

1 KENNETH G. HAUSMAN (No. 57252)
Email: khausman@howardrice.com
2 SARAH M. KING (No. 189621)
Email: sking@howardrice.com
3 FRANK A. LAFORGE (No. 251141)
Email: flaforge@howardrice.com
4 HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
5 A Professional Corporation
Three Embarcadero Center, 7th Floor
6 San Francisco, California 94111-4024
Telephone: 415/434-1600
7 Facsimile: 415/217-5910

8 Attorneys for Specially-Appearing Cross-Defendants
JOHN J. BYRNE, JR., ALLISON H. ABRAHAM,
9 and JASON C. LINDSEY and Cross-Defendant
JOHN A. FISHER
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN
13 UNLIMITED JURISDICTION

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

14
15 OVERSTOCK.COM, INC., et al.,
16 Plaintiffs,
17 v.
18 GRADIENT ANALYTICS, INC., an Arizona
corporation, et al.,
19 Defendants.
20
21
22
23
24 AND RELATED CROSS-ACTION.
25

No. CV 053693
Action Filed: August 11, 2005
DECLARATION OF SPECIALLY
APPEARING CROSS-DEFENDANT
JASON C. LINDSEY IN SUPPORT OF (A)
MOTION TO QUASH SERVICE OF
SUMMONS FOR LACK OF PERSONAL
JURISDICTION, AND (B) SPECIAL
MOTION TO STRIKE SLAPP SUIT
Date: March 19, 2008
Time: 9:00 a.m.
Dep't: B
Judge: Hon. Terrence R. Boren
Trial Date: September 9, 2008

1 I, JASON C. LINDSEY, declare as follows:

2 1. I have been named as a Cross-Defendant in this litigation. I have personal knowledge of
3 the matters set forth below, and if called as a witness, I could and would testify competently to them.

4 2. I was a member of the Board of Directors of Overstock.com, Inc. ("Overstock")
5 between October 1999 and October 2002 and between October 2005 and January 2008. I was also
6 Overstock's Chief Financial Officer from 1999 until August 2003 and served as Overstock's
7 President from April 2006 until January 2, 2008. Overstock is a Delaware corporation
8 headquartered in Salt Lake City, Utah.

9 3. I am a resident and domiciliary of Utah and have been since approximately 2000.

10 4. At no time during the period of the events alleged in this action or thereafter have I
11 engaged in any substantial, continuous, or systematic course of conduct in California.

12 5. More specifically, I have never had an office or place of business in California; never
13 maintained any bank accounts, telephone listings, or mailing addresses in California; nor have I ever
14 had any agents or employees living or working in California.

15 6. I have never resided or owned or rented a home in California.

16 7. I am not and never have been qualified, authorized, licensed, or chartered to do business
17 in California, nor have I ever sought to be.

18 8. I have never paid income taxes in California, nor have I been required to do so.

19 9. I do not contract, nor have I ever contracted, to provide services in California.

20 10. Within the last five years, I have visited California approximately half-a-dozen times for
21 personal reasons—for example, family vacations to Disneyland.

22 11. To the best of my recollection and based upon a review of travel documents, in the last
23 five years, I have been in California on non-personal matters only four times—in September 2006, I
24 had a layover at LAX on my way to Europe; in February 2003 (more than three years before the
25 filing of the Cross-Complaint), I traveled to California in connection with a financing; in May 2004,
26 I traveled to California to meet with representatives of Safeway, Inc., in connection with a
27 transaction also unrelated to the allegations of the Cross-Complaint; and in 2005 or 2006 I traveled
28 to Oracle's offices in Redwood Shores for a day to learn about Oracle's new software services.

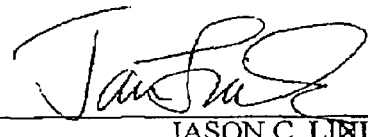
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. During my tenure, Overstock's Board of Directors never met in California and never made any decision specifically directed, targeted, or aimed at the California investment market. Contrary to the allegations in the Cross-Complaint, the Board of Directors never approved or ratified Overstock's lawsuit against Copper River and Gradient. The decision to file the lawsuit was made by Overstock management at a time (August 2005) when I was neither an officer nor director of Overstock.

13. I am not now, nor have I ever been, aware of the identity of any of Copper River's or Rocker Partner's contract partners or prospective business relationships.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of January, 2008, at Farmington, UT.



JASON C. LINDSEY

HOWARD
RICE
NEMEROVSKI
CANADY
PALK
& RABKIN