the authoritative promulgation of GAAS.

225. Deloitte’s failure to qualify, modify or abstain from issuing its audit opinion on Priceline’s fiscal 1999 financial statements, when it knew or recklessly turned a blind eye to the numerous adverse facts and “red flags” set forth herein, caused Deloitte to violate at least the following provisions of GAAS:

a. Deloitte violated GAAS Standard of Reporting No. 1 which requires the audit report to state whether the financial statements are presented in accordance with GAMP. Deloitte’s audit report falsely stated that Priceline’s fiscal 1999 financial statements were presented in accordance with GAMP when they were not for the reasons stated herein.

b. Deloitte violated Standard of Reporting No. 4 which requires that, when an opinion on the financial statements taken as a whole cannot be expressed, the reasons therefore must be stated. Deloitte should have stated that no opinion could be issued by it on those financial statements or issued an adverse opinion stating that those financial statements were not fairly presented. The failure to make such qualification, correction, modification and/or withdrawal, was a violation of GAAS, including Standard of Reporting No. 4.

c. Deloitte violated GAAS and the standards set forth in SAS No. 1 and SAS No. 82 by, among other things, failing to adequately plan and supervise the work of its staff and to establish and carry out procedures reasonably designed to search for and detect the existence of material misstatements caused by error or fraud.

d. Deloitte violated GAAS General Standard No. 3, which requires that due professional care must be exercised by the auditor in the performance of the audit and the preparation of the report.

e. Deloitte violated Standard of Fieldwork No. 3, which requires sufficient

competent evidential matter to be obtained through inspection, observation, inquiries and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

226. Deloitte also failed to comply with:

a. SAS No. 31, which requires that an auditor obtain all corroborating information to support the financial statements being audited including checks, invoices, contracts, minutes of meetings, confirmations or other written representations by knowledgeable people, and information obtained from independent sources;

b. SAS No. 67, which requires that an auditor establish and perform a confirmation process with third parties to verify information utilized in the audit; and

c. SAS No. 19, which requires that an auditor not substitute its client's representations for audit procedures necessary to form a reasonable basis as to the opinion being given on financial statements.

d. The requirement that an inability to obtain sufficient competent evidential matter constitutes a restriction on the scope of the audit which requires an auditor to qualify or disclaim an opinion (FASB Auditing Standards §508.17.)

e. The requirement that the auditor must perform procedures to obtain a sufficient understanding of three elements of an entity's internal control structure: the control environment, the accounting system, and control procedures. (FASB Auditing Standards §319.02.)

f. The requirement that the auditor obtain a knowledge of the entity's business, organization and operating characteristics so that the auditor can identify areas that need special attention. (FASB Auditing Standards §§311.06-311.07.)

g. The requirement that the auditor must design the audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements. (FASB Auditing Standard 316.05.).

227. In giving its consent to the use of its audit opinion and good name in connection with Priceline's 1999 Form 10-K, Deloitte was under a duty to update, confirm and re-confirm the accuracy and validity of its audit report.

Other 10(b) Elements

228. Deloitte knew, or would have known but for its reckless disregard of facts readily available, that Priceline's financial statements were materially false and misleading, and that contrary to Deloitte's audit report, did not conform to GAMP. A strong inference of Deloitte's knowledge and/or recklessness arises from the facts set forth herein.

DELOITTE'S SCIENTER

Deloitte's Unfettered Access to Information

229. During its yearly audit and quarterly reviews of Priceline's books, records and financial statements, members of Deloitte's engagement team had virtually limitless access to information concerning Priceline's and Webhouse's true financial condition:

- a. Deloitte was present at Priceline's headquarters, and thus Webhouse's headquarters, frequently throughout the year;
- b. Deloitte performed review, audit and other services;
- c. Deloitte had unfettered access to documents and employees at Priceline's offices and knew of or recklessly disregarded that the Company was improperly valuing the Webhouse warrants when it was clear that Webhouse's financial condition was perilous. Webhouse and Priceline shared the same reports, reporting system and databases. Reports regarding Webhouse's financial performance were available for Deloitte's inspection. Had it reviewed these reports, the problems with Webhouse's performance identified herein would have been obvious. In turn, it would have been obvious that the value of the Webhouse warrants carried on the Company's balance sheets was materially overstated;

d. Deloitte had conversations with Priceline management and employees about the Company's accounting practices and its relationship with Webhouse; and

e. Deloitte attended Audit Committee meetings and answered the Committee's questions about the Company's financial statements and internal controls.

230. By virtue of this access, Deloitte knew or recklessly disregarded that, contrary to GAMP, the value of the Webhouse warrants was materially less than \$189 million throughout the Class Period; that Priceline had improperly recognized \$189 million in income in the 1999 fourth quarter; that Priceline improperly recognized revenues from Webhouse in the three reporting periods during the Class Period; and that Priceline was required to report its and Webhouse's results and assets on a combined, if not consolidated, basis. Accordingly, Deloitte's unqualified audit opinion and report was knowingly or recklessly improper and without any reasonable basis.

231. Deloitte persistently refused to see the obvious or investigate the doubtful, and its accounting judgments were such that no reasonable accountant would have made the same decisions if confronted with the same facts. This was not a mere misapplication of accounting principles. Given the importance of Webhouse to the Company's financial position and public pronouncements, for the reasons set forth above, Deloitte's audit work on Priceline's 1999 financial statements was grossly deficient.

**The Red Flags Available To Deloitte Regarding
Improper Carrying Value of the Webhouse Warrants**

232. At least the following red flags were available to Deloitte which either did reveal, or would have revealed, had Deloitte not acted recklessly, Priceline's accounting machinations:

(a) By virtue of its presence at Priceline's and Webhouse's offices and its access to the Company's and Webhouse's records Deloitte was aware, first hand, of Webhouse's real financial performance and the inapplicability of the Priceline business model to Webhouse;

(b) Deloitte knew or recklessly disregarded Priceline's disclosures regarding

Webhouse's success, in terms of geographical expansion, expansion into new supermarkets, and its ability to cover the discounts being given to Webhouse's customers by obtaining manufacturer or oil producer discounts or revenues from other parties. The prolific nature of Defendants' disclosures about Webhouse should have prompted Deloitte to examine further any statements made to it by Priceline that the Webhouse warrants continued to have a value of \$189 million;

(c) the value of the warrants did not change, according to Priceline, since the time it received them through the end of the Class Period. Yet, Webhouse's business was not static. By the time Deloitte issued its subsequent events opinion on the year end 1999 financial statements in late March 2000, Priceline had in hand some six months of results from Webhouse, which confirmed that it was on a course to failure. Examples of such reports and their vivid recitation of Webhouse's failing business model have been described previously herein;

(d) the frequent migration of personnel between Webhouse and Priceline, along with all other manners of common control, as set forth herein, were easily ascertainable to Deloitte. Consequently, the need for combined, if not consolidated, reporting was obvious;

(e) the inadequacies of Priceline's computer systems should have been apparent, as should have the massive effort to upgrade that system. A team of computer programmers sleeping on cots is hard to mistake for anything other than what they are. Once aware of these massive computer problems, Deloitte was obligated to examine the incurrence of these expenses and their effect on Priceline's financial performance and the future trend of Priceline business, which would have led Deloitte to conclude that Priceline was using Webhouse to move its own expenses off its books; and

(f) the interrelatedness of Walker, his other companies and Webhouse and the fact that Webhouse was established by Walker as an "off-the-books" affiliate of Priceline should have prompted additional inquiries of such related party transactions.

233. The issuance of the false and misleading Priceline SEC filings and press releases, with the inflated revenues and earnings set forth therein, materially impacted the market prices of Priceline

stock, which was artificially inflated and distorted throughout the Class Period. In ignorance of the false and misleading nature of the representations and omissions described above, in particular the material misstatements of Priceline's revenues, earnings and gross profits throughout the Class Period, and the deceptive and manipulative devices and contrivances employed by Deloitte, Plaintiff and the other members of the Class, in reliance on either the integrity of the market or directly on the statements and reports of Deloitte, engaged in transactions of Priceline securities at prices artificially inflated or distorted by Defendants' misconduct and were damaged thereby.

234. If Plaintiff and the other members of the Class had known of the material adverse information not disclosed by Deloitte, or had been aware of the truth behind Deloitte's material misstatements, they would not have engaged in transactions of Priceline securities at artificially affected prices.

235. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

236. By reason of the foregoing, Deloitte has violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and is liable to the Lead Plaintiffs and the other members of the Class for the substantial damages which they suffered in connection with their purchase of Priceline securities during the Class Period.

BASIS OF ALLEGATIONS.

237. As the Private Securities Litigation Reform Act, §21D(c) of the Exchange Act [15 U.S.C. §78u-4(c)], requires complaints to be pleaded in conformance with Federal Rules of Civil Procedure 11, Lead Plaintiffs have alleged the foregoing based upon the investigation of its counsel, which included a review of Priceline's filing with the SEC, including Priceline's 1999 and 2000 Form 10-K, Form 10-Q, Form 14A, Form 4, and Form 144, all securities and analysts' reports issued before, during and after the Class Period, including, but not limited to, reports from Robertson Stephens, First Union Securities, Merrill Lynch, Prudential Securities, and Salmon Smith Barney. Lead

Plaintiffs also have based the allegations of the Complaint on information obtained after consultation with accounting and financial experts and advisories, a review of approximately 30,000 pages of Company press releases and news reports, review of internal Company memoranda, correspondence, and other internal Company documents, witness interviews of approximately 30-40 former Priceline, Webhouse, Walker Digital and Perfect YardSale senior, mid and low level employees who are familiar with the management, organization, information technologies, and business stratagem of these companies. According, pursuant to Rule 11(b)(3), Lead Plaintiffs believe that after reasonable opportunity for discovery, substantial evidentiary support will likely exist for the allegations set forth herein.

DEFENDANTS' IMPRIMATUR ON THE ANALYSTS' REPORTS ON PRICELINE

238. Prior to and throughout the Class Period, the Defendants actively utilized the analysts following the Company to increase the market's expectations for the Company's prospects in an effort to inflate the Company's stock price. To accomplish this purpose:

(a) After each release of quarterly or year-end results, the Individual Defendants conducted conference calls with analysts, among others, during which the Individual Defendants would provide "guidance" to the analysts regarding the Company's expected revenues and earnings, product releases and also more fully elaborate on the historical results set forth in the Company's press releases discussing the quarterly or yearly results. To facilitate participation in these calls, the Company circulated a press release, setting forth the date and time of such calls, the 800 number to access the conference, and the access code for listening to each such conference. Thus, repeatedly, analysts' reports on the Company issued following these conference calls referenced the fact that the analysts had spoken to management and that management had issued "guidance" prompting the analysts to reach the conclusions as set forth in those reports. Moreover, these analyst reports contained vast quantities of company-specific information which could only have been obtained from management, such as the number of Webhouse customers, the number of stores participating in Webhouse, and the

fact that Webhouse was purportedly substantially covering its discounts through manufacturer participation and third party payments;

(b) To facilitate investors' access to the analysts' reports containing management's guidance and the other information provided by management to the analysts, Priceline's website published, throughout the Class Period, a list of the analysts following the Company, the contact person at each firm responsible for following the Company, his/her phone number and a weblink to facilitate investors' access to that analyst. Additionally, recordings of the Company's conference calls were available to investors through Priceline's website;

(c) The individual Defendants regularly met individually with analysts. Following these meetings, analysts published reports on the Company. Many of these reports reference such "meetings with management" and many specifically reference the analysts' meetings with certain of the Individual Defendants. Defendants are thus responsible for the content of these reports, given the strong inference that the contents of these reports is based on Defendants' statements issued during their meetings with analysts. As a result of these acts, Defendants have placed their imprimatur on the analyst reports cited herein and are responsible for the statements contained therein.

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 plaintiffs and the members of the Class damages in an amount to be proven at trial, together with interest thereon;

(c) Awarding plaintiffs 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 plaintiffs have an effective remedy.

JURY DEMAND.

Plaintiffs demand a trial by jury.

DATED: October 29, 2001

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by U.S. Mail, postage prepaid, this 29th day of October 2001, to the following:

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