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CENTRAL DIST. OF CALIF.
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BY: _____

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

13 MONTE CAHN, an individual,
14 Plaintiff,

15 v.

16 OVERSEE.NET, a California
17 corporation; JEFF KUPIETZKY, an
18 individual; LAWRENCE NG, an
19 individual; and Does 1 through 10
20 Defendants.

CASE NO. **CV 11-03800** SVW (AGP)

COMPLAINT FOR:

- 1.) BREACH OF CONTRACT - MANAGEMENT INCENTIVE PLAN
- 2.) BREACH OF CONTRACT - COMMISSION PLAN
- 3.) BREACH OF CONTRACT - RESTAURANTS.COM
- 4.) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
- 5.) ACCOUNTING
- 6.) INTENTIONAL MISREPRESENTATION
- 7.) NEGLIGENT MISREPRESENTATION
- 8.) BREACH OF FIDUCIARY DUTIES
- 9.) CONVERSION
- 10.) UNFAIR COMPETITION UNDER CAL. BUSINESS & PROFESSION CODE § 17200

1 Plaintiff Monte Cahn alleges for his Complaint against Defendants
2 Oversee.net, Jeff Kupietzky and Lawrence Ng (collectively "Defendants") as
3 follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has diversity jurisdiction of this action under 28 U.S.C. §
6 1332, in that there is complete diversity of citizenship between the parties, and the
7 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and
8 costs.

9 2. Venue is proper in the Central District under 28 U.S.C. § 1391(a) in that
10 one or more of the defendants reside in this judicial district, and in particular, in the
11 Court of Los Angeles, and a substantial part of the events giving rise to the claim
12 occurred in this district.

13 **PARTIES**

14 3. Plaintiff Monte Cahn ("Cahn" or "Plaintiff") is, and at all times
15 mentioned was, an individual residing in Lauderdale by the Sea, Florida.

16 4. Defendant Oversee.net ("Oversee") is, and at all times mentioned was, a
17 corporation, organized and existing under the laws of the State of California, with its
18 principal place of business in Los Angeles, California. Cahn is informed and
19 believes that Oversee is a wholly owned subsidiary of ODN Holding Corporation
20 ("ODN").

21 5. Defendant Jeff Kupietzky ("Kupietzky") is, and at all times mentioned
22 was, an individual residing in California. Kupietzky is the Director, Chief Executive
23 Officer and President of Oversee.

24 6. Defendant Lawrence Ng ("Ng") is, and at all times mentioned was, an
25 individual residing in California. Ng is the Chairman of the Board and Co-Founder
26 of Oversee.

27 7. The true names and capacities, whether individual, corporate, associate
28 or otherwise, of the defendants named herein as Does 1 through 100, are unknown to

1 Cahn at this time. Cahn is informed and believes that each of these fictitiously
2 named defendants is in some manner responsible for the events and damages alleged
3 herein and will seek leave of court to amend this Complaint to show the true names
4 and capacities when the same have been ascertained.

5 FACTS AND BACKGROUND

6 8. Cahn is one of the leading pioneers of the domain name selling, valuing,
7 and auction concept, starting one of the first online domain brokerage businesses on
8 the Internet in 1996.

9 9. Cahn formed Domain Systems, Inc. d/b/a Moniker.com (“Moniker”) in
10 1999. Moniker is a web-based service that provides users a streamlined interface to
11 search for, register and manage their domain names. It provides domain sales,
12 brokerage, registration of domains, domain traffic monetization and parking, drop
13 and expired name back order and purchasing services, and domain management and
14 asset management services.

15 10. Cahn successfully managed and operated the business as the sole owner
16 until 2005, at which time Cahn sold Moniker to Seevast Corp. (“Seevast”). Cahn
17 remained CEO and maintained management responsibilities for the company until
18 2007.

19 11. Oversee specializes in monetizing, registering, selling and developing
20 domain names through its various subsidiaries, including SnapNames, DOMAINfest,
21 LowFares.com, ShopWiki.com, AboutAirportParking.com and CreditCards.org.

22 12. In or around 2007 Oversee approached Seevast and Cahn with an offer
23 to purchase Moniker. The parties engaged in extensive negotiations. The negotiated
24 price of Moniker was \$35,000,000. However, Oversee stated that it would not
25 purchase Moniker unless Cahn, as one of the leaders in the industry of domain name
26 sales and valuations, agreed to join Oversee.net for at least three years after the sale.
27 As an inducement for Cahn to join Oversee.net, Oversee proposed a “Management
28 Incentive Plan” (“MIP”) whereby Cahn would be able to earn up to \$13,000,000

1 through a goal oriented bonus structure. Kupietzky and Ng were primarily
2 responsible for the negotiations on behalf of Oversee and in making the false
3 representations and assurances to Cahn that he would be able to earn up to
4 \$13,000,000 in bonuses.

5 13. The bonus structure set forth under the proposed MIP was based on
6 Cahn's attainment of certain performance goals in four categories: the Registrar
7 Business Segment, the Domain Sales Business Segment, the TrafficClub Business
8 Segment, and Oversee EBITDA. Cahn's performance was to be determined, in good
9 faith, by the Oversee.net board of directors, and was based upon Oversee's Interim
10 Financial Statements or the Determination Period Financial Statements.

11 14. Kupietzky, on behalf of all defendants, represented that the overall
12 Oversee EBITDA in the MIP would be adjusted, either up or down, from the time the
13 merger took place throughout the term of the MIP, and those calculations would be
14 the controlling benchmarks.

15 15. Cahn is informed and believes, and on the basis of such information and
16 belief alleges that sometime on or around December 2007, but on a date presently
17 unknown to Cahn, Defendants formed the intent, and actively concealed and
18 misrepresented the true fact that they intended to withhold payments under the MIP
19 and deprive Cahn of his benefits under the MIP.

20 16. Based on Defendants' representations and assurances that Cahn would
21 have the ability to earn up to \$13,000,000 in payments under the MIP, Cahn was
22 induced to forgo other lucrative business opportunities, and continue in his
23 management and oversight of Moniker. The parties reached a mutual agreement
24 regarding the terms of the sale of Moniker to Oversee on or around December 14,
25 2007.

26 17. As agreed that, Cahn was to receive, at a minimum: 300,000 shares of
27 Oversee.net; a yearly base salary of \$250,000; participation in all of Oversee's
28 employee benefit programs; participation in the MIP; participation in the Oversee.net

1 2005 Equity Incentive Plan; a signing bonus in the amount of \$75,000; and a yearly
2 retention bonus of \$75,000.

3 18. Based on the terms of the parties' negotiations, Cahn was to serve as the
4 President of Moniker, and was to have the normal duties, responsibilities, functions
5 and authority as are normally associated with and appropriate for such position.

6 19. On or around December 14, 2007 Overseer and Cahn entered into the
7 MIP. The MIP was to be in effect from October 1, 2007 through December 31,
8 2010, and divided into three "determination periods". The cash awards were to be
9 paid for each determination period. The first determination period ran from October
10 1, 2007 through December 31, 2008; the second determination period ran from
11 January 1, 2009 through December 31, 2009, and the third determination period ran
12 from January 1, 2010 through December 31, 2010.

13 20. On or around November 18, 2008 Overseer proposed an amendment to
14 the MIP. Overseer offered Cahn an Incentive Compensation Plan ("ICP") which
15 provided an alternative bonus structure to the MIP. Except as expressly amended by
16 the ICP, the terms and provisions of the MIP were to remain in full force and effect.
17 After the ICP was in effect, Cahn was to be entitled to a bonus payment under the
18 plan that provided Cahn with the highest compensation.

19 21. On or around June 4, 2010, Overseer offered Cahn an additional form of
20 compensation through a commission plan ("Commission Plan"). Overseer's goal was
21 to leverage Cahn's skill set in order to achieve their corporate Gross Profit and
22 Revenue goals for 2010. Overseer utilized Cahn's expertise to close individual sales
23 transactions with particular reference to high-value names sales, and Cahn was to
24 receive a pre-determined percentage based on the prescribed scale.

25 22. While acting as President of Moniker at Overseer.net, Overseer delegated
26 Cahn the additional responsibility of running the SnapNames and DomainSponsor
27 divisions of Overseer.net, and removed Cahn's oversight and control from the
28 Registrar Business Segment. No explicit changes were made to modify Cahn's

1 performance goals under the MIP, as required under the terms of the MIP, to take
2 into account the additional responsibilities that Cahn would incur, and the changes
3 that the additional subdivisions would have on Monikers' EBITDA. However,
4 Defendants had, at a minimum, an implied obligation to factor these additional
5 responsibilities into Cahn's performance goals.

6 23. Cahn is informed and believes, and on the basis of such information and
7 belief alleges that Oversee improperly interfered with his ability to attain his goals
8 pursuant to the MIP, and thereby interfered with his ability to receive his bonuses
9 under the MIP by, amongst other things, improperly diverting substantial revenues
10 and profits from Moniker to other subsidiaries of Oversee; reducing his staff by more
11 than 33%; and improperly and incorrectly reporting Moniker's Selling, General &
12 Administrative Expenses.

13 24. Cahn is informed and believes, and on the basis of such information and
14 belief alleges that in 2009 Oversee.net was within at least seventy percent of its
15 yearly EBITDA goal, entitling Cahn, at a minimum, to the Oversee.net EBITDA
16 award for 2009 under the MIP. In direct violation of the MIP, Oversee failed to
17 provide Cahn his award.

18 25. Cahn is informed and believes, and on the basis of such information and
19 belief alleges that in 2010 Oversee met its yearly EBITDA goal, entitling Cahn, at a
20 minimum, to the Oversee.net EBITDA award for 2010 under the MIP. In direct
21 violation of the MIP, Oversee failed to provide Cahn his award. During his
22 employment term with Oversee.net Cahn did not receive one cash award under the
23 MIP.

24 26. During his employment term with Oversee.net Cahn performed all of his
25 duties and responsibilities as required under both the terms of his employment, and
26 under the conditions of the MIP, and the additional responsibilities bestowed upon
27 him, beyond those required under the terms of the contracts.

1 27. Cahn's employment with Oversee.net expired on December 31, 2010.
2 Cahn elected to not renew his employment agreement with Oversee.net.

3 **FIRST CLAIM FOR RELIEF**

4 **BREACH OF CONTRACT - 2007 MANAGEMENT INCENTIVE PLAN**

5 **(Against Oversee)**

6 28. Cahn refers to each of the foregoing paragraphs in their entirety, and
7 hereby incorporates them by reference as though fully set forth herein.

8 29. Cahn entered into a valid, enforceable, written 2007 Management
9 Incentive Plan on December 14, 2007, which provided Cahn with additional cash
10 compensation upon the attainment of the delineated performance goals.

11 30. Pursuant to paragraph 10 of the contract, the MIP contains the entire
12 agreement between the parties with respect to Cahn's supplemental compensation for
13 the attainment of his performance goals, and supercedes all prior agreements or
14 understandings, whether written or oral, between the parties relating to such subject
15 matter.

16 31. Cahn performed all the conditions, covenants and promises required on
17 his part to be performed, to the extent his duties and obligations have not been
18 excused, frustrated or prevented by the wrongful acts and omissions of Oversee.

19 32. Oversee's conduct, as alleged herein, constitutes a material breach of the
20 MIP in that Oversee has (i) failed to pay awards under the MIP for each
21 determination period upon attainment of the performance goals, as established by the
22 contract; (ii) failed to determine, in good faith, the attainment of the performance
23 goals as set forth in the contract; (iii) failed to make the requisite amendments to the
24 contract, and failed to take into consideration, the acquisition of new business
25 segments and the change in management and control of other business segments in
26 the determination of the performance goals under the MIP; (iv) intentionally took
27 actions for the sole purpose of manipulating the Registrar EBITDA, Oversee
28 EBITDA, Domain Sales EBITDA and the Gross Profit with respect to the Traffic

1 Club Business Segment; (v) improperly diverted revenue and profit from Moniker to
2 SnapNames; and (vi) improperly diverted revenue from Moniker to DomainSponsor.

3 33. As a direct, actual and proximate consequent and result of the conduct
4 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
5 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
6 at the legal rate.

7 **SECOND CLAIM FOR RELIEF**

8 **BREACH OF CONTRACT - COMMISSION PLAN 2010**

9 **(Against Overseer)**

10 34. Cahn refers to each of the foregoing paragraphs in their entirety, and
11 hereby incorporates them by reference as though fully set forth herein.

12 35. Cahn entered into a valid, enforceable, written Commission Plan on
13 May 24, 2010, which provided Cahn a reward and incentive for his sale of both third
14 party and owned and operated domain names. This plan was in addition to the MIP
15 and the ICP.

16 36. Cahn performed all the conditions, covenants and promises required on
17 his part to be performed, to the extent his duties and obligations have not been
18 excused, frustrated or prevented by the wrongful acts and omissions of Overseer.

19 37. Overseer's conduct, as alleged herein, constitutes a material breach of the
20 Commission Plan in that Overseer has failed to pay Cahn his rewards pursuant to the
21 terms of the Commission Plan.

22 38. As a direct, actual and proximate consequent and result of the conduct
23 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
24 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
25 at the legal rate.

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1 **THIRD CLAIM FOR RELIEF**

2 **BREACH OF CONTRACT - RESTAURANTS.COM**

3 **(Against Oversee)**

4 39. Cahn refers to each of the foregoing paragraphs in their entirety, and
5 hereby incorporates them by reference as though fully set forth herein.

6 40. Cahn and Oversee entered into a valid and binding agreement that upon
7 the closing of Restaurants.com sale, Cahn would be entitled to a commission
8 payment as an outside broker, and was to receive fifty-percent of the payable
9 commission. The payable commission on Restaurants.com was negotiated at 20
10 percent of the gross profit of the sale. Cahn's commission agreement for the sale of
11 Restaurants.com was confirmed by Defendants, including confirmation from Craig
12 Snyder, General Manager of Oversee.net, in a February 9, 2011 email from Snyder to
13 Cahn.

14 41. Cahn performed all the conditions, covenants and promises required on
15 his part to be performed, to the extent his duties and obligations have not been
16 excused, frustrated or prevented by the wrongful acts and omissions of Oversee.

17 42. Cahn successively brokered the sale of Restaurants.com, and the deal
18 closed in February 2011. Oversee failed to provide Cahn his commission payment.

19 43. Oversee's conduct, as alleged herein, constitutes a material breach of the
20 contract in that Oversee has failed to pay Cahn his commission pursuant to the terms
21 of the agreement.

22 44. As a direct, actual and proximate consequent and result of the conduct
23 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
24 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
25 at the legal rate.

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1 MIP, and Cahn would not have expended his valuable time and energy into
2 completing valuable domain name sales for the benefit of Overseer while foregoing
3 other valuable business opportunities.

4 49. Based on the conduct alleged above, among other things, Overseer
5 breached its duty of good faith and fair dealing under the MIP, thereby depriving
6 Cahn of his benefits under the contracts.

7 50. As a direct, actual and proximate consequent and result of the conduct
8 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
9 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
10 at the legal rate.

11 **FIFTH CLAIM FOR RELIEF**
12 **BREACH OF FIDUCIARY DUTY**
13 **(Against Overseer)**

14 51. Cahn refers to each of the foregoing paragraphs in their entirety, and
15 hereby incorporates them by reference as though fully set forth herein.

16 52. As the President of Moniker, a special relationship existed between
17 Cahn and Overseer. In the course of their dealings and throughout their relationship,
18 Overseer was imputed with at least the fiduciary duty to (i) comply with the terms of
19 the MIP and the Commission Plan; (ii) to promptly disclose any information that
20 could materially effect Cahn's ability to obtain his awards under the MIP or the
21 Commission Plan; (iii) to refrain from committing malfeasance or otherwise
22 interfering with Cahn's ability to attain his performance goals under the MIP or the
23 Commission Plan; and (iv) to evaluate Cahn's performance under the MIP in good
24 faith.

25 53. Overseer breached their fiduciary duty to Cahn, including but not limited
26 to, the duty of loyalty by materially breaching the terms of the MIP and the
27 Commission Plan, and by acting against Cahn's interest.

1 MIP and the Commission Plan, and Oversee failed to abide by the express terms of
2 the contracts. Oversee has failed to make any payments to Cahn under either the
3 MIP or the Commission Plan.

4 61. Cahn is informed and believes, and on the basis alleges that he cannot
5 ascertain what is rightfully due and owed to him without an accounting.

6 **SEVENTH CLAIM FOR RELIEF**

7 **INTENTIONAL MISREPRESENTATION**

8 **(Against All Defendants)**

9 62. Cahn refers to each of the foregoing paragraphs in their entirety, and
10 hereby incorporates them by reference as though fully set forth herein.

11 63. During the negotiations, Oversee, Kupietzky and NG represented to
12 Cahn that he would have the ability to earn up to \$13,000,000 in payments under the
13 MIP. Based on this representation and belief, Cahn agreed to assist Oversee in the
14 purchase of Moniker, and agreed to continue in the management and oversight of
15 Moniker.

16 64. Cahn is informed and believes, and on the basis alleges that at some
17 point unknown to Cahn, but during the negotiations, Oversee, Kupietzky and Ng
18 formed the intent to withhold compensation to Cahn under the MIP, and only made
19 such a representation to induce Cahn to join Oversee and assist in the purchase of
20 Moniker.

21 65. In reliance upon Oversee's representation, Cahn entered into the MIP as
22 a condition of the sale of Moniker to Oversee, and agreed to continue in the
23 management and oversight of Moniker under the understanding and belief that he
24 was to receive additional compensation during his employment with Oversee in the
25 form of cash awards under the MIP.

26 66. Cahn never received any payment from Oversee under the MIP.

27 67. Oversee, Kupietzky and Ng carried out their deliberate scheme to
28 defraud Cahn out of his award payments by, amongst other things, (i) failing to

1 determine, in good faith, Cahn's attainment of his performance goals as set forth in
2 the MIP; (ii) failing to adjust the overall Overseer EBITDA for all three years of the
3 MIP; (iii) intentionally imposing upon Cahn the additional responsibility of
4 managing SnapNames and DomainSponsor; (iv) failed to make the requisite
5 amendments to the contract, and failed to take into consideration, the acquisition of
6 new business segments and the change in management and control of other business
7 segments in the determination of the performance goals under the MIP; (v) moving
8 Cahn down the corporate hierarchy and altering the chain of command; (vi)
9 intentionally manipulating the Registrar EBITDA, Overseer EBITDA, Domain Sales
10 EBITDA and the Gross Profit with respect to the Traffic Club Business Segment;
11 (vii) improperly diverted revenue and profit from Moniker to SnapNames; and (viii)
12 improperly diverted revenue from Moniker to DomainSponsor.

13 68. Cahn is informed and believes, and on the basis alleges that the conduct
14 of Overseer, Kupietzky and Ng was carried out as a scheme to induce Cahn to join
15 Overseer, and to defraud Cahn out of the full amount of his entitlements under the
16 MIP. Such conduct was oppressive, fraudulent, and malicious, and subjected Cahn
17 to unjust hardship in a willful and conscious disregard of his rights, warranting
18 exemplary and punitive damages in accordance with *California Civil Code* section
19 3294.

20 69. As a direct, actual and proximate consequent and result of the conduct
21 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
22 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
23 at the legal rate.

24 **EIGHTH CLAIM FOR RELIEF**

25 **NEGLIGENT MISREPRESENTATION**

26 **(Against All Defendants)**

27 70. Cahn refers to each of the foregoing paragraphs in their entirety, and
28 hereby incorporates them by reference as though fully set forth herein.

1 71. During the negotiations, Oversee, Kupietzky and Ng represented to
2 Cahn that he would have the ability to earn up to \$13,000,000 in payments under the
3 MIP. Based on this representation and belief, Cahn agreed to assist Oversee in the
4 purchase of Moniker, and agreed to continue in the management and oversight of
5 Moniker.

6 72. Cahn is informed and believes, and on the basis alleges that the
7 representations made in paragraphs 12, 13, 14, 17, 18, 20 and 21 were made without
8 any reasonable ground for believing that the representations were true.

9 73. Cahn is informed and believes, and on the basis alleges that Oversee,
10 Kupietzky and Ng only made such representations in order to induce Cahn to sell
11 Moniker at a reduced rate.

12 74. In reliance upon Oversee's representation, Cahn entered into the MIP as
13 a condition of the sale of Moniker to Oversee, and agreed to continue in the
14 management and oversight of Moniker under the understanding and belief that he
15 was to receive additional compensation during his employment term with Oversee in
16 the form of cash awards under the MIP.

17 75. Cahn never received any payment from Oversee under the MIP.

18 76. Oversee, Kupietzky and Ng carried out their deliberate scheme to
19 defraud Cahn out of his award payments by, amongst other things, (i) failing to
20 determine, in good faith, Cahn's attainment of his performance goals as set forth in
21 the MIP; (ii) failing to adjust the overall Oversee EBITDA for all three years of the
22 MIP; (iii) intentionally imposing upon Cahn the additional responsibility of
23 managing SnapNames and DomainSponsor; (iv) failing to make the requisite
24 amendments to Cahn's performance goals under the MIP after his acquisition of the
25 new business segments and the change in ownership and control of the other
26 business segments; (v) moving Cahn down the corporate hierarchy and altering the
27 chain of command; (vi) intentionally manipulating the Registrar EBITDA, Oversee
28 EBITDA, Domain Sales EBITDA and the Gross Profit with respect to the Traffic

1 Club Business Segment; (vii) improperly diverted revenue and profit from Moniker
2 to SnapNames; and (viii) improperly diverted revenue from Moniker to
3 DomainSponsor.

4 77. As a direct, actual and proximate consequent and result of the conduct
5 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
6 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
7 at the legal rate.

8 **NINTH CLAIM FOR RELIEF**

9 **CONVERSION**

10 **(Against Overseer)**

11 78. Cahn refers to each of the foregoing paragraphs in their entirety, and
12 hereby incorporates them by reference as though fully set forth herein.

13 79. Under the mutually agreed upon terms of the MIP, Cahn was to receive
14 cash awards upon attaining the goals specified in the MIP for each determination
15 period.

16 80. Under the mutually agreed upon terms of the Commission Plan, Cahn
17 was to receive commissions pursuant to the scale set forth in the Commission Plan
18 for the sale of third party and owned and operated domain names.

19 81. Cahn is informed and believes, and on the basis alleges that during the
20 determination periods of October 1, 2007 through December 31, 2010, Cahn satisfied
21 the conditions, as set forth in the MIP, entitling him to cash awards under the MIP,
22 and as such had a vested legal right to the ownership and possession of cash awards
23 in the amount specified under the terms of the MIP.

24 82. Cahn is informed and believes, and on the basis alleges that he satisfied
25 the conditions, as set forth in the Commission Plan, entitling him to commission
26 payments, and as such had a vested legal right to the ownership and possession of the
27 commission payments in the amount specified under the terms of the Commission
28

1 Plan. Cahn's entitlement to commission for the Restaurants.com sale is confirmed in
2 the February 9, 2011 email from Craig Snyder to Cahn.

3 83. Oversee intentionally prevented Cahn from access to, and refused to
4 release the cash awards to Cahn, as required under the terms of the MIP and the
5 Commission Plan. Instead, Oversee improperly retained and diverted Cahn's
6 personal property for its own use and benefit in a matter inconsistent with Cahn's
7 lawful rights of ownership and possession.

8 84. Cahn made multiple requests to Oversee, asserting his right and
9 entitlement to the cash awards under both the MIP and the Commission Plan.
10 Oversee repeatedly ignored his requests.

11 85. Cahn is informed and believes, and on the basis alleges that the conduct
12 of Oversee was carried out as a scheme to defraud Cahn out of the full amount of his
13 proceeds for the sale of Moniker, and the full amount of his entitlement under the
14 MIP and the Commission Plan. Such conduct was oppressive, fraudulent, and
15 malicious, and subjected Cahn to unjust hardship in a willful and conscious disregard
16 of his rights, warranting exemplary and punitive damages in accordance with
17 *California Civil Code* section 3294.

18 86. As a direct, actual and proximate consequent and result of the conduct
19 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
20 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
21 at the legal rate.

22 **TENTH CLAIM FOR RELIEF**

23 **Unfair Competition under Cal. Business & Professions Code § 17200**

24 **(Against Oversee)**

25 87. Cahn refers to each of the foregoing paragraphs in their entirety, and
26 hereby incorporates them by reference as though fully set forth herein.

27 88. Oversee conditioned its purchase of Moniker on Cahn's continued
28 management and oversight of Moniker. As an inducement for Cahn to join

1 Oversee.net, Oversee represented to Cahn that he would have the ability to earn up to
2 \$13,000,000 in payments under the MIP. Cahn is informed and believes, and on the
3 basis of such information and belief alleges that Oversee never intended to abide by
4 its obligations under the MIP, and actively concealed and misrepresented such intent
5 in order to consummate the sale of Moniker. Based upon Oversee's representations
6 Cahn forewent other lucrative business opportunities, and instead entered into the
7 MIP under the representation and belief that he would earn a certain level of income
8 under the MIP.

9 89. Cahn is informed and believes, and on the basis alleges that during the
10 determination periods of October 1, 2007 through December 31, 2010, Cahn satisfied
11 the conditions, as set forth in the MIP, entitling him to cash awards under the MIP,
12 and as such had a vested legal right to the ownership and possession of cash awards
13 in the amount specified under the terms of the MIP. Despite the satisfaction of his
14 obligations under the terms of the MIP, Cahn has not received any compensation
15 under the MIP.

16 90. In a scheme to further the interests of Oversee.net, Oversee represented
17 to Cahn that he would have the ability to earn commission payments for the sale of
18 third party and owned and operated domain names under the Commission Plan.
19 Cahn is informed and believes, and on the basis of such information and belief
20 alleges that Oversee never intended to abide by its obligations under the Commission
21 Plan, and actively concealed and misrepresented such intent in order to induce and
22 incentivize Cahn to perform under the agreement. Had Cahn known the true intent
23 of Oversee, Cahn would not have expended his valuable time and energy into
24 consummating valuable domain name sales for the benefit of Oversee while
25 foregoing other valuable business opportunities.

26 91. Cahn is informed and believes, and on the basis alleges that he satisfied
27 the conditions, as set forth in the Commission Plan, entitling him to commission
28 payments, and as such had a vested legal right to the ownership and possession of the

1 commission payments in the amount specified under the terms of the Commission
2 Plan. Cahn's entitlement to commission for the Restaurants.com sale is confirmed in
3 the February 9, 2011 email from Craig Snyder to Cahn. Despite the satisfaction of
4 his obligations under the terms of the Commission Plan, Cahn has not received any
5 payments under the contract.

6 92. Cahn is informed and believes, and on the basis alleges that the conduct
7 of Oversee was carried out as a scheme to defraud Cahn out of his entitlements under
8 the MIP and the Commission Plan. Such conduct was oppressive, fraudulent, and
9 malicious, and subjected Cahn to unjust hardship in a willful and conscious disregard
10 of his rights, warranting exemplary and punitive damages in accordance with
11 *California Civil Code* section 3294.

12 93. As a direct, actual and proximate consequent and result of the conduct
13 alleged herein, Cahn has suffered, and continues to suffer, significant damages in an
14 amount to be proven at trial, but that exceeds \$75,000, together with interest thereon
15 at the legal rate.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Cahn prays for judgment in his favor and against Defendants as
3 follows:

- 4 1. For judgment in his favor, and against Defendants, for damages in an
5 amount to be proven at trial, but exceeding \$75,000;
- 6 2. For punitive damages in an amount to be determined by the trier of fact;
- 7 3. For an accounting to determine the amounts due to Cahn under the
8 terms of the MIP, which would have been received by Cahn but for the wrongful
9 conduct of Defendants;
- 10 4. For restitution of all wrongfully withheld amounts and disgorgement of
11 all ill-gotten profits, in an amount according to proof;
- 12 5. For costs of suit;
- 13 6. For prejudgment and post-judgment interest; and
- 14 7. For such other relief as the Court may deem just and proper.

15 DATED: May 3, 2011

16 JOHN L. BARBER
17 KENNETH D. WATNICK
18 LEWIS BRISBOIS BISGAARD & SMITH
19 LLP

20 By 

21 Kenneth D. Watnick
22 Attorneys for MONTE CAHN, an individual

23 **DEMAND FOR JURY TRIAL**

24 Cahn hereby demand trial by jury to the full extent permitted by law.

25 DATED: May 3, 2011

26 JOHN L. BARBER
27 KENNETH D. WATNICK
28 LEWIS BRISBOIS BISGAARD & SMITH
LLP

By 

Kenneth D. Watnick
Attorneys for MONTE CAHN, an individual