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12 OVERSEE.NET, JEFFREY KUPIETZKY,  
13 and LAWRENCE NG

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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17

18 MONTE CAHN, an individual,  
19  
20 Plaintiff,  
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22 v.  
23 OVERSEE.NET, a California  
24 corporation; JEFF KUPIETZKY, an  
25 individual, LAWRENCE NG, an  
26 individual; and DOES 1 through 10

27 Defendants.

Case No. CV11-03800 SVW (AGRx)

**DEFENDANT OVERSEE.NET'S  
SEPARATE STATEMENT OF  
UNCONTROVERTED FACTS IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

DATE: December 19, 2011

TIME: 1:30 p.m.

PLACE: Crtrm. 6

Complaint Filed: May 3, 2011

Trial Date: January 17, 2012

1 Pursuant to Local Rule 56-1, Defendant Oversee.net hereby submits its Separate  
 2 Statement of Uncontroverted Facts and Conclusions of Law in support of its Motion  
 3 for Summary Judgment, or in the Alternative, Summary Adjudication:  
 4

<u><b>Uncontroverted Facts</b></u>	<u><b>Evidence</b></u>
6 1. Monte Cahn entered into an 7 Employment Agreement (“Employment 8 Agreement”) with Oversee.net on 9 December 14, 2007.	1. Employment Agreement, attached as Exhibit E to the Declaration of Todd Greene, dated November 14, 2011.
10 2. The Employment Agreement allowed 11 Cahn to participate in a financial incentive 12 plan called the Oversee 2007 Management 13 Incentive Plan (“MIP”).	2. Employment Agreement, Section 3(d).
14 3. The MIP was divided into three 15 determination periods: a First 16 Determination Period (October 1, 2007- 17 December 31, 2008), a Second 18 Determination Period (January 1, 2009 19 through December 31, 2009) and a Third 20 Determination Period (January 1,2010 21 through December 31, 2010).	3. MIP, Section 15(e), attached as Exhibit C to the Declaration of Elizabeth Murray, dated November 14, 2011.
22 4. The MIP was further divided into four 23 business lines: TrafficClub, Registrar, 24 Domain Sales, and Oversee.	4. MIP, Schedule A.
25 5. The performance targets and baseline 26 awards for each business line for each 27 determination period are set forth in 28	5. MIP, Schedule A.

1	Schedule A of the MIP.	
2	6. The performance goal for the	6. MIP, Schedule A.
3	“Oversee” business line was left as	
4	“TBD” or “To Be Determined.”	
5	7. The TrafficClub performance goals	8. Murray Decl. ¶¶ 7, 14 and Exhibit D.
6	were not met for any of the First, Second,	
7	or Third Determination Periods.	
8	8. The Registrar performance goals were	9. Murray Decl. ¶¶ 7, 21 and Exhibit D.
9	not met for any of the First, Second, or	
10	Third Determination Periods.	
11	9. The Domain Sales performance goals	10. Murray Decl. ¶¶ 7, 26 and Exhibit D.
12	were not met for any of the First, Second,	
13	or Third Determination Periods.	
14	10. Section 5(a) of the MIP requires that	11. MIP, Section 5(a).
15	Monte Cahn designate the Participants	
16	under the MIP within the first (15) days	
17	11. Monte Cahn never designated the	12. Greene Declaration, ¶ 3.
18	Participants for the MIP for any of the	
19	Determination Periods as required by	
20	Section 5(a) of the MIP.	
21	12. The MIP provides that “Target	13. MIP, Section 15(u).
22	EBITDA” with respect to Oversee	
23	EBITDA “shall be determined from time	
24	to time by the Board, in consultation with	
25	Monte Cahn for so long as he is employed	
26	by the Company.”	
27	13. Neither the Board of Oversee nor the	14. Greene Decl., ¶ 4; Deposition
28		

1	Board of ODN Holding Corporation, the	Transcript of Jeffrey Kupietzky, taken
2	parent corporation of Oversee, ever	October 26, 2011 (“Kupietzky Depo.”),
3	calculated a Target EBITDA for Oversee	at 110:4-10 (attached as Delgado Decl.
4	EBITDA.	Ex. G).
5	14. In November 2008, Cahn and Oversee	15. 2008 Amendment (attached as
6	entered into an agreement amending the	Greene Decl. Ex. F).
7	goals and bonuses under the MIP for	
8	Cahn, specifically.	
9	15. Under the 2008 Amendment, payment	16. <i>Id.</i> , “Interaction with MIP” Section.
10	for the MIP’s Oversee Business Segment	
11	is conditioned upon first receiving a	
12	payment under any of the MIP’s Moniker	
13	Business Segments.	

14

15 Dated: November 16, 2011

15 WILLENKEN WILSON LOH & LIEB LLP

16

17 By: /s/ William A. Delgado

18 William A. Delgado,

19 Attorneys for Defendants OVERSEE.NET,

20 JEFFFREY KUPIETZKY, and LAWRENCE

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Electronic Service List for this Case.

Dated: November 16, 2011

WILLENKEN WILSON LOH & LIEB LLP

By: /s/ William A. Delgado  
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JEFFREY KUPIETZKY, and LAWRENCE NG