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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CYNTHIA SEPULVEDA, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

GUITAR CENTER, INC. and  
NATIONAL ASSOCIATION OF MUSIC  
MERCHANTS, INC.

Defendants.

No. **'09 CV 2267 LAB RBB**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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OP

1 Plaintiff, Cynthia Sepulveda, by her undersigned attorneys, individually and on  
2 behalf of all others similarly situated, files this class action complaint against the  
3 defendants named herein for treble damages and other relief under the antitrust laws  
4 of the United States and, alleges as follows based upon personal knowledge with  
5 respect to her own acts, and upon the investigation of counsel, information and belief,  
6 and publicly available information with respect to all other matters:

7 **NATURE OF ACTION**

8 1. This antitrust class action is brought on behalf of plaintiff and a class of  
9 purchasers of fretted musical instrument products such as acoustic and electric  
10 guitars, violins, amplifiers and strings (“FI Products”) between January 1, 2005 and  
11 December 31, 2007 (the “Class Period”). Plaintiff alleges that Guitar Center, a  
12 dominant, multi-brand retailer and a member of the National Association of Music  
13 Merchants (“NAMM”), together with NAMM and its members, conspired to  
14 maintain, implement and/or enforce Minimum Advertised Pricing (“MAP”) policies  
15 that had the purpose and effect of fixing prices, securing higher price levels,  
16 restricting retail price competition and eliminating price discounting.

17 2. Specifically, from at least 2005-2007, NAMM organized meetings and  
18 programs where competing fretted instrument (“FI”) retailers, including Guitar  
19 Center, were permitted and encouraged to discuss and agree upon restrictions of retail  
20 price competition, strategies for the adoption, implementation, and enforcement of  
21 minimum advertised price policies, and appropriate and optimal retail prices and  
22 margins. In effect, NAMM facilitated resale price maintenance (“RPM”) agreements  
23 between and among its members. (Hereinafter, MAP and RPM are used  
24 interchangeably). The NAMM meetings led to agreements between Guitar Center,  
25 other leading FI retailers, and manufacturers of FI Products to impose a RPM scheme  
26 designed to raise and maintain retail prices for FI Products.





1           14. Plaintiff will fairly and adequately protect the interests of the class. The  
2 interests of plaintiff coincide with and are not antagonistic to, those of the class. In  
3 addition, plaintiff is represented by counsel who are experienced and competent in the  
4 prosecution of complex class action and antitrust litigation.

5           15. There are questions of law and fact common to the members of the  
6 class, and those common questions predominate over any questions which may affect  
7 only individual members of the class, because defendants have acted on grounds  
8 generally applicable to the entire class. Among the predominant questions of law and  
9 fact common to the class are:

10           a. whether defendants engaged in agreements, contracts,  
11 combinations, and conspiracies, which had the purpose and/or effect of unreasonably  
12 restraining competition and limiting purchaser access to competing and lower-priced  
13 FI Products;

14           b. whether defendants unreasonably restrained trade;

15           c. whether defendants' anti-competitive contracts, combinations,  
16 and conspiracies have caused plaintiff and the other members of the class to suffer  
17 antitrust injury in the nature of overcharges;

18           d. whether defendants' unlawful conduct caused plaintiff and other  
19 class members to pay more for FI Products than they otherwise would have paid;

20           e. the appropriate class-wide measure of damages; and

21           f. whether defendants' anti-competitive conduct is continuing, thus  
22 entitling the class to injunctive relief to promote unrestrained trade and free and fair  
23 competition.

24           16. Class action treatment is a superior method for the fair and efficient  
25 adjudication of the controversy, in that, among other things, such treatment will  
26 permit a large number of similarly situated persons to prosecute their common claims  
27 in a single forum simultaneously, efficiently, and without the unnecessary duplication  
28

1 of evidence, effort, and expense that numerous individual actions would engender.  
2 The benefits of proceeding through the class mechanism, including providing injured  
3 persons or entities with a method for obtaining redress for claims that might not be  
4 practicable to pursue individually, substantially outweigh any difficulties that may  
5 arise in management of this class action. There are no difficulties likely to be  
6 encountered in the management of this class action that would preclude its  
7 maintenance as a class action and no superior alternative exists for the fair and  
8 efficient adjudication of this controversy on behalf of plaintiff and the members of the  
9 class.

10 **INTERSTATE TRADE AND COMMERCE**

11 17. The activities of defendants, as described in this Complaint, were within  
12 the flow of, and substantially affected, interstate commerce.

13 18. During the time period covered by this Complaint, Guitar Center and  
14 members of defendant NAMM sold and distributed FI Products through the means of  
15 interstate commerce in a continuous and uninterrupted flow to customers located  
16 throughout the United States. Plaintiff and other members of the class located  
17 throughout the United States purchased FI Products directly from defendants and their  
18 co-conspirators, who received millions of dollars from such interstate trade and  
19 commerce.

20 19. Among other unreasonable restraints on interstate trade and commerce,  
21 defendants' combination and conspiracy artificially raised the price of FI Products  
22 and deprived plaintiff and the class of the benefits of free and open competition in the  
23 market for FI Products throughout the United States.

24 **RELEVANT MARKET**

25 20. The relevant product market in this case is retail sales of products in the  
26 Fretted Instruments Product category which includes guitars, amplifiers and  
27 accessories for same.  
28



1 shows each year, where manufacturers introduce new products and meet with dealers  
 2 and competing manufacturers, distributors and retailers of musical instruments meet  
 3 and discuss issues of concern to the industry.” See  
 4 <http://www.ftc.gov/opa/2009/03/namm.shtm>.

5 27. On information and belief, from the late 1990s to at least 2007,  
 6 defendants and their co-conspirators worked to facilitate uniform agreement both as  
 7 to the implementation and enforcement of MAP as well as pricing. The purpose of  
 8 facilitating agreement both as to MAP policies and pricing was because Guitar  
 9 Center, as well as other retailer members of NAMM, were concerned about increased  
 10 competition by mass merchants, such as Wal-Mart and Costco, as well as internet  
 11 retailers.<sup>1</sup>

12 28. NAMM held biannual trade shows and conventions. NAMM shows are  
 13 considered an indispensable resource by music product retailers. In a February 2007  
 14 interview, a member was quoted in Musical Merchandise Review:

15 Many years ago, the importance of attending a NAMM  
 16 show may not have seemed important, today it is  
 17 absolutely necessary. Owners and key personnel should be  
 18 at NAMM . . . the education seminars are priceless. The  
 19 interaction with the industry people and colleagues is also  
 20 priceless.

21 29. In the late 1990s or early 2000s, at a NAMM show, “a high-profile  
 22 retailer delivered a stinging address, lamenting the fact that manufacturers sat by idly  
 23 as price wars raged and retail profits plummeted.”<sup>2</sup> This address coincided with the  
 24 adoption of MAP policies by leading musical instrument manufacturers, which  
 25 commenced in 1999 and continued thereafter.<sup>3</sup>

26 <sup>1</sup> “Exhibitors Speak: candid comments on business, the NAMM show, dealers  
 27 and what to expect in 2006,” Music Trades (March 1, 2006); “Justified Optimism or  
 28 rose-colored glasses?” Music Trades (March 1, 2006). See also FTC Complaint, ¶ 4.

<sup>2</sup> “Do MAP policies work?” Music Trades (August 1, 2001).

<sup>3</sup> FTC Complaint, ¶ 4.

1           30. By the early 2000s, several major music retail chains, including Guitar  
2 Center, were expressing a heightened concern for margin and profit protection.

3           31. According to independent retailers, Guitar Center wields enormous  
4 power in the industry. In an interview in Musical Merchandise Review, April 2007  
5 issue, Alan Levin of Chuck Levin's Washington Music Center said:

6                   The biggest concern is Guitar Center. They are many  
7                   manufacturers' biggest customers and changes are being  
8                   made . . . to suit them alone.

8           Similarly, one NAMM member observed: "Guitar Center has too much  
9 leverage. . ."<sup>4</sup>

10           32. Thus, when Guitar Center and NAMM encouraged and required the  
11 implementation of MAP pricing, manufacturers did so for fear of losing Guitar Center  
12 as a customer.

13           33. In fact, a major shift in retail opinion regarding the effectiveness of  
14 MAP policies to protect profits occurred between 2000 and 2001. A poll conducted  
15 by Music Trades magazine revealed that:

16                   Last year [2000] when we polled leading m.i. dealers about  
17                   the value of minimum advertised price (MAP) policies,  
18                   only 31% said they had a positive effect on gross margins.  
19                   60% said that MAP had no effect at all on selling prices,  
20                   while 9% said the programs actually decreased margins.  
21                   When asked the same question this year [2001], retailers  
22                   expressed a major change of heart. 51% said that MAP  
23                   policies had improved their gross margins during the past  
24                   12 months, and only 44% deemed the policies ineffectual.<sup>5</sup>

21           34. Music Trades concluded that the 20-point shift in opinion was due to the  
22 fact that "the biggest benefit of MAP policies has been to rid the internet of loss-  
23 leader pricing." Music Trades explained:

24                   As a result [of the MAP policies], these days when you  
25                   type the name of a popular product into a search engine,  
26                   you'll get a screen full of results offering the same MAP  
27                   regulated price. As our poll indicates, brick-and-mortar  
28                   retailers obviously appreciate the fact that they don't have

4           As reported in the March 1, 2008 issue of Music Trades.

5           "Do MAP policies work?" Music Trades (August 1, 2001).

1 to deal with a legion of customers coming into the store  
2 brandishing a computer print out and demanding, 'Why  
3 can't you beat this price?'

4 35. In addition to reducing competition from internet retailers, Music  
5 Trades also credited MAP policies with a more "sane approach to industry pricing,"  
6 stating that "retail margins appear to have stabilized."

7 36. Thus, MAP policies were a hot topic at the January 2001 NAMM trade  
8 show. Music Trades reported that retailers' then-current gross margins of 27% to  
9 32% were far lower than they had been in the 1990s, and that both large and small  
10 retailers "have jointly concluded that they simply can't afford to give up any more  
11 gross margin points."

12 37. In response to this joint retailer pressure, at the January 2001 NAMM  
13 show, "manufacturers seemed to be doing more than paying lip service to retail profit  
14 concerns" by rolling out new and more restrictive MAP policies. However, on  
15 information and belief, the manufacturers realized and agreed that the MAP policies  
16 were not designed to increase services at the retailers but merely to protect their profit  
17 margins. In fact, manufacturers allegedly "were fulsome in their criticisms of the  
18 industry's retail network," stating, *inter alia*: "They don't do any marketing," and  
19 "Their stores are staffed with minimum wage idiots."

20 38. Thus, the result of the January 2001 NAMM show, and the discussion  
21 facilitated by NAMM at that show, was that manufacturers realized that they could no  
22 longer rely on brilliant engineering and design, but instead agreed to implement "[a]  
23 distribution scheme that enables retailers to make a respectable gross margin...."

24  
25 <sup>6</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

26 <sup>7</sup> "Do MAP policies work?" Music Trades (August 1, 2001).

27 <sup>8</sup> "Brick and Mortar Gets New Respect," Music Trades (March 1, 2001)

28 <sup>9</sup> "Brick and Mortar Gets New Respect," Music Trades (March 1, 2001)

<sup>10</sup> "Brick and Mortar Gets New Respect," Music Trades (March 1, 2001)

1           39.     At the January 2002 NAMM Show, NAMM continued to facilitate  
2 discussion among its members on the optimal use of MAP policies. As a result,  
3 manufacturers “acknowledged the retail concern with profitability by instituting  
4 minimum advertised price, or MAP policies. In fact, mention of MAP pricing was  
5 routinely included in just about every new product presentation.”<sup>11</sup>

6           40.     At these shows, on information and belief, NAMM encouraged dealers  
7 to and dealers agreed to and did outline their MAP policies. But the dealers did not  
8 do so in conjunction with requests for retailer advertising, in-store displays, better  
9 product demonstrations or knowledgeable store staff. Rather, the MAP policies were  
10 agreed to at the behest of defendants and their co-conspirators and rolled out at the  
11 NAMM shows with the retailer profitability in mind.

12           41.     For example, at the Summer 2004 NAMM show, “[a] number of  
13 exhibitors also announced higher MAP prices in a bid to shore up dealer margins. As  
14 one supplier noted, ‘The truth is, there isn't a lot of difference between our products  
15 and our competitors. If we're going to get dealer support, we've got to make these  
16 guys money.’”<sup>12</sup>

17           42.     Similarly, at the NAMM show in summer 2005, Peavey Electronics  
18 (among others) outlined its MAP policy, reiterating “Peavey’s commitment to dealer  
19 profitability.”<sup>13</sup>

20           43.     But NAMM did not only encourage individual dealers or retailers to  
21 discuss and agree how to restrict price competition. In fact, it facilitated joint  
22 discussions by all members of NAMM. At NAMM’s biannual trade shows and

23 <sup>11</sup> “Blue skies ahead? Expectations were low, but Christmas sales came in  
24 strong, and retailers flocked to Anaheim, making for a high energy show ... Does this  
25 mean the recession is over and industry growth is back on track?; NAMM in  
Anaheim 2002.” Music Trades (March 1, 2002).

26 <sup>12</sup> “NAMM's grand finale in Nashville: strong buying, product shortages,  
27 exuberant entertainment, and confidence in the second half made the last NAMM  
show in Nashville one to remember; Nashville NAMM Report 2004,” Music Trades  
(September 1, 2004).

28 <sup>13</sup> “Peavey 40<sup>th</sup> anniversary dealer meeting,” Music Trades (September 1, 2005).

1 conventions, NAMM hosted “NAMM Show University Sessions.” These sessions  
2 were designed to facilitate discussion and education on a wide variety of music  
3 industry topics, including price competition and restrictions to competition.

4 44. At the January 2006 trade show, NAMM hosted several sessions  
5 regarding MAP policies.

6 45. For example, NAMM facilitated a panel discussion regarding MAP  
7 policies. On a panel comprised of industry heavy-hitters, such as the Vice President  
8 and General Manager of Yamaha’s Pro-Audio and Combo division, sales managers  
9 from Kaman Music Corp. and Avedis Zildjian, and several retailers, the suppliers  
10 were “unanimous, offering a guardedly positive assessment of MAP policies.”<sup>14</sup>

11 46. At this panel, there was just one lone voice that supported competition  
12 on prices. Bryan Junk of massmusic.net asked the Panel and the audience, “We’re  
13 supposed to compete, aren’t we?” According to one industry report of the Panel  
14 session:

15 Whether or not you agree with him, Bryan Junk, an internet  
16 retailer, deserves credit for staring down an auditorium  
17 packed with independent retailers and stating that MAP  
18 should be scrapped. To audible boos, he declared,  
19 ‘Consumers like low prices, and we try to give them what  
20 they want. Why shouldn’t we be able to grow our business  
21 by offering the lowest possible prices without interference  
22 from the manufacturers?’

23 47. However, Mr. Junk’s view was not the consensus. In fact, the Panel  
24 discussed that, absent MAP, “prices would rapidly migrate down to 10% over  
25 cost....” The Panel even advocated revising the current MAP pricing “upwards to  
26 give retailers a better profit margin.”

27 48. The Panel also discussed how to enforce the MAP policies, agreeing  
28 that “MAP is only as effective as its enforcement....” The Panel thus discussed how  
to enforce MAP, particularly with the proliferation of internet sites.

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<sup>14</sup> “MAP policies on trial: Do they help? Do they hurt? Is there a better way?”  
Music Trades (March 1, 2006).

1 49. NAMM also released a report based on comments it compiled from the  
2 January 2006 trade show participants and attendees. NAMM released the following  
3 poll results, in which it provided the answers:<sup>15</sup>

4 What do independent retailers view as a threat to their  
5 business and profitability? On a 1 to 5 scale, with 5 being  
6 extremely concerned, rate the following issues. (Report is  
7 average of responses.)

8 3.4 The expanded presence of music products in mass  
9 merchants, like Wal-Mart and Costco.

10 3.2 Competition from internet and catalog merchants.

11 \* \* \*

12 2.5 MAP pricing policies that set margins too low.

13 50. NAMM hosted another session entitled, "Does the Industry Need A  
14 MAP makeover?" At this session, Music for Everyone ("MFE"), a California  
15 retailers association, presented a "voluntary MAP formula/guideline" which it  
16 "recommended for general use..."<sup>16</sup>

17 51. MFE published, and presented at the January 2006 NAMM trade show  
18 with NAMM's participation and consent, the following two pricing formulas based  
19 on retail cost and which were "designed for all instruments and all combo and audio  
20 products"<sup>17</sup>:

21 Proposed MAP Formula  
22 Recommended Minimum Profit Formulas for A & B  
23 Discounts

24 \* \* \*

25 Retail [\$1-\$149] x 0.5 x 2.00 = MAP (0% off retail) \*  
26 Retail [\$150-\$249] x 0.5 x 1.90 = MAP (5% off retail) \*  
27 Retail [\$250-\$299] x 0.5 x 1.85 = MAP (7.5% off retail) \*

28 <sup>15</sup> "Justified Optimism or rose-colored glasses?" Music Trades (March 1, 2006).

<sup>16</sup> "Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense," Music Trades (November 1, 2005).

<sup>17</sup> "Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense," Music Trades (November 1, 2005).

1           Retail [\$300-\$349] x 0.5 x 1.80 = MAP (10% off retail) \*\*  
 2           Retail [\$350-\$399] x 0.5 x 1.75 = MAP (12.5% off retail)  
 3           \*\*

4           Retail [\$400-\$449] x 0.5 x 1.70 = MAP (15% off retail) \*  
 5           Retail [\$450-\$499] x 0.5 x 1.65 = MAP (17.5% off retail) \*  
 6           Retail [\$500 and up] x 0.5 x 1.60 = MAP (20% off retail) \*  
 7           Retail [\$550-\$599] x 0.5 x 1.55 = MAP (22.5% off retail)  
 8           \*\*

9           Retail [\$600 and up] x 0.5 x 1.50 = MAP (25% off retail)  
 10           \*\*

11           \* Formula A

12           \*\* Formula B

13           52. MFE explained that the formulas were designed to permit “[f]ormula  
 14 discounts from retail start[ing] at zero” and to provide a “much higher” profit  
 15 percentage for lower-priced products.”<sup>18</sup>

16           53. MFE even went so far at the NAMM show to encourage manufacturers  
 17 to adopt the MAP pricing reflected in Formula A, capping permitted discounts at 20%  
 18 and stating that Formula A “is likely to be ... accepted widely.” Nonetheless, MFE  
 19 stated that no MAP pricing should be lower than that reflected in Formula B, stating  
 20 “the formula B profits are the minimum that brick-and-mortar full service music  
 21 instrument retailers require to survive, and hopefully thrive.”<sup>19</sup>

22           54. At the 2006 Summer NAMM Show, NAMM again held an industry  
 23 panel discussion, comprised of the NAMM president, a vice president of Yamaha,  
 24 and the Chairman and CEO of Fender Musical Instruments, among others.<sup>20</sup> NAMM  
 25 touted this roundtable as follows: “In the two-hour session suppliers and retailers of  
 26 all sizes will be able to share views about critical issues affecting profitability,  
 27  
 28

<sup>18</sup> “Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense,” Music Trades (November 1, 2005).

<sup>19</sup> “Marketplace realities demand new approach to MAP policies: with fixed costs the same on all merchandise, a sliding pricing scale makes sense,” Music Trades (November 1, 2005).

<sup>20</sup> “Austin goes all out for NAMM: Austin got high marks as a fabulous trade show venue, but attendance levels barely made a passing grade. Nevertheless, the industry still seems committed to a summer show. The only question, where to have it; Part 2; Company overview,” Music Trades (September 1, 2006).

1 including MAP pricing, internet sales tax, and the entrance of mass consumer  
2 merchandisers into the industry.”<sup>21</sup> Among the topics facilitated at this meeting were  
3 MAP prices that were set too low and profit margins.<sup>22</sup>

4 55. NAMM continued to facilitate industry discussions of MAP pricing at  
5 its 2007 Winter show. One roundtable discussion focused on, *inter alia*, increasing  
6 profit margins and MAP pricing.<sup>23</sup>

7 56. Thus, NAMM organized meetings and programs for its members at  
8 which competing retailers of musical instruments, as well as manufacturers of those  
9 instruments, were permitted and encouraged to exchange information and discuss  
10 strategies for implementing minimum advertised price policies, the restriction of retail  
11 price competition, and the need for higher retail prices.

12 57. Representatives of NAMM determined the scope of information  
13 exchange and discussion by selecting moderators and setting the agenda for these  
14 programs.

15 58. At these NAMM-sponsored events, NAMM members discussed the  
16 adoption, implementation, and enforcement of minimum advertised price policies; the  
17 details and workings of such policies; appropriate and optimal retail price and  
18 margins; and other competitively sensitive issues.

19 59. Relative to Guitar Center and other retail members of NAMM, internet  
20 based retailers are small companies that compete in the relatively new trade channel  
21 known variously as “electronic commerce,” “e commerce,” “e tailing,” “internet

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22 <sup>21</sup> “Get ready for a memorable show as the world's live music capital hosts  
23 NAMM; NAMM PREVIEW: Summer Session In Austin,” Music Trades (July 1,  
2006).

24 <sup>22</sup> “Austin goes all out for NAMM: Austin got high marks as a fabulous trade  
25 show venue, but attendance levels barely made a passing grade. Nevertheless, the  
26 industry still seems committed to a summer show. The only question, where to have  
it; Part 2; Company overview,” Music Trades (September 1, 2006).

27 <sup>23</sup> “Why going to NAMM is a total no-brainer: new products, smart people, and  
28 tons of educational sessions add up to the single biggest business opportunity of the  
year. If you're serious, there's only one thing to do: Show Up!; NAMM 2007  
PREVIEW; Calendar,” Music Trades (January 1, 2007).

1 retail,” etc. Internet retailers of FI Products are highly efficient competitors because,  
2 among other reasons, their operating expenses are low. This allows them to compete  
3 vigorously on price, both with other internet retailers and with retailers in other trade  
4 channels, such as Guitar Center (which operates through “brick and mortar” stores as  
5 well as on the internet). Thus, when allowed to compete freely, internet retailers’  
6 price competition enhances consumer welfare by bringing down prices.

7 60. By the 2000s, NAMM and its members recognized that the increased  
8 popularity of “e-commerce,” with its associated increase in price competition, posed a  
9 substantial threat to NAMM members’ sales and profits. Thus, NAMM, whose retail  
10 members are generally considered “traditional” brick-and-mortar retailers because  
11 they primarily sells products through their physical store locations, considered ways  
12 to thwart internet retailer competitors.

13 61. NAMM and its members’ response to internet retailing was both  
14 predictable and anticompetitive. As recognized at an FTC 2002 public workshop,  
15 entitled “Possible Anticompetitive Efforts to Restrict Competition on the Internet,”  
16 one expert explained:

17 The promise of the world of electronic commerce is to  
18 create an environment where consumers can freely shop  
19 between various competitive alternatives. **By reducing  
20 transaction costs and improving transparency, the  
Internet offers the potential of dramatically improving  
competition in various retail markets.**

21 \* \* \*

22 **[But] as new market forces arise, . . . “traditional”  
23 competitors often respond to the threat by trying to  
create barriers to thwart those new entrants.**

24 See David A. Balto, Testimony Before the FTC, Office of Policy Planning, Public  
25 Workshop on E-Commerce, at 1-2 (October 10, 2002) (emphasis added).

26 62. Just as the experts predicted, NAMM encouraged its members to devise  
27 an illegal plan to combat internet retailers by exacting agreements from the  
28 manufacturers of FI Products being sold through Guitar Center and NAMM

1 members' stores (or that desired to sell products at their stores) to require, on penalty  
2 of termination and as a condition of doing business with them, that the manufacturer  
3 ensure that its other retailers refrain from discounting.

4 63. NAMM facilitated the discussion of, and sought and obtained the  
5 agreement of its manufacturer members, to impose and enforce MAP policies solely  
6 for Guitar Center and its retail members' benefit and not for any legitimate pro-  
7 competitive reason.

### 8 The FTC Action

9 64. In March 2009, the Federal Trade Commission ("FTC") issued a cease  
10 and desist order to NAMM and at the same time settled the FTC's charges that  
11 NAMM had "permitted and encouraged" acts constituting violations of Section 5 of  
12 the FTC Act among its members and that the acts and practices of NAMM "constitute  
13 unfair methods of competition in or affecting commerce in violation of Section 5 of  
14 the Federal Trade Commission Act, as amended 15 U.S.C. § 45." The FTC also  
15 alleged that absent appropriate relief "such acts and practices, or the effects thereof  
16 will continue or recur . . ."

17 65. Specifically, the FTC, after an investigation, alleged that between 2005  
18 and 2007, NAMM organized various meetings and programs for its members, at  
19 which competing retailers of musical instruments were permitted and encouraged to  
20 exchange competitively sensitive information, strategies for implementing minimum  
21 advertised pricing and restrictions of retail price competition.

22 66. The FTC alleged that the "challenged conduct served no legitimate  
23 business purpose and resulted in no significant efficiency benefits."

24 67. According to the FTC's press release announcing NAMM's settlement,  
25 "the FTC's proposed consent order is designed to remedy NAMM's anti-competitive  
26 conduct." The Commission's vote to accept the complaint and the consent order was  
27 4-0.

1           68. The FTC has alleged that no significant pro-competitive benefit was  
2 derived from the challenged conduct. After analyzing the type of information  
3 involved, the level of detail, the absence of procedural safeguards, and overall market  
4 conditions, the FTC concluded that the exchange of information engineered by  
5 NAMM lacked a pro-competitive justification.

6           69. The FTC has ordered NAMM to cease and desist from:

7           (a) Entering into, adhering to, enforcing, urging, encouraging,  
8 advocating, suggesting, assisting or otherwise facilitating any Musical Product  
9 Manufacturer or Musical Product Dealer to enter into, adhere to or enforce any  
10 combination, conspiracy, agreement or understanding between or among any Musical  
11 Product Manufacturers of Musical Product Dealers relating to:

12                   (i) the retail price of any Musical Product;

13                   (ii) any term, condition or requirement upon which any  
14 Musical Product Manufacturer or Musical Product Dealer deals, or is willing to deal,  
15 with any other Musical Product Manufacturer or Musical Product Dealer, including,  
16 but not limited to, Price Terms, margins, profits, or pricing policies, including but not  
17 limited to Minimum Advertised Price Policies or Resale Price Maintenance Policies;  
18 or

19                   (iii) the refusal to do business, or the reduction of business,  
20 with particular Musical Product Manufacturers or Musical Product Dealers.

21           (b) Urging, encouraging, advocating, suggesting, coordinating,  
22 participating in, or facilitating in any manner the exchange of information between or  
23 among Musical Product Manufacturers or Musical Product Dealers relating to:

24                   (i) the retail price of Musical Products; or

25                   (ii) any term, condition or requirement upon which any  
26 Musical Product Manufacturer or Musical Product Dealer deals, or is willing to deal,  
27  
28

1 with any other Musical Product Manufacturer or Musical Product Dealer, including  
2 but not limited to, Price Terms, margins, profits, or pricing policies, including but not  
3 limited to Minimum Advertised Price Policies or Resale Price Maintenance Policies.

4 **ANTI-COMPETITIVE EFFECTS OF DEFENDANTS'**  
5 **UNLAWFUL CONDUCT**

6 70. The unlawful contract, combination or conspiracy alleged above had,  
7 *inter alia*, the following effects:

8 a. Prices charged by defendants and their co-conspirators to plaintiff  
9 and the members of the class for FI Products were maintained at artificially high and  
10 noncompetitive levels; and

11 b. Plaintiff and other members of the class were required to pay  
12 more for FI Products than they would have paid in a competitive marketplace,  
13 unfettered by defendants' and their co-conspirators collusive and unlawful conduct.

14 72. During and throughout the Class Period, plaintiff and members of the  
15 class directly purchased FI Products in the United States.

16 73. Plaintiff and the other class members paid more for FI Products that  
17 they purchased than they would have paid under conditions of free and open  
18 competition.

19 74. As a direct and proximate result of the illegal combination, contract or  
20 conspiracy alleged herein, plaintiff and the members of the class were injured and  
21 financially damaged in their businesses and property in amounts that are not presently  
22 determinable.

23 **TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT**  
24 **CONCEALMENT, AND EQUITABLE TOLLING**

25 75. Plaintiff did not discover and could not have discovered through the  
26 exercise of reasonable diligence the existence of the claims sued upon herein until the  
27 FTC issued a press release in March 2009.



1 or conspiracy to unreasonably restrain trade and commerce in violation of Section 1  
2 of the Sherman Antitrust Act (15 U.S.C. § 1) by artificially reducing or eliminating  
3 competition in the United States.

4 84. In particular, defendants and their co-conspirators combined and  
5 conspired to raise, fix, maintain or stabilize the prices of FI Products sold in the  
6 United States.

7 85. As a result of defendants' unlawful conduct, prices for FI Products were  
8 raised, fixed, maintained and stabilized in the United States.

9 86. The contract, combination or conspiracy among defendants consisted of  
10 a continuing agreement, understanding, and/or concerted action among defendants  
11 and their co-conspirators.

12 87. For purposes of formulating and effectuating their contract, combination  
13 or conspiracy, defendants and their co-conspirators did those things they contracted,  
14 combined, or conspired to do, including but not limited to:

15 a. participating in meetings and conversations to discuss the prices  
16 and supply of FI Products;

17 b. communicating in writing and orally to fix target prices, floor  
18 prices, and price margins for FI Products;

19 c. exchanging competitively sensitive information among each other  
20 to facilitate their conspiracy, including minimum advertised pricing, strategies for  
21 raising retail prices, restricting retail price competition;

22 d. agreeing to manipulate prices and supply of FI Products sold in  
23 the United States in a manner that deprived direct purchasers of free and open  
24 competition; and

25 e. selling FI Products to customers in the United States at  
26 non-competitive prices.

27  
28

1           88. As a result of defendants' unlawful conduct, plaintiff and the other  
2 members of the class were injured in their businesses and/or property in that they paid  
3 more for FI Products than they otherwise would have paid in the absence of  
4 defendants' unlawful conduct.

5           **PRAYER FOR RELIEF**

6           WHEREFORE, plaintiff respectfully requests that:

7           A. The Court determine that this action may be maintained as a class action  
8 under Rule 23 of the Federal Rules of Civil Procedure, that plaintiff be appointed  
9 class representative, and that plaintiff's counsel be appointed as counsel for the class;  
10

11           B. The contract, combination or conspiracy, and the acts done in  
12 furtherance thereof by defendants and their co-conspirators, be adjudged to have been  
13 in violation of Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1 and  
14 Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26;  
15

16           C. Plaintiff and the class recover compensatory damages, as provided by  
17 law, determined to have been sustained by each of them, and that joint and several  
18 judgments in favor of plaintiff and the class, respectively, be entered against  
19 defendants, in an amount to be trebled in accordance with antitrust laws, and each of  
20 them;  
21  
22

23           D. Plaintiff and the class recover their costs of this suit, including  
24 reasonable attorneys' fees and expert fees, as provided by law;  
25

26           E. Plaintiff and the class be awarded pre-judgment and post-judgment  
27 interest at the highest legal rate to the extent provided by law; and  
28

1 F. Defendants and all other persons acting or claiming to act on their  
2 behalf be permanently enjoined and restrained from, in any manner, continuing,  
3 maintaining or renewing the contract, combination or conspiracy alleged herein, or  
4 from engaging in any other contract, combination or conspiracy having similar  
5 purpose of effect; and  
6

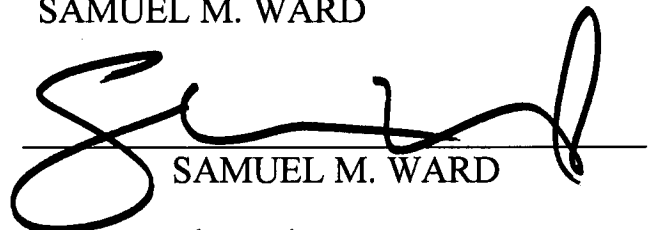
7  
8 G. Plaintiff and the class be granted such other, further relief as the nature  
9 of the case may require or as may seem just and proper to this Court under the  
10 circumstances.  
11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial by jury on all claims so triable.

14 DATED: October 14, 2009

BARRACK, RODOS & BACINE  
STEPHEN R. BASSER  
SAMUEL M. WARD

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18   
SAMUEL M. WARD

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20 600 West Broadway, Suite 900  
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Attorneys for Plaintiff

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
Cynthia Sepulveda

**(b) County of Residence of First Listed Plaintiff** San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
Samuel M. Ward, Barrack, Rodos & Bacine, 600 West  
Broadway, Ste. 900, San Diego, CA 92101; 619/230-0800

**DEFENDANTS**  
Guitar Center, Inc. and National Association of Music Merchants, Inc.

County of Residence of First Listed Defendant CLEVEDALE  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. BY: \_\_\_\_\_

Attorneys (If Known) **09 CV 2267 LAB RBB**

**FILED**  
OCT 14 AM 10:39  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Sherman Antitrust Act - 28 U.S.C. Section 1331, 1337, 15 U.S.C. Section 15

Brief description of cause: \_\_\_\_\_

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$** \_\_\_\_\_

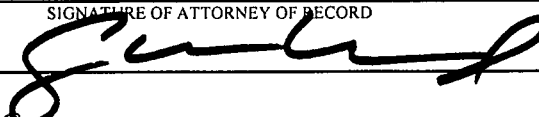
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE SEE ATTACHED

DOCKET NUMBER SEE ATTACHED

DATE 10/14/2009

SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # 6226 AMOUNT 350.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

CR MS 10/14/09

**RELATED CASES**

Docket Number	Judge
Case No. 09-2002	Honorable Larry A. Burns
Case No. 09-2146	Honorable Roger T. Benitez
Case No. 09-2151	Honorable John A. Houston
Case No. 09-2156	Honorable Barry Ted Moskowitz
Case No. 09-2178	Honorable Barry Ted Moskowitz
Case No. 09-2211	Honorable Roger T. Benitez
Case No. 09-6897	Honorable George H. Wu
Case No. 09-7015	Honorable Gary A. Feess
Case No. 09-6104	Honorable George M. Marovich

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS006226  
Cashier ID: msweeney  
Transaction Date: 10/14/2009  
Payer Name: SAM WARD

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CIVIL FILING FEE  
For: SEPULVEDA V GUITAR CENTER  
Case/Party: D-CAS-3-09-CV-002267-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 3189  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.