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ENDORSED
FILED
San Francisco County Superior Court

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GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

OVERSTOCK.COM, INC., a Delaware corporation; KEITH CARPENTER, an individual; OLIVIER CHENG, an individual; MARY HELBURN, an individual; ELIZABETH FOSTER, an individual; and HUGH D. BARRON, an individual,

Plaintiffs,

v.

MORGAN STANLEY & CO., INCORPORATED, THE GOLDMAN SACHS GROUP, INC., BEAR STEARNS SECURITIES CORP., BANC OF AMERICA SECURITIES LLC, THE BANK OF NEW YORK, CITIGROUP, INC., CREDIT SUISSE (USA) INC., DEUTSCHE BANK SECURITIES, INC., MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., UBS FINANCIAL SERVICES, INC., and DOES 1 through 100,

Defendants.

Case No. CGC-07-460147

COMPLAINT FOR:

(1) CONVERSION

(2) TRESPASS TO CHATTELS

(3) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(4) VIOLATIONS OF CALIFORNIA CORPORATIONS CODE SECTIONS 25400, *et seq.*

(5) UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE SECTIONS 17200, *et seq.* AND SECTIONS 17500, *et seq.*)

Plaintiffs Overstock.com, Inc., a Delaware corporation ("Overstock"); David Trent, an individual; Keith Carpenter, an individual; Olivier Cheng, an individual; Mary Helburn, an individual; and Hugh D. Barron, an individual (collectively, "Plaintiffs") for their Complaint, allege as follows:

NATURE OF THE CASE

1. Defendants have and continue to participate in a massive, illegal stock market manipulation scheme. Defendants control approximately 80% of the prime brokerage market. Among other things, Defendants have executed short sales of the stock of Overstock with no intention of delivering stock to settle the short sale. Rather, Defendants have intentionally failed to deliver Overstock stock to settle the short positions. Defendants' actions caused and continue to cause dramatic distortions with regard to the nature and amount of trading in Overstock stock, which have caused Overstock's share price to drop. Defendants' conduct violates California's securities laws, common law, and constitutes unfair business practices under California law. Plaintiffs were harmed by Defendants' conduct.

PARTIES

2. Overstock is a Delaware corporation with its principal place of business in Salt Lake City, Utah. Overstock's common stock trades on the NASDAQ National Securities Market ("NASDAQ) under the symbol "OSTK."

3. Plaintiff Keith Carpenter is an individual and resident of New York, New York, and is a current or former owner of Overstock common stock at the relevant times herein.

4. Plaintiff Olivier Cheng is an individual and resident of New York, New York, and is a current or former owner of Overstock common stock at the relevant times herein.

5. Plaintiff Mary Helburn is an individual and resident of Idaho, and is a current or former owner of Overstock common stock at the relevant times herein.

6. Plaintiff Elizabeth Foster is an individual and resident of New York, and is a current or former owner of Overstock common stock at the relevant times herein

7. Plaintiff Hugh D. Barron is an individual and resident of Marin County, California, and is a current or former owner of Overstock common stock at the relevant times herein.

8. Defendant Morgan Stanley & Co., Incorporated ("Morgan Stanley") is a Delaware corporation. Morgan Stanley is qualified to and does do business in the state of California. Morgan Stanley is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Morgan Stanley is the largest prime brokerage firm in terms of aggregate client assets (23.1% of the prime brokerage market).

9. Defendant The Goldman Sachs Group, Inc. ("Goldman") is a Delaware corporation with its principal place of business in New York, New York. Goldman is qualified to and does do business in the state of California. Goldman is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Goldman is the third largest prime brokerage firm in terms of aggregate client assets (16.5% of the prime brokerage market).

10. Defendant Bear Stearns Securities Corp ("Bear Stearns") is a Delaware Corporation with its principal place of business in New York, New York. Bear Stearns is qualified to and does do business in the state of California. Bear Stearns is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belie, Bear Stearns is the second largest prime brokerage firm in terms of aggregate client assets (20.9% of the prime brokerage market).

11. Defendant Banc of America Securities, LLC, ("Banc of America") is a Delaware corporation, qualified to do business in California. Upon information and belief, Banc of America has a principal office in San Francisco, California. Banc of America is in the business of, among other things, providing prime brokerage services and securities lending from its San Francisco office. Upon information and belief, Banc of America is the tenth largest prime brokerage firm in terms of aggregate client assets (2.0% of prime brokerage market).

12. Defendant The Bank of New York ("Bank of New York") is a New York corporation. Bank of New York is qualified to and does do business in the state of California.

Bank of New York is in the business of, among other things, providing prime brokerage services and securities lending.

13. Defendant Citigroup, Inc. ("Citigroup") is a Delaware Corporation. Citigroup is qualified to and does do business in the state of California. Citigroup is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Citigroup is the sixth largest prime brokerage firm in terms of aggregate client assets (2.7% of the prime brokerage market).

14. Defendant Credit Suisse (USA) Inc. ("Credit Suisse") is a Delaware corporation. Credit Suisse is qualified to and does do business in the state of California. Credit Suisse is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Credit Suisse is the ninth largest prime brokerage firm in terms of aggregate client assets (2.2% of the prime brokerage market).

15. Defendant Deutsche Bank Securities, Inc. ("Deutsche Bank") is a Delaware corporation. Deutsche Bank is qualified to and does do business in the state of California. Deutsche Bank is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Deutsche Bank is the eighth largest prime brokerage firm in terms of aggregate client assets (2.5% of the prime brokerage market).

16. Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") is a Delaware corporation. Merrill Lynch is qualified to and does do business in the state of California. Merrill Lynch is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, Merrill Lynch is the fifth largest prime brokerage firm in terms of aggregate client assets (4.6% of the prime brokerage market).

17. Defendant UBS Financial Services, Inc. ("UBS") is a Delaware corporation. UBS is qualified to and does do business in the state of California. UBS is in the business of, among other things, providing prime brokerage services and securities lending. Upon information and belief, UBS is the fourth largest prime brokerage firm in terms of aggregate client assets (5.9% of the prime brokerage market).

18. Upon information and belief, the activities of Defendants in the state of California are an integral part of their prime brokerage business. Defendants each maintain multiple offices in California in which, upon information and belief, they conduct prime brokerage activities, including the activities which form the basis of this action.

19. The names and capacities of the Defendants named as Does 1 through 100, inclusive, are presently unknown to the Plaintiffs. Plaintiffs are informed and believe that Does 1 through 100, inclusive, are the affiliates, partners, co-venturers, co-conspirators and/or aiders and abettors of the other Defendants, and each other, and Defendants agreed, conspired and participated with the other Defendants in doing the things alleged herein, and ratified and accepted the benefits of the acts of the other Defendants, such that they are in some manner responsible for the acts and omissions complained of herein. Accordingly, these Defendants, each of whom is legally responsible for the acts alleged herein, are sued by these fictitious names. When the identities and capacities of Does 1 through 100, inclusive, are ascertained, Plaintiffs will seek leave of Court to amend the Complaint accordingly.

OVERSTOCK'S BUSINESS

20. Overstock is a leading "closeout" retailer. It offers customers the opportunity to shop conveniently online for brand name merchandise at heavily discounted prices, and offers its suppliers an alternative means of inventory liquidation distribution. Overstock launched its first website through which customers could purchase products in 1999. Since that time, Overstock's overall business and gross revenues have grown steadily and consistently each year since 2000. Overstock's annual revenues for the year ending December 31, 2005, were approximately $804 million. Further, consistent with Overstock's strategy and business model, traffic on the company's website has continued, and continues, to increase.

21. Overstock's economic links to California are substantial. In 2005, California sales amounted to over 15% of the company's overall sales. Overstock does business with a significant number of California-based suppliers and buys a substantial amount of its inventory from such suppliers. In 2005 and the first six months of 2006 alone, Overstock

purchased over $144 million in inventory from its California trading partners, which was 17% of Overstock's total purchasing expenditure.

22. Three large vendors in the San Francisco Bay Area accounted for more than $19 million of Overstock's purchasing expenditures on California products during this 18 month time period. During that same time period, Overstock purchased over $57 million in advertising services from California companies, including $18 million from San Francisco Bay Area companies Google, Inc., Yahoo, Nextag, and Shopping.com.

23. Each of Overstock's four public offerings was handled by one or more investment banking firms headquartered in San Francisco, California. There are also a substantial number of Overstock shareholders located in California, and California residents own shares of Overstock in at least hundreds of brokerage accounts.

DEFENDANTS' WRONGFUL ACTIONS

24. Collectively controlling approximately 80% of the prime brokerage market, Defendants act as settlement agents, providing custody for assets and financing for their clients who are hedge funds, money managers, market makers, arbitrageurs, specialists, and other professional investors. Defendants hold themselves out as assuring the proper accounting and settlement of stock trades, including short sales, and providing most of the lending of securities in the marketplace that settles short sales.

25. A "short sale" of stock is generally the sale of a stock the seller does not currently own or that the seller will borrow for delivery on the trade settlement date – the date on which payment is made to settle the stock sale. The seller speculates that the price of the stock will go down so that, if the price of the stock in fact drops by the trade settlement date, the short seller is then able to make a profit from the fall in price.

26. Generally speaking, in a short sale, a person sells stock that he or she does not then own by borrowing the stock and warranting to the stock lender – the broker-dealer – that the loan will be "covered" with shares purchased at a later date. The borrowed stock will come from either the broker-dealer's own inventory, the margin account of other firm clients, or another lender – and the broker-dealer will charge interest on the loan. Defendants, among other

things, promise to locate shares of the shorted stock, borrow the stock, and deliver the stock. Defendants charge a fee to the short sellers for locating and delivering the borrowed shares.

27. If Defendants fail to deliver the shares within three days of the short sale, the sale becomes a "naked short sale" and the shares become "fails to deliver."

28. In a naked short sale, the sale to the buyer still occurs, but it is of phantom shares because real shares were never delivered.

29. Naked short selling destabilizes and depresses a company's share price because it removes any supply constraint on stock sales. An unlimited supply of any commodity, including a company's stock, places a downward pressure on the price of that commodity.

30. Since at least January 2005, large quantities of Overstock shares have been the subject of naked short selling. Indeed, there have been instances where the short position in Overstock has exceeded the company's entire supply of outstanding shares.

31. These persistent failures to deliver have created immense downward pressure on the price of Overstock's stock by creating an unlimited supply of that stock for sale. With Defendants' failing to buy or borrow a security for settlement, naked short positions in Overstock have grown very large.

32. Upon information and belief, the vast majority of Defendants' fails to deliver Overstock stock are intentional, and not due to inadvertent errors. Defendants are motivated to intentionally fail to deliver stocks because this removes a core cost from their securities lending business – the cost of providing the security – thus allowing them to earn more money through the charging of fees, commissions and/or interest through phantom securities transactions. Upon information and belief, Defendants earn approximately $10 billion annually from their securities lending operations.

33. Overstock's share price is artificially depressed because of the oversupply caused by failing to settle transactions with shares issued by Overstock. Shares issued by Overstock in the normal course of raising capital as a public company are not being properly valued because of the dilutive effect of the phantom shares, which were not issued by Overstock.

Selling but failing to deliver actual shares issued by Overstock has the effect of generating a virtually unlimited supply of Overstock shares for sale.

34. Upon information and belief, Defendants' market manipulation took place in the State of California.

35. Plaintiffs are informed and believe that Defendants and Does 1 through 100, individually and collectively, each and all of them agreed and conspired to engage in the unlawful, unfair, or fraudulent business acts or practices, and/or aided and abetted, as alleged herein, the acts of each other, and encouraged, ratified, and/or accepted the benefits of the acts of each other.

36. Defendants' wrongful actions have resulted in substantial harm to Plaintiffs. Among the harms Defendants' actions have caused Plaintiffs are: loss of the price per share of Overstock common stock, which has declined substantially; and impairment of Overstock's share price continued ability to grow at historic rates.

37. Each Plaintiff sold shares of Overstock during the timeframes alleged herein that Defendants acted wrongfully at prices that were artificially depressed due to Defendants' wrongful conduct. Plaintiffs were damaged in an amount subject to proof at trial, which amount exceeds the jurisdictional minimum of this court.

FIRST CAUSE OF ACTION
(Conversion – Plaintiffs against All Defendants)

38. Paragraphs 1 through 37, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

39. Plaintiffs own specific property in the form of Overstock common stock, which includes intangible benefits and prerogatives susceptible of disposition. Plaintiffs have a legitimate claim to the exclusive interest in each of their shares of stock which are capable of precise definition as well as possession or control. By the conduct complained of, Defendants have substantially wrongfully interfered with Plaintiffs' rights to possession of their property. Plaintiffs have therefore been damaged by the loss of the value of those rights.

SECOND CAUSE OF ACTION
(Trespass to Chattels – Plaintiffs against All Defendants)

40. Paragraphs 1 through 39, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

41. Defendants have intentionally interfered with Plaintiffs' rights in their Overstock stock, thereby proximately causing injury to Plaintiffs.

42. Plaintiffs are therefore entitled to recover their actual damages suffered by the loss in value in Plaintiffs' Overstock stock and by reason of the impairment of the stock rights they hold as well as the interference with the ordinary and intended operation and exercise of those rights.

THIRD CAUSE OF ACTION
(Intentional Interference with Prospective Economic Advantage – Overstock against All Defendants)

43. Paragraphs 1 through 42, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

44. Overstock has or had valuable prospective economic relationships and business opportunities with its suppliers, bankers, customers, lenders, investors and prospective investors, from which Overstock derived economic gain, and from which Overstock had a reasonable expectancy of deriving future economic gain. Defendants were and are aware of these relationships. Defendants, through the acts alleged herein, have and continue to, wrongfully, knowingly and intentionally act to interfere with and destroy or harm Overstock's existing and/or prospective business relationships.

45. Defendants' wrongful acts as alleged herein have actually interfered with and disrupted Overstock's relationships and/or prospective relationships, and these acts designed to interfere with and disrupt these relationships have been a substantial factor in causing Overstock's harm through the loss of prospective economic advantage.

FOURTH CAUSE OF ACTION
(California Corporations Code §§ 25400, *et seq.* – Plaintiffs Against All Defendants)

46. Paragraphs 1 through 45, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

47. By virtue of the allegations set forth above, Defendants violated California Corporations Code Sections 25400(a) and (b) *et seq.*, Defendants' violations were committed either directly or indirectly within California.

48. Defendants knew that the transactions they were effecting would be reported solely as sales, without corresponding purchases or changes in the beneficial ownership of Overstock common stock. Defendants acted with the intent to and thereby did create a false or misleading appearance with respect to the market for Overstock's common stock, in violation of Section 25400(a).

49. Defendants effected repeated transactions in Overstock common stock to create actual or apparent active trading in Overstock and depress the price of Overstock with the knowledge that such action would depress the price and to induce the sale of that stock by others in violation of Section 25400(b).

50. As a proximate result of Defendants' acts and omissions occurring in California with regard to Overstock, as alleged, Overstock's stock price was manipulated downward, and Plaintiffs were injured by such downward manipulation.

51. Pursuant to the provisions of California Corporations Code Section 25500, Plaintiffs are entitled to, and should be awarded, damages against Defendants for unlawful manipulation of the price of Overstock stock.

FIFTH CAUSE OF ACTION
(Violation of California Business & Professions Code §§ 17200, *et seq.* and §§ 17500, *et seq.* – Plaintiffs against All Defendants)

52. Paragraphs 1 through 51, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

53. Defendants' illegal stock market manipulation constituted unlawful, unfair, and/or fraudulent business acts or practices by the Defendants, and each of them, all in violation of California Business & Professions Code §§ 17200, *et seq.* and §§ 17500, *et seq.*

54. Plaintiffs have been injured by the Defendants' violations of California Business & Professions Code §§ 17200, *et seq.* and §§ 17500, *et seq.* and Defendants have been unjustly enriched at Plaintiffs' expense.

55. Plaintiffs are informed and believe that Defendants and Does 1 through 100, individually and collectively, each and all of them, agreed and conspired to engage in the unlawful, unfair, or fraudulent business acts or practices, and/or aided and abetted, as alleged herein, the acts of each other, and encouraged, ratified, and/or accepted the benefits of the acts of each other.

56. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining the Defendants and Does 1 through 100, individually and collectively, each and all of them from committing further unfair trade practices and restitution from Defendants according to proof.

PRAYER

1. For general damages in an amount according to proof at trial, but of approximately $3,480,000,000.00, well in excess of the jurisdictional minimum of this Court.

2. For special damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of this Court.

3. For punitive damages.

4. For prejudgment interest.

5. For costs;

6. For other applicable remedies as provided in the Civil Code, Corporations Code and Business and Professions Code;

7. For injunctive relief; and

8. For such and further relief as the Court may deem appropriate.

Dated: February 2, 2007

STEIN & LUBIN LLP

By: ______________________________

Theodore A. Griffinger, Jr.
Attorneys for Plaintiffs
OVERSTOCK.COM, INC., a Delaware corporation; DAVID TRENT, an individual; KEITH CARPENTER, an individual; OLIVIER CHENG, an individual; MARY HELBURN, an individual; ELIZABETH FOSTER, an individual; and HUGH D. BARRON, an individual