

ENDORSED
FILED
San Francisco County Superior Court
SEP 14 2007
GORDON PARKER, Clerk
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7 Attorneys for Plaintiffs
OVERSTOCK.COM, INC., KEITH CARPENTER,
8 OLIVIER CHENG, MARY HELBURN,
ELIZABETH FOSTER, HUGH D. BARRON,
9 DAVID TRENT and MARK MONTAG

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

13 OVERSTOCK.COM, INC., a Delaware
14 corporation; KEITH CARPENTER, an
individual; OLIVIER CHENG, an
15 individual; MARY HELBURN, an
individual; ELIZABETH FOSTER, an
16 individual; HUGH D. BARRON, an
individual; DAVID TRENT, an individual,
17 and MARK MONTAG, an individual,

18 Plaintiffs,

19 v.

20 MORGAN STANLEY & CO.,
INCORPORATED, THE GOLDMAN
21 SACHS GROUP, INC., BEAR STEARNS
SECURITIES CORP., BANC OF
22 AMERICA SECURITIES LLC, THE
BANK OF NEW YORK, CITIGROUP,
23 INC., CREDIT SUISSE (USA) INC.,
DEUTSCHE BANK SECURITIES, INC.,
24 MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC., LEHMAN BROTHERS
25 INC., UBS SECURITIES LLC, and DOES
2 through 100,

26 Defendants.

Case No. CGC-07-460147

FIRST AMENDED COMPLAINT FOR:

- (1) CONVERSION**
- (2) TRESPASS TO CHATTELS**
- (3) VIOLATIONS OF CALIFORNIA CORPORATIONS CODE SECTIONS 25400, et seq.**
- (4) UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE SECTIONS 17200, et seq. AND SECTIONS 17500, et seq.)**

Complaint filed: February 2, 2007

1 Plaintiffs Overstock.com, Inc., a Delaware corporation (“Overstock”); David
2 Trent, an individual; Elizabeth Foster, an individual; Keith Carpenter, an individual; Olivier
3 Cheng, an individual; Mary Helburn, an individual; Hugh D. Barron, an individual and Mark
4 Montag, an individual (collectively, Overstock and the individual Plaintiffs are referred to as
5 “Plaintiffs”) for their Complaint, allege as follows:

6 NATURE OF THE CASE

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

16 PARTIES

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

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

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

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

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

28 7. Plaintiff Hugh D. Barron is an individual and resident of Marin County,