

**COPY**

**FILED**

AUG 11 2005

MARIN COUNTY SUPERIOR COURT  
BY: K. MAIN, DEPUTY

1 William J. Sexton (State Bar No. 164929)  
2 Tae-Yoon Kim (State Bar No. 209934)  
3 SIEGLER LAW GROUP  
4 9454 Wilshire Boulevard, Suite M-16  
5 Beverly Hills, California 90212  
6 Telephone: (310) 777-1111  
7 Telecopy: (310) 777-1114

8 Attorneys for Plaintiffs  
9 OVERSTOCK.COM, INC., a Delaware corporation  
10 and MARY HELBURN, an individual

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF MARIN

13 OVERSTOCK.COM, INC., a Delaware  
14 corporation; MARY HELBURN, an  
15 individual,

16 Plaintiffs,

17 vs.

18 GRADIENT ANALYTICS, INC., an  
19 Arizona corporation; ROCKER  
20 PARTNERS, LP, a New York limited  
21 partnership; ROCKER MANAGEMENT,  
22 LLC, a New Jersey limited liability  
23 company; ROCKER OFFSHORE  
24 MANAGEMENT COMPANY, INC., a  
25 New York corporation; DAVID ROCKER,  
26 an individual; MARC COHODES, an  
27 individual; JAMES CARR BETTIS, an  
28 individual; DONN VICKREY, an  
individual; MATTHEW KLIBER, an  
individual; and DOES 1 through 100,

Defendants.

CASE NO. CV 053693

COMPLAINT FOR:

- 1) UNFAIR COMPETITION
- 2) NEGLIGENCE

1 Plaintiffs Overstock.com, Inc. and Mary Helburn, for their Complaint,  
2 allege as follows:

3 **NATURE OF THE CASE**

4 This is an action for unfair business practices where the Defendants have  
5 conspired to denigrate the business of online retailer Overstock.com so as to reap personal  
6 profits for themselves. The plaintiffs are Overstock.com, Inc. and Mary Helburn  
7 (collectively "Plaintiffs"). The defendants are Gradient Analytics, Inc., Rocker Partners,  
8 LP, Rocker Management, LLC, Rocker Offshore Management Company, Inc., David  
9 Rocker, Marc Cohodes, James Carr Bettis, Donn Vickrey, and Matthew Kliber. As set  
10 forth below, the complaint alleges claims for (i) unfair competition in violation of  
11 Business & Professions Code §§ 17200 et seq., 17500, et seq., and (ii) negligence under  
12 California common law.

13  
14 **PARTIES**

15 1. Overstock.com, Inc. ("Overstock") is a Delaware corporation with its  
16 principal place of business in Salt Lake City, Utah.

17 2. Mary Helburn ("Helburn") is a citizen of California, residing in Santa Clara  
18 County, California.

19 3. Upon information and belief, Gradient Analytics, Inc. ("Gradient") is an  
20 Arizona corporation with its principal place of business in Scottsdale, Arizona; was  
21 formerly known as Camelback Research Alliance, Inc., and adopted its present name in  
22 November 2004; is owned and controlled by Defendants James Carr Bettis and Donn  
23 Vickrey, and disseminates its research reports to hedge funds, mutual funds and financial  
24 commentators on a subscription basis throughout the State of California.

25 4. Upon information and belief, Rocker Partners, LP ("Rocker Partners") is a  
26 New York limited partnership with its principal place of business in New York, New  
27 York, which is authorized to conduct and transact business in California, and which  
28 maintains an address in Larkspur, California, within Marin County. Upon information

1 and belief, Rocker Partners is owned and controlled by its general partners, Defendants  
2 David Rocker and Marc Cohodes.

3 5. Upon information and belief, Rocker Offshore Management Company, Inc.  
4 (“Rocker Offshore”) is a New York corporation which has its principal place of business  
5 in Millburn, New Jersey, and which is authorized to conduct and transact business in  
6 California. Upon information and belief, Rocker Offshore is owned, operated and  
7 controlled by Defendant David Rocker.

8 6. Upon information and belief, Rocker Management, LLC (“Rocker  
9 Management”) is a New Jersey limited liability company which has its principal place of  
10 business in Millburn, New Jersey, which is authorized to conduct and transact business in  
11 California, and which maintains an address in Larkspur, California, within Marin County.  
12 Upon information and belief, Rocker Management is owned, operated and controlled by  
13 Defendants David Rocker and Marc Cohodes.

14 7. Upon information and belief, David Rocker (“Rocker”) is a citizen of New  
15 Jersey residing in Short Hills, New Jersey, and is an officer, sole managing partner,  
16 member, and/or controlling owner of companies including the Rocker Defendants,  
17 defined hereafter.

18 8. Upon information and belief, Marc Cohodes (“Cohodes”) is a citizen of  
19 California residing in Marin County, California, and is an officer, member, and/or  
20 controlling owner of companies including the Rocker Defendants.

21 9. Upon information and belief, Carr Bettis (“Bettis”) is a citizen of Arizona  
22 residing in Scottsdale, Arizona.

23 10. Upon information and belief, Donn Vickrey (“Vickrey”) is a citizen of  
24 Arizona residing in both Arizona and California.

25 11. Upon information and belief, Matthew Kliber (“Kliber”) is a citizen of  
26 Arizona residing in both Arizona and California.

27 12. The names and capacities of the Defendants named as Does 1 through 100,  
28 inclusive, are presently unknown to the Plaintiffs. Plaintiffs are informed and believe

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

10 13. Defendants Rocker Partners, Rocker Offshore, Rocker Management are  
11 sometimes collectively referred to herein as “the Rocker Defendants.” Upon information  
12 and belief, the Rocker Defendants are owned, operated and controlled by each other and  
13 ultimately by Rocker and/or Cohodes, and because of such ownership, operation and  
14 control, the Rocker Defendants, Rocker and Cohodes have such a unity of interest that the  
15 separate personalities of the entities and the individuals no longer exist, and if the acts are  
16 treated as those of the entities alone, an inequitable result will follow.

17 14. Defendants Gradient, the Rocker Defendants, Rocker, Cohodes, Bettis,  
18 Vickrey, Kliber and Does 1 through 100 are sometimes collectively referred to herein as  
19 “Defendants.” Each of the Defendants is jointly and severally liable for the acts and  
20 omissions complained of herein.

21  
22 **FACTUAL BACKGROUND**

23 15. Overstock is an online “closeout” retailer headquartered in Salt Lake City,  
24 Utah. Overstock launched its first website through which customers could purchase  
25 products in 1999. Since that time, Overstock’s overall business, and gross revenues have  
26 grown steadily and consistently, at the rate of approximately 100% each year since 2000.  
27 Overstock’s annual revenues for the year ending December 31, 2004, were approximately  
28 \$500 million.

1           16.    On May 30, 2002, Overstock conducted an initial public offering of its  
2 stock, offering 3.101 million shares of common stock at a price of \$13.00 per share. On  
3 February 12, 2003, the company sold 1.725 million shares of common stock in another  
4 public offering, this time at a price of \$15.00 per share. Thereafter, in May 2004,  
5 Overstock sold another 1.3 million shares of common stock in a public offering at a price  
6 of \$30.50 per share. Finally, on November 11, 2004, the company issued (i) 1.38 million  
7 shares of common stock at a price of \$57.53 per share, and (ii) 3.75 % Convertible Senior  
8 Notes due in 2011 for \$120,000,000. Overstock's common stock trades on the NASDAQ  
9 National Securities Market under the symbol "OSTK."

10           17.    Helburn formerly was the owner of 500 shares of Overstock common stock  
11 purchased on January 28, 2005 at \$57.08/share, and on August 5, 2005, Helburn sold such  
12 shares at \$41.83/share, for a gross loss of \$15.25/share.

13           18.    According to its website, Gradient is "an independent research firm  
14 providing both analyst-written research work...and quantitative stock ratings for  
15 institutional clients . . . ." See <http://www.gradientanalytics.com/aboutus.php> (emphasis  
16 added). In these regards, Gradient produces and publishes, inter alia, so-called Earnings  
17 Quality Analytics ("EQA") reports, which provide analysis of various publicly traded  
18 companies. Gradient is an influential company, and sells reports and analyses on publicly  
19 traded companies to hedge funds, traditional mutual funds, and provides them to financial  
20 commentators such as MSNBC. The wide exposure of its products gives Gradient a large  
21 audience.

22           19.    Upon information and belief, Vickrey was a co-founder of Gradient and the  
23 primary creator of EQAs and other reports, and currently oversees and manages all of  
24 Gradient's purported "analyst-driven content." Kliber, in turn, is Gradient's Vice  
25 President of Research and "leads the development of Gradient's analyst-driven research  
26 products." Bettis, also a co-founder of Gradient, is the company's President and Chief  
27 Executive Officer, and "guides the strategic direction and oversees the business  
28 operations...[of the company]."

1           20.     Contrary to its purported “independent” status, Gradient is closely aligned  
2 with various stock hedge funds. One of those hedge funds is Rocker Partners, which on  
3 information and belief is owned and/or controlled by Rocker and Cohodes, individually  
4 and/or through Rocker Offshore or Rocker Management. The Rocker Defendants’  
5 business model largely revolves around short selling as an investment strategy. Generally  
6 speaking, in a short sale, a person sells stock that he or she does not then own by  
7 borrowing the stock and warranting that the loan will be “covered” with shares purchased  
8 at a later date. The seller speculates that the price of the stock will go down so that, when  
9 (if ever) the loan is “covered,” he or she will profit from the drop in price. In this regard,  
10 therefore, the Rocker Defendants bet that the stock price of a company whose stock it has  
11 shorted will (i) decrease from the price at which it sold the stock, and (ii) not recover to  
12 that price, thereby locking in a profit if covered. Thus, the Rocker Defendants have a  
13 vested interest in seeing the share prices of its short holdings decrease. Upon information  
14 and belief, the Rocker Defendants have, and maintain, significant short positions in  
15 Overstock’s common stock. Indeed, short interest in Overstock in general has  
16 skyrocketed in the last two years. It is, therefore, in the Rocker Defendants’ interest for  
17 the price of Overstock’s common stock to be depressed.

18           21.     Beginning around June 2003 and over the following two years, Gradient  
19 issued a continual slew of approximately 58 EQAs and various other reports on  
20 Overstock, uniformly giving the company the lowest possible grades (or nearly so).  
21 Generally Gradient’s reports were tailored to include information supplied by the Rocker  
22 Defendants. Instead of being objective and independent reports, however, these EQAs  
23 and other reports reflected significant negative input from at least the Rocker Defendants,  
24 Rocker, and Cohodes. Indeed, upon information and belief, Vickrey routinely edited  
25 draft EQAs and other reports on Overstock – which he shared with the Rocker  
26 Defendants prior to publication – to reflect specific negative input from Rocker and/or  
27 Cohodes. On information and belief, Vickrey routinely held the EQAs and other reports  
28 at the specific request of Rocker and/or Cohodes before disseminating the EQAs and

1 other reports to enable the Rocker Defendants time to position their portfolio to benefit  
2 from the publication. Gradient's EQAs and other reports did not disclose either that the  
3 Rocker Defendants had input into their drafting, or that the EQAs and other reports were  
4 not independent and objective analyses of their target. Nor did Gradient disclose that they  
5 were, at least in large part, simply platforms for the Rocker Defendants to pursue its  
6 investment agenda of having Overstock's share price kept as low as possible.

7 22. As noted above, Overstock went public in May 2002. From that time until  
8 early 2003, the short interest in Overstock's common stock was slight. Several months  
9 before Gradient began issuing EQAs and other reports on Overstock, however, short sales  
10 of Overstock began to increase markedly. Thereafter, short sales of the company's stock  
11 have virtually exploded, mushrooming to almost 7 million shares by June 2005. In the  
12 meanwhile, the price of Overstock's common stock fought against (i) the effects of  
13 Gradient's negative EQAs and other reports, and (ii) the downward pressure of massive  
14 short selling, to close at an all time high of \$77.18 in January 2005. However, despite  
15 Overstock's consistently growing revenues and its stock price's well-justified  
16 performance in the market, in the last few months as a result of the Gradient's tainted and  
17 malicious EQAs and other reports, Overstock's reputation and stock price have been  
18 greatly harmed. Now Overstock's stock trades well below its high of \$77.17.

19 23. Gradient publicly holds itself out as providing independent, objective, and  
20 unbiased reports on publicly traded companies. It further boasts the expertise of Bettis  
21 and Vickrey as renowned academicians and theoreticians in the field of quantitative  
22 analysis. In reality, however, Gradient's EQAs and other reports are driven not by  
23 objective analysis, but by the undisclosed biases and subjective agendas of hedge funds  
24 (and others) with vested interests in the performance of the targeted companies. In other  
25 words, Gradient knowingly serves as a shill for, in Overstock's case, at least the Rocker  
26 Defendants, Rocker, and Cohodes. The EQAs and other reports are controlled by Kliber  
27 and Vickrey who, with Bettis' blessing, allow Defendants and other biased hedge funds  
28 and other third parties to dictate their content without disclosing that input and bias. The

1 EQAs and various other reports have had their intended effect, i.e., depressing and  
2 driving down the price of Overstock's common stock, but that effect was artificially and  
3 surreptitiously created.

4  
5 **FIRST CAUSE OF ACTION**

6 **(Violation of Business and Professions Code §§ 17200, et seq. and §§ 17500 et seq.**  
7 **and Conspiracy or Aiding and Abetting - Against All Defendants)**

8 24. Paragraphs 1 through 23, inclusive, of this Complaint are incorporated by  
9 reference as if set forth in full herein.

10 25. The knowing and intentional dissemination of negative EQAs and other  
11 reports on Overstock without disclosing the input of the Rocker Defendants, Rocker, and  
12 Cohodes therein, constitutes an unlawful, unfair, or fraudulent business act or practice by  
13 the Defendants, and each of them, in violation of Business and Professions Code §§  
14 17200, et seq. and §§ 17500 et seq.

15 26. Overstock and Helburn have been injured by the Defendants' violations of  
16 §§ 17200 et seq. and §§ 17500 et seq.

17 27. Plaintiffs are informed and believe that the Defendants agreed and  
18 conspired to engage in acts of unfair competition, or aided and abetted the acts of each  
19 other, and encouraged, ratified, and/or accepted the benefits of the acts of each other.

20 28. Overstock is entitled to injunctive relief restraining the Defendants from  
21 committing further unfair trade practices, and restitution of (i) all amounts lost in the sales  
22 of common stock to the public at prices lower than what they would have been had the  
23 Defendants not engaged in the challenged conduct, (ii) all amounts lost in the decline of  
24 Overstock's market capitalization resulting from the challenged conduct; (iii) attorneys'  
25 fees; and (iv) prejudgment interest.

26 29. Likewise, Helburn is entitled to restitution from the Defendants of all sums  
27 lost by her as a result of the decline in Overstock's share price, as well as attorneys' fees  
28 and prejudgment interest.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND CAUSE OF ACTION**

**(Negligence - Against All Defendants)**

30. Paragraphs 1 through 29, inclusive, of this Complaint are incorporated by reference as if set forth in full herein.

31. Under the circumstances, the Defendants, and each of them, owed a duty of care to Overstock and Helburn. The Defendants breached their duties of care by, inter alia, preparing and publishing the EQAs and other reports on Overstock without disclosing the fact and nature of the negative input given by the Rocker Defendants, Rocker, and Cohodes. As a proximate result of the Defendants' negligence, Overstock and Helburn (i) have been damaged in amounts to be determined, and (ii) are entitled to recovery for those damages from the Defendants.

**PRAYER**

WHEREFORE, Plaintiffs seek judgment as follows:

On the First Cause of Action:

1. For restoration of money and property acquired by unfair competition.
2. Injunctive relief.
3. Restitution for benefits unfairly obtained by Defendants.
4. For attorneys' fees according to statute.
5. For prejudgment interest.

On the Second Cause of Action:

1. For damages in an amount according to proof at trial, in an amount in excess of the jurisdictional minimum of Superior Court.

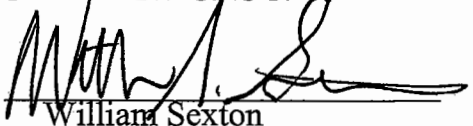
1 On All Causes of Action:

- 2 1. For costs;
- 3 2. For reasonable attorneys' fees; and,
- 4 3. For such and further relief as the Court may deem appropriate.
- 5

6 Dated:

Respectfully submitted,

SIEGLER/LAW GROUP

By:   
William Sexton

Attorneys for Plaintiffs  
OVERSTOCK.COM, INC., a Delaware  
corporation and MARY HELBURN, an  
individual

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28