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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
12
13

14 OVERSTOCK.COM, INC., a Delaware
corporation; KEITH CARPENTER, an
15 individual; OLIVIER CHENG, an
individual; FERN BAILEY and WENDY
16 MATHER, as Co-Personal Representatives
of the Estate of MARY HELBURN;
17 ELIZABETH FOSTER, an individual;
HUGH D. BARRON, an individual;
18 DAVID TRENT, an individual, and
MARK MONTAG, an individual,

19 Plaintiffs,

20 v.
21

22 MORGAN STANLEY & CO.,
INCORPORATED, THE GOLDMAN
SACHS GROUP, INC., BEAR STEARNS
23 SECURITIES CORP., BANC OF
AMERICA SECURITIES LLC, THE
24 BANK OF NEW YORK, CITIGROUP,
INC., CREDIT SUISSE (USA) INC.,
25 DEUTSCHE BANK SECURITIES, INC.,
MERRILL LYNCH, PIERCE, FENNER &
26 SMITH, INC., LEHMAN BROTHERS
INC., UBS SECURITIES LLC,
27 GOLDMAN SACHS & CO., GOLDMAN
SACHS EXECUTION & CLEARING,
28 L.P., CITIGROUP GLOBAL MARKETS,

Case No. CGC-07-460147

FIFTH AMENDED COMPLAINT FOR:

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

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

**(3) VIOLATIONS OF NEW JERSEY RICO
(N.J.. STAT. 2C:41-2(c) and (d))**

Complaint filed: February 2, 2007

JURY TRIAL DEMANDED

Case No. CGC-07-460147

1 INC., CREDIT SUISSE SECURITIES
2 (USA) LLC, MERRILL LYNCH
3 PROFESSIONAL CLEARING
CORPORATION and DOES 7 through
100,

4 Defendants.

5
6 Plaintiffs Overstock.com, Inc., a Delaware corporation ("Overstock"); David
7 Trent, an individual; Elizabeth Foster, an individual; Keith Carpenter, an individual; Olivier
8 Cheng, an individual; Fern Bailey and Wendy Mather, as co-personal representatives of the Estate
9 of Mary Helburn; Hugh D. Barron, an individual and Mark Montag, an individual (collectively,
10 Overstock and the individual Plaintiffs are referred to as "Plaintiffs") for their Complaint, allege
11 as follows:

12 **NATURE OF THE CASE**

13 1. Defendants have and continue to participate in a massive, illegal stock
14 market manipulation scheme. Defendants control a substantial portion of the prime brokerage
15 market. Among other things, Defendants have executed, as principal and agent, short sales of the
16 stock of Overstock with no intention of delivering stock to settle the short sale. Rather,
17 Defendants have intentionally failed to deliver Overstock stock to settle the short positions.
18 Defendants' actions caused and continue to cause dramatic distortions with regard to the nature
19 and amount of trading in Overstock securities, which have caused Overstock's securities' prices
20 to drop. Defendants' conduct violates California's securities laws, the New Jersey Racketeer
21 Influenced and Corrupt Organizations Act ("New Jersey RICO"); and constitutes unfair business
22 practices under California law. Plaintiffs were harmed by Defendants' conduct.

23 **PARTIES**

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

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

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

3 5. Plaintiff Fern Bailey and Wendy Mather are co-personal representatives of
4 the Estate of Mary Helburn, an Idaho Estate, which is a current or former owner of Overstock
5 securities at the relevant times herein.

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

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

10 8. Plaintiff David Trent is an individual and resident of Los Angeles,
11 California, and is a current or former owner of Overstock securities at the relevant times herein.

12 9. Plaintiff Mark Montag is an individual and resident of Blue Bell,
13 Pennsylvania, and is a current or former owner of Overstock securities at the relevant times
14 herein.

15 10. Defendant The Goldman Sachs Group, Inc. ("Goldman") is a Delaware
16 corporation with its principal place of business in New York, New York. Goldman is qualified to
17 and does do business in the state of California. Goldman is in the business of, among other
18 things, providing prime brokerage services and securities lending. Upon information and belief,
19 Goldman is the third largest prime brokerage firm in terms of aggregate client assets (16.5% of
20 the prime brokerage market). Goldman also engages in proprietary trading for its own benefit.

21 11. Defendant Banc of America Securities, LLC, ("Banc of America") is a
22 Delaware corporation, qualified to do business in California. Upon information and belief, Banc
23 of America has a principal office in San Francisco, California. Banc of America is in the business
24 of, among other things, providing prime brokerage services and securities lending from its San
25 Francisco office. Upon information and belief, Banc of America is the tenth largest prime
26 brokerage firm in terms of aggregate client assets (2.0% of prime brokerage market). Banc of
27 America also engages in proprietary trading for its own benefit.

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1 12. Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch")
2 is a Delaware corporation. Merrill Lynch is qualified to and does do business in the state of
3 California. Merrill Lynch is in the business of, among other things, providing prime brokerage
4 services and securities lending. Upon information and belief, Merrill Lynch is the fifth largest
5 prime brokerage firm in terms of aggregate client assets (4.6% of the prime brokerage market).
6 Merrill Lynch also engages in proprietary trading for its own benefit.

7 13. Plaintiffs were ignorant of a defendant's name, stated that fact in the
8 complaint, and designated the defendant by a fictitious name. That Defendant's true name is
9 Goldman Sachs & Co, and Plaintiffs previously amended their complaint to name Goldman Sachs
10 & Co. as Doe Number 2.

11 14. Plaintiffs were ignorant of a defendant's name, stated that fact in the
12 complaint, and designated the defendant by a fictitious name. That Defendants true name is
13 Goldman Sachs Execution & Clearing, L.P. Plaintiffs previously amended their complaint to
14 name Goldman Sachs Execution & Clearing, L.P. as Doe Number 3.

15 15. Plaintiffs were ignorant of a defendant's name, stated that fact in the
16 complaint, and designated the defendant by a fictitious name. That defendant's true name has
17 now been discovered and Plaintiffs previously amended their complaint to substitute Defendant
18 Merrill Lynch Professional Clearing Corporation for DOE Number 6. Defendant Merrill Lynch
19 Professional Clearing provides prime brokerage services and is qualified to and does do business
20 in the state of California.

21 16. Upon information and belief, the activities of Defendants in the state of
22 California are an integral part of their prime brokerage business. Defendants each maintain
23 multiple offices in California in which, upon information and belief, they conduct prime
24 brokerage activities as well as proprietary trading activities, including the activities which form
25 the basis of this action.

26 17. The names and capacities of the Defendants named as Does 7 through 100,
27 inclusive, are presently unknown to the Plaintiffs. Plaintiffs are informed and believe that Does 7
28 through 100, inclusive, did the same actions with the same intent as alleged against Defendants

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

9 **OVERSTOCK'S BUSINESS**

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

18 19. Overstock's economic links to California are substantial. In 2005,
19 California sales amounted to over 15% of the company's overall sales. Overstock does business
20 with a significant number of California-based suppliers and buys a substantial amount of its
21 inventory from such suppliers. In 2005 and the first six months of 2006 alone, Overstock
22 purchased over \$144 million in inventory from its California trading partners, which was 17% of
23 Overstock's total purchasing expenditure.

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

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

5 **DEFENDANTS' WRONGFUL ACTIONS**

6 22. Collectively controlling a substantial portion of the prime brokerage
7 market, Defendants act as settlement agents, providing custody for assets and financing for their
8 clients who are hedge funds, money managers, market makers, arbitrageurs, specialists, and other
9 professional investors. Defendants hold themselves out as assuring the proper accounting and
10 settlement of stock trades, including short sales, and providing most of the lending of securities in
11 the marketplace that settles short sales.

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

17 24. Generally speaking, in a short sale, a person sells stock that he or she does
18 not then own by borrowing the stock and warranting to the stock lender – the broker-dealer – that
19 the loan will be "covered" with shares purchased at a later date. The borrowed stock will come
20 from either the broker-dealer's own inventory, the margin account of other firm clients, or
21 another lender – and the broker-dealer will charge interest on the loan. Defendants, among other
22 things, promise to locate shares of the shorted stock, borrow the stock, and deliver the stock.
23 Defendants charge a fee to the short sellers for locating and delivering the borrowed shares.

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

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

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

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

7 29. These persistent failures to locate and deliver have created immense
8 downward pressure on the prices of Overstock's securities by creating an unlimited supply of
9 stock for sale. With Defendants' failing to buy or borrow a security for settlement, naked short
10 positions in Overstock have grown very large.

11 30. Upon information and belief, the vast majority of Defendants' fails to
12 locate and deliver Overstock stock are intentional, and not due to inadvertent errors. Defendants
13 are motivated to intentionally fail to deliver stocks because this removes a core cost from their
14 securities lending business – the cost of providing the security – thus allowing them to earn more
15 money through the charging of fees, commissions and/or interest through phantom securities
16 transactions. Upon information and belief, Defendants earn approximately \$10 billion annually
17 from their securities lending operations. Upon information and belief, Defendants also profit
18 from naked short selling of Overstock securities for their own benefit. When Defendants engage
19 in naked short selling on their own account, they are further motivated to intentionally fail to
20 deliver stock to obtain the gains from a drop in price in Overstock stock for their own account.

21 31. Overstock's securities prices are artificially depressed because of the
22 oversupply caused by failing to settle transactions with shares issued by Overstock. Shares issued
23 by Overstock in the normal course of raising capital as a public company are not being properly
24 valued because of the dilutive effect of the phantom shares, which were not issued by Overstock.
25 Selling but failing to deliver actual shares issued by Overstock has the effect of generating a
26 virtually unlimited supply of Overstock shares for sale.

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

1 33. Plaintiffs are informed and believe that Defendants and Does 7 through
2 100, individually and collectively, each and all of them agreed and conspired to engage in the
3 unlawful, unfair, or fraudulent business acts or practices, and/or participated in those acts, and/or
4 aided and abetted, as alleged herein, the acts of each other, and encouraged, ratified, and/or
5 accepted the benefits of the acts of each other.

6 34. Defendants' wrongful actions have resulted in substantial harm to
7 Plaintiffs. Among the harms Defendants' actions have caused Plaintiffs are: loss of the price of
8 Overstock securities, which have declined substantially; and impairment of Overstock's
9 securities' prices continued ability to grow at historic rates.

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

14 **FIRST CAUSE OF ACTION**

15 **(California Corporations Code §§ 25400, *et seq.* – Plaintiffs Against All Defendants and**
16 **DOES 7-100**

17 36. Paragraphs 1 through 16, 18 through 32 and 34 through 35 of this
18 Complaint are incorporated by reference as if set forth in full herein.

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

22 38. Defendants knew that the transactions they were effecting would be
23 reported solely as sales, without corresponding purchases or changes in the beneficial ownership
24 of Overstock common stock. Defendants acted with the intent to and thereby did create a false or
25 misleading appearance with respect to the market for Overstock securities, in violation of Section
26 25400(a).

27 39. Defendants effected repeated transactions in Overstock securities to create
28 actual or apparent active trading in Overstock and depress the price of Overstock with the

1 knowledge that such action would depress the price and to induce the sale of that stock by others
2 in violation of Section 25400(b).

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

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

9 42. Defendants and Does 7 through 100 violated 25400 and/or willfully,
10 directly and materially participated in violating 25400 by, for example: (1) effecting transactions
11 in Overstock securities which involved no change in the beneficial ownership of those securities,
12 with the intention of creating a false and misleading appearance with respect to the market for
13 Overstock securities; and/or (2) effecting transactions in Overstock securities to create the
14 actuality or appearance of active trading in Overstock securities or depress the price of Overstock
15 securities; and/or (3) knowingly manipulating transactions in Overstock securities and the records
16 relating to such transactions in order to effect such transactions, in violation of 25400.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of California Business & Professions Code §§ 17200, *et seq.***
19 **and §§ 17500, *et seq.* – Plaintiffs against All Defendants and DOES 7-100)**

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

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

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

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1 46. Overstock owns the exclusive right to create and issue new shares from its
2 authorized Overstock stock and has a vested right to all ownership interest in such authorized, but
3 un-issued shares ("Overstock's treasury shares"). Overstock is the only entity that has the right to
4 issue from its treasury shares, shares that it may then sell through the medium of a public market
5 or by other means. Notwithstanding, Defendants' actions alleged herein have created phantom
6 shares of Overstock stock, which the Defendants have effectively sold, and through such sale,
7 have taken from Overstock the compensation it was rightly entitled to for the sale of these shares.
8 In doing so, Defendants have stolen Overstock's vested interest in its treasury stock, stolen or
9 otherwise diverted from Overstock the compensation that would otherwise have come to it from
10 the sale of its stock

11 47. Plaintiffs are informed and believe that Defendants and Does 7 through
12 100, individually and collectively, each and all of them, agreed and conspired to engage in the
13 unlawful, unfair, or fraudulent business acts or practices, and/or aided and abetted, as alleged
14 herein, the acts of each other, and encouraged, ratified, and/or accepted the benefits of the acts of
15 each other.

16 48. Plaintiffs are entitled to preliminary and permanent injunctive relief
17 restraining the Defendants and Does 7 through 100, individually and collectively, each and all of
18 them from committing further unfair trade practices

19 **THIRD CAUSE OF ACTION**

20 **(New Jersey RICO – Violation of New Jersey Statute 2C:41-2(c) and (d) – Plaintiffs Against**
21 **Defendants Goldman, Sachs & Co., Goldman Sachs Execution Clearing, L.P., Merrill**
22 **Lynch Pierce, Fenner & Smith Inc., and Merrill Lynch Professional Clearing Corp.)**

23 49. Paragraphs 1 through 48 inclusive, of this Complaint are incorporated by
24 reference as if set forth in full herein.

25 50. Plaintiffs assert this cause of action against Defendant Goldman, Sachs &
26 Co. ("Goldman Sachs"), Defendant Goldman Sachs Execution Clearing, L.P. ("GSEC")
27 (together, the "Goldman Defendants"), Defendant Merrill Lynch Pierce, Fenner & Smith Inc.
28 ("Merrill Lynch"), and Defendant Merrill Lynch Professional Clearing Corp. ("Merrill Pro")
(together, the "Merrill Defendants") (the Goldman Defendants and the Merrill Defendants

collectively are referred to as “Defendants”). Further details of portions of the illegal stock market manipulation scheme and other related acts set forth in Paragraphs 1 through 48 of this Complaint are set forth below.

Introduction

51. Plaintiffs Overstock and the individual shareholders in this case seek redress for harm they have suffered as a result of a massive naked short selling market manipulation scheme involving the sale of millions of shares of Overstock stock that no one involved in the trade owned, had any intention of borrowing or any intention of ever delivering.

52. From at least 2005 to mid-2007, the naked short selling scheme created persistent fails-to-deliver, to such an extent that the fails-to-deliver in Overstock consistently exceeded a million shares and sometimes three million shares of Overstock stock. These massive fails-to-deliver created an artificial supply of Overstock stock that was used to perpetuate naked short selling in Overstock securities, dramatically distort the normal market, and drive down the price of the stock. The pressure of this manipulative naked short selling was so intense that the short interest in Overstock actually reached the point where it exceeded the entire float (all tradable shares) of Overstock securities.

53. Out of the thousands of participants in the stock settlement system, including such industry titans as Morgan Stanley and Bear Stearns, over 90% of the fails-to-deliver were concentrated in just the Merrill Defendants and Goldman Defendants. Why? Because these fails were undeniably planned and intentional.

54. The scheme begins with a meeting in a bar in August 2004 between high-level executives at Goldman Sachs—executives who normally wine and dine the leading hedge funds on Wall Street—and an unknown trader named Scott Arenstein who traded out of his house. Quite simply, Arenstein agreed to sell Goldman Sachs massive amounts of stock that he did not have, would never borrow and would never deliver. Goldman knew that Arenstein did not have and would not deliver this stock. Goldman Sachs planned to use these manipulative naked short sales of stock as the backbone of its new “Hedging Strategies Group.” It was an odd pairing, but it was the beginning of a carefully-concealed scheme that would require sham

1 compliance policies, cause dissension among top executives and heavily damage the targets of the
2 scheme.

3 55. The scheme would also require the participation of the Merrill Defendants,
4 who decided and documented in an email to “fuck the compliance area” and follow the directive
5 of Merrill Pro’s President and its CEO that “we want to fail” these trades and “stop delivery”, and
6 would eventually loop in other traders.

7 56. The bottom-line intent and effect of the scheme was to effect manipulative
8 naked short selling that artificially increased the supply of stock to short sell, caused massive
9 fails-to-deliver in Overstock securities, and put downward pressure on the stock price that was
10 untempered by the natural forces of supply and demand. The parties to the scheme made
11 hundreds of millions of dollars, while Plaintiffs suffered the harm of selling stock into an
12 artificially depressed market.

13 57. The Background section (§§ 58-68) will explain the industry and the
14 general motivations for the scheme. After that, the Complaint will describe the history and
15 various parts of the scheme which included:

- 16 • The mandate of Goldman Sachs’ newly-created Hedging Strategies group to
17 “create supply and perpetuate selling” in stocks like Overstock (§§ 69-72);
- 18 • Goldman Defendants’ initiation of the scheme to create supply and perpetuate
19 selling, including the meeting in the bar with Arenstein (§§ 73-86);
- 20 • Goldman Defendants’ institution of an unwritten policy that would negate its
21 written policy and purportedly allow it to participate in trades it knew were
22 manipulative (§§ 87-96);
- 23 • Goldman Defendants’ plot to move Arenstein’s trading to another broker’s books
24 to carry out the scheme (§§ 97-101);
- 25 • Arenstein’s attempts to make a deal with Merrill Defendants to bring his business
26 to Merrill Pro if they will agree in advance to intentionally fail his trades (§§ 102-
27 105);
- 28 • Merrill Defendants’ initial refusal, but eventual agreement and arrangement to
 intentionally fail Arenstein’s trades and their expansion of the agreement to other
 Merrill Pro clients (§§ 106-112);
- A Merrill Pro executive’s statement to Merrill Defendants’ Chief Compliance
 Officer in the context of initiating the intentional fails: “Fuck the compliance area”
 (§§ 113-115);

- Merrill Defendants altering their computer systems to purposefully fail to deliver the naked short sales (§§ 116-119);
- Arenstein's opening of his account at Merrill Pro and his immediate and continuing naked short selling of massive quantities of Overstock for over a year (§§ 120-124);
- Defendants' manipulation and alteration of their books and records to conceal the scheme (§§ 125-134);
- Merrill Defendants' ignoring of their Chief Compliance Officer's concerns (§§ 135-140)
- Trades effected by Defendants to carry out the scheme (§§ 141-149);
- Defendants' use of obscure trading techniques to conceal the scheme (§§ 150-158);
- The naked short selling and intentional fails to delivers achieving the intended and desired effect of creating artificial supply for short sellers and perpetuating naked short selling (§§ 159-165);
- The Goldman Defendants further increasing the artificial supply by having GSEC fail to deliver additional shares for a year straight (§§ 166-172);
- The devastating effect of the scheme on Overstock's stock price (§§ 173-183);
- Defendants' extra motive to attack Overstock, and the brokerage industry's description of Overstock as one of their "enemies" (§§ 184-187);

- The New Jersey Rico violations and elements (§§ 191-255).

Background and General Overview of the Scheme

58. As previously set forth above, a short sale is generally the sale of a stock the seller does not currently own. The stock is borrowed from someone who owns the stock and shares are delivered for settlement of the trade. As set forth above, Defendant Merrill Lynch, Defendant Merrill Pro, Defendant Goldman Sachs and Defendant GSEC are responsible for the proper accounting and settlement of stock trades, including borrowing and delivering stock to settle short sales. (*See supra*, §§ 22-24.)

59. The short seller is betting that the stock will go down in price, and makes a profit if the stock price goes down enough that the difference exceeds his expenses. (*See supra*, ¶ 23.) Defendants profit from the short selling of Overstock's stock and the decline in Overstock's stock price in multiple ways, including but not limited to (1) payment of loan fees to Defendants

1 that Defendants charge for short sales, whether or not they actually borrow shares or settle the
2 short sales, (2) interest earned by Defendants on margin accounts in which short selling occurs,
3 and (3) transaction fees charged for the short sales and other accounts fees. Defendants also
4 profit by selling short on a proprietary basis the same stocks that their clients are shorting,
5 including Overstock, either in their own accounts or in the accounts of affiliates of Defendants.

6 60. There are thousands of listed stocks that trade on major markets like the
7 NYSE and NASDAQ. Even though short sales account for about 15 percent of all shares traded,
8 short sales are concentrated in a very small number of stocks. Those stocks tended to be
9 relatively new, cutting-edge companies whose stock prices climbed as the companies emerged as
10 significant new companies, but were also perceived as being vulnerable.

11 61. Overstock was one of these stocks. From at least 2004 until 2008,
12 Overstock was a "hard to borrow" stock that was, especially in 2005-2006, heavily shorted. At
13 some times, more shares were sold short than were freely tradable. Defendants charged
14 extremely high loan fees that short sellers were required to pay before Defendants would effect
15 the short sales on their books. In 2005-2006, for example, a short-seller frequently had to pay at
16 least 30% interest to Defendants. Paying that level of interest means that Overstock stock would
17 have to drop at least 30% on an annual basis in order for the short-sellers' trade to be profitable.

18 62. Stocks, including Overstock, were identified by the prime brokers as being
19 highly shorted according to various metrics such as short-to-float (the amount of sales sold short
20 versus the overall number of freely-trading shares in a stock) and short interest ratio (sales sold
21 short divided by average daily trading volume). The Defendants would spread this information to
22 short sellers, including their own proprietary short-selling operations, which then served as a
23 target list of stocks to be driven down. While prime brokers' compliance guidelines forbid the
24 distribution of non-public information, Defendants did not enforce these prohibitions.

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 63. Defendants' prime brokerage businesses in large part were predicated on
4 the short-selling of hard-to-borrow securities. For example, an internal profit-and-loss analysis
5 by Goldman Sachs shows that more than half of the revenue of its Securities Lending Group was
6 derived from hard-to-borrow securities, even though hard-to-borrow securities are a tiny fraction
7 of the securities traded in the market. In turn, securities lending represented more than half of
8 Goldman Sachs' entire prime brokerage business. Defendants make hundreds of millions of
9 dollars from their securities lending businesses, which is generated primarily from the short-
10 selling of a small basket of stocks such as Overstock. Defendants make so much money off of
11 stocks such as Overstock because these are "hard to borrow" stocks that trade actively and
12 command extremely high charges or interest rates from Defendants' clients.

13 64. The continued success of Defendants' prime brokerage businesses depends
14 on the continued heavy short-selling of a small number of stocks. Concentrated short-selling
15 causes price drops, which in turn encourage more short-selling, in a downward price cycle.
16 However, there is a natural restraint on this downward pressure: In a non-manipulated market,
17 the natural forces of supply and demand for shares limit the downward pressure. As the demand
18 for shares to short goes up, the cost to borrow the stock increases, which makes short-selling
19 more expensive, which normally reduces its volume and duration. Furthermore, as there are a
20 limited number of shares in any company that can be borrowed in a non-manipulated market,
21 there is a natural limit to the short interest that can exist in a particular stock in a non-manipulated
22 market. These forces of supply and demand are somewhat similar to the forces seen in long
23 buying, where the scarcity of stock and upward price pressure eventually drive away buyers.

24 65. Defendants, however, conceived a plan to artificially, in Goldman Sachs'
25 own words, "create supply" and "perpetuate selling" in hard-to-borrow securities, including
26 Overstock, with the intent of driving down the price of Overstock and creating a vicious cycle of
27 naked short selling and price declines. "Naked short selling" refers to selling short shares that the
28 seller does not have and does not borrow to make delivery. By removing the borrowing and

1 delivery of shares, naked short selling allows for concentrated downward price pressure through
2 unlimited short selling without the costs of borrowing.

3 66. It was well-understood within the industry, and among Defendants
4 specifically, that naked short selling destabilizes and depresses a company's share price because it
5 removes any supply constraint on sales of the stock. An unlimited supply of any commodity,
6 including a company's stock, places a downward pressure on the price of that commodity. (*See*
7 *supra*, ¶27). Joseph Mastrianni, a Managing Director and Compliance Officer of Merrill
8 Defendants, testified in this case that naked short selling would put "sell pressure on a security
9 which would ultimately drive the stock down...things that are understood in the industry." Paul
10 Busby, a Managing Director and Co-Head of Equity Finance for Deutsche Bank testified in this
11 case that "[t]here is a general understanding in the marketplace that naked short selling has a
12 detriment to the stock price of a company." Goldman Sachs' Trading & Market Structure
13 Analysis, dated July 8, 2004, instructs that "[n]aked short selling increases the leverage of short
14 sellers and hence their ability to potentially manipulate prices and aggravate price declines."

15 67. While the scheme is described in detail below, the essence of the scheme is
16 that Defendant Goldman Sachs would "buy" shares that did not exist—and they knew did not
17 exist—which would result in the trades not settling. Settlement refers to the exchange of cash for
18 shares. When that exchange does not take place, there is a "fail to deliver." In spite of these
19 "fails to deliver," Defendant Goldman Sachs would then lend out the shares that did not exist,
20 thereby "creating supply" out of thin air. The "fail to deliver" would be recorded on the books of
21 Merrill Defendants, and also Defendant GSEC, who would simply let the fail to deliver sit there
22 indefinitely. Merrill Defendants and Defendant GSEC devised further means to manipulate their
23 settlement records to conceal the fact that they had consistent fails to deliver in Overstock
24 securities within the settlement system that lasted a year or more. As a point of reference, the
25 person most knowledgeable about settlement at Banc of America Securities testified under oath
26 that a fail-to-deliver position that lasted 100 days would be "extraordinary," yet Merrill
27 Defendants and Defendant GSEC maintained a fail-to-deliver position for well over a year in this
28 scheme.

1 68. By pumping artificial “supply” into the market, Defendants effected
2 millions of short sales that would never have occurred, driving down Overstock’s stock price. By
3 maintaining millions of shares of fails-to-deliver for years in Overstock, Defendants could
4 artificially avoid the natural constraints on supply and demand that occur when trades are actually
5 settled. And these fails-to-deliver and resulting increased short interest further created the
6 downward price pressure in Overstock. In this context, buyers who see value in a stock do not
7 try to oppose the short-selling momentum, but instead sell off their positions, further supporting
8 the downward cycle. Defendants knew and intended that this would result.

9 **The “Mandate” of Goldman Sachs’ Newly-Formed Hedging Strategies Group Was to**
10 **“Create Supply and Perpetuate Selling in Stocks”**

11 69. Ordinarily, a clearing firm is supposed to clear and settle trades.
12 “Clearing” refers to the process of matching trades in anticipation of settlement, and settlement
13 refers to the ultimate exchange of shares for cash. The clearing firm generally should be an agent,
14 passively responding to the needs of clients who are trading.

15 70. In 2004-2005, though, Goldman Defendants decided to take matters into
16 their own hands and manipulatively cause selling in hard-to-borrow securities in order to push
17 and sharpen the downward price cycle described above. Specifically, Goldman Sachs created and
18 built-out a “Hedging Strategies Group” within its Securities Lending Group. The mission of the
19 Hedging Strategies Group as stated in a December 8, 2005 email from Kelly Reed (“Reed”) to
20 David Santina (“Santina”) was to “create supply and perpetuate selling in stocks with a large
21 amount of short interest.” Santina became the manager of the Hedging Strategies Group, and
22 Reed worked as a trader reporting to him.

23 71. A September 8, 2005 email written by Larry Ostroff, another trader in the
24 Hedging Strategies Group, to Sam Rosenbloom (“Rosenbloom”), who would replace Santina as
25 manager of the Hedging Strategies Group when Santina was again promoted, confirms Defendant
26 Goldman Sachs’ “mandate to ‘create supply.’”

27 72. Defendants knew, understood and intended that the perpetuation of short
28 selling in hard-to-borrow securities with high short interest would drive down the price of the

1 targeted stocks, including Overstock, and thereby enhance the scale and profitability of Goldman
2 Sachs' Securities Lending Group. As described above, the Securities Lending Group generated
3 the majority of revenue within Goldman Sachs' prime brokerage business. Prime brokerage/asset
4 management is one of three major lines of business for Goldman Sachs, the other two being
5 proprietary trading and investment banking.

6 **The Inception of the Scheme at Issue in this Case**

7 73. Given the lucrative nature of securities lending, particularly hard-to-borrow
8 securities, the lure of money always existed, as well as the mandate to create supply, but the
9 scheme did not emerge until an unusual meeting in a bar in August 2004. At that meeting were
10 members of a senior group within Goldman Sachs – William Conley ("Conley"), Santina and
11 Rosenbloom. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Instead, they went to a bar to meet a little-known trader named Scott Arenstein
15 ("Arenstein").

16 74. In 2004, Conley was a Managing Director of Goldman Sachs on the fast
17 track. A little over a year later, Conley would be elevated to the elite status of a Goldman Sachs
18 partner and replace Masterson as head of all of Goldman Sachs' securities lending business in the
19 United States. Only a few hundred of the more than 60,000 Goldman Sachs employees ever
20 reach the inner circle of partnership that runs Goldman Sachs. Santina was Conley's trusted
21 right-hand man and, at Conley's direction, was working to establish the Hedging Strategies
22 Group. Rosenbloom was in turn Santina's key employee within the Hedging Strategies Group.

23 75. Scott Arenstein did not run a hedge fund. He was not a client of Goldman
24 Sachs or its Securities Lending Group. He did not own or borrow stock. There was no legitimate
25 reason for him to meet with the Securities Lending Group. Arenstein was an obscure trader who
26 traded out of his house at 312 Sweetbriar Court in Franklin Lakes, New Jersey. Arenstein was the
27 sole proprietor of SBA Trading LLC ("SBA"), which was headquartered at Arenstein's home in
28 New Jersey. Arenstein traded through SBA.

1 76. While there was no legitimate reason for the meeting, there was a reason.
2 Arenstein was known to Defendant GSEC because he was a GSEC client. Specifically, he was a
3 client of one of GSEC's two divisions, First Options of Chicago (Spear Leeds Kellogg was the
4 other division). GSEC knew Arenstein's business. As recounted by the Chief Financial Officer
5 of the First Options division of GSEC, William Brennan ("Brennan"), on June 6, 2004, he "spoke
6 to Scott Arenstein earlier this week" and Arenstein "tends to carry large shorts in symbols that
7 everyone on the street is failing."

8 77. In 2004, Arenstein, as a GSEC client, was entering into so-called
9 "conversion trades" with the Securities Lending Group at Goldman Sachs in hard-to-borrow
10 securities. A legitimate conversion trade is a trade entered into by someone who possesses
11 inventory of a stock and desires to obtain a risk-free return on the stock; the owner of the
12 inventory sells the stock, hedged by options, for a fixed period of time. Arenstein, however, did
13 not own any inventory, as GSEC and Goldman Sachs both knew. Therefore, these phony
14 conversion trades were actually naked short sales designed merely to create the appearance of a
15 transfer of stock from Arenstein (who had no stock) to the Securities Lending Group at Goldman
16 Sachs (who wanted to appear to acquire stock). The problem was that on or around August 12,
17 2004, GSEC, including Brennan, had personally informed Arenstein that he was going to have to
18 start making actual delivery of stock. The jig was up. Arenstein had made a business out of
19 "providing very aggressive liquidity to Goldman [Sachs]," but now GSEC wanted him to actually
20 back up those stock sales with real stock.

21 78. On August 12, 2004, Conley asked a key Managing Director at GSEC
22 named Peter Lawler ("Lawler"), who was also the co-CEO of the First Options division, about
23 Arenstein because, as Conley stated, he was going to meet with Arenstein on Monday, August 16.
24 Lawler had long had concerns about Arenstein and his dealings with the Securities Lending
25 Group. Back in May 2004, Steven Chilow ("Chilow"), the head of Goldman Sachs' trading desk
26 on the Chicago Board Options Exchange, had informed Lawler that he had been entering into
27 conversion trades with Arenstein in order to secure stock of hard-to-borrow securities for the
28 Securities Lending Group, to which Lawler replied: "That doesn't make sense....I will call

1 them.”

2 79. The reason it made no sense to Lawler was that he understood that
3 Arenstein did not own stock, never borrowed stock and would never make delivery of stock—so
4 he could not supply stock to the Securities Lending Group. Lawler understood, like everyone
5 with a background in the industry, that securities lending groups at prime brokers obtain stock
6 from custodial banks that hold stock (State Street Bank, Bank of New York, etc.), from mutual
7 funds that lend stock (Fidelity, Vanguard, etc.), from other prime brokers (Morgan Stanley,
8 Citigroup, etc.), from individuals who own stock and so forth. They do not obtain it from a solo
9 trader operating out of his house in New Jersey who is not selling or lending stock.

10 80. On August 12, 2004, in response to Conley’s email about meeting
11 Arenstein, Lawler informed Conley that he expected that Arenstein was going to be out of
12 business because he could not “fail anymore.” Indeed, that same day, Arenstein had been
13 frantically calling GSEC “pleading” with GSEC executives to discuss his “current trading
14 strategy” with him. Undeterred by Lawler’s statement that Arenstein would be out of business,
15 Conley forwarded Lawler’s email to Santina and cheerfully said of his upcoming meeting with
16 Arenstein, “Will be a good conversation.”

17 81. On August 16, 2004, Conley, Santina and Rosenbloom met with Arenstein
18 at the bar. Rosenbloom has testified to the Securities and Exchange Commission (“SEC”) that he
19 cannot remember what was said. Arenstein has refused to testify in this case about the meeting.

20 82. On information and belief, Conley, Santina and Rosenbloom discussed
21 with Arenstein a plan for keeping Arenstein in business. Arenstein would keep trading on
22 GSEC’s books until options expiration in January 2005 (the third Friday in January). After that
23 time, Arenstein would look to transition his business to a clearing firm that would let him fail
24 trades on their books, instead of GSEC’s books. Arenstein would continue to sell stock to the
25 Securities Lending Group of Goldman Sachs that he did not have. The stock would invariably be
26 one of those handful of targeted companies, such as Overstock, whose stock was targeted by
27 Goldman Sachs’ short-selling hedge funds. After Arenstein purported to “sell” to Goldman Sachs
28 stock that Arenstein did not have, Goldman Sachs no longer needed to pay to borrow actual

1 shares of that stock from a real lender of that stock. The scarcity problem of supply and demand
2 was purportedly solved, and Goldman Sachs could now tap an endless supply of artificial stock
3 that could support endless naked short sales in companies targeted by Defendants and their
4 customers—all of which would support the vicious cycle driving down a company's stock price,
5 which in turn would propagate more of the same, and more money for Defendants as the target
6 company's price declined.

7 83. 

14 84. Knowing that Arenstein had no stock to sell, and that the trades would
15 never settle, the trades were designed to last only for a period of time, after which they would be
16 unwound. Therefore, the nonexistence of the stock would ultimately be dealt with by unwinding
17 the trade after the stock of the target company had been driven down and Goldman Sachs no
18 longer needed the stock to create supply and perpetuate short selling.

19 85. An independent floor trader, Timothy Young, assisted in brokering many
20 of the trades. He described, in plainer English, a portion of the scheme in a September 14, 2005
21 instant message: "I have two guys who...will sell any reversal for a credit. Gs [Goldman Sachs]
22 firm buys them...takes in the long stock into their inventory and then scalps out the loan to their
23 customers and makes a killing." A reversal is simply one half of a conversion trade. The "two
24 guys" were Arenstein and Steven Hazan ("Hazan"). As described below, Hazan also engaged in
25 similar conversion trades with Goldman Sachs as a client of Defendant Merrill Pro.

26 86. Goldman Defendants had further and continuing discussions with
27 Arenstein about the logistics of the scheme. For example, on August 19, 2004, Santina emailed
28 Rosenbloom, Conley, and others regarding the potential use of flex options as part of the naked


1 short selling scheme. Santina noted “[w]e have been talking to Scott [Arenstein] about this
2 already, and will look further into it.” Arenstein’s use of flex options ultimately became part of
3 an AMEX disciplinary order barring Arenstein from the industry.

4 **Goldman Sachs Instituted An Unwritten Policy That Would Purportedly Allow It To**
5 **Participate In Trades It Knew Were Manipulative**

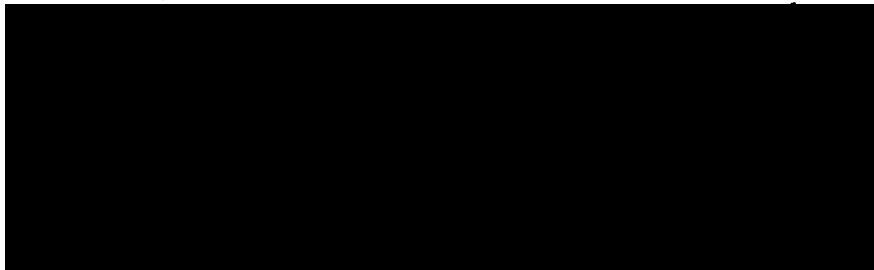
6 87. Goldman Defendants knew and understood that they were doing something
7 wrong. For the trades entered into by Goldman Sachs and cleared by GSEC, Arenstein had no
8 stock to sell, so his naked short selling would result in a fail to deliver. Intentionally trading stock
9 that does not exist and intentionally causing fails-to-deliver is manipulative: As stated on March
10 4, 2008 by Christopher Cox, the then-Chairman of the SEC, when a stock has massive fails to
11 deliver “for months and years at a time, [there] is ample evidence that there is also fraud in the
12 market that needs to be arrested.” The stocks targeted in the naked short selling scheme,
13 including Overstock, had massive fails to deliver, evidencing the fraud. In July 2008, the SEC
14 issued an emergency order that “aim[ed] to stop unlawful manipulation through ‘naked’ short
15 selling that threatens the stability of financial institutions.” That order required that anyone
16 effecting a short sale arrange beforehand to borrow and deliver the shares at settlement.
17 Unfortunately, the order applied only to the stocks of nineteen financial institutions, including,
18 ironically, Goldman Sachs Group, Inc. and Merrill Lynch & Co., Inc.

19 88. Rather than stop the fraudulent conduct, Goldman Defendants devised a
20 sham compliance policy as purported evidence of good faith that they could wave in front of
21 regulators if they needed to. Goldman Sachs began drafting a written compliance manual for the
22 Hedging Strategies Group that, in its final form, contained an express policy that bars conversion
23 trades that are “more likely than not to result in...fails to deliver by the firm’s counterparties.”
24 As the Goldman Sachs policy states:

25 The Hedging Strategies Group may engage in conversion trades,
26 provided that the firm is not in possession of facts indicating that
27 such trades are more likely than not to result in fails to receive by
28 the firm or fails to deliver by the firm’s counterparties.



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89. Goldman Sachs, however, had no intent of following this policy, largely written for the eyes of regulators who would not know that Goldman Sachs' actual operations were expressly contrary.

90. Santana, who was manager of the Hedging Strategies Group, Rosenbloom, a trader within Goldman Sachs' Securities Lending Group, and their boss, Conley, had met personally with Arenstein for the very purpose of discussing conversion trades with a trader whose business—his *raison d'être*—was failing to deliver securities. Thus, the drafting of a compliance policy was just a formalized concealment of the truth of Goldman Sachs' business plan. Goldman Sachs knew, wanted and intended that the conversion trades with Arenstein would result in fails-to-deliver. As testified to by Tim Young to the National Association of Securities Dealers, ("NASD"), Goldman Sachs and Arenstein priced the trades so that they would effectively split the profit obtained by Goldman Sachs lending out the "stock" to support more short sales—"stock" that cost Arenstein nothing to sell to Goldman Sachs (because he had not borrowed and would not deliver it). If Arenstein had actually borrowed the stock, he would have to pay to borrow the stock. If he had paid to borrow the stock, the scheme would never have worked. Moreover, if Goldman Defendants wanted to buy or borrow stock, they had numerous options where delivery would occur, including borrowing from custodial banks, mutual funds, other prime brokers. However, such borrowing costs money.

91. In order to vitiate the very written policy it created, Goldman Sachs instituted a secret, unwritten compliance policy known only to a few select people. Of course, Goldman Sachs does not have unwritten policies; to the contrary, it has extensive, meticulously-detailed written policies. Nonetheless, in this instance, as Rosenbloom testified to the SEC, Goldman Sachs orally instructed members of Hedging Strategies Group that they should not

1 know their counterparties. That policy was put in place after and because of the meeting with
2 Arenstein. In other words, after the Hedging Strategies Group met with Arenstein and agreed to
3 do manipulative "conversion" trades with him, the Hedging Strategies Group was orally
4 instructed to not know that it was doing conversion trades with Arenstein.

5 92. To carry off this charade, the Hedging Strategies Group would transmit the
6 names of the targeted stocks and share amounts to Bryan Ghalioungui ("Ghalioungui"), a Goldman
7 Sachs Order Clerk in Chicago. Ghalioungui would then execute the trade with Arenstein,
8 referring to him obliquely in emails to the Hedging Strategies Group as "our usual counterpart."
9 Thus, Goldman Sachs instituted its unwritten rule so that the Securities Lending Group, including
10 the Hedging Strategies Group, could pretend it lacked knowledge that Goldman Sachs was
11 trading with Arenstein and, as the scheme expanded, other naked short sellers who would also fail
12 virtually 100% of the time.

13 93. Ghalioungui testified before the SEC about Goldman Sachs' unwritten
14 rule. Ghalioungui testified that, as a floor broker, it was in effect unavoidable for him to know
15 the identities of the counterparties.

16 94. Yet while Ghalioungui and other brokers would inevitably know the
17 counterparties to the trades, Rosenbloom and others in Securities Lending took active steps to
18 make it appear that personnel within Hedging Strategies would not have such knowledge.
19 Ghalioungui testified that sometime around 2004, Rosenbloom telephoned him and stated that
20 Rosenbloom and Securities Lending were "not supposed to know the names of the counterparties,
21 period." Nothing in the compliance manual referred to a rule that the Hedging Strategies Group
22 should not know the names of counterparties because, if it had, the compliance manual would
23 have lost its value as evidence of Goldman Sachs' purported non-manipulative intent. If
24 Goldman Sachs' compliance manual had stated that it intended to buy stock from someone who
25 had no stock, knowing that the purchase would result in a fail-to-deliver, and then use that stock
26 to perpetuate short selling in the stock, Goldman Sachs' manipulative intent would have been
27 evident.

28 ///

1 95. The unwritten rule was applicable only to the Securities Lending Group,
2 including the Hedging Strategies Group. Ghalioungui testified he could tell any other desk in
3 Goldman Sachs who the counterparties were, but that he could not tell the Securities Lending
4 Group. While no one at Goldman Sachs told Ghalioungui why Goldman had instituted his
5 unwritten rule, Ghalioungui testified that he “knew it was a rule and I shouldn’t break it.”

6 96. 

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12 **To Further Their Scheme, Goldman Defendants Sought To Remove Arenstein From Their**
13 **Books**

14 97. There was another hitch to the scheme that needed to be dealt with.
15 Arenstein was a client of GSEC, which is an affiliate of the Goldman entity that owns its
16 securities lending business - Goldman Sachs. Goldman Sachs is where Conley, Santina and
17 Rosenbloom worked. That was not a good situation, as GSEC would eventually be expected to
18 deliver, on behalf of its client Arenstein, the stock that Arenstein was selling to Goldman Sachs -
19 stock that Arenstein did not have.

20 98. As set forth above, when someone sells stock they do not own (a short sale)
21 and they do not borrow the stock to make delivery (naked short selling), that naked short sale
22 results in a fail to deliver stock by the broker who is responsible for settling the trade. (*See supra*,
23 ¶¶ 24, 25).

24 99. As Merrill Defendants’ Compliance Officer Mastrianni confirmed, with a
25 fail to deliver, the buyer “on his account he is shown that he has purchased the shares and he
26 owns them.” Thus, Goldman Sachs would show ownership of the stock even though its
27 Securities Lending Group was buying stock from a seller, Arenstein, that it knew had no stock.
28 However, if Arenstein naked shorted the stock on GSEC’s books, fails-to-deliver would appear in

1 large quantities on GSEC's books, and it would look suspicious for Defendant GSEC to
2 constantly fail to settle trades where Defendant Goldman Sachs was the counterparty.
3 Accordingly, the parties needed another, independent broker to agree to intentionally fail to
4 deliver the stock.

5 100. Furthermore, Goldman Defendants feared that Arenstein's trading would
6 trigger regulatory scrutiny, which was another reason to consider another broker participant in the
7 scheme. Although Goldman Defendants knew that Arenstein's trades were manipulative,
8 Goldman Defendants had no qualms about continuing to participate in these manipulative trades –
9 so long as the trades would fail on the account of another clearing broker. Goldman Sachs
10 believed that, thanks to its written compliance policy and its unwritten policy, it could claim that
11 it never had any knowledge that it was entering into manipulative trades that would result in fails-
12 to-deliver.

13 101. Despite this understanding, Goldman Defendants did in fact, effect some
14 naked short sales with Arenstein, including in Overstock, on GSEC's books while Arenstein was
15 searching for a new clearing firm.

16 **Arenstein Attempts to Make a Deal With Merrill Defendants To Bring His Business to**
17 **Merrill Pro If They Will Agree to Intentionally Fail to Deliver His Naked Short Sales**

18 102. On or about February 2, 2005, Arenstein approached Thomas Tranfaglia
19 ("Tranfaglia"), Merrill Pro's President, Curt Richmond ("Richmond"), a Merrill Pro Managing
20 Director, and Alan Cooper ("Cooper"), a Merrill Pro Vice-President.

21 103. Arenstein told Merrill Pro that his entire business was naked short selling
22 hard to borrow stocks. Merrill Pro's February 10, 2005 New Business Committee account form
23 indicated that Mr. Arenstein's "trading strategy" was "reversals".

24 104. Tranfaglia described Arenstein's discussions with Merrill Pro in a March 1,
25 2005 email to Richmond as follows: "he wants to short and have us fail on the negatives,
26 correct?" Thus, Merrill Defendants understood that Arenstein wished to come to Merrill Pro,
27 open up an account, naked short sell hard-to-borrow securities, and have Merrill Defendants agree
28 in advance of his trades to intentionally fail to deliver the stock.

105. Arenstein needed to be up front with Merrill Defendants and tell them exactly what the plan was, because the scheme would only work if Merrill Defendants agreed to intentionally fail to deliver the stock Arenstein sold. Since Defendants all knew Arenstein did not have any stock to sell, they all knew there would be no delivery. If Merrill made efforts to make delivery rather than agreeing to intentionally fail to make delivery, the expense of Merrill Defendants obtaining the stock for delivery would make the scheme financially unfeasible. As described above, Arenstein's business was to naked short sell millions of shares of hard to borrow stocks, with market values of hundreds of millions of dollar a day.

Merrill Defendants Initially Refuse the Deal But Then Agree to the Arrangement and Expand it to Hazan and Other Merrill Pro Clients

106. At first, Merrill Defendants were not willing to enter into a business arrangement that would leave massive quantities of failures to deliver of hard to borrow securities on Merrill Pro's books. Merrill Pro knew that the whole plan was to not deliver stock because Arenstein had no stock, and that the volume and nature of Arenstein's naked short selling business in hard to borrow securities would result in massive fails to deliver.

107. On February 14, 2005, Richmond emailed to the other Merrill Pro executives "I will tell Scott Arenstein he can't trade these with us any more than he can with [Goldman Defendants]." On March 1, 2005, Richmond wrote Tranfaglia that he previously told Arenstein no, that he appealed for another opinion "so I said I would (reluctantly) ask you... I will tell him the answer is still no..." On March 4, 2005, Richmond again wrote Tranfaglia, noting that he informed Arenstein that "we had no interest" in clearing his naked short selling/fail strategy.

108. At the time Arenstein approached Merrill Defendants, Merrill Defendants had already been involved in internal discussions regarding a strategy to intentionally fail to deliver short sales for other Merrill Pro clients, including Hazan, sole proprietor of Hazan Capital Management, LLC ("HCM"). Hazan had an identical business to Arenstein – he naked shorted stock in order to create false supply. Like Arenstein, the success of Hazan's business depended upon Merrill Defendants either agreeing to intentionally fail to deliver shares for his trades or not

1 charging him the cost of borrowing to make delivery. As with Arenstein, Goldman Defendants
2 created the demand for his naked shorts.

3 109. On February 9, 2005, Keith Babbitt, a Merrill Lynch executive ("Babbitt"),
4 emailed Tranfaglia and John Brown ("Brown") (an employee of both Merrill Defendants, and
5 CEO of Merrill Pro), suggesting they might want to "consider letting [customers such as Hazan]
6 fail." On February 10, 2005, Brown asked Merrill Pro executives "How and when can we
7 prevent delivery?" On February 14, 2005, Brown set up a meeting with Tranfaglia to discuss
8 what Merrill Defendants needed to do to make market maker trades fail.

9 110. However, Merrill Defendants also told Hazan in February 2005 that they
10 could not "accommodate his trading style." On March 1, 2005, Richmond confirmed that Merrill
11 Pro did not "have any desire to clear this type of trading (aka Steve Hazan)." Despite having a
12 desire to intentionally fail to deliver these trades, on April 19, 2005, Brown also acknowledged in
13 an email to the other Merrill Defendants' executives that this would not be appropriate; rather
14 Merrill Defendants should make delivery on these naked short sales and charge the customers the
15 cost.

16 111. Despite these internal acknowledgements, Merrill Pro continued to work
17 with Hazan to develop a trading strategy to naked short hard-to-borrow stocks like Overstock.
18 Merrill Pro documents reflect these discussions. For example, on March 30, 2005, Cooper
19 emailed Frank Catris, another Merrill Pro executive, asking to "discuss his situation...I have a
20 feeling the solution to the negative issue may take a while to implement and I hate to see him
21 leave." On April 20, 2005, Cooper worked on internal spreadsheets to evaluate each client's
22 "desire to fail", noting Hazan's "desire to fail." On May 19, 2005, Cooper emailed Tranfaglia
23 and other Merrill Pro executives regarding "establishing a new short...for Steve Hazan today?"
24 and discussing trading strategies to help Hazan naked short a hard to borrow security. On May
25 19, 2005, Cooper noted that he "got approval from" Tranfaglia to intentionally fail a hard to
26 borrow security for Hazan.

27 112. Ultimately, Merrill Defendants decided to agree to intentionally fail to
28 deliver hard to borrow securities, including Overstock, which Hazan and Arenstein wanted to

1 naked short sell. By June 13, 2005, Tranfaglia declared in an email that Merrill Defendants
2 “[w]ant to fail.” On July 26, 2005, Cooper confirmed in an email that “Steve [Hazan]
3 understands that [Merrill Pro] will fail.” On July 29, 2005, Merrill Pro executives acknowledged,
4 in regards to Hazan’s naked short sales of multiple hard to borrow stocks, including Overstock,
5 that “[w]e borrowed all of these and will start failing.”

6 **Merrill Pro’s Managing Director in Its Regulatory Control Group Tells**
7 **Merrill Defendants’ Chief Compliance Officer in Response to Her Concerns About the**
8 **Intentional Fails “Fuck the Compliance Area”**

9 113. Merrill Pro’s Chief Compliance Officer Linda Messinger (“Messinger”),
10 who was employed by both Merrill Defendants, opposed the decision by Merrill Defendants to
11 intentionally fail Hazan’s trades. In response to Merrill Defendants’ intentional fail to deliver
12 Hazan’s naked short sale referenced above, on May 25, 2005, Messinger emailed Melz and
13 Tranfaglia: “I thought we were going to have a little further discussion so that I was comfortable
14 - guess not. Can I get Peter’s [Melz] procedures today?”

15 114. Melz, a Merrill Pro Managing Director in Merrill Pro’s Regulatory Control
16 Group at the time, and currently Merrill Pro’s President, responded that same day to both
17 Messinger and Tranfaglia (Merrill Pro’s President) by email: “*Fuck the compliance area –*
18 *procedures, schmecedures*” (emphasis added).

19 115. After this dialogue, on June 1, 2005, Merrill Pro created a compliance
20 procedure that stated Merrill Defendants would allow intentional fails to deliver in limited
21 circumstances, and created strict procedures that were required to be followed before doing so.
22 However, these procedures were not followed by Merrill Pro executives; and were not even
23 circulated to or known by Merrill Pro’s personnel who dealt with Hazan’s and Arenstein’s
24 accounts.

25 **Merrill Defendants Alter Their Computer Systems to Purposefully Fail to Deliver Naked**
26 **Short Sales**

27 116. In order to accomplish their goal of intentionally failing to deliver these
28 stocks, Merrill Defendants had to restructure their computer systems to extricate these specific
trades from their normal clearance and settlement procedures.

1 117. Merrill Lynch is responsible for the settlement of Merrill Pro trades, as
2 well as Merrill Lynch trades. Merrill Defendants refer to this as the “correspondent clearing
3 process.” That means that in the normal course, Merrill Lynch would make any and all efforts to
4 make delivery on all stock sales on Merrill Defendants’ books, including Merrill Pro short sales.
5 This is done at Merrill Defendants’ offices in Jersey City, New Jersey. In the words of Merrill
6 Lynch’s Vice President of Domestic Settlement, Joanne Whatley, in her deposition in this case
7 “[o]n settlement date, we attempt to settle trades. That’s basically it. Gather inventory to settle,
8 and that’s it,” and the settlement process is “systemic.”

9 118. In order to deviate from Merrill Defendants’ standard operating and
10 “systemic” procedure, Merrill Defendants had to significantly alter their computer systems to
11 keep the trades from settling, or in the words of CEO Brown set forth above, to “prevent
12 delivery.” Melz testified in this case that Merrill Defendants altered their systems to “try[] to
13 fail” and to “actively fail” naked short sales, including Hazan and Arenstein’s naked short sales of
14 Overstock. Upon information and belief this process of systems alteration to accommodate the
15 scheme cost at least tens of thousands of dollars and took several months.

16 119. Because the altering of its systems to change the normal procedure and
17 purposefully fail trades was complicated, Melz testified that despite all their efforts, Merrill
18 Defendants were never “equipped to...purposefully fail...in a 100 percent scientific way.”
19 However, as further detailed below, Merrill Defendants did successfully “purposefully fail”
20 massive quantities of Overstock stock.

21 **Arenstein Opens His Merrill Pro Account and Immediately Begins to Naked Short Sell**
22 **Huge Quantities of Hard to Borrow Stocks Including Overstock**

23 120. Not surprisingly, and in accordance with the plan, after Merrill Defendants
24 decided they would and could successfully intentionally fail to settle naked short sales of hard to
25 borrow securities including Overstock, Arenstein opened his account at Merrill Pro in July 2005,
26 and almost immediately began to naked short sell huge quantities of hard to borrow stocks,
27 including Overstock.

28 ///

1 121. Arenstein testified to the NASD that he stopped using GSEC as his
2 clearing firm in July 2005 since they did not want to clear the hard to borrow stocks that he
3 trades. Arenstein testified Goldman was concerned about the risk of his trading on their books,
4 concerned that his trading might be illegal and therefore they did not want to have regulatory risk
5 for clearing his trades on their books. However, once Arenstein moved his trading to Merrill
6 Pro's books where Merrill Defendants agreed to intentionally fail to deliver to settle the trades,
7 Goldman Sachs was on the other side of the vast majority of his naked short sales of hard to
8 borrow stocks, including those in Overstock.

9 122. The traders and managers of Goldman Sachs' trading desk knew that
10 Merrill Pro was the broker on whose books Arenstein's short sales would fail. Ghalioungui, a
11 Goldman Sachs employee, testified to the SEC that he was aware that Arenstein was a
12 counterparty to Goldman Sachs' trades. Ghalioungui also was aware that Arenstein was a Merrill
13 Pro customer because Ghalioungui would "write the clearing number on the tickets." As such,
14 Goldman Sachs knew that the naked short sales that Defendants were effecting would fail on
15 Merrill Pro's books. Of course, Goldman Sachs executives Conley, Santana and Rosenbloom had
16 met with Arenstein to discuss how he could continue failing on trades to Goldman Sachs back in
17 August 2004, and throughout 2005, GSEC Managing Director Lawler had monitored Arenstein's
18 account transition to Merrill Pro.

19 123. Likewise, Merrill Defendants knew Arenstein was naked short selling to
20 Goldman Sachs. On October 22, 2005 Arenstein emailed "bryan/lisa" (Goldman Sachs
21 Ghalioungui and Merrill Pro employee Lisa Burke) regarding having "sold too much" of a stock
22 to Goldman Sachs, and asking them both to "erase" the trade. A Merrill Lynch employee, Geno
23 McCambridge, sometimes assisted with the execution of trades and therefore would see the
24 counterparties to both sides of the trade.

25 124. Merrill Defendants subsequently expanded their agreement and
26 arrangement to intentionally fail trades for their clients.
27
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1
2 **Defendants Manipulate and Alter Their Records to Conceal the Persistent Failures to**
3 **Deliver**

4 125. Defendants' naked short selling scheme raised another problem: the selling
5 of stock that did not exist would result in fails-to-deliver. Those fails-to-deliver would be
6 massive and long-lasting. Such data could invite regulatory scrutiny, particularly given that those
7 fails-to-deliver were concentrated in some of the Defendants, as opposed to being spread around
8 the industry equally. In addition, there was a risk that, if stock was not borrowed and delivery
9 was not made, a "buy-in" could occur, as described below. To create the appearance of delivery,
10 Defendants created schemes to make it appear on their records that stock was being purchased
11 and delivery made. But it was not.

12 126. As everyone involved in the scheme knew, the traders did not have any
13 Overstock stock and all parties understood there never would be delivery of Overstock stock.
14 Thus, for each fail-to-deliver there would be a corresponding "fail-to-receive," *i.e.*, some clearing
15 firm would not receive the stock that was supposed to be delivered. Intuitively, one might
16 assume that Goldman Sachs would have the fail-to-receive that would match Merrill Pro's fail-to-
17 deliver. However, the system does not work that way. Because DTCC uses a Continuous Net
18 Settlement ("CNS") system, the fail to receive caused by Merrill Pro's fail-to-deliver may be
19 allocated to any of a long list of clearing firms, even though these firms were not involved in any
20 way in the trade that caused the fail. Thus, when Merrill Defendants decided to fail-to-deliver,
21 any CNS participant who has a fail to receive could potentially institute a "CNS Buy-In" whereby
22 they tell the DTCC they want to force settlement. The participant in the fail-to-deliver position
23 then has a brief window of time to make delivery, otherwise the other broker can buy the shares
24 to cover the fail to deliver. That fact added another wrinkle to the scheme.

25 127. Obviously, neither Merrill Pro, nor its clients who participated in the
26 scheme, want to be forced to buy the stock (as they seek to naked short sell); if the CNS Buy-In
27 occurs, Merrill Pro will in essence have been forced to purchase and pay for massive quantities of
28 stock. If the buy-in occurred, the entire economics of the naked short selling scheme would

1 break down, because the short sales would now involve real costs to acquire the shares. Some
2 solutions were devised.

3 128. First, Cooper testified that Merrill Pro devised a plan with its clients to
4 “manage risk” and to “make sure the traders had the information on the [CNS] buy-ins before the
5 close of the market so that they could sell into them” for buy-ins of stock including Overstock.
6 Thus, Merrill Pro would provide its clients who were subject to CNS Buy-Ins with the
7 information on the quantity of the buy-in that had occurred before the close of the market on the
8 same day so that the clients could immediately naked short sell the stock again. This is reflected
9 in an email written by Cooper on August 31, 2005, whereby he notes that Merrill Pro needs to
10 make sure clients such as Hazan have the information on the buy-in prior to the close of the
11 market so they can “sell into it.” Because the client would naked short sell at the same time that it
12 is being charged the cost of purchasing stock, the transaction would be a wash. Again, since none
13 of the traders had any stock, the new short sale was a naked short sale. Merrill Defendants would
14 then intentionally fail to deliver those naked short sales again, and the process would repeat.

15 129. Second, Merrill Defendants worked with its clients to engage in fake
16 purchases between them that would then be unwound within 24 hours. These trades created the
17 false appearance, with supporting false records, that one party to the transaction was buying stock
18 long and thereby curing the failure-to-deliver. However, simultaneously, they would enter into a
19 “flex option” purchase and sale. The effect of the flex option was to reverse the transaction the
20 next market day or shortly thereafter. Thus, for example, if Hazan naked short sold Overstock to
21 Arenstein, the next trade day Merrill Pro’s books and records would show the trade was reversed,
22 with Arenstein naked selling the stock right back to Hazan. Other Merrill Pro records, though,
23 would show that the fail-to-deliver had been resolved by the purchase, regardless of the
24 unwinding of the trade.

25 130. Again, no stock was delivered, so Merrill Defendants’ fails-to-deliver in
26 Overstock continued to persist. Cooper described this in an August 4, 2005 email to Bill Stein, a
27 Merrill Pro Managing Director, and Tranfaglia as follows: Merrill Pro’s customers “were
28 knowingly putting on shorts and then basically rolling them.” By rolling the trades, it appeared

1 that the fails-to-deliver were short-lived, when in reality they lasted for months and even years.

2 131. Banc of America's Compliance Manual identifies these types of
3 prearranged transactions as "wash transactions", and Brian Mattioni, a Banc of America
4 compliance officer confirmed in testimony in this case that these types of trades would be
5 prohibited under their policies.

6 132. On information and belief, these naked short selling transactions were also
7 effected in [REDACTED] Merrill Pro accounts, after Merrill Pro
8 instructed these clients in the naked short selling strategy.

9 133. On information and belief, Goldman Defendants originally came up with
10 this naked short selling strategy to perpetuate the fails to deliver. As alleged above, on August
11 19, 2004, an email involving Conley, Santina, and Rosenbloom (three days after their meeting
12 with Arenstein) discussed the potential use of flex options as part of the scheme. Santina noted
13 "[w]e have been talking to Scott [Arenstein] about this already, and will look further into it."

14 134. Hazan testified to the NASD that he discussed this strategy with Merrill
15 Defendants on multiple occasions, and that Merrill Defendants agreed to the strategy. Hazan
16 specifically identified a call in approximately November 2005. In an August 6, 2006 email,
17 Cooper wrote that in a conversation with Hazan, Hazan expressed his understanding that Merrill
18 Defendants agreed to these transactions, and that if Merrill Defendants had not agreed to it, he
19 would not have done them.

20 **Merrill Defendants' Chief Compliance Officer Adamantly Opposed the Scheme, But the**
21 **Merrill Defendants Ignored Her**

22 135. Messinger, Merrill Defendants' Chief Compliance Officer, had previously
23 expressed her unhappiness with Merrill Defendants' decision to intentionally fail on trades.
24 Later, she expressed even more strongly her opposition to the naked short selling scheme. In her
25 December 2005 monthly "Compliance Dashboard," Messinger notes the "very large CNS [fail to
26 deliver]" at Merrill Pro is causing Merrill Pro to "receive significant scrutiny from regulators"
27 and also noted a regulatory "inquiry on FLEX trades by two Merrill PAX clients [Hazan and
28 Arenstein] in Overstock."

1 136. In a January 19, 2006 telephone call with a Merrill Pro manager, Ellen
2 Liska ("Liska"), Messinger and Liska discussed Arenstein's trading, and Merrill's intentional
3 fails to deliver: "this Overstock is going nowhere...the NASD and everyone is looking into
4 it...because our position never changes...our position is increasing. We are over 2 million shares
5 short...and he has more...he's going short another 250,000." Messinger stated "this is not
6 okay...you cannot be recycling this short position... ."

7 137. In a January 11, 2006 email to multiple Merrill Pro executives, Messinger
8 states: "I can not stress strongly enough the need to clean up the enormous fails to deliver
9 positions," attaching a spreadsheet including millions of failing shares of Overstock.

10 138. On June 28, 2006, Messinger emailed multiple Merrill Pro executives in
11 regards to the fails to deliver "[t]his is totally unacceptable...In my opinion there needs to be
12 some assessment done here, and fails cleaned up..."

13 139. As they had before, all of Messinger's protests fell on deaf ears. Merrill
14 Defendants continued to effect the naked short sales well into 2007. This was not surprising,
15 given Merrill Pro's Melz's earlier response to Messinger: "fuck the compliance area." Merrill
16 Pro's President at the time, Thomas Tranfaglia, also showed contempt for Messinger's objections.

17 140. Merrill Defendants were motivated to agree to this arrangement rather than
18 listen to their compliance officer for several reasons. In 2004 and 2005, Merrill Pro had
19 purchased two other clearing firms in an effort to expand its clearing business, specifically for
20 clients such as Hazan and Arenstein. Merrill Defendants understood exactly what kind of
21 business these clients were in – selling hard to borrow stocks they did not have, with
22 corresponding fails to deliver on Merrill Defendants' books, and that this business, along with
23 Merrill Defendants' business, could only grow if the short sales in these hard to borrow stocks
24 continued to grow and the price of the stocks continued to go down. Merrill Defendants
25 understood and intended that in order for its clients, and therefore Merrill Defendants, to be
26 successful, the vicious cycle described herein must continue. Merrill Defendants also made huge
27 profits lending out hard to borrow securities such as Overstock. Merrill Lynch did not want to
28 lose the opportunity to make tremendous profits off of what inventory did exist for these stocks,

1 by "wasting" their inventory making delivery on Hazan and Arenstein's naked short sales.
2 Merrill Defendants, like Goldman Defendants, also took out proprietary short positions in
3 Overstock during this time period. Merrill Defendants knew, understood, and intended that the
4 scheme would drive down the price of Overstock. Merrill Pro's expansion of its business caused
5 it to have record profits in 2005, and Tranfaglia received a bonus of half a million dollars for his
6 efforts that year. Melz was eventually promoted to President of Merrill Pro. Merrill Defendants
7 fired Messinger in January 2010.

8 **The Trades Effected by Defendants as Part of the Scheme**

9 141. To date, Plaintiffs have identified the trades described below as being
10 effected by Defendants as part of the scheme alleged in the Complaint.

11 142. At least 99 percent of the trades effected in Hazan's Merrill Pro accounts
12 were part of the scheme alleged herein. At least 98.47 percent of the trades effected in
13 Arenstein's Merrill Pro accounts were part of the scheme alleged herein. Merrill Defendants
14 effected each of these trades.

15 143. These trades are reflected in Merrill Pro's blue sheets for their DTCC
16 account number 369 and 671. The Bates numbers of the Merrill Pro spreadsheets reflecting the
17 manipulative trades are: MLPROF-OSTK-00004826-4840; 4702-06; 7392-98.

18 144. The trades are located in the following account numbers in the above-
19 referenced blue sheets: 1020010HCM000000000; 1020010G0500000000, or in the blue sheets
20 where no account number is given but rather an account name is stated "Hazan Capital
21 Management, LLC" appears in that column (Hazan's accounts) 1020010AFR000000000;
22 1020010AFS000000000 or in the blue sheets where no account number is given but rather an
23 account name is stated "SBA Trading, LLC" (Arenstein's accounts).

24 145. The trades effected in these accounts reflect naked shorts sales of
25 Overstock by Hazan as part of 49 reverse conversions, and as part of 54 reverse conversions by
26 Arenstein; and 65 trades between Hazan and Arenstein which involved naked short sales paired
27 with options that reverses the trade shortly thereafter; and 11 (Hazan) and 24 (Arenstein) similar
28 additional naked short selling strategies done by Hazan and Arenstein but not with each other.

1 146. Examples of the trades contained in these records are as follows:

2 a) On September 28, 2005 the following trades were effected: 40,000 shares of
3 Overstock were naked sold short in Hazan's account at \$39.10 (all prices are expressed in per
4 share price) and 400 options contracts of March 40 puts sold at \$7.20 (all prices are expressed in
5 per contract prices) and 400 contracts of March 40 calls at \$4.40 purchased.

6 b) On March 24, 2006 the following trades were effected: 49,200 shares of
7 Overstock were naked sold short in Arenstein's account at \$30.60, 492 options contracts of June
8 35 puts at \$5.20 sold and 492 contracts of June 35 calls at \$0.50 purchased.

9 c) On October 24, 2005, the following trades were effected: 28,600 shares of
10 Overstock were naked sold short at \$34.60 in Hazan's account, 143 contracts of December 35
11 puts at \$4.30 and 143 contracts of December 35 puts at \$4.20 were sold, and 286 contracts of
12 December 35 calls at \$3.20 were purchased.

13 d) On February 15, 2006 the following trades were effected: 57,500 shares of
14 Overstock were naked sold short at \$25.20 in Hazan's account, 575 contracts of June 35 puts at
15 \$10.80 were sold and 575 contracts of June 35 calls purchased at \$0.40.

16 e) On September 14, 2005, the following trades were effected: 95,000 shares of
17 Overstock were naked short sold at \$43.70 in Arenstein's account, 950 contracts of December 45
18 puts were sold at \$6.40 and 950 contracts of December 45 calls were purchased for \$3.70.

19 f) On December 28, 2005, the following trades were effected: 50,000 shares of
20 Overstock were naked sold short in Arenstein's account for \$29.142, 500 contracts of February
21 35 puts sold at \$7.40 and 500 contracts of February 35 calls were purchased at \$0.90.

22 g) On November 15, 2005, the following trades were effected: 28,500 shares of
23 Overstock were sold in Arenstein's account to Hazan's account for \$32.83, 285 contracts of
24 November 45 puts at \$12.20 were sold in Arenstein's account and purchased in Hazan's account.

25 h) On June 21, 2006, the following trades were effected: 32,000 shares of
26 Overstock are purchased in Hazan's account for \$20.02 and 320 contracts of June 1 calls are sold
27 at \$19.00 with June 22 expiration date.

28 ///

1 i) On April 28, 2006, the following trades were effected: 441,000 shares of
2 Overstock were purchased in Arenstein's account for \$26.125, and 4410 contracts of May 1 calls
3 expiring May 2 were sold at \$25.10.

4 147. Further naked short sales that were part of this scheme are contained in
5 Merrill Pro's blue sheets for their clearing account number 551 (MLPROF-OSTK-00004841-53;
6 7403-7433). These naked short sales were effected by Merrill Defendants in the accounts of
7 [REDACTED] from June 2006 through at least September 14, 2007.
8 There accounts are identified by their entity names in the blue sheets. The trading in these three
9 entities' accounts created the vast majority of the fails to deliver Overstock stock in Merrill Pro's
10 551 account. For example, [REDACTED] trading on April 24, 2007 resulted in fails to deliver of
11 434,943 shares of Overstock; [REDACTED] trading on June 15, 2006 resulted in fails to deliver
12 254,840 shares of Overstock; [REDACTED] trading on October 26, 2006 resulted in fails to deliver
13 of 63,903 shares of Overstock, [REDACTED] trading on January 26, 2007
14 resulted in fails to deliver of 170,527 on December 12, 2006 for each of these two entities; each
15 of these three entities' trades on December 12, 2006 resulted in fails to deliver of 71,487 shares of
16 Overstock (total fail of 214,461).

17 148. As part of the scheme, Arenstein also engaged in naked sale transactions
18 involving 50,000 shares of Overstock on April 29, 2005 and May 4, 2005, while he was still a
19 GSEC customer. GSEC effected these transactions.

20 149. Goldman Sachs was the counterparty to conversion trades by Arenstein,
21 Hazan and other Merrill Pro clients in the same scheme, as previously identified above.
22 Examples of Goldman trades (purchases of the naked short sales) identified to date are as follows:

- 23 a. 125,000 shares of Overstock on June 28, 2005,
- 24 b. 87,000 shares of Overstock on June 30, 2005,
- 25 c. 100,000 shares of Overstock on June 15, 2005,
- 26 d. 5,000 and 15,000 shares of Overstock on July 18, 2005,
- 27 e. 20,000 shares of Overstock on July 20, 2005,
- 28 f. 100,000 and 12,500 shares of Overstock on July 27, 2005,

- g. 110,000 shares of Overstock on August 1, 2005,
- h. 150,000 shares of Overstock on August 18, 2005,
- i. 100,000 shares of Overstock on September 14, 2005,
- j. 100,000 shares of Overstock on September 20, 2005,
- k. 150,000 shares of Overstock on September 23, 2005,
- l. 25,000 and 200,000 shares of Overstock on March 21, 2006,
- m. 50,000 shares of Overstock on January 8, 2007.
- n. 100,000 shares of Overstock on July 12, 2005,
- o. 220,000 shares of Overstock on August 15, 2005,
- p. 115,000 shares of Overstock on April 27, 2005,
- q. 110,00 shares of Overstock on April 29, 2005.

Defendants Conducted their Trading to Conceal the Scheme

150. Although Overstock is a NASDAQ stock, little to none of the trading at issue occurred on the NASDAQ. Instead, the sales of stock and options involved in the trades were broken up and routed to exchanges such as the Pacific Stock Exchange and the Cincinnati Stock Exchange. The trades were arranged to take place on these small regional exchanges. The stock and options components of the conversion trades were separated into trades on different exchanges so as to conceal the substance of the trading. Executing the trades on small regional exchanges also allowed the trades to be “crossed,” which refers to the direct execution of the trade between buyer and seller without the participation of market makers. For example, Hazan and Goldman Sachs would “meet in cincy” (the Cincinnati Stock Exchange) to cross their trades, knowing that they could simply take their prearranged trade and “print it to the tape,” meaning that the trade could be recorded on the books of that exchange without any potential interference from legitimate buyers and sellers in the market. In contrast, if Goldman had attempted to sell to Hazan on the NASDAQ, there would be a risk of other buyers and sellers interfering in the prearranged trade.

151. Goldman Sachs also instructed Tim Young’s partner, William Buckley, who was assisting with the execution of the trades, to enter Arenstein’s name on the trade ticket

1 rather than Buckley's name. By doing so, as the NASD found, it would give the "impression Mr.
2 Arenstein executed the trade in person, rather than through Mr. Buckley, compromising the
3 AMEX Audit Trail." Not only would the audit trail be compromised, it would appear that the
4 trade with Arenstein was a legitimate floor trade on the open market, not a prearranged trade with
5 Arenstein who was back at his house in New Jersey.

6 152. Because the trades were divided into component pieces, split from large
7 block trades into smaller trades for execution, routed to regional exchanges where they could be
8 crossed and printed to the tape outside the normal floor-based trading process, mismarked with
9 false information on the trade tickets that compromised the audit trail, and through other similar
10 tactics, the nature of the trading was unknown to the public and concealed from Overstock and
11 other targeted companies. Indeed, the only information that was publicly revealed was that
12 certain companies were on a list of companies with significant fails-to-deliver, but the number of
13 fails, the sources of fails, and the names of the clearing firms involved in the fails were all
14 withheld from the public. Of course, the underlying agreements and understandings which
15 caused the fails-to-deliver, including but not limited to the meeting in the bar in August 2004 and
16 the agreement of the Merrill Defendants to intentionally fail trades were also unknown.

17 153. Such complex efforts to conceal the trading activities required substantial
18 effort. The scheme, though, was so profitable that the extra efforts to conceal what was occurring
19 were well worth the trouble. As Young stated to Hazan in an instant message, Goldman Sachs
20 "doesn't care what price they r buying them."

21 154. In other contexts, Goldman Defendants have made similar efforts to
22 conceal their knowledge of activities causing fails-to-deliver. For example, in an October 12,
23 2005 letter to the NASD, Steven O'Malley ("O'Malley"), GSEC's Vice President and
24 Compliance Officer, stated that "GSEC has no procedure in place to identify which specific short
25 sale transactions caused its fails to deliver." O'Malley's claim is belied by a November 17, 2006
26 email exchange between Conley and Ralane Bonn ("Bonn"), in which Conley inquired about
27 Goldman Sachs' procedures for not giving locates on names with fails. Bonn replied: "per Les
28 Nelson, we have to be careful not to link locates to fails b/c we have told the regulators that we

1 can't."

2 155. As demonstrated by Bonn's email, Goldman Sachs believed that it could
3 game the regulatory system. On information and belief, Goldman Defendants intentionally
4 misled regulators about their ability to link particular short sales, locates, and failures to deliver in
5 order to conceal their scheme alleged herein.

6 156. Even in the context of this lawsuit, Goldman Defendants have attempted to
7 conceal their knowledge. In her October 15, 2010 deposition in this action, Bonn gave false
8 testimony about when she had first heard of Arenstein, stating that she first heard of him as the
9 result of a public disciplinary order that was issued in 2007. Bonn expressly testified that "Yes, it
10 was a result of that public document that I first heard of Scott Arenstein." Bonn actually knew of
11 Arenstein long before the 2007 disciplinary order because he had been entering into conversion
12 trades with the Securities Lending Group at Goldman Sachs since at least 2004. Thus, in a
13 January 2005 email, produced after her deposition, she specifically discussed Arenstein's
14 conversions and the fact that he was not charged any borrowing fee by GSEC (as he never
15 borrowed and delivered stock in his trades with the Securities Lending Group).

16 157. Moreover, upon learning of Arenstein's 2007 disciplinary order, Bonn
17 quickly emailed notice of that order to Conley and Santina – two of the participants in the scheme
18 alleged herein – in an email the importance of which Bonn marked "High." Bonn later forwarded
19 that email to Brennan. Bonn was aware of Arenstein long before the 2007 disciplinary order, and
20 she understood the implications that the Goldman Defendants' history of dealings with Arenstein
21 may have for Goldman Sachs.

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23
24 158. At the time of her testimony, the Goldman Defendants had not disclosed to
25 Plaintiffs the existence of the parallel SEC investigation.

26 **The Naked Short Selling and Intentional Fails to Deliver Achieved the Intended and**
27 **Desired Effect**

28 159. As set forth above, the intent of the scheme was to perpetuate naked short

1 selling in Overstock securities and drive down the price of Overstock stock. Defendants
2 understood and intended that targeting a limited number of small to midsize companies –
3 including Overstock – for manipulative naked short selling would create a snowball, or pile-on
4 effect, as more and more short sellers, attracted by the high short interest and declining stock
5 price, would commence short sales to further drive down the price of such companies' stock, to
6 the profit of both Defendants and their clients. Defendants accomplished their goal.

7 160. Goldman Sachs furthered the scheme to drive down the price of stocks,
8 including Overstock, by distributing lists of the top shorted stocks to clients. In one such list,
9 dated May 18, 2006, Overstock was listed as number four on the list. In another, dated October
10 27, 2006, Overstock was listed as number six on the list. These lists show the extraordinary
11 pressure on Overstock's stock price as a result of short-selling that had become unmoored from
12 the natural supply/demand balance.

13 161. Goldman Sachs intended that its distribution of such lists would lead the
14 clients of Goldman Defendants to further "pile on" in the shorting of Overstock stock, which
15 would further drive down the price of Overstock stock in a downward spiral, from which
16 Goldman and its clients would profit. Goldman Sachs also knew that such lists would alert
17 holders of Overstock shares to the potential short-selling activities described and that by placing
18 Overstock on such a list, Goldman Sachs was signaling to these holders that Overstock shares
19 may be subject to further price declines owing to short selling which would trigger further sales in
20 the broader market of Overstock's shares and further fuel price declines. As David Solomon of
21 Goldman Sachs said about one such list, "[o]ur hedge fund clients and hedge fund investors love
22 this piece."

23 162. 
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1 163. Goldman Defendants also encouraged the “piling on” of heavily shorted
2 stocks in order to further distort their market prices, and they recognized that its clients did so. A
3 July 20, 2004 email, where Conley says to Santina “encourage the guys to stay in the flow on
4 these names. This has all the makings of a train wreck,” reflects Goldman Sachs’ practices in this
5 regard.

6 164. Goldman Defendants were aware that, at times during the scheme, the short
7 interest in Overstock stock exceeded the available shares that can trade, or “float.” In an email
8 dated May 25, 2006, Pedro Concha, who had primarily responsibility for settlements within
9 GSEC, stated that Overstock’s “CEO has been battling Hedge Funds for shorting the company.
10 Two months ago 107% of the floating was short!”

11 165. Defendants and/or their affiliates shorted Overstock during this timeframe
12 in proprietary accounts. For example, in October 2006, SLK-Hull Derivatives, LLC, an affiliate
13 of Goldman Sachs that soon thereafter merged into Goldman Sachs, had a short position in
14 Overstock of over a million dollars. SLK-Hull Derivatives, LLC was allowed to short Overstock
15 without paying a loan fee whereas an independent client, [REDACTED] was required to pay a 22.559%
16 loan fee. [REDACTED]

17 [REDACTED] Merrill Defendants also held millions of
18 dollars in short positions in Overstock during this timeframe.

19 **The Goldman Sachs-GSEC Scheme**

20 166. GSEC also had fails-to-deliver that exceeded one million shares of
21 Overstock. GSEC had a fail-to-deliver position that lasted for a year at CNS, every day without
22 interruption. As reflected in a CNS Accounting Summary, GSEC’s fails-to-deliver lasted for at
23 least 242 consecutive business days, from March 2006 to February 12, 2007.

24 167. GSEC, like Merrill Defendants, made a conscious decision not to deliver
25 stock sold short by clients. The reason GSEC did not deliver stock sold short by clients is that
26 Goldman Sachs would not send the stock to GSEC to make delivery, and GSEC was required to
27 borrow stock solely from Goldman Sachs. Each day, GSEC would send over a list of “needs” to
28 Goldman Sachs that showed hundreds of thousands of shares that GSEC needed to settle trades of

1 Overstock, and each day Goldman Sachs would send back zero shares. The reason that Goldman
2 Sachs would not send stock is that that stock could be used by Goldman Sachs to support
3 additional short sales and further the downward price cycle as described above. Not that settling
4 trades was a real objective of GSEC. Among other things, Overstock was trading at a negative
5 rebate, so GSEC actually profited by not settling the Overstock trades. Thus, both Goldman
6 Sachs and GSEC were motivated not to settle trades in Overstock securities, so the fails-to-deliver
7 persisted.

8 168. GSEC's fails-to-deliver were tied to underlying trading activity by two
9 clients, [REDACTED] and Keystone Trading Partners ("Keystone").
10 Keystone was, in the estimation of Brennan as reflected in a November 1, 2006 email to John
11 Ruth, Scott Arenstein all over again. Keystone was run by a trader named Tim Lobach and
12 entered into conversion trades with Goldman Sachs. Keystone, like Hazan and Arenstein, used
13 Tim Young as a go-between (Young, like Arenstein and Hazan, has refused to testify). Keystone
14 routinely sold stock that it had never borrowed and had no intention of delivering. When GSEC
15 would buy-in a trade on which Keystone had failed to deliver, Keystone would sell short on the
16 same day, making the buy-in a wash transaction. Sometimes Keysone would even "sell short into
17 the buy-in," which refers selling short directly to the entity (GSEC) that is purportedly buying the
18 shares and charging Keystone, an even more patent example of a wash transaction. GSEC would
19 even tip off Keystone as to when the buy-in would occur, in order to make it easier for Keystone,
20 as is reflected in an April 6, 2006 email exchange between Magdalena Coreas ("Coreas") of
21 GSEC's New Jersey office and Keystone regarding the buy-in of 50,000 shares of Overstock
22 stock.

23 169. [REDACTED] also entered into conversion trades with Goldman Sachs. From
24 at least 2006 through early 2007, [REDACTED] placed trades that were routinely the source of
25 hundreds of thousands of fails to deliver in Overstock stock. Goldman Sachs instructed that
26 [REDACTED] would be allowed to fail on GSEC's books, and then, when it did, GSEC would buy-in
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Like Keystone, [REDACTED] routinely sold short to wash out the effect of the buy-in.

4 170. On August 2, 2006 alone, [REDACTED] was net short 613,535 shares in
5 Overstock. On August 8, 9 and 10, GSEC purported to buy-in approximately 540,000 shares of
6 Overstock against [REDACTED] but [REDACTED] sold short virtually the exact same amount of shares
7 on the exact same days. On the same days, GSEC also purported to buy-in about 440,000 shares
8 of Overstock against Keystone, but Keystone sold short virtually the exact same number of shares
9 as well. Thus, even though GSEC purported to buy-in nearly a million shares of Overstock over
10 this three-day period, GSEC's fails-to-deliver remained at approximately a million shares. GSEC
11 tracked its fails-to-deliver, including this buy-in activity and offsetting trades, in regular reports
12 and could and did see that its fails-to-deliver remained exceptionally high because of this
13 manipulative trading activity. In addition, GSEC would routinely send out buy-in notices to
14 [REDACTED] and Keystone, but it knew that those buy-in notices would be used as a signal to sell
15 short to offset the buy-ins and maintain the massive fails-to-deliver at GSEC.

16 171. On information and belief, after receiving inquiries from the NASD into
17 [REDACTED] trades, GSEC eventually felt obliged to put an end to the wash trades that allowed
18 GSEC's fails to persist for high levels for a year. GSEC's fails dropped dramatically in 2007,
19 but, by then, the damage had been done. GSEC, in a manner somewhat similar to the pattern of
20 trading involving Merrill Defendants and others as described above, had managed to increase the
21 short interest and downward price pressure in hard-to-borrow securities, including Overstock, by
22 never making delivery of actual shares as it was required to do. Instead, GSEC purported to
23 purchase shares to make delivery, but those purchases had no economic substance and were
24 manipulative.

25 172. In 2007, Keystone switched to Merrill Pro as its clearing firm. It was no
26 surprise to the Goldman Defendants. The fails-to-deliver on GSEC's books attributable to
27 Keystone moved onto Merrill Pro's books.

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The Devastating Effects of the Scheme

173. As previously alleged, these persistent failures to deliver created immense downward pressure on the prices of Overstock's securities by creating an unlimited supply of stock to sell short. With Defendants failing to buy or borrow a security for settlement, naked short positions in Overstock have grown very large. (*See supra*, ¶ 29)

174. Defendants' actions resulted in massive fails to deliver in Overstock at the DTCC. Although thousands of participants settle their trades through the DTCC, Defendants' fails to deliver during this time period account for over 90 percent of all settlement fails in Overstock at the DTCC. The amount and persistence of Defendants' fails-to-deliver vastly exceeded their industry peers because their fails were intentional.

175. Merrill Defendants failed to deliver Overstock continuously from June 2005 through September 10, 2007. Merrill Pro's books and records produced in this case show that the trades identified in this Complaint accounted for at least 90 percent of these fails. Defendant GSEC had a fail-to-deliver position that lasted every day from at least March 2006 to February 2007.

176. As previously quoted, a Banc of America executive testified that a 100-day fail would be "extraordinary." What he labeled as "extraordinary" was minor compared with what actually occurred here.

177. The entire float of Overstock shares, meaning those shares that have been issued by Overstock and are unrestricted from trading, was approximately 10 million shares during this time. Defendants' fails to deliver Overstock first exceeded one million shares in August 2005, and their fail to deliver stayed above one million shares until September 2006, and remained close to or exceeded one million shares until April 2007. For significant periods of time, Defendants' fails to deliver Overstock exceeded three million shares per day. Adding the daily fails up over this time period, the aggregate count exceeds 600 million shares of Overstock.

178. The dollar value of Defendants' fails to deliver Overstock was as high as eighty million dollars in a single day; collectively the daily aggregate dollar value of the fails to deliver during this time period was at least billions of dollars.

1 179. Defendants' actions resulted in millions of shares of increased short sales
2 in Overstock beyond what would have occurred in an un-manipulated market. Short interest in
3 Overstock climbed above 6 million shares in mid-2005, and, upon information and belief, was
4 107% of float in early 2006. It was as high as almost ten million in April of 2006.

5 180. Correspondingly, Overstock's stock price plummeted. Overstock's stock
6 price went from over \$70 in early 2005 to under \$20 in late 2006.

7 181. A large part of the decline in Overstock's stock price was due to
8 Defendants' market manipulation. As previously alleged, naked short selling destabilizes and
9 depresses a company's share price because it removes any supply constraint on stock sales. An
10 unlimited supply of any commodity, including a company's stock, places a downward pressure on
11 the price of that commodity. (*See supra*, ¶ 27). Merrill Pro's Mastrianni acknowledged under
12 oath in this case that large and persistent fails to deliver "would be indicative of sell pressure
13 which would drive the stock down" and that that naked short selling would put "sell pressure on a
14 security which would ultimately drive the stock down...things that are understood in the
15 industry." Busby also testified in this action that the longer the fails to deliver existed "the more
16 downward, downward momentum of the stock price" and that "[t]here is a general understanding
17 in the marketplace that naked short selling has a detriment to the stock price of a company."

18 182. Shares issued by Overstock in the normal course of raising capital as a
19 public company are not being properly valued because of Defendants' market manipulation.
20 Overstock has been forced to issue stock at manipulated prices which deprive the company of
21 capital and the corresponding benefits of additional capital. Plaintiffs have sold stock at depressed
22 prices due to the manipulation.

23 183. Upon information and belief, in addition to all the other profits made by
24 Defendants as set forth earlier in this Complaint, Defendants also profited from the decline they
25 caused in Overstock's stock price in their own proprietary trading of Overstock.

26 **Defendants' Extra Motive to Attack Overstock**

27 184. Overstock has been a leading voice for reform of abusive practices within
28 the stock settlement system. In turn, Overstock has been met with hostility.

1 185. For example, Defendants are members of the leading Wall Street lobbying
2 association known as the Securities Industry and Financial Markets Association ("SIFMA"),
3 which was previously known as the Securities Industry Association ("SIA"). Les Nelson, a
4 Goldman Sachs Managing Director, is Goldman's primary contact with SIFMA and is highly
5 involved in its activities. In an April 2007, Les Nelson, as well as a SIFMA representative,
6 received an email chain which, in the context of discussing this lawsuit, refers to an intent to
7 "neutralize" at least one potential expert witness against the industry.

8 186. The email chain refers to Overstock as one of SIFMA's "more powerful
9 enemies" and states that the potential expert witness previously "tried to work with DTCC until
10 their outside lawyers decided to shut him out, probably to neutralize him as an expert witness for
11 the opposition. So, he should be someone we can work with, especially if he sees that
12 cooperation results in resources, both data and funding; while resistance results in isolation."

13 187. In May 2006, Utah, where Overstock is based, passed a law designed to
14 limit naked short selling. In February 2007, SIFMA informed Goldman that the law had been
15 repealed. A GSEC employee stated to various GSEC employees, including GSEC's manager in
16 charge of settlements: "This is where we see a return on investment for supporting industry
17 organizations and committees."

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19 188. 

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1 189. [REDACTED]

3 190. [REDACTED]

5 **New Jersey Statute 2C:41-2(c) (Racketeering)**

6 191. Under New Jersey Statute 2C:41-2(c), it is unlawful for any person
7 employed by or associated with any enterprise engaged in or activities of which affect trade or
8 commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs
9 through a pattern of racketeering activity. New Jersey Statute 2C:41-4(c) provides a civil
10 remedy for any person damaged in their business or property by reason of a violation of New
11 Jersey Statute 2C:41-2(c). Through the conduct alleged in paragraphs 49 to 190 herein,
12 Defendants are liable to Plaintiffs for Defendants' violation of New Jersey Statute 2C:41-2(c).

13 **The New Jersey RICO Persons**

14 192. Each of the Goldman Defendants is a "person" within the meaning New
15 Jersey Statute 2C:41-1(b) in that each of the Goldman Defendants is an entity or enterprise
16 holding or capable of holding a legal or beneficial interest in property.

17 193. Each of the Merrill Defendants is a "person" within the meaning New
18 Jersey Statute 2C:41-1(b) in that each of the Merrill Defendants is an entity or enterprise holding
19 or capable of holding a legal or beneficial interest in property.

20 **The New Jersey RICO Enterprises**

21 194. Defendant Goldman Sachs, Defendant GSEC, Defendant Merrill Lynch,
22 Defendant Merrill Pro, Arenstein, SBA, Hazan, HCM, [REDACTED]
23 [REDACTED] are or were an "enterprise" within the meaning of New Jersey Statute 2C:41-1(c).

24 195. Defendant Goldman Sachs, Defendant GSEC, Arenstein, SBA, Hazan,
25 HCM, [REDACTED] are or were an "enterprise" within the meaning
26 of New Jersey Statute 2C:41-1(c).

27 196. Defendant Goldman Sachs, Defendant GSEC, [REDACTED] and/or Keystone
28 are or were an "enterprise" within the meaning of New Jersey Statute 2C:41-1(c).

1 197. Defendant Goldman Sachs and Defendant GSEC collectively are or were
2 an “enterprise” within the meaning of New Jersey Statute 2C:41-1(c). Defendant Goldman Sachs
3 and Defendant GSEC each individually are or were an “enterprise” within the meaning of New
4 Jersey Statute 2C:41-1(c).

5 198. Defendant Merrill Lynch, Defendant Merrill Pro, Arenstein, SBA, Hazan,
6 HCM, [REDACTED] are or were an “enterprise” within the
7 meaning of New Jersey Statute 2C:41-1(c).

8 199. Defendant Merrill Lynch and Defendant Merrill Pro collectively are or
9 were an “enterprise” within the meaning of New Jersey Statute 2C:41-1(c). Defendant Merrill
10 Lynch and Defendant Merrill Pro each individually are or were an “enterprise” within the
11 meaning of New Jersey Statute 2C:41-1(c).

12 200. The enterprises alleged herein will be collectively referred to as the
13 “Enterprises”.

14 201. The Enterprises and their members committed fraud in the offering, sale or
15 purchase of securities by effecting a scheme to perpetuate the manipulative naked short selling of
16 Overstock stock and drive down the price of Overstock stock; by effecting transactions in
17 Overstock stock, which involved no change in beneficial ownership, for the purpose of creating a
18 false or misleading appearance of active trading in Overstock stock or with respect to the market
19 for Overstock stock; by entering into orders for the purchase or sale of Overstock stock knowing
20 that orders of substantially the same size and at substantially the same time and place had been, or
21 would be, entered by the same or affiliated persons, for the purpose of creating a false or
22 misleading appearance of active trading in Overstock stock or with respect to the market for
23 Overstock stock; and/or by employing a fraudulent device, scheme, or artifice to manipulate the
24 market in Overstock stock.

25 202. The participants in the Enterprises shared the common purposes of
26 perpetuating the naked short selling of Overstock stock, of driving down the price of Overstock
27 stock, of manipulating the market for Overstock stock, and of engaging in the other manipulative
28 conduct alleged in herein. The participants in the Enterprises also shared the common purpose of

1 profiting from the fraudulent and manipulative conduct alleged herein.

2 203. The Enterprises each had an organization in that they each divided among
3 their members the tasks necessary to achieve their common purposes. To accomplish these
4 purposes, the Enterprises' members engaged in a high degree of planning, cooperation, and
5 coordination.

6 204. On information and belief, Goldman Defendants communicated with each
7 other and with Arenstein, in person, by telephone and by email, to discuss and develop the
8 manipulative scheme alleged herein. Such communications include a meeting in a bar on or
9 around August 16, 2004 and other communications alleged herein. Goldman Defendants worked
10 with Arenstein to develop methods of naked short selling of hard-to-borrow stocks that would
11 "create" supply for Goldman Sachs that it could then purport to lend to its clients at high interest
12 rates. Goldman Defendants also discussed with Arenstein methods for making the naked short
13 selling hard to detect. Goldman Defendants and Arenstein then proceeded to effect naked short
14 sales, understanding that there would be no delivery of stock. While Arenstein was still a client
15 of Defendant GSEC, Arenstein and GSEC effected manipulative trades in Overstock stock on or
16 about April 29, 2005, which were continued on May 4, 2005, and which were maintained for
17 months in furtherance of the Enterprises and their goals.

18 205. In or around April and July 2005, Merrill Defendants agreed to effect
19 trades for Hazan and Arenstein, respectively, which they expressly agreed to fail to deliver in
20 furtherance of the Enterprises and their goals. As alleged herein, Merrill Defendants worked with
21 Hazan and Arenstein to further develop the manipulative scheme at issue.

22 206. By agreeing with Hazan and Arenstein in advance to fail their trades and
23 by then effecting the trades identified herein, Merrill Defendants "created supply" of hard to
24 borrow stocks, such as Overstock, which would allow Merrill Defendants to profit. Such
25 artificial supply would then purportedly be used by Goldman Sachs to lend to their clients at high
26 interest rates so that they could short sell Overstock stock. By artificially increasing the supply of
27 Overstock, this scheme put additional downward pressure on the stock price.

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207. Merrill Defendants expanded the scheme by instructing [REDACTED] [REDACTED] on the manipulative scheme alleged herein and by agreeing in advance to fail the trades [REDACTED] and by then effecting their naked short sales in Overstock.

208. Goldman Defendants discussed and effected the naked short selling and washed/matched trading strategies with [REDACTED] and Keystone as alleged herein. Their intent was to maintain extended fail-to-deliver positions at GSEC without ever having Goldman Sachs use its supply of stock to cure GSEC's fail-to-deliver position, thereby allowing Goldman Sachs to effect further short sales in hard-to-borrow securities, including Overstock. By artificially increasing the supply of Overstock, this scheme put additional downward pressure on the stock price.

209. As detailed herein, the Enterprises and their organizations did in fact carry out the scheme. The participants in the scheme profited from it. Defendants profited from the fees they charged to their clients, the growth in their profits from the scheme, and their own proprietary short positions in Overstock

210. Additional details regarding the Enterprises are alleged in paragraphs 49-190 herein.

Trade Or Commerce

211. The Enterprises were engaged in trade or commerce and/or their activities affected trade or commerce, which is defined by New Jersey RICO to include all economic activity relating to any commodity or service. Each of the Enterprises engaged in trade or commerce in New Jersey and/or affected trade or commerce in New Jersey, in one or more of the following ways:

a) Arenstein and SBA played their roles in effecting each of the trades in Overstock stock alleged herein in Franklin Lakes, New Jersey. Through the conduct alleged herein, Arenstein and SBA generated substantial revenues in New Jersey. Through the conduct of Arenstein and SBA alleged herein, the Enterprises engaged in trade or commerce in New Jersey and affected trade or commerce in New Jersey.

1 b) Defendant Goldman Sachs and Defendant GSEC discussed with Arenstein
2 the scheme alleged herein by communications directed to or from New Jersey. In 2005 and 2006,
3 Arenstein, trading out of his New Jersey home, regularly communicated with Ghalioungui, an
4 employee of Goldman Sachs, to agree on the names of hard-to-borrow stocks and amount of
5 shares that would be naked shorted, including Overstock. Some Arenstein phone records show
6 that he was in direct contact with Ghalioungui in executing this trading activity. In addition,
7 Ghalioungui telephoned Arenstein just before Arenstein gave deposition testimony to the NASD
8 on the subject of Arenstein's trading with Goldman Defendants. Ghalioungui also emailed
9 Arenstein in New Jersey at the time of Arenstein's deposition. Ghalioungui, in turn,
10 communicated with the Securities Lending Group at Goldman Sachs on a nearly daily basis
11 concerning the trading. Through such conduct, the Enterprises engaged in trade or commerce in
12 New Jersey and affected trade or commerce in New Jersey.

13 c) Defendant Goldman Sachs purported to "loan" the supply the Enterprises
14 "created" of Overstock stock to Defendant Goldman Sachs' clients, as alleged herein. This
15 artificial supply was purportedly "created," in part, by the activities of Arenstein, Defendant
16 GSEC, and Merrill Defendants in New Jersey. Through such conduct, the Enterprises engaged
17 in trade or commerce in New Jersey and affected trade or commerce in New Jersey.

18 d) Defendant GSEC played its role in effecting conversion trades in
19 Overstock stock alleged herein in Jersey City, New Jersey, where it clears and settles trades in
20 Overstock and other securities. Through such conduct, Defendant GSEC generated substantial
21 revenue in New Jersey. Through such conduct, the Enterprises engaged in trade or commerce in
22 New Jersey and affected trade or commerce in New Jersey.

23 e) Defendant Merrill Pro discussed the manipulative scheme alleged herein,
24 and Merrill Defendants ultimately agreed to let Arenstein fail on the books of Defendant Merrill
25 Lynch and Defendant Merrill Pro, through communications directed to or from New Jersey. On
26 information and belief, such communications include communications with Arenstein in February
27 and March 2005, as reflected in February 14, 2005, March 1, 2005, and March 4, 2005 emails
28 from Richmond. Through such conduct, the Enterprises engaged in trade or commerce in New

1 Jersey and affected trade or commerce in New Jersey.

2 f) David Nolan ("Nolan"), who was employed by Defendant Merrill Pro,
3 testified to the SEC that he called Arenstein at home or on his cell phone "pretty much everyday."
4 As previously alleged herein, Arenstein's home and business address were in
5 New Jersey. On information and belief, Nolan and Arenstein discussed and furthered the scheme
6 alleged herein, including the manipulative trading in Overstock stock, in these daily or near daily
7 telephone calls that Nolan placed to or from New Jersey. Through such conduct, the Enterprises
8 engaged in trade or commerce in New Jersey and affected trade or commerce in New Jersey.

9 g) Defendants Merrill Pro has its principal place of business in New Jersey.
10 Peter Melz, Defendant Merrill Pro's President and Chief Operating Officer, stated in a declaration
11 to this Court that Merrill Pro "maintained substantial operations" in New Jersey. Through the
12 conduct alleged herein, Merrill Pro generated substantial revenue in New Jersey. Through such
13 conduct, the Enterprises engaged in trade or commerce in New Jersey and affected trade or
14 commerce in New Jersey.

15 h) Maryelizabeth Miller, Defendant Merrill Lynch's Director of Domestic
16 Settlement Services in New Jersey, stated in a declaration to this Court that Defendant Merrill
17 Lynch "maintained substantial operations" in New Jersey. Through the conduct alleged herein,
18 Merrill Lynch generated substantial revenue in New Jersey. Through such conduct, the
19 Enterprises engaged in trade or commerce in New Jersey and affected trade or commerce in New
20 Jersey.

21 i) The operations of Merrill Defendants in New Jersey include substantial
22 clearing and settlement of trades in hard-to-borrow securities, including Overstock securities.
23 Because of the manipulation of Merrill Pro's clearing and settlement systems in New Jersey,
24 substantial trades in Overstock securities that normally would have cleared and settled did not
25 settle. In addition, as alleged herein, Merrill Defendants, on information and belief, spent at least
26 tens of thousands of dollars and several months altering their computer systems to accommodate
27 the manipulative trading scheme alleged herein. On information and belief, some of these
28 computers and computer systems were located in New Jersey. Through such conduct, the

1 Enterprises engaged in trade or commerce in New Jersey and affected trade or commerce in New
2 Jersey.

3 j) As alleged herein, Merrill Defendants falsified their own records. Merrill
4 Defendants falsified these records in part in New Jersey. Instead of letting their records reflect
5 the continuous, years-long fails to deliver in Overstock, Merrill Defendants created records
6 purporting to show that the fails-to-deliver were short-lived as a result of fraudulent purchases
7 and sales of stock that were immediately unwound. Through such conduct, the Enterprises
8 engaged in trade or commerce in New Jersey and affected trade or commerce in New Jersey.

9 k) Defendant GSEC has its principal place of business in Jersey City, New
10 Jersey. Dennis Kerlin, a Vice President in Defendant GSEC's Compliance Department, stated in
11 a declaration to this Court that Defendant GSEC "maintains substantial operations" in Jersey
12 City, New Jersey. GSEC occupies the Goldman Sachs Tower, located at 30 Hudson Street in
13 Jersey City, New Jersey. At 781 feet tall, the Goldman Sachs Tower is the tallest building in New
14 Jersey and is the main office worldwide of GSEC. The Goldman Sachs Tower has 42 stories and
15 contains approximately 1.6 million gross square feet of office space. On information and belief,
16 approximately 4,000 employees of Goldman Defendants work in the Goldman Sachs Tower in
17 New Jersey. Through the New Jersey conduct of GSEC alleged herein, the Enterprises engaged
18 in trade or commerce in New Jersey and affected trade or commerce in New Jersey.

19 l) GSEC's clearing and settlement operations are located primarily in the
20 Goldman Sachs Tower in Jersey City, New Jersey. GSEC's massive fails-to-deliver were the
21 direct result of the manipulation of the buy-in process, managed out of its New Jersey office, for
22 [REDACTED] and Keystone as described herein, and GSEC's records were altered to make them
23 appear that the fails-to-deliver were being closed out by the genuine, open market purchase of
24 stock when in fact that was not true. GSEC's fails-to-deliver were also tracked and analyzed in
25 the New Jersey office, where GSEC management effected the trading activities necessary to
26 maintain the fail-to-deliver position in Overstock for over a year straight. Through such conduct,
27 the Enterprises engaged in trade or commerce in New Jersey and affected trade or commerce in
28 New Jersey.

m) During the time period alleged herein, hundreds of New Jersey residents owned over 100,000 shares of Overstock stock. Through the conduct alleged herein, the Enterprises substantially affected trade or commerce in New Jersey by artificially lowering the price of New Jersey residents' shares of Overstock stock.

n) Overstock's sales in New Jersey sales in each of the years from 2005 to 2008 was over \$30 million.

212. The Enterprises' trade or commerce in New Jersey and/or activities that affected New Jersey trade or commerce alleged herein affected Plaintiffs by artificially driving down the price of Overstock stock, as alleged herein. Plaintiffs ultimately sold shares of Overstock at prices that were artificially low by reason of the fraudulent and manipulative conduct of Defendants alleged herein that occurred in New Jersey and/or affected New Jersey trade or commerce.

Associations With The Enterprises

213. Each Defendant was employed by, or associated with, the Enterprises. Each Defendant had a position or functional connection with the Enterprises that enabled each Defendant to engage or participate directly or indirectly in the affairs of the Enterprises. Each Defendant also was aware of the scope, and unlawful activities, of the Enterprises.

214. Additional details regarding each of the Defendants' associations with the Enterprises are alleged in paragraphs 49-190 herein.

Participation In The Enterprises' Affairs

215. Each Defendant conducted or participated, directly or indirectly, in the affairs of the Enterprises. Each Defendant acted purposefully and knowingly in the affairs of the Enterprises of which they were a part. Each Defendant engaged in activities that sought to further, assist, or help effectuate the goals of those Enterprises. Each Defendant exercised control and direction over the Enterprises' goals, or over the methods used to achieve those goals.

216. Additional details regarding each of the Defendants' participation in the Enterprises' affairs are alleged in paragraphs 49-190 herein.

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The Pattern Of Racketeering Activity

217. New Jersey RICO defines “racketeering activity” to include “fraud in the offering, sale or purchase of securities.” Each Defendant participated in the conduct or affairs of the Enterprises through a pattern of securities fraud by committing fraud in the offering, sale or purchase of securities. Each Defendant engaged in a series of securities transactions to perpetuate the manipulative naked short selling of Overstock stock and drive down the price of Overstock stock; effected transactions in Overstock stock, which involved no change in beneficial ownership, for the purpose of creating a false or misleading appearance of active trading in Overstock stock or with respect to the market for Overstock stock; entered into orders for the purchase or sale of Overstock stock knowing that orders of substantially the same size and at substantially the same time and place had been, or would be, entered by the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in Overstock stock or with respect to the market for Overstock stock; and/or employed a fraudulent device, scheme, or artifice to manipulate the market in Overstock stock. Representative examples of the securities transactions are identified in paragraphs 141-149 herein.

218. In engaging in the actions described above, including effecting the manipulative securities transactions that were intended to and did result in massive, extended fails-to-deliver, all of which was intended to and did drive down the stock price of Overstock, each Defendant engaged in at least two incidents of racketeering conduct as defined by New Jersey Law because each Defendant engaged in fraud in the offering, sale or purchase of securities. Each Defendant violated the following provisions of the New Jersey Uniform Securities Law: New Jersey Statute 49:3-52.1(a)(2), (3), (4), (5) and New Jersey Statute 49:3-52. Each Defendants’ violations of these laws were willful, knowing, and/or reckless. As such, each Defendant committed crimes under New Jersey Statute 49:3-70. In addition, each Defendant committed crimes under New Jersey Statute 2C:2-6, under which, among other things, each of Defendant aided or agreed or attempted to aid the other members of the Enterprises in planning or committing the racketeering acts alleged herein.

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1 219. Through the scheme alleged herein, each Defendant engaged in repeated
2 incidents of racketeering conduct over a period of multiple years. Each Defendants' incidents of
3 racketeering conduct occurred after the effective date of New Jersey RICO. The last of each
4 Defendants' incidents of racketeering conduct occurred within 10 years of a prior incident of
5 racketeering activity. Upon information and belief, Defendants' racketeering conduct began at
6 least in 2005 and continued at least into 2007.

7 220. The incidents of each Defendants' racketeering activity embrace criminal
8 conduct that has either the same or similar purposes, results, participants or victims or methods of
9 commission. Each Defendants' racketeering acts are interrelated by distinguishing characteristics
10 and are not isolated, sporadic, or disconnected incidents.

11 221. Additional details regarding each Defendants' pattern of racketeering
12 activity are alleged in paragraphs 49-190 and 222-241 herein.

13 *New Jersey Statute 49:3-52.1(a)(2) and New Jersey Statute 49:3-70*

14 222. New Jersey Statute 49:3-52.1(a)(2) provides that a person may not "effect a
15 transaction in a security which involves no change in the beneficial ownership of the security for
16 the purpose of creating a false or misleading appearance of active trading in a security or with
17 respect to the market for the security." Under New Jersey Statute 49:3-70(a), any person who
18 knowingly violates this statute is guilty of a crime.

19 223. The Enterprises and Defendants' transactions in Overstock stock alleged
20 herein were transactions in Overstock stock which involved no change in beneficial ownership of
21 the Overstock stock, and were made for the purpose of creating a false or misleading appearance
22 of active trading in Overstock stock or with respect to the market for Overstock stock.

23 224. As part of the Enterprises, each Defendant knowingly violated New Jersey
24 Statute 49:3-52.1(a)(2) repeatedly from at least 2005 through at least mid- 2007.

25 225. Additional details regarding each Defendants' knowing violations of New
26 Jersey Statute 49:3-52.1(a)(2) are alleged in paragraphs 49-190 herein.

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New Jersey Statute 49:3-52.1(a)(3) and New Jersey Statute 49:3-70

226. New Jersey Statute 49:3-52.1(a)(3) provides that a person may not “enter an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security has been, or will be, entered by or for the same, or affiliated, person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security.” Under New Jersey Statute 49:3-70(a), any person who knowingly violates this statute is guilty of a crime.

227. In effecting the transactions in Overstock stock alleged herein, the Enterprises and each Defendant entered into orders for the purchase of Overstock stock with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security had been, or would be, entered by or for the same, or affiliated, person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security.

228. As part of the Enterprises, each Defendant knowingly violated New Jersey Statute 49:3-52.1(a)(3) repeatedly from at least 2005 through at least mid-2007.

229. Additional details regarding each Defendants’ knowing violations of New Jersey Statute 49:3-52.1(a)(3) are alleged in paragraphs 49-190 herein.

New Jersey Statute 49:3-52.1(a)(4) and New Jersey Statute 49:3-70

230. New Jersey Statute 49:3-52.1(a)(4) provides that a person may not “enter an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been, or will be, entered by or for the same, or affiliated, person for the purposes of creating a false or misleading appearance of active trading in a security or with respect to the market for the security.” Under New Jersey Statute 49:3-70(a), any person who knowingly violates this statute is guilty of a crime.

231. In effecting the transactions in Overstock stock alleged herein, the Enterprises and each Defendant entered into orders for the sale of Overstock stock with the

1 knowledge that an order of substantially the same size and at substantially the same time and
2 price for the sale of the security had been, or would be, entered by or for the same, or affiliated,
3 person for the purpose of creating a false or misleading appearance of active trading in a security
4 or with respect to the market for the security.

5 232. As part of the Enterprises, each Defendant knowingly violated New Jersey
6 Statute 49:3-52.1(a)(4) repeatedly from at least 2005 through at least mid-2007.

7 233. Additional details regarding each Defendants' knowing violations of New
8 Jersey Statute 49:3-52.1(a)(4) are alleged in paragraphs 49-190 herein.

9 *New Jersey Statute 49:3-52.1(a)(5) and New Jersey Statute 49:3-70*

10 234. New Jersey Statute 49:3-52.1(a)(5) provides that a person may not "employ
11 any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a
12 security." Under New Jersey Statute 49:3-70(a), any person who knowingly violates this statute
13 is guilty of a crime.

14 235. In engaging in the conduct regarding Overstock stock alleged herein, the
15 Enterprises and each Defendant employed a deceptive or fraudulent device, scheme, or artifice to
16 manipulate the market in Overstock.

17 236. As part of the Enterprises, each Defendant knowingly violated New Jersey
18 Statute 49:3-52.1(a)(5) repeatedly from at least 2005 through at least mid-2007.

19 237. Additional details regarding each of Defendants' knowing violations of
20 New Jersey Statute 49:3-52.1(a)(5) are alleged in paragraphs 49-190 herein.

21 *New Jersey Statute 49:3-52 and New Jersey Statute 49:3-70*

22 238. New Jersey Statute 49:3-52 provides that "[i]t shall be unlawful for any
23 person, in connection with the offer, sale, or purchase of any security, directly or indirectly (a) To
24 employ any device, scheme, or artifice to defraud." Under New Jersey Statute 49:3-70(a), any
25 person who knowingly violates this statute is guilty of a crime. Under New Jersey Statute 49:3-
26 70(b), any person who recklessly violates this statute is guilty of a crime.

27 239. In engaging in the conduct regarding Overstock stock alleged herein, the
28 Enterprises and each Defendant, directly or indirectly, employed a device, scheme, or artifice to

defraud in connection with the offer, sale, or purchase of Overstock stock.

240. As part of the Enterprises, each Defendant knowingly and/or recklessly violated New Jersey Statute 49:3-52 repeatedly from at least 2005 through at least mid-2007.

241. Additional details regarding each Defendants' knowing and/or reckless violations of New Jersey Statute 49:3-52 are alleged in paragraphs 49-190 herein.

Damage to Business or Property

242. Plaintiffs are each a "person" within the meaning of New Jersey Statutes 2C:41-1(b) and 2C:41-4(c) in that Plaintiffs are each an individual or an entity "capable of holding a legal or beneficial interest in property." Plaintiffs were each damaged in their business or property under New Jersey Statute 2C:41-4(c) by reason of Defendants' racketeering. Defendants' violations of New Jersey RICO were the proximate cause of Plaintiffs' damage. Plaintiffs sold shares of Overstock at prices that were artificially depressed as a result of those violations. Plaintiffs were directly injured as a result of Defendants' conduct.

243. Additional details regarding how Plaintiffs were each damaged in their business or property by reason of Defendants' racketeering are alleged in paragraphs 49-190 herein.

New Jersey Statute 2C:41-2(d) (Conspiracy)

244. Under New Jersey Statute 2C:41-2(d), it is unlawful for any person to conspire to violate New Jersey Statute 2C:41-2(c). Through the conduct alleged in paragraphs 49-190 herein, Defendants are liable to Plaintiffs pursuant to New Jersey Statute 2C:41-2(d).

245. Each Defendant is liable under New Jersey Statute 2C:41-2(d) for conspiring with another person or persons to violate New Jersey Statute 2C:41-2(c), as alleged herein. In doing so, each Defendant: (a) agreed with such other person or persons that they or one or more of them would engage in conduct which constitutes such a crime or an attempt or solicitation to commit such crime; or (b) agreed to aid such other person or persons in the planning or commission of such a crime or of an attempt or solicitation to commit such a crime.

246. In or around August 2004, Goldman Defendants agreed with Arenstein that one or more of them would effectuate the manipulative naked short selling scheme alleged herein.

1 247. In or about April and May, 2005, Defendant GSEC agreed with Arenstein
2 that Arenstein and Defendant GSEC would effectuate the manipulative transactions in Overstock
3 stock alleged herein.

4 248. As alleged herein, on or about April, 2005, Merrill Defendants agreed with
5 Hazan in advance of the trades to effect his naked short sales and fail to deliver to settle his naked
6 short sales.

7 249. As alleged herein, on or about July 2005, Merrill Defendants agreed with
8 Arenstein in advance of the trades to effect his naked short sales and fail to deliver to settle his
9 naked short sales.

10 250. Defendant Merrill Pro agreed with Arenstein to effect each of the
11 manipulative trades in Overstock stock alleged herein in advance of those trades.

12 251. Defendant Merrill Pro agreed with Hazan to effect each of the manipulative
13 trades in Overstock stock alleged herein in advance of those trades.

14 252. Defendant Goldman Sachs agreed with Arenstein and Hazan to effect most
15 of the manipulative trades alleged herein in advance of those trades.

16 253. Merrill Defendants agreed with [REDACTED]
17 in advance of the trades to effect their naked short sales and fail to deliver to settle the naked short
18 sales.

19 254. Goldman Defendants agreed with [REDACTED] and Keystone to the naked
20 short selling and washed/matched trading strategies as alleged herein, and agreed in advance of
21 the trades to effect those trades.

22 255. Additional details regarding each Defendants' agreements in violation of
23 New Jersey Statute 2C:41-2(d) are alleged in paragraphs 49-190 herein.

24 **PRAYER**

25 1. For general damages in an amount according to proof at trial, but well in
26 excess of the jurisdictional minimum of this Court;

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

- 1 3. For treble damages and the cost of the suit, including a reasonable
2 attorney's fee, costs of investigation and litigation, in an amount according to proof at trial;
3 4. For prejudgment interest;
4 5. For other applicable remedies as provided in the Civil Code, Corporations
5 Code, Business and Professions Code, and New Jersey RICO statute;
6 6. For injunctive relief; and
7 7. For such and further relief as the Court may deem appropriate.

8 Dated: May 27, 2011

STEIN & LUBIN LLP

9
10 By: 

11 Ellen Cirangle
12 Attorneys for Plaintiffs
13 OVERSTOCK.COM, INC.; KEITH CARPENTER,
14 OLIVIER CHENG; FERN BAILEY and WENDY
15 MATHER, as Co-Personal Representatives of the
16 Estate of MARY HELBURN; ELIZABETH
17 FOSTER; HUGH D. BARRON; DAVID TRENT
18 and MARK MONTAG
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