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9  
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.* TERRY  
13 GODDARD, Attorney General,

14 Plaintiff,

15 -vs-

16 TUCSON UNIFIED SCHOOL DISTRICT,  
an Arizona Political Subdivision;  
17 GUYTON CAMPBELL, an individual;  
RUDY FLORES, an individual;  
18 TRILLION PARTNERS, INC., a Delaware  
corporation; E-RATE CONSULTING  
19 SERVICES, L.L.C., a Georgia limited  
liability company; LOGICAL CHOICE  
20 TECHNOLOGIES, INC., a Georgia  
corporation; JOHN/JANE DOES 1-100;  
21 XYZ Corporations 1-100,

22 Defendants.

Case No:

**COMPLAINT**

ANTITRUST, BID RIGGING,  
PROCUREMENT FRAUD, CONFLICT OF  
INTEREST

(Jury Trial Demanded)

Judge: \_\_\_\_\_

23  
24 The State of Arizona, by and through its Attorney General, brings this civil action to  
25 obtain damages, equitable relief and civil penalties against the above named defendants, and  
26 complains and alleges as follows:

1 **I. JURISDICTION AND VENUE**

2 1. This Complaint is filed under the Arizona Antitrust Act, A.R.S. § 44-1401 *et*  
3 *seq.*, the Arizona Conflict of Interest statutes, A.R.S. § 38-501 *et seq.*, the Arizona  
4 Procurement Code, A.R.S. § 41-2501 *et seq.*, the Arizona Education Act, A.R.S. § 15-101 *et*  
5 *seq.*, and the Arizona Administrative Code, A.A.C. R7-2-1001 *et seq.*, for violations of  
6 Arizona antitrust, conflict of interest, bid rigging and procurement laws. Jurisdiction is  
7 proper under A.R.S. § 44-1405, A.R.S. § 15-213(G) and A.R.S. § 41-2616(D).

8 2. The causes of action alleged in this Complaint arose within Arizona. Three of  
9 the Defendants are corporations or limited liability companies that are incorporated or  
10 registered in other states and have their primary places of business without the state of  
11 Arizona. The Plaintiff is the State of Arizona. Therefore, venue in Maricopa County is  
12 proper for all claims pursuant to A.R.S. § 12-401(1) and § 12-401(17).

13 **II. DEFINITIONS**

14 3. “Attorney General” or “AG” means the Arizona Attorney General and any duly  
15 authorized representative of the Office of the Attorney General, State of Arizona.

16 4. “Board” or “Governing Board” means the members of the Tucson Unified  
17 School District’s Governing Board.

18 5. “Competitive Purchasing” means the process, as determined by the Arizona  
19 Auditor General in the Uniform System of Financial Records, promulgated pursuant to  
20 A.R.S. § 15-271, of informally soliciting bids or quotes, usually on the basis of price, for  
21 goods, services, materials, construction, or any other tangible or intangible thing where the  
22 amount expended is below a threshold dollar amount set by applicable procurement law.  
23 Competitive Purchasing also includes all functions that pertain to informal solicitations,  
24 including but not limited to identifying potential contractors, describing requirements or  
25 specifications, selecting contractors, and preparing and awarding contracts, work orders, and  
26

1 all other activities related to contracts to provide goods, services, materials, construction and  
2 tangible or intangible things.

3 6. “Complaint” means the State’s Complaint in this action.

4 7. “Contract” means all types of agreements, including purchase orders, regardless  
5 of what they may be called, for the procurement of materials, services or construction, or the  
6 disposal of materials. “Contract” also means any agreement, understanding or meeting of the  
7 minds, irrespective of form, whether written, verbal or otherwise expressed or understood,  
8 and includes agreements implied in fact and in law.

9 8. “Contractor” or “vendor” is any person who provides, and is paid for, goods,  
10 services, materials, construction or any other tangible or intangible thing to any government  
11 entity or political subdivision, and includes, but is not limited to, any person who has a  
12 contract with a School District. *See* A.A.C. R7-2-1001(16).

13 9. “District” or “TUSD” means the Tucson Unified School District No. 1, a  
14 political subdivision of the State of Arizona.

15 10. “Education Procurement Code” or “School Procurement Code” means those  
16 rules adopted by the Arizona State Board of Education pursuant to A.R.S. § 15-213, codified  
17 at A.A.C. R7-2-1001 *et seq.*

18 11. “Ed. Tech.” means the District’s Educational Technology Department, part of  
19 the District’s Department of Curriculum and Innovation.

20 12. “E-Rate” means the Schools and Libraries Program of the Universal Services  
21 Fund, which provides funding for schools and libraries to obtain affordable  
22 telecommunications and internet access.

23 13. “Goods” means personal property of any kind, other than services.

24 14. “GSA” means the United States General Services Administration.

25 15. “Person” means any natural person and any corporation, partnership, joint  
26 venture, formal or informal association, and any other legal entity.

1           16.    “Procurement” means the process of formally soliciting bids or quotes, such as  
2 by Requests for Proposals, as set forth in the School Procurement Code, A.A.C. R7-2-1001 *et*  
3 *seq.*, for goods, services, materials, construction, or any other tangible or intangible thing  
4 where the amount expended is above a threshold dollar amount set by applicable procurement  
5 law. Procurement also includes all functions that pertain to formal solicitations, including but  
6 not limited to publishing notice, describing requirements or specifications, competitive sealed  
7 bidding, selecting contractors, and preparing and awarding contracts, work orders, all phases  
8 of contract administration, and all other activities related to contracts to provide goods,  
9 services, materials, construction and tangible or intangible things.

10           17.    “Request for Proposals” or “RFP” has that meaning set forth in A.A.C. R7-2-  
11 1001(73).

12           18.    “ROI” means Return on Investment and refers to the District’s 2005-2006  
13 Return on Investment Analysis for Voice Over Internet Protocol.

14           19.    “School District” means a political subdivision of this state with geographic  
15 boundaries organized for the purpose of the administration, support and maintenance of  
16 public schools or an accommodation school. A.R.S. § 15-101(21).

17           20.    “Services” means the furnishing of labor, time or effort by a contractor which  
18 does not involve delivery of a specific end-product other than required reports and  
19 performance. *See* A.A.C. R7-2-1001(79).

20           21.    “Solicitation” means a request for oral or written quotations as part of a  
21 competitive purchasing process.

22           22.    “State” means the State of Arizona, acting through its Attorney General.

23           23.    “TTS” means the District’s Telecommunications and Technology Services  
24 Department.

25  
26



1           32. The District has a Technology and Telecommunications Services Department  
2 (“TTS”) that is charged with overseeing the District’s technology and telecommunications  
3 needs, including installing, maintaining and repairing the District’s telephone, computer and  
4 internet systems. At material times, the TTS Department was headed by Defendant Guyton  
5 Campbell.

6           33. The District also has an Educational Technology Department (“Ed. Tech.”),  
7 which is part of the District’s Department of Curriculum and Innovation. The Ed. Tech.  
8 Department is charged with promoting the use of technology throughout the educational  
9 community, including the use of technology in the classroom, to enhance achievement and  
10 productivity. At material times, the Ed. Tech. Department was headed by Lisa Long.

11           34. Every year, the District allocates funds for the purchase of goods, services,  
12 materials, construction or any other tangible or intangible thing for the operation of the  
13 District. A portion of those funds are used to hire private contractors to provide these goods  
14 and services, including but not limited to contractors hired by TTS and Ed. Tech.

15           35. At all material times, the District was required to follow rules and regulations,  
16 promulgated by the State Board of Education and the Auditor General, in purchasing goods,  
17 services, construction, materials or any other tangible or intangible things. *See* A.R.S. § 15-  
18 213; A.R.S. § 15-271; A.A.C. R7-2-1001 *et seq.*; and U.S.F.R. section VI-G-8-9.

19           36. School Districts that do not adopt and follow the USFR guidelines risk having  
20 state education funds withheld by the Arizona Department of Education. The District  
21 adopted the USFR guidelines. At all material times, the District policy mirrored the USFR  
22 requirements for purchases below the threshold amount.

23           37. District administrators and employees are public employees subject to  
24 Arizona’s Conflict of Interest laws, A.R.S. § 38-501 *et seq.* Included in these laws is a  
25 prohibition on public employees accepting gifts or gratuities that would not ordinarily accrue  
26 to them in the performance of their official duties. *See* A.R.S. § 38-504(C).

1           38. Defendant Guyton Campbell (“Campbell”) is an individual and a resident of  
2 Pima County, Arizona. Campbell was hired by the District in late 2003 to serve as its TTS  
3 Director. He served in that position until he resigned in January 2007. It is unknown at this  
4 time where Campbell is currently employed.

5           39. In his position as the District’s TTS Director, Campbell received a salary,  
6 together with other District employee benefits.

7           40. At material times, Campbell received economic gains and benefits in addition to  
8 his salary and employee benefits flowing from the acts alleged below including, but not  
9 limited to, meals and drinks paid for by one or more of the District’s contractors, among other  
10 items of value not currently known.

11           41. Campbell was personally involved in the procurement and competitive  
12 purchasing processes conducted by TTS, including but not limited to procurement and  
13 competitive purchasing processes involving contractors who provided economic benefits to  
14 Campbell.

15           42. As the TTS Director at all relevant times, Campbell was responsible to follow  
16 applicable conflict of interest laws, procurement laws and regulations, and District policies, to  
17 refrain from accepting gifts, gratuities or other benefits from contractors, and to ensure  
18 competitive purchasing and procurement. Campbell was responsible for the conduct of each  
19 of his subordinates in connection with the District’s procurement activities.

20           43. Campbell held a position of public trust and was at all material times a fiduciary  
21 of the funds allocated by the Arizona State Legislature for the operation of the District.

22           44. Defendant Rudy Flores (“Flores”) is an individual and a resident of Pima  
23 County, Arizona. Flores is currently the Chief Operations Officer for the District. From July  
24 2005 through July 2006, he was the Assistant Director of the District’s TTS Department, and  
25 reported to Guyton Campbell.

26

1           45. In his position as the District's Assistant TTS Director, Flores received a salary,  
2 together with other District employee benefits.

3           46. At material times, Flores received economic gains and benefits in addition to  
4 his salary and employee benefits flowing from the acts alleged below including, but not  
5 limited to, meals and drinks paid for by one or more of the District's contractors, among other  
6 items of value not currently known.

7           47. At material times, Flores was personally involved in the procurement and  
8 competitive purchasing processes conducted by TTS, including but not limited to  
9 procurement and competitive purchasing processes involving contractors who provided  
10 economic benefits to Flores.

11           48. As the Assistant Director of TTS, Flores was responsible at all times to follow  
12 applicable procurement law and the District's procurement policies, to refrain from accepting  
13 gifts, gratuities or other benefits from contractors, and to ensure competitive purchasing and  
14 procurement. Flores was responsible for the conduct of each of his subordinates in  
15 connection with TTS's procurement activities.

16           49. Flores held a position of public trust and was at all material times a fiduciary of  
17 the funds allocated by the Arizona State Legislature for the operation of the District.

18           50. Trillion Partners, Inc. ("Trillion") is a Delaware corporation, headquartered in  
19 Austin, Texas, and registered as a foreign corporation and doing business in the State of  
20 Arizona. Trillion designs, builds, installs, and provides WAN and VoIP telephony services to  
21 school districts. Trillion's services and products include wireless networking, infrastructure,  
22 equipment, installation and service.

23           51. At material times, Trillion participated in the District's competitive purchasing  
24 and procurement processes and was awarded a conditional contract by the District.

25           52. As a contractor seeking to do business with an Arizona School District, Trillion  
26 was at all material times subject to and expected to comply with regulations set forth in the



1 Arizona Antitrust Act, A.R.S. § 44-1401 *et seq.*, the Arizona Procurement Code, A.R.S. § 41-  
2 2501 *et seq.*, and the School Procurement Code, A.A.C. R7-2-1001.

3 53. At material times, Trillion had a business relationship with E-Rate Consulting  
4 Services, Inc. (“ERC”), and exchanged information with ERC regarding the District’s ROI  
5 analysis, its E-Rate applications and its WAN procurement process.

6 54. At material times, Trillion provided gifts and gratuities, including meals and  
7 gift cards, to District employees, including District administrators, TTS employees and other  
8 District employees involved in the District’s competitive purchasing and procurement  
9 processes.

10 55. E-Rate Consulting Services, L.L.C. (“ERC”) is a limited liability company  
11 registered in Georgia and headquartered in Montgomery, Alabama. At material times, ERC  
12 did business in the State of Arizona. ERC provides assistance to schools and other public  
13 entities seeking to participate in the federal E-rate program.

14 56. At material times, ERC participated in the District’s competitive purchasing and  
15 procurement processes and was awarded contracts by the District. In fiscal year 2005-2006,  
16 the District paid ERC at least \$39,095 for services contracted for illegally.

17 57. As a contractor seeking to do business with an Arizona School District, ERC  
18 was at all material times subject to and expected to comply with regulations set forth in the  
19 Arizona Antitrust Act, A.R.S. § 44-1401 *et seq.*, the Arizona Procurement Code, A.R.S. § 41-  
20 2501 *et seq.*, and the School Procurement Code, A.A.C. R7-2-1001.

21 58. At material times, ERC had a business relationship with Trillion, and  
22 exchanged information with Trillion regarding the District’s ROI analysis, its E-Rate  
23 applications and its WAN procurement process.

24 59. Logical Choice Technologies, Inc. (“Logical Choice”) is a Georgia corporation  
25 with its principal place of business in Duluth, Georgia. Logical Choice is a reseller for  
26 Promethean, Inc., a United Kingdom corporation with its United States headquarters in

1 Alpharetta, Georgia. At material times, Logical Choice did business in the State of Arizona.  
2 Logical Choice sold Promethean interactive whiteboards and related accessories, along with  
3 installation, maintenance and training, to School Districts.

4 60. The United States General Services Administration (“GSA”) is a federal  
5 procurement office that, among other things, competitively procures contracts for the  
6 purchase of goods and services, which federal agencies and employees may utilize. Through  
7 the GSA’s cooperative purchasing program, state and local governmental entities, including  
8 school districts, may access GSA contracts to purchase information technology goods and  
9 services without engaging in the competitive purchasing or procurement processes required  
10 by state law.

11 61. Logical Choice has a GSA contract, number GS-35f-0519M. At all material  
12 times, Logical Choice’s GSA contract was subject to GSA regulations, including regulations  
13 for open market items, meaning those items not included on a vendor’s GSA schedule, which  
14 lists the eligible products or services that are part of the awarded GSA contract. At all  
15 material times, GSA regulations made open market items subject to applicable competitive  
16 purchasing or procurement requirements. *See* Federal Acquisition Regulation (“FAR”) *See*  
17 section 8.402(f).

18 62. At material times, Logical Choice sold Promethean whiteboards, accessories,  
19 installation and services to the District, and included open market items in its invoices.  
20 Logical Choice did not participate in, and the District did not institute, any competitive  
21 purchasing or procurement processes related to these open market items purchased by the  
22 District.

23 63. In 2006 and 2007, the District paid Logical Choice at least \$ 342,711.98 for  
24 open market items, which were contracted for unlawfully—without competitive purchasing  
25 or procurement.

26

1           64. As a contractor seeking to do business with an Arizona School District, Logical  
2 Choice was at all material times subject to and expected to comply with regulations set forth  
3 in the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*, and the School Procurement  
4 Code, A.A.C. R7-2-1001.

5           65. John/Jane Does 1-100 and XYZ Corporations are individuals and companies,  
6 some of whose identities are currently unknown, who participated in the acts alleged herein,  
7 or who engaged in other unlawful conduct in connection with the District's business.  
8 Plaintiff may amend this complaint to join additional Defendants.

#### 9   **IV. CO-CONSPIRATORS**

10          66. The Defendants' co-conspirators were, at material times:

11                   a. Gary Gaessler ("Gaessler") is an individual. His residence is unknown at  
12 this time. At all relevant times, Gaessler was employed by Trillion as a salesman, and he  
13 served as Trillion's lead contact person for the District. Gaessler presented gift cards to TTS  
14 employee Martha Peyton, and communicated with District employees and with ERC before  
15 and during the WAN procurement process.

16                   b. Bear Poth ("Poth") is an individual. His residence is unknown at this time.  
17 At all relevant times, Poth was Trillion's Chief Executive Officer. Poth attended a breakfast  
18 meeting in Denver on October 27, 2005, with Gaessler, Davis, Campbell, Flores, and  
19 Pfeuffer.

20                   c. Roger Clague ("Clague") is an individual. His residence is unknown at this  
21 time. At all relevant times, Clague was employed by Trillion as the Vice-President of Sales.  
22 On multiple occasions, Clague met with District personnel and communicated with District  
23 employees and with ERC before and during the District's procurement process.

24                   d. Steve Davis ("Davis") is an individual. His residence is unknown at this  
25 time. At all relevant times, Davis was employed by Trillion as the Vice-President of  
26

1 Operations and Technology. Davis met with District personnel and communicated with  
2 District employees and with ERC both before and during the District's procurement process.

3 e. Scott Smyth ("Smyth") is an individual. His residence is unknown at this  
4 time. At material times, Smyth was employed by Trillion as the Vice-President of Legal and  
5 Regulatory Services, and communicated with ERC during the District's procurement process.

6 f. Jonathan M. Slaughter ("Slaughter") is an individual. His residence is  
7 unknown at this time. Currently and at all material times, he is the president and chief  
8 executive officer of ERC. At material times, Slaughter exchanged information relating to the  
9 District's ROI analysis, its E-Rate application and its procurement process with Trillion.

10 g. Dan Kettwich ("Kettwich") is an individual whose residence is unknown at  
11 this time. Kettwich was a salesperson and project manager for ERC and served as the  
12 primary contact for the District. At material times, Kettwich exchanged information relating  
13 to the District's ROI analysis, its E-Rate application and its procurement process with Trillion  
14 and with Gaessler.

15 h. Vasili Triant ("Triant") is an individual. His residence is unknown at this  
16 time. At all material times he was a representative of ShoreTel, a telephone and VoIP system  
17 provider that Trillion was promoting.

18 i. Promethean, Inc. ("Promethean") is a corporation registered in the United  
19 Kingdom with its United States headquarters in Alpharetta, Georgia. From 2006-2008,  
20 Promethean sold its products and services to the District through resellers, such as Logical  
21 Choice and Level 3 Audio Video, while at the same time providing gifts and gratuities to  
22 District administrators and employees.

23 j. Roger Pfeuffer ("Pfeuffer") is an individual and a resident of Pima County,  
24 Arizona. At all material times, Pfeuffer was the Superintendent of the District. In fiscal year  
25 2005-2006, Pfeuffer accepted gifts and gratuities from Trillion in the form of dinner at a  
26 Denver restaurant called Tamayo.

1 k. Martha Peyton (“Peyton”) is an individual and a resident of Pima County,  
2 Arizona. At all relevant times, Peyton was an employee of the District’s TTS Department,  
3 serving as Campbell’s executive assistant. Peyton accepted gift cards from Trillion’s  
4 Gaessler, and before and during the District’s WAN procurement process, Peyton exchanged  
5 information relevant to the procurement with Gaessler.

6 l. Patti Lopez (“Lopez”) is an individual and a resident of Pima County,  
7 Arizona. At material times, Lopez was a Deputy Superintendent at the District. Upon  
8 information and belief, in April 2008, Lopez accepted gifts and gratuities from Promethean in  
9 the form of meals, drinks, entertainment and lodging at the J.W. Marriott Starr Pass Resort  
10 (“Starr Pass”) in Tucson, Arizona. Upon information and belief, Lopez also received a gift  
11 basket from Promethean in her room at Starr Pass.

12 m. Lisa Long (“Long”) is an individual and a resident of Pima County,  
13 Arizona. At all relevant times, Long was employed by TUSD. Long is currently the  
14 District’s Director of Curriculum and Innovation, which includes the Ed. Tech. Department.  
15 In October 2005, Long accepted gifts and gratuities from Trillion in the form of dinner at a  
16 Denver restaurant called Tamayo. Long then served on the procurement evaluation  
17 committee that recommended awarding a contract to Trillion. In April 2008, while the Ed.  
18 Tech. Department was continuing to purchase Promethean products, Long accepted gifts and  
19 gratuities from Promethean in the form of meals, drinks, entertainment and lodging at Starr  
20 Pass. Upon information and belief, Long also received a gift basket from Promethean in her  
21 room at Starr Pass.

22 n. Ed Kowalczyk (“Kowalczyk”) is an individual and resident of Pima County,  
23 Arizona. At material times, Kowalczyk was employed in TUSD’s Ed. Tech. Department. In  
24 May 2006, Kowalczyk served on the evaluation committee that recommended purchasing  
25 Promethean whiteboards and accessories from Logical Choice. In February 2007, Kowalczyk  
26 attended a Promethean conference in Riverside, California, where, upon information and

1 belief, he accepted gifts and gratuities from Promethean in the form of meals, drinks,  
2 entertainment and lodging. In July 2007, Kowalczyk began working with Promethean on  
3 plans for Promethean conferences to be held in Tucson in April 2008. Sometime in or after  
4 April 2008, Kowalczyk accepted gifts and gratuities from Promethean in the form of a gift  
5 card and an iPod. Upon information and belief, Kowalczyk has returned the iPod to  
6 Promethean.

7 67. Various other persons not named herein , some of whose identities are presently  
8 unknown, may have acted in concert with Defendants in the offenses charged herein and may  
9 have performed acts and made statements in furtherance of the conspiracy.

#### 10 **V. MARKET**

11 68. At all material times, the business activities of the Defendants and Co-  
12 conspirators were within intrastate commerce in Arizona.

13 69. The relevant geographic market is the District.

14 70. The relevant product markets are, among others:

- 15 a. Computer equipment, installation, repair and maintenance eligible for E-  
16 Rate funding and provided to or offered to be provided to the District;
- 17 b. Internet networking equipment and services, repair and maintenance eligible  
18 for E-Rate funding and provided to or offered to be provided to the District;
- 19 c. Telephone networking, equipment, service, repair and maintenance eligible  
20 for E-Rate funding provided to or offered to be provided to the District;
- 21 d. Telecommunications and technology consulting provided to or offered to be  
22 provided to the District;
- 23 e. E-rate consulting and E-rate application processing provided to or offered to  
24 be provided to the District;
- 25 f. Interactive whiteboard equipment and accessories, installation, training,  
26 repair and maintenance provided to or offered to be provided to the District.

1 **VI. NATURE OF THE ACTION**

2 71. This action alleges violations of the Arizona Procurement Code and the School  
3 Procurement Code as to all defendants. This action alleges antitrust violations as to  
4 defendants Trillion, ERC, Campbell and Flores.

5 **VII. STATEMENT OF FACTS**

6 **Common to All Claims**

7 72. E-Rate is the Schools and Libraries Program of the Universal Services Fund,  
8 which provides funding for schools and libraries to obtain affordable telecommunications and  
9 Internet access. The USAC, under the direction of the Federal Communications Commission,  
10 administers the E-Rate program and has established rules and processes that applicants must  
11 follow to obtain Universal Services funding or discounts.

12 73. Applicants for E-Rate funds must follow a five step process:

13 a. First, the applicant must prepare and obtain the approval of a technology  
14 plan, which describes how technology will be used to achieve specific curriculum reforms  
15 and library improvements. In Arizona, school district technology plans are approved by the  
16 Arizona Department of Education.

17 b. Second, the applicant must open the competitive bidding process by filing  
18 with USAC a Form 470 Description of Services Requested and Certification Form (“Form  
19 470”). USAC posts the Form 470 on its website to notify vendors that the applicant is  
20 seeking the products and or services identified in the Form 470. USAC requires applicants to  
21 wait 28 days after the Form 470 is posted before selecting a service provider. Applicants are  
22 required to utilize a fair and open competitive bidding process.

23 c. After selecting a vendor or vendors utilizing a competitive purchasing or  
24 procurement process, the applicant files a Form 471 with USAC. The Form 471, Services  
25 Ordered and Certification Form, is the applicant’s actual request for funding.

1           d. The applicant files a Form 486 with USAC certifying that the requested  
2 services or products have been provided by the vendor and the vendor can be paid.

3           e. If the applicant pays the selected vendor(s) in full for the services or  
4 products provided, the applicant submits to USAC a Form 472 for reimbursement. If the  
5 applicant receives a discount off its bills from the service provider, the service provider  
6 submits a Form 474 to USAC to receive reimbursement.

7           74. USAC's E-Rate rules mandate an open and fair competitive bidding process,  
8 with "fair" meaning that all bidders are treated the same and no bidder has advance  
9 knowledge of the project information, and "open" meaning that there are no secrets in the  
10 process, such as information shared with one bidder but not with others.

11           75. USAC's E-Rate rules explain that a conflict of interest exists when an  
12 applicant's consultant is associated with a service provider and is involved in determining the  
13 services sought by the applicant and the selection of the applicant's service provider.

14           76. E-Rate funds and discounts are processed on a fiscal year basis, beginning the  
15 first year E-Rate funds were available. E-Rate Year 9, which is the year for which Trillion  
16 was awarded the District contract, was July 2006 through June 2007. The application process  
17 for E-Rate funds and discounts starts in January of the prior fiscal year.

18           77. Pursuant to A.R.S. § 15-213, the State Board of Education has adopted rules,  
19 located in the School Procurement Code at A.A.C. R7-2-1001 *et seq.*, prescribing  
20 procurement practices applicable to all school districts in Arizona, specifying the total cost of  
21 procurement requiring invitations for bids and requests for proposals. Per A.A.C. R7-2-1002,  
22 competitive sealed bids or competitive sealed proposals, but for a few enumerated exceptions,  
23 are required for every expenditure of public monies made by a school district for the  
24 procurement of construction, materials and services over \$33, 689 (threshold amount).

25           78. Pursuant to A.R.S. § 15-271(C)(3), the Arizona Auditor General, in conjunction  
26 with the Arizona Department of Education, has prescribed a Uniform System of Financial



1 Records (USFR) for use by school districts, which specifies competitive purchasing  
2 guidelines applicable to all purchases under the threshold amount. For purchases between  
3 \$15,000 and the threshold amount, the USFRs require school districts to obtain written price  
4 quotations from at least three vendors. For purchases between \$5,000 and \$14,999.99, the  
5 USFRs require school districts to obtain oral price quotations from at least three vendors. *See*  
6 USFR section VI-G-8-9.

7 79. Except for a lower threshold amount of \$30,000, TUSD’s Policy DJ mirrors the  
8 USFR requirements for competitive purchasing below the threshold amount. Thus, under  
9 District Policy DJ, competitive sealed bids or competitive sealed proposals are required for  
10 any purchases of \$30,000 or more, written quotes from at least three vendors are required for  
11 purchases between \$15,000 and \$29,999.99, and oral quotes from at least three vendors are  
12 required for purchases between \$5,000 and \$14,999.99.

13 80. If fewer than three quotations are submitted in response to a solicitation, USFR  
14 guidelines require a school district to contact the non-submitting vendor to request a “no  
15 quote” documenting why the vendor did not submit a quote. *See* USFR section VI-G-8.

16 81. District policy and the USFR guidelines define a single procurement as the  
17 known requirements for an item or a collection of items, in the aggregate, that results in the  
18 purchase of an item or items from one vendor during a fiscal year. The Arizona Education  
19 Act, USFR guidelines and District policy all prohibit splitting or sequencing projects or  
20 purchases in order to avoid procurement or competitive purchasing requirements. *See* A.R.S.  
21 § 15-213(C); USFR section VI-G-8; District Policy DJ.

22 82. District Policy DJ requires that the District’s purchasing department issue a  
23 purchase order before materials or services are ordered.

24 83. District Policy GBEAA and A.R.S. § 38-504(C) prohibit District employees  
25 from accepting gifts and gratuities from current or prospective vendors.

26

1 **Trillion, the District, Flores and Campbell**

2 84. Sometime on or before October 4, 2005, Trillion's Arizona salesperson, Gary  
3 Gaessler, dropped off information on Trillion's products and services at the District's TTS  
4 Department. Then on October 4, 2005, Gaessler contacted Guyton Campbell and Rudy  
5 Flores in the District's TTS Department, requesting a meeting to discuss those materials.

6 85. Following this request and over a period of three months, Gaessler, Campbell  
7 and Flores had a series of meetings before, during and after regular District business hours, at  
8 the District offices and at restaurants. There were at least six of these meetings. Also in  
9 attendance at one or more of these meetings were Roger Pfeuffer, Martha Peyton, Roger  
10 Clague, Steve Davis, Bear Poth, and Vasili Triant.

11 86. While District personnel were in Denver at the NSBA Technology & Learning  
12 Conference, Trillion hosted and paid for a dinner at a restaurant called Tamayo exclusively  
13 for District employees. Ten to fifteen District employees attended this dinner, including but  
14 not limited to the District Superintendent Roger Pfeuffer, as well as Campbell, Flores, and  
15 Long. Trillion paid for the dinner after obtaining leave to do so from Superintendent  
16 Pfeuffer.

17 87. On more than one occasion, Gaessler presented Martha Peyton with Starbuck's  
18 gift cards of \$20 or more.

19 88. Pfeuffer, Campbell, Flores, Long, Peyton, and other District employees knew or  
20 should have known that their acceptance of such gifts and gratuities from Trillion violated  
21 District policies and constituted a conflict of interest in violation of A.R.S. § 38-504(C).

22 89. Gaessler also regularly communicated with Flores and Campbell by e-mail and  
23 telephone. In the three months prior to the District issuing its RFP on January 13, 2006,  
24 Trillion and the District's TTS Department exchanged more than twenty-four (24) e-mails  
25 about the District's WAN design or setting up meetings to discuss the District's WAN design.  
26

1           90. District employees failed to preserve as public records copies of all of the e-  
2 mails and other records pertaining to their communications and meetings with Trillion.

3           91. During one or more of these meetings, verbal or written communications,  
4 Campbell and Flores revealed to Trillion the District's plans for an ROI analysis and its plans  
5 for future technology procurements, including its plan to procure WAN and VoIP services.

6           92. On one or more occasion, Gaessler, Campbell and Flores discussed, in person,  
7 by phone or by e-mail, the District's technology plans, site lists, fiber lines, and other  
8 information relevant to developing a WAN design.

9           93. After learning of the District's plans to hire a consultant to do an ROI analysis,  
10 Gaessler sent Campbell an e-mail introducing ERC as a potential vendor to conduct the ROI  
11 analysis. Gaessler did not inform Campbell in that e-mail that Trillion and ERC were  
12 ePartners or otherwise had an alliance. Four days later, Gaessler e-mailed Campbell with an  
13 introduction to Public Sector Consultants, another potential ROI vendor.

14           94. In or before early November 2005, Trillion began working on a preliminary  
15 WAN design for the District based on the information Flores and Campbell had provided,  
16 even though the District had not issued an RFP or initiated any procurement process. The  
17 District did not issue the RFP until two months later.

18           95. Trillion completed its preliminary WAN design and e-mailed it to the District  
19 by November 23, 2005, and met with Campbell and Flores to review that WAN design on  
20 December 7, 2005.

21           96. Campbell and Flores knew or should have known at all material times that their  
22 meetings and communications with Trillion were against District policy and violated the  
23 School Procurement Code. Their actions ensured that Trillion would have advance notice of  
24 the upcoming procurement and have an advantage over other prospective vendors.

25           97. At material times, District Superintendent Roger Pfeuffer had personal  
26 knowledge of the unlawful acts and practices of Flores, Campbell and Trillion, as he attended

1 at least one of the meetings in the months preceding the procurement process and permitted  
2 Trillion to pay for the dinner at Tamayo.

3 98. On January 13, 2006, with the assistance of ERC, the consultant recommended  
4 by Trillion, the District posted RFP #06-69-11 for Voice, Data and Video Services, the WAN  
5 procurement on which Trillion planned to bid. At that point, all communication with  
6 prospective vendors should have gone through the District's purchasing department.

7 99. Nonetheless, on at least two occasions after the RFP was issued, Martha Peyton  
8 communicated with Trillion, including responding to a request from Gaessler for copies of  
9 the District's bond books. Peyton did not provide this bond information to any other  
10 prospective vendor or inform the purchasing department of the request so that the information  
11 could be included in the RFP's addendums. The School Procurement Code requires  
12 addendums to correct defects or ambiguities in the solicitation and to avoid prejudice by  
13 providing all prospective vendors with the same information.

14 100. Peyton knew at all material times that her communications with Gaessler after  
15 the RFP was issued violated District policies and the School Procurement Code, as she and  
16 other TTS employees were reminded on January 20, 2006 not to talk with any prospective  
17 vendors and to direct all vendor questions directly to the District's purchasing department.  
18 Moreover, she had, in fact, directed another vendor's question to the purchasing department  
19 the day before she responded to Trillion's question about the bond books.

20 101. On or before the submission deadline, Trillion submitted a proposal in response  
21 to RFP #06-69-11, seeking to provide the District's WAN and VoIP services.

22 102. Sometime after February 10, 2006, a District evaluation committee met to  
23 review the sixteen (16) proposals submitted in response to RFP #06-69-11. ERC's Dan  
24 Kettwich assisted the evaluation committee in its evaluation of the offers. Two of the three  
25 members of the District's evaluation committee were Rudy Flores and Lisa Long. In October  
26 2005, both Flores and Long accepted gratuities from Trillion when they attended the dinner

1 hosted and paid for by Trillion in Denver, and in the three months preceding the RFP process,  
2 Flores had attended multiple meetings and exchanged numerous e-mails with Trillion's Gary  
3 Gaessler and others in which they discussed the District's technology needs, its plans for  
4 WAN and VoIP, and plans for this very procurement.

5 103. The evaluation committee recommended Trillion as one of the six companies to  
6 be awarded contracts pursuant to RFP #06-69-11. The value of the Trillion contract was  
7 approximately \$2 million.

8 104. Gaessler's actions, including the giving of gift cards to Peyton, requesting and  
9 attending meetings and exchanging information with Flores and Campbell in the months prior  
10 to the RFP process, and exchanging information with Peyton during the procurement process,  
11 were made knowingly and in direct contravention of the School Procurement Code.

12 105. Flores' actions in meeting with Trillion and exchanging information related to  
13 the RFP process with Gaessler and others were made knowingly and in direct contravention  
14 of District policy and the School Procurement Code. His unlawful actions were compounded  
15 by his serving on the evaluation committee that reviewed Trillion's proposal and  
16 recommended awarding a contract to Trillion.

17 106. Campbell's actions in meeting with Trillion and communicating with Trillion  
18 about the District's technology needs and plans were made knowingly and in direct  
19 contravention of District policy and the School Procurement Code. At material times,  
20 Campbell had personal knowledge of the unlawful acts of Flores and Peyton, yet Campbell  
21 took no action to remedy or change these unlawful practices.

### 22 **ERC, the District, Campbell and Flores**

23 107. During the Fall of 2005, the District's Governing Board directed the TTS  
24 Department to conduct a return on investment (ROI) analysis for the District's technology  
25 needs to determine whether the District needed to overhaul its WAN, LAN and  
26 telecommunications systems.

1           108. At some point prior to November 10, 2005, Campbell or Flores informed  
2 Trillion that the District intended to hire a consultant to perform this ROI analysis. Trillion  
3 then provided TTS with the name of two consultants, ERC and Public Sector Consultants.

4           109. On November 23, 2005, TTS issued a Solicitation for Written Price Quotations  
5 for an ROI analysis, with a submission deadline of November 30, 2005. TTS sent the  
6 solicitation to only three companies: ERC, Public Sector Consultants, and Salire.

7           110. The USFRs require that at least three quotes be obtained before a contract can  
8 be awarded. If a vendor elects not to submit a quote, the District is directed to obtain a “no  
9 quote” explaining the vendor’s reasons for not bidding. The USFRs and District policy also  
10 require that a purchase order be issued before a vendor can begin work.

11           111. Although only two quotes were received, Flores awarded the ROI analysis  
12 contract to ERC, which began work as early as December 9, 2005. No purchase order was  
13 issued before ERC began its work on the ROI analysis. The District paid ERC \$29,200 under  
14 this contract.

15           112. In late December, Flores contacted Salire asking them to submit a quote for the  
16 ROI analysis, even though the deadline had long passed, the contract had already been  
17 awarded to ERC and ERC had already begun work. Although Salire’s quote was the lowest,  
18 Flores prepared a memorandum justifying his decision to award the contract to ERC. Flores’  
19 memorandum created a false record that TTS had complied with competitive purchasing  
20 requirements before awarding the contract to ERC, when it had not done so.

21           113. Flores’ actions in awarding the contract to ERC without completing the  
22 competitive purchasing requirements and in preparing the false record were made knowingly  
23 and in direct contravention of District policies and the USFRs.

24           114. In early December, the District prepared a draft RFP seeking E-Rate consulting  
25 services to assist the District through the E-Rate application process. The draft RFP had a  
26

1 submission deadline of December 14, 2005, and included a prospective vendors' list with  
2 ERC on it. The District asserts that this draft RFP was never issued.

3 115. On December 15, 2005, the day after the submission deadline in the draft RFP,  
4 ERC's Dan Kettwich e-mailed Campbell and Flores his appreciation for their decision to hire  
5 ERC to handle the District's E-Rate application process.

6 116. ERC began working immediately on the E-Rate consulting project. In January  
7 2006, as part of its E-Rate consulting work for the District, ERC helped prepare the District's  
8 E-Rate Form 470 applications. ERC also worked on the District's three RFPs, including RFP  
9 #06-69-11 which was eventually used to award a contract to ERC's e-partner Trillion. ERC's  
10 work on the RFPs included drafting part or all of the RFP documents, suggesting revisions to  
11 the RFPs, developing prospective vendor lists, and drafting responses to vendor questions.

12 117. When ERC submitted the District's E-Rate Form 470 applications in January  
13 2006, the District did not have a current technology plan in place, as required by the E-Rate  
14 program rules. Eventually the District had to withdraw its E-Rate applications, and lose the  
15 opportunity for federal E-Rate funding, because of its lack of a technology plan.

16 118. When ERC was awarded the contract for E-Rate consulting services, Kettwich  
17 promised to forward an invoice for \$4,848.48. In fact, ERC submitted an invoice for \$9,895  
18 for E-rate services work to the District on February 25, 2006. ERC then submitted another  
19 invoice for an additional \$3,000 for related E-Rate services.

20 119. The USFRs and District policy require the District to obtain at least three oral  
21 quotes for purchases over \$5,000. If in the middle of a purchase District staff learn that the  
22 purchase will exceed the threshold, the USFRs and District policy require the District to stay  
23 the transaction and comply with competitive purchasing requirements before completing the  
24 purchase.

25 120. A.R.S. § 15-213(C) and District policy prohibit splitting, dividing or  
26 sequencing purchases in order to avoid competitive purchasing or procurement requirements.

1           121. The District never initiated any competitive purchasing or procurement process  
2 for the E-Rate consulting project. Although the District had prepared a draft RFP, it was not  
3 issued and no quotes, written or oral, were ever received from vendors other than ERC.

4           122. Flores, Campbell and ERC knew and were informed that ERC's E-Rate services  
5 consulting contract, combined with its ROI analysis contract, would exceed the District's  
6 \$30,000 threshold and require a formal procurement process.

7           123. Flores and Campbell knowingly violated A.R.S. § 15-213(C), the School  
8 Procurement Code and District policy when they awarded the E-Rate consulting contract to  
9 ERC without any competitive purchasing process and permitted ERC to split its invoices to  
10 avoid competitive purchasing and procurement requirements.

11           124. ERC was aware that its ERC consulting services, combined with its ongoing  
12 ROI analysis, exceeded the procurement threshold and required an RFP. ERC also  
13 knowingly violated A.R.S. § 15-213(C), the School Procurement Code and District policy  
14 when it split its invoices in order to avoid competitive purchasing requirements.

15           125. Also included in the District's three RFPs was RFP #06-65-10 for future E-Rate  
16 consulting services. This RFP did not cover the services E-Rate services ERC was providing  
17 the District at that time. Even though ERC helped draft this RFP, it proceeded to submit a  
18 proposal in response to it.

19           126. Flores and Campbell acted knowingly and in direct contravention of the School  
20 Procurement Code and District policy. Despite being told that it is a conflict of interest for a  
21 vendor who provides assistance in the network analysis to be awarded future jobs related to  
22 that analysis, Flores and Campbell permitted ERC to submit a proposal on the RFP that ERC  
23 had helped draft.

24           127. ERC's actions were made knowingly and in direct contravention of the School  
25 Procurement Code, which prohibits interested parties from having access to procurement  
26



1 documents before they are issued and prohibits consultants who act as procurement advisors  
2 from benefiting from an awarded contract.

### 3 **Trillion and ERC**

4 128. Beginning at a time unknown but believed to have been prior to June 2005, and  
5 then continuing into 2006, Trillion and ERC formed and maintained an alliance and e-partner  
6 agreement. The purpose of this alliance was to identify potential customers and promote each  
7 company's e-ratable products and services to school districts.

8 129. In furtherance of this agreement, Trillion and ERC entered into an ePartner  
9 Reseller Agreement in June 2005. ERC appointed Trillion as its nonexclusive agent to sell  
10 and service ERC's compliance services to school districts. In return, Trillion was given free  
11 access to ERC's ServCast program, which allowed Trillion to identify potential customers by  
12 data mining E-Rate filings. Prior to January 2006, ERC identified Trillion as an e-Partner on  
13 ERC's website until Trillion asked ERC to remove Trillion's logo from ERC's website.

14 130. Also in furtherance of this agreement and in an effort to identify potential  
15 customers and promote each company's services, throughout 2005 Trillion and ERC jointly  
16 sponsored E-Rate seminars in Colorado, California and Arizona, and communicated with  
17 each other regarding school district projects.

18 131. On one or more occasions, Trillion and ERC agreed to work together to sell  
19 their products to Arizona school districts. They also agreed to share information on contacts  
20 at school districts and to assist each other in gaining introductions to specific Arizona school  
21 districts.

22 132. On November 8, 2005, Trillion's Arizona salesperson, Gary Gaessler, e-mailed  
23 ERC's Arizona salesperson, Dan Kettwich, that he [Gaessler] could get Kettwich an  
24 introduction to TUSD.

25 133. Two days later, on November 10, 2005, Gaessler e-mailed TUSD's TTS  
26 Department with an introduction to ERC, which he described as an independent consulting

1 firm that could manage the District's ROI project. Gaessler did not inform the District that  
2 Trillion and ERC were e-partners or were working together.

3 134. From November 2005 through February 2006, both before and during the  
4 District's procurement process, Trillion and ERC shared information regarding TUSD's ROI  
5 analysis and its WAN procurement. There was at least one face-to-face meeting and multiple  
6 e-mails and telephone calls between Trillion and ERC.

7 135. Before ERC submitted its quotation in response to the District's solicitation for  
8 the ROI analysis, ERC first sent a copy to Trillion for review. Trillion's Gaessler worked  
9 with ERC's Dan Kettwich to find him a VoIP consultant to use in the ROI analysis who was  
10 familiar with ShoreTel. At that time, Trillion was heavily promoting ShoreTel's VoIP  
11 telephony equipment and services.

12 136. Trillion's Gaessler and Clague had dinner with ERC's Kettwich in December  
13 2005 to discuss TUSD's ROI project and its IP Tel (VoIP) needs. Shortly after this dinner,  
14 Gaessler asked ShoreTel's Vasili Triant to send ShoreTel's information directly to Kettwich,  
15 thus allowing ERC to review information from Trillion's preferred provider while ERC was  
16 working on the District's E-Rate applications.

17 137. During this period, ERC was helping the District draft its E-Rate applications  
18 and its RFPs. The meetings and communications between Trillion and ERC influenced both  
19 the District's E-Rate applications and the language in its RFPs, giving Trillion an advantage  
20 over other prospective vendors.

21 138. While ERC was drafting the District's E-Rate applications, ERC's CEO Jon  
22 Slaughter sought clarification from Trillion about its voice services. Trillion's Scott Smyth  
23 then provided ERC with sample E-Rate Form 470 language, specifying the language of  
24 successful 470s that would fund the services Trillion provides. Just two days after receiving  
25 Trillion's suggestions, ERC filed the District's Form 470s.

26

1           139. After RFP #06-69-11 was posted on January 13, 2006, all communications with  
2 prospective vendors should have gone through the District's purchasing department. Trillion  
3 and ERC continued to communicate during this period. Trillion was asking questions and  
4 getting clarification from ERC even after the period for vendor questions had expired.

5           140. Competition was harmed by the collusion between Trillion and ERC. Not only  
6 did Trillion influence ERC when it was drafting the District's E-Rate applications and RFPs,  
7 but other prospective vendors did not have access to all the information available to Trillion..  
8 Consequently other vendors decided not to bid on RFP #06-69-11 or submitted bids that were  
9 not as strong as they could have been had the competition been fair.

10           141. One prospective vendor complained to the District that with the information  
11 provided in the RFP and addendums, it would be difficult for any vendor to properly respond.  
12 Another vendor, asking the District how anyone could be accurate, informed the District it  
13 would not bid on the project.

14           142. By conspiring to ensure that both companies were awarded District contracts,  
15 Trillion and ERC violated the School Procurement Code, state antitrust statutes and the  
16 USAC E-Rate program rules.

17           143. Trillion and ERC's collusion constituted a conspiracy in restraint of trade, and  
18 because the contracts were with a school district their collusion is per se unlawful per A.R.S.  
19 § 44-1402 and § 44-1416(A).

20           144. The USAC E-Rate program rules mandate an open and fair competitive bidding  
21 process, where all bidders are treated the same and receive the same information, no bidder  
22 has advance knowledge, and consultants are not associated with service providers.

23           145. Trillion and ERC knowingly violated these statutes and rules. Trillion and ERC  
24 had an existing alliance and agreed to work together to sell their services to Arizona school  
25 districts. Keeping their alliance secret, Trillion introduced ERC to the District and helped  
26 ERC become the District's consultant. In that position, ERC was involved in determining the

1 scope of the services TUSD would seek in its E-Rate applications. With input from Trillion,  
2 ERC drafted the District's Form 470s and its RFPs, one of which was used to award a  
3 contract to Trillion.

#### 4 **The District, Promethean and Logical Choice**

5 146. In May 2006, the District's Ed. Tech. Department formed a selection committee  
6 to evaluate interactive whiteboard and projectors. On the selection committee were Rudy  
7 Flores, Ed Kowalczyk and Lisa Long, though Long later withdrew. The District did not  
8 issue an RFP but instead selected vendors for product demonstrations and evaluation based  
9 on existing state and federal contracts that TUSD could access through cooperative  
10 purchasing arrangements.

11 147. Based on the selection committee's recommendations, Promethean, which sells  
12 its products through resellers such as Logical Choice, was selected as the interactive  
13 whiteboard vendor.

14 148. In July 2006, the District Governing Board approved the purchase of up to \$1.3  
15 million in Promethean products using Logical Choice's GSA contract. No additional  
16 Governing Board approvals were obtained.

17 149. In fiscal year 2006-2007, the District purchased \$1,892,840.73 in Promethean  
18 products from Logical Choice, exceeding the Board authorization by more than a half million  
19 dollars. The District also purchased an additional \$157,713.56 in Promethean products from  
20 another reseller, Level 3 Audio Visual, using an Arizona State Procurement Office contract.  
21 The District's purchases of Promethean products continued in fiscal year 2007-2008, with  
22 \$17,680.90 paid to Logical Choice and \$356,668.15 paid to Level 3 Audio Visual.

23 150. For both fiscal years and both resellers, the District issued 120 purchased orders  
24 totaling \$2,416,803.34—exceeding the Board's authorized expenditures by more than one  
25 million dollars.

1           151. District Policy DJ requires Governing Board approval for any purchase of  
2 \$250,000 or more. A.R.S. § 15-213(J) requires the Governing Board to authorize purchases  
3 using GSA contracts. District Policy and A.R.S. § 15-213(C) prohibit dividing or sequencing  
4 the total annual purchase of like items from one source in order to avoid prescribed limits.

5           152. The District's Ed. Tech. Department violated District policies when, after the  
6 initial purchase from Logical Choice, it continued to purchase Promethean products without  
7 Governing Board approval. Upon information and belief, the District is continuing to  
8 purchase Promethean products from Level 3 Audio Visual.

9           153. The District made its purchases from Logical Choice using Logical Choice's  
10 GSA contract #GS-35f-0519M. GSA Rules, codified at Federal Acquisition Regulation  
11 ("FAR") section 8.402(f), permit an ordering entity to include in its purchase order items not  
12 on the vendor's GSA Schedule contract (open market items) only if all applicable purchasing  
13 regulations have been followed for those open market items, including competitive  
14 purchasing and procurement requirements. This regulation is incorporated into Logical  
15 Choice's GSA contract.

16           154. Logical Choice included open market items on one or more of its invoices to the  
17 District, and the District purchased those open market items from Logical Choice without  
18 going through any competitive purchasing or procurement process. The District paid Logical  
19 Choice at least \$342,711.98 for open market items, good and services purchased without any  
20 competitive purchasing process at all.

21           155. Logical Choice knowingly violated the School Procurement Code and GSA  
22 guidelines when it submitted an invoice for open market items and accepted payment for  
23 those items without satisfying applicable competitive purchasing requirements.

24           156. The District likewise violated the School Procurement Code, A.R.S. § 15-213,  
25 and federal regulations when it included open market items on its purchase orders without  
26 any competitive purchasing or procurement process. The District knowingly violated these

1 statutes and regulations, as it knew that the first invoice and purchase order contained open  
2 market items, since someone had written “Open Market Items” next to each such item, and  
3 the District’s purchase requisition and final purchase order identified every other line item by  
4 a GSA Schedule number while the open market items had no such schedule numbers.

5 157. More than a year after the initial procurement but while the District was  
6 continuing to purchase Promethean products, Ed Kowalczyk in the District’s Ed. Tech.  
7 Department began working with Promethean to plan two Promethean conferences to be held  
8 in April 2008 at the J.W. Marriott Starr Pass Resort in Tucson, as well as at District schools.  
9 The focus of these two conferences was on the benefits of educational technology and the  
10 uses of Promethean products in the classroom.

11 158. At these conferences, Promethean provided gifts and gratuities to the District  
12 and District employees, including \$12,000 in conference registration fee waivers for District  
13 employees as well as meals, drinks, entertainment and lodging at Starr Pass for key District  
14 employees.

15 159. Kowalczyk provided Promethean with a list of employees to invite to the  
16 conference, including members of the Ed. Tech. Department, District Administrators and  
17 Principals, including one that Kowalczyk described as a strong ally. At least ten of these  
18 District employees accepted Promethean’s offer of free lodging at Starr Pass, even though  
19 accepting such gifts and gratuities violates Arizona’s conflict of interest statutes and District  
20 policies. These employees included District leaders and key decision makers.

21 160. The District violated its own policies and state procurement laws when it  
22 allowed employees to accept gifts and gratuities from a current vendor, and then continued to  
23 purchase products from that vendor at the same time it was hosting the vendor’s conferences.  
24  
25  
26

1 **CAUSES OF ACTION**

2 **Count One - Conspiracy in Restraint of Trade, Collusion, and Bid Rigging**  
3 **Trillion and ERC**

4 **A.R.S. §§ 44-1402, 44-1407, 44-1416**

5 161. Plaintiff realleges and incorporates by reference paragraphs 1-160, above.

6 162. Beginning at a time unknown and continuing at least through February 2006,  
7 Trillion and ERC and their co-conspirators met, conversed, communicated verbally and in  
8 writing, face to face, and via telephone, and through these communications entered into one  
9 or more contracts, combinations and conspiracies to restrain intrastate trade.

10 163. These contracts, combinations and conspiracies consisted of one or more  
11 agreements or understandings between Trillion and ERC and their co-conspirators including,  
12 but not limited to:

- 13 a. agreeing to work together to ensure both companies got District contracts;
- 14 b. agreeing to communicate regularly about the District's ROI analysis and its  
15 E-Rate applications and RFPs;
- 16 c. agreeing to influence the District's E-Rate applications and RFPs so that  
17 Trillion would have an advantage over other prospective vendors;
- 18 d. agreeing to conceal their conspiracy; and
- 19 e. agreeing to take other action in furtherance of the conspiracy to restrain  
20 trade.

21 164. For the purposes of effectuating the combination and conspiracy, Trillion and  
22 ERC performed those actions they conspired to commit, among others.

23 165. As a result of their conspiracies and acts in furtherance thereof, Trillion, ERC  
24 and their co-conspirators denied the District the benefit of free and open competition, and  
25 prevented competing vendors from obtaining District contracts.

1 166. The agreements and acts by Trillion and ERC constituted a continuing  
2 conspiracy to rig bids and to boycott competitors in restraint of intrastate trade and  
3 commerce, within the meaning of A.R.S. §§ 44-1402.

4 167. The agreements and acts by Trillion and ERC are *per se* unlawful under A.R.S.  
5 § 44-1416.

6 168. Trillion and ERC may still be bidding on work for the District and for other  
7 governmental entities.

8 169. Due to the conspiracies and acts in furtherance alleged herein, Plaintiff is  
9 entitled to civil penalties and injunctive relief under A.R.S. § 44-1407, as well as other  
10 equitable relief.

11 **Count Two - Conspiracy in Restraint of Trade, Collusion, Procurement Violations**  
12 **and Bid Rigging**

13 **Trillion, ERC, Campbell and Flores**

14 **A.R.S. §§ 15-213, 44-1402, 44-1407, 44-1416**

15 170. Plaintiff realleges and incorporates by reference paragraphs 1-169, above.

16 171. Beginning in October 2005 and continuing at least through February 2006,  
17 Trillion, ERC, Campbell and Flores and their co-conspirators met, conversed, communicated  
18 verbally and in writing, face to face and via telephone, and through these communications  
19 entered into one or more contracts, combinations and conspiracies to restrain intrastate trade.

20 172. These contracts, combinations and conspiracies consisted of one or more  
21 agreements or understandings between Trillion, ERC, Campbell and Flores and their co-  
22 conspirators including, but not limited to:

- 23 a. agreeing to communicate regularly and share information regarding the
- 24 District's ROI analysis, its plans for telecommunications and technology
- 25 projects, and its RFPs, and providing information about District projects and
- 26 budgets;



- 1 b. agreeing to provide Trillion with information, documentation and advance  
2 notice of the District's procurement plans to give Trillion an advantage in  
3 drafting its proposal in response to District RFP #06-69-11;
- 4 c. agreeing not to follow statutes, rules and policies on communications  
5 between District staff, consultants and prospective vendors before and  
6 during the procurement process;
- 7 d. agreeing not to follow statutes, rules and policies on competitive purchasing  
8 and procurement;
- 9 e. agreeing to ensure that Trillion would be awarded a contract under RFP  
10 #06-69-11;
- 11 f. agreeing to conceal their conspiracy; and
- 12 g. agreeing to take other action in furtherance of the conspiracy to restrain  
13 trade.

14 173. For the purposes of effectuating the combination and conspiracy, Trillion, ERC,  
15 Flores and Campbell performed those actions they conspired to commit, among others.

16 174. As a result of their conspiracies and acts in furtherance thereof, Trillion, ERC,  
17 Flores and Campbell denied the District the benefit of free and open competition.

18 175. The agreements and acts by Trillion, ERC, Flores and Campbell constituted a  
19 continuing conspiracy to rig bids and to boycott competitors in restraint of intrastate trade and  
20 commerce, within the meaning of A.R.S. §§ 44-1402.

21 176. The agreements and acts by Trillion, ERC, Flores and Campbell are *per se*  
22 unlawful under A.R.S. § 44-1416.

23 177. Trillion may still be bidding on work for the District and other governmental  
24 entities.

1 178. Due to the conspiracies and acts in furtherance alleged herein, Plaintiff is  
2 entitled to civil penalties and an injunction under A.R.S. §§ 15-213 and 44-1407, as well as  
3 other equitable relief.

4 **Count Three - Procurement Violations**

5 **ERC, Campbell and Flores**

6 **A.R.S. §§ 15-213, 41-2616, A.A.C. R7-2-1001 *et seq.***

7 179. Plaintiff realleges and incorporates by reference paragraphs 1-178, above.

8 180. At material times, Defendants ERC, Campbell and Flores were persons who  
9 contracted for or purchased goods and or services with or on behalf of the District within the  
10 meaning of the School Procurement Code, A.A.C. R7-2-1001(60), and the Arizona  
11 Procurement Code, A.R.S. § 41-2501.

12 181. At material times, ERC, Campbell and Flores knowingly entered into one or  
13 more contracts in a manner contrary to A.A.C. R7-2-1001 *et seq.*, A.R.S. §§ 15-213 and 41-  
14 2616, and District policy by, among other things:

- 15 a. agreeing to award and awarding contracts without competitive bidding;
- 16 b. agreeing to award and awarding contracts and beginning work on District  
17 projects before the competitive purchasing process was complete and before  
18 a purchase order was issued;
- 19 c. splitting bids, invoices or work orders to avoid competitive bidding  
20 requirements and procurement rules, regulations and policies;
- 21 d. falsifying public records to create the false impression of compliance with  
22 applicable rules, regulations and policies; and
- 23 e. agreeing to not follow applicable procurement statutes, rules and policies.

24 182. The District paid ERC a total of \$39,095 pursuant to these unlawful contracts.

25 183. Each separate transaction alleged herein is a separate violation of applicable  
26 procurement law. Each defendant is personally liable to the District for all amounts paid plus

1 twenty percent (20%), plus interest from the date of payment, plus all costs and damages  
2 arising out of each violation, pursuant to A.R.S. § 41-2616.

3 184. ERC may still be bidding on work for the District and for other governmental  
4 entities.

5 185. Due to the acts alleged herein, Plaintiff is entitled to an injunction under A.R.S.  
6 § 15-213, as well as other equitable relief.

7 **Count Four - Procurement Violations**

8 **Logical Choice**

9 **A.R.S. §§ 15-213, 41-2616, A.A.C. R7-2-1001 *et seq.***

10 186. Plaintiff realleges and incorporates by reference paragraphs 1-185, above.

11 187. At material times, Defendant Logical Choice was a person who contracted for  
12 goods and or services with the District within the meaning of the School Procurement Code,  
13 A.A.C. R7-2-1001(60), and the Arizona Procurement Code, A.R.S. § 41-2501.

14 188. At material times, Logical Choice knowingly entered into one or more contracts  
15 in a manner contrary to A.A.C. R7-2-1001 *et seq.*, A.R.S. §§ 15-213 and 41-2616, FAR  
16 8.402(f) and District policy by, among other things:

17 a. agreeing to provide and sell open market items to the District without any  
18 competitive purchasing or procurement process, and so doing; and

19 b. agreeing to not follow applicable procurement statutes, rules and policies.

20 189. The District paid Logical Choice an amount to be proven at trial but not less  
21 than \$342,711.98 pursuant to these unlawful contracts.

22 190. Each separate transaction alleged herein is a separate violation of applicable  
23 procurement law. Logical Choice is personally liable to the District for all amounts paid plus  
24 twenty percent (20%), plus interest from the date of payment, plus all costs and damages  
25 arising out of each violation, pursuant to A.R.S. § 41-2616.

1           191. Logical Choice may still be bidding on work for the District and for other  
2 governmental entities.

3           192. Due to the acts alleged herein, Plaintiff is entitled to an injunction under A.R.S.  
4 § 15-213, as well as other equitable relief.

5   **Count Five - Procurement Violations**

6   **TUSD**

7   **A.R.S. §§ 15-213**

8           193. Plaintiff realleges and incorporates by reference paragraphs 1-192, above.

9           194. At all material times, TUSD was subject to the requirements of the Arizona  
10 Education Act, A.R.S. § 15-213, the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*,  
11 the School Procurement Code, A.A.C. R7-2-1001 *et seq.*, the USFRs and District policies.

12           195. At all material times, TUSD was required to use formal procurement processes,  
13 pursuant to the School Procurement Code, to procure goods and services above the threshold  
14 amount set by the State Board of Education and the Auditor General, adjusted to \$30,000 by  
15 District Policy DJ.

16           196. At all material times, TUSD was required by the USFRs and District policy to  
17 obtain at least three oral price quotes for purchases between \$5,000 and \$14,999.99, and at  
18 least three written price quotes for purchases between \$15,000 and \$29,999.99.

19           197. At all material times, TUSD was required by the USFRs and District policy to  
20 issue purchase orders prior to contractors beginning any work.

21           198. At all material times, TUSD was prohibited by A.R.S. § 15-213, the USFRs,  
22 and District Policy from dividing or sequencing purchases, or splitting bids, invoices or work  
23 orders to artificially avoid competitive bidding requirements and procurement rules,  
24 regulations and policies;

25           199. At all material times, District Policy required TUSD's Governing Board to  
26 approve all purchases of \$250,000 or more.

1           200. At all material times, TUSD was required to conduct its competitive purchasing  
2 and procurement activities in an open and fair manner, avoiding extensive or improper  
3 communications with vendors that would give the appearance of collusion or favoritism.

4           201. At material times, TUSD entered into one or more contracts in a manner  
5 contrary to A.A.C. R7-2-1001 *et seq.*, A.R.S. §§ 15-213, and District policy by, among other  
6 things:

- 7           a. awarding contracts to vendors without any competition at all or before
- 8           competitive purchasing processes were completed;
- 9           b. authorizing contractors to begin work before purchase orders were issued;
- 10          c. dividing or sequencing purchases so as to avoid the limits and requirements
- 11          of procurement rules, regulations and policies; and
- 12          d. participating in extensive and improper communications with prospective
- 13          and current vendors.

14          202. Each separate transaction alleged herein is a separate violation of applicable  
15 procurement law.

16          203. Due to the acts alleged herein, Plaintiff is entitled to an injunction under A.R.S.  
17 § 15-213, as well as other equitable relief.

18           **PRAYER FOR DAMAGES, PENALTIES AND INJUNCTIVE RELIEF**

19           WHEREFORE, Plaintiff prays:

20          204. This Court adjudge and decree that Defendants Trillion, ERC, Campbell and  
21 Flores engaged in unlawful combinations and conspiracies in unreasonable restraint of  
22 intrastate trade and commerce in violation of A.R.S. §§ 44-1402 and 44-1416, and bid rigging  
23 and procurement code violations in violation of A.R.S. §§ 15-213 and 41-2616.

24          205. That the Court award civil penalties of \$150,000 each against Defendants  
25 Trillion and ERC and find that each of them is jointly and severally liable for the State's fees,  
26 costs and expenses under A.R.S. §§ 44-1407 and 12-2506.

1           206. That the Court order disgorgement from Defendants ERC, Flores and Campbell  
2 of the entire proceeds of each violation of the School Procurement Code, totaling \$39,095.00,  
3 together with a penalty of 20%, plus legal interest from the date of payment, as set forth in  
4 A.R.S. § 41-2616(A) and that the Court find Defendants ERC, Flores and Campbell jointly  
5 and severally liable under A.R.S. §§ 41-2616 and 12-2506.

6           207. That the Court adjudge and decree that Defendant Logical Choice engaged in  
7 unlawful conduct and in violation of the School Procurement Code, A.R.S. §§ 15-213 and 41-  
8 2616.

9           208. That the Court order disgorgement from Defendant Logical Choice of the entire  
10 proceeds of each violation of the School Procurement Code, in an amount to be proven at trial  
11 but not less than \$342,711.98, together with a penalty of 20%, plus legal interest from the  
12 date of payment, as set forth in A.R.S. § 41-2616(A).

13           209. That this Court issue a permanent injunction for a term of three (3) years,  
14 enjoining and restraining Defendants Trillion, ERC and Logical Choice, and each of them,  
15 their officers, directors, agents, employees and successors and all other persons acting or  
16 claiming to act on their behalf from:

17                   a. engaging in unlawful combinations and conspiracies in restraint of trade and  
18                   commerce in violation of A.R.S. §§ 44-1402 and 44-1416; and

19                   b. engaging in unlawful conduct in violation of A.R.S. §§ 15-213 and 41-2616.

20           210. That the Court adjudge and decree that Defendant Tucson Unified School  
21 District engaged in unlawful conduct and in violation of the Arizona Education Act, A.R.S.  
22 § 15-213, the State Procurement Code, A.R.S. § 41-2501 *et seq.*, the School Procurement  
23 Code, A.A.C. R7-2-1001 *et seq.*, and the USFRs.

24           211. That this Court issue a permanent injunction for a term of three (3) years,  
25 enjoining and restraining Defendant Tucson Unified School District, and its officers,  
26

1 directors, agents, employees and successors and all other persons acting or claiming to act on  
2 their behalf from:

- 3 a. engaging in unlawful combinations and conspiracies in restraint of trade and  
4 commerce in violation of A.R.S. §§ 44-1402 and 44-1416; and  
5 b. engaging in unlawful conduct in violation of A.R.S. §§ 15-213, 41-2616,  
6 and 38-504.

7 212. That the Court order each Defendant, for a term of three (3) years, to file with  
8 Plaintiff on or before the anniversary date of the final judgment, an annual verified  
9 declaration reporting that such Defendant has complied with the terms of any injunction,  
10 verdict, judgment, or decree.

11 213. For costs of court and costs of investigation pursuant to A.R.S. § 41-2616 and  
12 A.R.S. § 44-1407.

13 214. For reasonable attorneys' fees pursuant to A.R.S. § 44-1407.

14 215. That Plaintiff have such other relief as the nature of this case may require and  
15 the Court may deem just and proper.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

18  
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