UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

Amendment No. 1

(Mark One)

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2009

Or

o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware	**87-0634302**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

6350 South 3000 East

Salt Lake City, Utah 84121

(Address, including zip code, of Registrant s principal executive offices)

Registrant s telephone number, including area code: **(801) 947-3100**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the act). Yes o No x

There were 22,814,053 shares of the Registrant s common stock, par value $0.0001, outstanding on April 29, 2009.

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EXPLANATORY NOTE

On January 29, 2010, the Audit Committee of the Board of Directors of Overstock.com, Inc. concluded, based on the recommendation of management, that we would restate (1) our consolidated financial statements as of and for the year ended December 31, 2008 (however, only the restatement of the balance sheet is presented herein) and (2) our consolidated financial statements as of and for the three months ended March 31, 2008 and 2009 contained in this Quarterly Report on Form 10-Q/A to correct the following errors:

- Accounting for amounts that we pay our drop ship fulfillment partners and an amount due from a vendor that went undiscovered for a period of time. Specifically, these errors related to (1) amounts we paid to partners or deducted from partner payments related to return processing services and product costs and (2) amounts we paid to a freight vendor based on incorrect invoices from the vendor. Once discovered, we applied gain contingency accounting for the recovery of such amounts, which was an inappropriate accounting treatment.

- Amortization of the expense related to restricted stock units. Previously the expense was based on the actual three year vesting schedule, which incorrectly understated the expense as compared to a three year straight line amortization. We also corrected for the use of an outdated forfeiture rate in calculating share-based compensation expense under the plans.

The following additional adjustments were also included in this restatement:

- Correction of certain amounts related to customer refunds and credits.

- Recognition of co-branded credit card bounty revenue and promotion expense over the estimated term of the credit card relationships. Previously the revenue was incorrectly recognized when the card was issued.

- Reduction in the restructuring accrual and correction of the related expense due to a 2008 sublease benefit which was previously excluded from the accrual calculation and the accretion of interest expense related to the restructuring accrual, which was not previously recorded.

- Change in our accounting for external audit fees to the as incurred method instead of the ratable method.

- Other miscellaneous adjustments, none of which were material either individually or in the aggregate. Certain of these adjustments were related to a reduction in revenue and cost of goods sold in equal amounts for certain consideration we received from vendors, an increase in inventory, accounts payable and accrued liabilities to record our sales return allowance on a gross basis, an adjustment to our cash and restricted cash balances due to compensating balance arrangements and an adjustment to record redeemable common stock for certain shares previously

issued to employees.

The (increase) decrease to net loss attributable to common shares of the above adjustments is as follows (in thousands):

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	Three months ended March 31, 2008		Three months ended March 31, 2009	
The effect of the adjustments related to (1) amounts the Company paid to partners or deducted from payments to partners related to return processing services and product costs and (2) amounts the Company paid to a freight vendor based on incorrect invoices from the vendor.	$	927	$	(1,606)
The effect of the adjustments related to accounting for certain of the Company s share-based compensation plans.		(71)		(340)
The effect of the adjustments related to customer refunds and credits.				9
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.		221		48
The effect of the adjustments related to restructuring expense and interest expense related to the accretion of the restructuring accrual.				(17)
The effect of the adjustments related to external audit fees.		(316)		(221)
The effect of other miscellaneous adjustments		53		271
Total impact of the effect of the adjustments	$	814	$	(1,856)

A more complete discussion of the restatement can be found in Note 3 to the consolidated financial statements contained in Item 1 of this Form 10-Q/A.

The Company is filing this Amendment to its Quarterly Report on Form 10-Q/A for the quarter ended March 31, 2009 (this Form 10-Q/A) to reflect the restatement of the Company s consolidated financial statements for the three months ended March 31, 2008 and 2009 and related financial information contained in the Company s Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 as filed with the Securities and Exchange Commission on May 1, 2009 (the Original Filing). This Form 10-Q/A amends and restates Items 1, 2 and 4 of Part 1 and Item 6 of Part II of the Original Filing. Except as required to reflect the effects of the restatement for the items above, no additional modifications or updates to the consolidated financial statements or data in this Form 10-Q/A have been made to the consolidated financial statements or data for the three months ended March 31, 2008 and 2009. This filing should be read in conjunction with the Company s Annual Report on Form 10-K for the year ended December 31, 2009 and other filings made with the SEC subsequent to the filing of the Original Filing, as those filings may have been amended, as information in such reports and documents may update or supersede certain information contained in this filing.

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PART 1. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

Overstock.com, Inc.

Consolidated Balance Sheets

(in thousands)

	December 31, 2008 (Restated)	March 31, 2009 (Unaudited) (Restated)
Assets		
Current assets:		
Cash and cash equivalents	$ 96,457	$ 74,487
Restricted cash	4,262	4,285
Marketable securities	8,989	
Accounts receivable, net	7,100	9,493
Notes receivable (Note 5)	1,250	
Inventories, net	24,719	16,072
Prepaid inventories, net	761	1,401
Prepaids and other assets	9,552	8,568
Total current assets	153,090	114,306
Fixed assets, net	24,724	22,291
Goodwill	2,784	2,784
Other long-term assets, net	538	2,920
Total assets	$ 181,136	$ 142,301
Liabilities and Stockholders Equity (Deficit)		
Current liabilities:		
Accounts payable	$ 57,981	$ 28,788
Accrued liabilities	34,097	33,596
Deferred revenue	19,232	17,841
Total current liabilities	111,310	80,225
Other long-term liabilities	4,251	4,449
Convertible senior notes, net	66,558	61,730
Total liabilities	182,119	146,404
Commitments and contingencies (Note 9)		
Redeemable common stock, $0.0001 par value, 98 and 55 shares outstanding as of December 31, 2008 and March 31, 2009 (Note 13)	1,263	687
Stockholders equity (deficit):		
Preferred stock, $0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2008 and March 31, 2009		
Common stock, $0.0001 par value, 100,000 shares authorized, 25,438 and 25,586 shares issued as of December 31, 2008 and March 31, 2009, respectively, and 22,645 and 22,758 shares outstanding as of December 31, 2008 and March 31, 2009, respectively	2	2

Additional paid-in capital		337,707		339,482
Accumulated deficit		(263,333)		(267,277)
Treasury stock, 2,793 and 2,828 shares at cost as of December 31, 2008 and March 31, 2009, respectively		(76,670)		(76,997)
Accumulated other comprehensive income		48		
Total stockholders deficit		(2,246)		(4,790)
Total liabilities and stockholders deficit	$	181,136	$	142,301

See accompanying notes to consolidated financial statements.

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Overstock.com, Inc.

Consolidated Statements of Operations (unaudited)

(in thousands, except per share data)

	Three months ended March 31, 2008 (Restated)	Three months ended March 31, 2009 (Restated)
Revenue, net		
Direct	$ 51,655	$ 34,882
Fulfillment partner	150,145	150,847
Total net revenue	201,800	185,729
Cost of goods sold		
Direct(1)	44,697	30,397
Fulfillment partner	122,491	119,201
Total cost of goods sold	167,188	149,598
Gross profit	34,612	36,131
Operating expenses:		
Sales and marketing(1)	15,023	13,587
Technology(1)	14,489	13,591
General and administrative(1)	9,392	13,834
Total operating expenses	38,904	41,012
Operating loss	(4,292)	(4,881)
Interest income	1,304	123
Interest expense	(901)	(922)
Other income (expense), net		1,736
Net loss	(3,889)	(3,944)
Deemed dividend related to redeemable common stock	(21)	(11)
Net loss attributable to common shares	$ (3,910)	$ (3,955)
Net loss attributable to common shares basic and diluted:	$ (0.17)	$ (0.17)
Weighted average common shares outstanding basic and diluted	23,345	22,803

(1) Includes stock-based compensation as follows (Note 12):		
Cost of goods sold direct	$ 52	$ 44
Sales and marketing	88	142
Technology	226	236
General and administrative	1,025	777

See accompanying notes to consolidated financial statements.

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Overstock.com, Inc.

Consolidated Statements of Stockholders Equity (Deficit)

and Comprehensive Loss (Unaudited Restated)

(in thousands)

	Common stock		Additional Paid-in	Accumulated	Treasury stock		Accumulated Other Comprehensive	
	Shares	Amount	Capital	Deficit	Shares	Amount	Income (loss)	Total
Balance at December 31, 2008 (Restated)	25,438	$ 2	$ 337,707	$ (263,333)	2,793	$ (76,670)	$ 48	$ (2,246)
Stock-based compensation to employees and directors			1,189					1,189
Stock-based compensation to consultants in exchange for services			10					10
Restricted stock units issued upon vesting	105							
Purchase of treasury stock					35	(327)		(327)
Issuance of redeemable common stock (Restated) (Note 13)	(21)		(198)					(198)
Lapse of rescission rights of redeemable stock (Restated) (Note 13)	64		785					785
Deemed dividend related to redeemable stock (Restated) (Note 13)			(11)					(11)
Comprehensive loss (Restated):								
Net loss (Restated)				(3,944)				(3,944)
Reclassification adjustment							(48)	(48)
Total comprehensive loss								(3,992)
Balance at March 31, 2009 (Restated)	25,586	$ 2	$ 339,482	$ (267,277)	2,828	$ (76,997)	$	$ (4,790)

See accompanying notes to consolidated financial statements.

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Overstock.com, Inc.

Consolidated Statements of Cash Flows (unaudited)

(in thousands)

	Three months ended March 31, 2008 (Restated)	2009 (Restated)
Cash flows from operating activities:		
Net loss	$ (3,889)	$ (3,944)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,561	3,987
Realized loss on marketable securities		39
Loss on disposition of fixed assets		184
Stock-based compensation to employees and directors	1,255	1,189
Stock-based compensation to consultants for services	(14)	10
Stock-based compensation relating to performance share plan	150	
Amortization of debt discount	87	74
Gain from early extinguishment of debt		(1,926)
Notes receivable accretion	(136)	
Changes in operating assets and liabilities:		
Restricted cash	(67)	(23)
Accounts receivable, net	1,931	(2,393)
Inventories, net	7,673	8,647
Prepaid inventories, net	1,004	(640)
Prepaids and other assets	(2,546)	(684)
Other long-term assets, net		(716)
Accounts payable	(37,519)	(29,193)
Accrued liabilities	(13,903)	(501)
Deferred revenue	(1,492)	(1,391)
Other long-term liabilities	(206)	251
Net cash used in operating activities	(41,111)	(27,030)
Cash flows from investing activities:		
Purchases of marketable securities	(6,539)	
Maturities of marketable securities	22,911	
Sale of marketable securities prior to maturity		8,902
Expenditures for fixed assets, including internal-use software and website development	(1,313)	(1,736)
Collection of notes receivable	502	1,250
Net cash provided by investing activities	15,561	8,416
Cash flows from financing activities:		
Payments on capital lease obligations	(3,794)	
Drawdowns on line of credit	5,268	1,612
Payments on line of credit	(5,268)	(1,612)
Paydown on direct financing arrangement		(53)
Payments to retire convertible senior notes		(2,976)
Purchase of treasury stock	(12,000)	(327)
Net cash used in financing activities	(15,794)	(3,356)
Effect of exchange rate changes on cash	(23)	

Net decrease in cash and cash equivalents		(41,367)		(21,970)
Cash and cash equivalents, beginning of period		92,807		96,457
Cash and cash equivalents, end of period	$	51,440	$	74,487
Supplemental disclosures of cash flow information:				
Interest paid	$	639	$	208
Non-cash financing activities				
Issuance of redeemable comon stock	$	732	$	198
Lapse of recission rights of redeemable stock	$	652	$	785

See accompanying notes to consolidated financial statements.

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Overstock.com, Inc.

Notes to Unaudited Consolidated Financial Statements

1. BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared by Overstock.com, Inc. (the Company) pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations and the restated audited annual consolidated financial statements and related notes thereto as of and for the year ended December 31, 2008 included in the Annual Report on Form 10-K for the year ended December 31, 2009. The accompanying unaudited consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of results for the interim periods presented. Preparing financial statements requires management to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on management s best knowledge of current events and actions that the Company may undertake in the future, actual results may be different from the estimates. The results of operations for the three months ended March 31, 2009 are not necessarily indicative of the results to be expected for any future period or the full fiscal year.

2. ACCOUNTING POLICIES

Principles of consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany account balances and transactions have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in the consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, valuation of investments, receivables valuation, revenue recognition, sales returns, incentive discount offers, inventory valuation, depreciable lives of fixed assets and internally-developed software, valuation of acquired intangibles, income taxes, stock-based compensation, and contingencies. Actual results could differ materially from those estimates.

Fair value of financial instruments

The Company s financial instruments, including cash, cash equivalents, notes receivable, accounts receivable, accounts payable and accrued liabilities are carried at cost, which approximates their fair value because of the short-term maturity of these instruments.

In September 2006, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements* (SFAS No. 157), which defines fair value, establishes guidelines for measuring fair value and expands disclosures regarding fair value measurements. SFAS No. 157 does not require any new fair value measurements but rather eliminates inconsistencies in guidance found in various prior accounting pronouncements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position (FSP) FAS No. 157-2, *Effective Date of FASB Statement No. 157* (FSP FAS No. 157-2), which delayed the effective date of SFAS No. 157 to fiscal years beginning after November 15, 2008 and interim periods within those fiscal years for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company adopted SFAS No. 157 on January 1, 2008, except as it applies to those non-financial assets and non-financial liabilities as described in FSP FAS No. 157-2, and it did not have a material impact on the Company s consolidated financial position, results of operations or cash flows.

On a quarterly basis, the Company measures at fair value certain financial assets, including restricted cash, cash equivalents and available-for-sale securities, if any. SFAS No. 157 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company s market assumptions. These two types of inputs have created the following fair-value hierarchy:

- Level 1 Quoted prices for identical instruments in active markets;

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•Level 2 Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

•Level 3 Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

This hierarchy requires the Company to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

The fair value of these financial instruments was determined using the following levels of inputs as of December 31, 2008 (in thousands):

	Fair Value Measurements at December 31, 2008:			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents and restricted cash - Money market mutual funds	$ 101,678	$ 101,678	$	$
Available-for-sale securities	8,989	8,989		
Total Assets	$ 110,667	$ 110,667	$	$

The fair value of these financial instruments was determined using the following levels of inputs as of March 31, 2009 (in thousands):

	Fair Value Measurements at March 31, 2009:			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents and restricted cash - Money market mutual funds	$ 70,911	$ 70,911	$	$

The estimated fair value of the Company s 3.75% Convertible Senior Notes due 2011 (Senior Notes) outstanding at December 31, 2008 and March 31, 2009 was $38.1 million on a carrying value of $66.6 million and $36.9 million on a carrying value of $61.7 million, respectively. The fair value of the Senior Notes was derived using a convertible debt pricing model with observable market inputs, which include stock price, dividend payments, borrowing costs, equity volatility, interest rates and interest spread.

Allowance for doubtful accounts

From time to time, the Company grants credit to some of its business customers on normal credit terms (typically 30 days). The Company performs ongoing credit evaluations of its customers financial condition and maintains an allowance for doubtful accounts receivable based upon

its historical collection experience and expected collectability of all accounts receivable. The allowance for doubtful accounts receivable was $1.6 million at December 31, 2008, and $1.7 million at March 31, 2009.

Valuation of inventories

The Company writes down its inventory for estimated obsolescence and to lower of cost or market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products. Reversal of the allowances is recognized only when the related inventory has been sold or scrapped.

Fixed assets

Fixed assets, which include assets such as furniture and fixtures, technology infrastructure, internal-use software and website development, are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the related assets or the term of the related capital lease, whichever is shorter, as follows:

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	Life (years)
Computer software	2-3
Computer hardware	3
Furniture and equipment	3-5

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated service lives. Depreciation expense is classified within the corresponding operating expense categories on the consolidated statements of operations, and certain assets are amortized as Cost of goods sold. Upon sale or retirement of assets, cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in the consolidated statements of operations.

Internal-use software and website development

The Company includes in fixed assets the capitalized cost of internal-use software and website development, including software used to upgrade and enhance its Website and processes supporting the Company s business. As required by AICPA Statement of Position (SOP) No. 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use,* the Company capitalizes costs incurred during the application development stage of internal-use software and amortizes these costs over the estimated useful life of two to three years. The Company expenses costs incurred related to design or maintenance of internal-use software as incurred.

During the three months ended March 31, 2008 and 2009, the Company capitalized $727,000 and $749,000, respectively, of costs associated with internal-use software and website development, both developed internally and acquired externally. Amortization of costs associated with internal-use software and website development was $3.1 million and $1.7 million for those respective periods.

Revenue recognition

The Company derives revenue primarily from two sources: direct revenue and fulfillment partner revenue, including listing fees and commissions collected from products being listed and sold through the Auctions tab of its Website as well as advertisement revenue derived from its cars and real estate listing businesses. The Company has organized its operations into two principal segments based on the primary source of revenue: Direct revenue and Fulfillment partner revenue (see Note 14 Business Segments).

Revenue is recognized when the following revenue recognition criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or the service has been provided; (3) the selling price or fee revenue earned is fixed or determinable; and (4) collection of the resulting receivable is reasonably assured. Revenue related to merchandise sales is recognized upon delivery to the Company s customers. As the Company ships high volumes of packages through multiple carriers, it is not practical for the Company to track the actual delivery date of each shipment. Therefore, the Company uses estimates to determine which shipments are delivered and therefore recognized as revenue at the end of the period. The delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the shipping carrier (as carriers differ in transit times); (ii) the fulfillment source (either the Company s warehouses or those of its fulfillment partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment.

The Company evaluates the criteria outlined in Emerging Issues Task Force (EITF) No. 99-19, *Reporting Revenue Gross as a Principal Versus Net as an Agent* , in determining whether it is appropriate to record the gross amount of product sales and related costs or the net amount earned as commissions. When the Company is the primary obligor in a transaction, is subject to inventory risk, has latitude in establishing prices and selecting suppliers, or has several but not all of these indicators, revenue is recorded gross. If the Company is not the primary obligor in the transaction and amounts earned are determined using a fixed percentage, revenue is recorded on a net basis. Currently, the majority of both direct revenue and fulfillment partner revenue is recorded on a gross basis, as the Company is the primary obligor. The Company presents revenue net of sales taxes.

The Company periodically provides incentive offers to its customers to encourage purchases. Such offers include current discount offers, such as percentage discounts off current purchases, and other similar offers. Current discount offers, when used by customers, are treated as a reduction of revenue.

Based upon the Company s historical experience, revenue typically increases during the fourth quarter because of the holiday retail season.

Co-branded Credit Card

The Company has a co-branded credit card agreement with a third-party bank, for the issuance of credit cards bearing the Overstock brand, under which the bank pays the Company fees for new accounts, renewed accounts and for card usage. New and renewed account fees are recognized as revenues on a straight-line basis over the estimated life of the credit card relationship. Credit card usage fees are recognized as revenues as actual credit card usage occurs.

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Direct revenue

Direct revenue consists of merchandise sold through the Company s Website to individual consumers and businesses that is fulfilled from its leased warehouses.

Fulfillment partner revenue

Fulfillment partner revenue consists of merchandise sold through the Company s Website and shipped by third parties directly to consumers and businesses from warehouses maintained by the fulfillment partners.

The Company provides an online auction service on its Website. The Auctions tab allows sellers to list items for sale, buyers to bid on items of interest, and users to browse through listed items online. Except in limited circumstances where the Company auction-lists returned merchandise, the Company is not the seller of auction-listed items and has no control over the pricing of those items. Therefore, the listing fees for items sold at auction by sellers are recorded as revenue during the period these items are listed or sold on a net basis. The revenue for the returned merchandise that the Company sells at auction is recorded on a gross basis. Revenue from the auctions business is included in the fulfillment partner segment.

The Company provides an online site for listing cars for sale as a part of its Website. The cars listing service allows dealers to list vehicles for sale and allows buyers to review vehicle descriptions, post offers to purchase, and provides the means for purchasers to contact sellers for further information and negotiations on the purchase of an advertised vehicle. Revenue from the cars listing business is included in the fulfillment partner segment.

The Company provides an online site for listing real estate for sale as a part of its Website. The real estate listing service allows customers to search active listings across the country. Listing categories include foreclosures, live and on-line auctions, for sale by owner listings, broker/agent listings and numerous aggregated classified ad listings. Revenue from the real estate business is included in the fulfillment partner segment.

Total revenues from Auctions, Cars and Real Estate businesses were $253,000 and $504,000 for the three month periods ended March 31, 2009, respectively.

The Company began selling products through its website to customers outside the United States in August 2008. The initial launch included Canada and 34 European countries, including the U.K. and Germany. The Company does not have operations outside the United States, and is utilizing a U.S. based third party to provide logistics and fulfillment for all international orders. Revenue generated from the international business is included in either direct or fulfillment partner revenue, depending on whether the product is shipped from the Company s leased warehouses or from a fulfillment partner.

Total revenues from International sales were $704,000 for the three month period ended March 31, 2009. There were no revenues from International sales during the three month period ended March 31, 2008.

Credit card chargeback allowance

Revenue is recorded net of credit card chargebacks. The Company maintains an allowance for credit card chargebacks based on current period revenues and historical chargeback experience. The allowance for chargebacks was $365,000 at December 31, 2008, and $314,000 at March 31, 2009.

Sales returns allowance

The Company inspects all returned items when they arrive at the Company s processing facility. The Company will refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or there has been a Company error, such as shipping the wrong product.

If the return is not a result of a product defect or Company error and the customer initiates a return of an unopened item within 30 days of delivery, except for computers and electronics, the Company will refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, the Company will reduce refunds for returns initiated more than 30 days after delivery or that are received at its returns processing facility more than 45 days after initial delivery.

If the Company s customer returns an item that has been opened or shows signs of wear, it will issue a partial refund minus both the original shipping charge and return shipping fees.

Total net revenue is recorded net of estimated returns. The Company records an allowance for returns based on current period revenues and historical returns experience. The Company analyzes actual historical returns, current economic trends and

changes in order volume and acceptance of its products when evaluating the adequacy of the sales returns allowance in any accounting period. The Company s actual product returns have not differed materially from its estimates. The Company is not currently aware of any trends that it expects would significantly change future returns experience compared to historical experience. The allowance for returns was $16.2 million at December 31, 2008, and $10.5 million at March 31, 2009.

Deferred revenue

Customer orders are recorded as deferred revenue prior to delivery of products or services. In addition, amounts received in advance for Club O membership fees are recorded as deferred revenue and recognized ratably over the membership period. The Company sells gift cards and records related deferred revenue at the time of the sale. Gift cards are sold without expiration dates and revenue from a gift card is recognized upon redemption of the gift card. If a gift card is not redeemed, the Company recognizes revenue when the likelihood of its redemption becomes remote based on the Company s historical experienceThe Company considers the likelihood of redemption to be remote after 36 months.

Advertising expense

The Company expenses the costs of producing advertisements the first time the advertising takes place and expenses the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to the Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to the Company s Website generated during a given period. Advertising expense is included in sales and marketing expenses and totaled $13.9 million and $11.6 million during the three months ended March 31, 2008 and 2009, respectively. Prepaid advertising, which consist primarily of prepaid advertising airtime, (included in Prepaids and other assets in the accompanying Consolidated Balance Sheets) was $877,000 and $901,000 million at December 31, 2008 and March 31, 2009, respectively.

Stock-based compensation

As required by SFAS No. 123(R), *Share-based Payment* (SFAS No. 123(R)), the Company measures compensation expense for all outstanding unvested share-based awards at fair value and recognizes compensation expense on a straight line basis. The estimation of stock awards that will ultimately vest requires judgment, and to the extent actual results differ from estimates, such amounts will be recorded as an adjustment in the period estimates are revised. Management considers many factors when estimating expected forfeitures, including types of awards, and historical experience. Actual results may differ substantially from these estimates (see Note 12 Stock-Based Awards).

Loss contingencies

In the normal course of business, the Company is involved in legal proceedings and other potential loss contingencies. The Company accrues a liability for such matters when it is probable that a loss has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any

other amount within the range, the minimum amount in the range is accrued.

Restructuring

Restructuring expenses are primarily comprised of lease termination costs. ASC Topic 420, *Accounting for Costs Associated with Exit or Disposal Activities,* requires that when an entity ceases using a property that is leased under an operating lease before the end of its contractual term, the termination costs should be recognized and measured at fair value when the entity ceases using the facility. Key assumptions in determining the restructuring expenses include the terms that may be negotiated to exit certain contractual obligations (see Note 4 Restructuring Expense).

Loss per share

Basic loss per share is computed by dividing net loss attributable to common shares by the weighted average number of common shares outstanding during the period. Diluted loss per share is computed by dividing loss attributable to common shares for the period by the weighted average number of common and potential common shares outstanding during the period. Potential common shares, comprising incremental common shares issuable upon the exercise of stock options, convertible senior notes, and restricted stock units are included in the calculation of diluted net loss per common share to the extent such shares are dilutive.

The following table sets forth the computation of basic and diluted net loss per common share for the periods indicated (in thousands, except per share data):

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	Three months ended March 31,			
	2008 (Restated)		2009 (Restated)	
Net loss	$	(3,889)	$	(3,944)
Deemed dividend related to redeemable common stock		(21)		(11)
Loss from continuing operations attributable to common stock	$	(3,910)	$	(3,955)
Weighted average common shares outstanding basic		23,345		22,803
Effect of dilutive securities:				
Stock options and restricted stock units				
Convertible senior notes				
Weighted average common shares outstanding diluted		23,345		22,803
Net loss per common share basic and diluted	$	(0.17)	$	(0.17)

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three months ended March 31,	
	2008	2009
Stock options and restricted stock units	1,567	1,497
Convertible senior notes	1,010	820

Accounting pronouncements issued not yet adopted

In April 2009, the FASB issued FASB Staff Position (FSP) FAS No. 107-1 and Accounting Principles Board (APB) Opinion No. 28-1, *Interim Disclosures about Fair Value of Financial Instruments* (FSP FAS No. 107-1 and APB Opinion No. 28-1), which amends the disclosure requirements of SFAS No. 107 and APB Opinion No. 28 and requires disclosure about the fair value of its financial instruments whenever it issues summarized financial information for interim reporting periods. FSP FAS No. 107-1 and APB Opinion No. 28-1 are effective for financial statements issued for interim reporting periods ending after June 15, 2009. The Company does not expect the adoption of FSP FAS No. 107-1 and APB Opinion No. 28-1will have a material impact on its consolidated financial statements.

In April 2009, the FASB issued FSP FAS No. 115-2 and FAS No. 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* (FSP FAS No. 115-2 and FAS No. 124-2), which amends SFAS No. 115 and FSP FAS No. 115-1 and FSP FAS No. 124-1 and conforms changes to other standards including EITF Issue No. 99-20 and AICPA Statement of Position (SOP) No. 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer,* and improves the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. FSP FAS No. 115-2 and FAS No. 124-2 are effective for interim and annual reporting periods ending after June 15, 2009. The Company does not expect the adoption of FSP FAS No. 115-2 and FAS No. 124-2 will have a material impact on its consolidated financial statements.

In April 2009, the FASB issued FSP FAS No. 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly* (FSP FAS No. 157-4), which provides additional guidance for estimating fair value in accordance with SFAS No. 157, *Fair Value Measurements* , when the volume and level of activity for the asset or liability have significantly decreased. This FSP also includes guidance on identifying circumstances that indicate a transaction is not orderly and

applies to all assets and liabilities within the scope of accounting pronouncements that require or permit fair value measurements, except in paragraphs 2 and 3 of SFAS No. 157. FSP FAS No. 157-4 is effective for interim and annual reporting periods ending after June 15, 2009. The Company does not expect the adoption of FSP FAS No. 157-4 will have a material impact on its consolidated financial statements.

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3. RESTATEMENT OF FINANCIAL STATEMENTS

On January 29, 2010, the Audit Committee of the Board of Directors of the Company concluded, based on the recommendation of management, that the Company would restate (1) its consolidated financial statements as of and for the year ended December 31, 2008 (however, only the restatement of the balance sheet is presented herein) and (2) its consolidated financial statements as of and for the three months ended March 31, 2008 and 2009 within this Form 10-Q/A to correct the following errors:

- Accounting for amounts that the Company pays its drop ship fulfillment partners and an amount due from a vendor that went undiscovered for a period of time. Specifically, these errors related to (1) amounts the Company paid to partners or deducted from partner payments related to return processing services and product costs and (2) amounts the Company paid to a freight vendor based on incorrect invoices from the vendor. Once discovered, the Company applied gain contingency accounting for the recovery of such amounts, which was an inappropriate accounting treatment.

- Amortization of the expense related to restricted stock units. Previously the expense was based on the actual three year vesting schedule, which incorrectly understated the expense as compared to a three year straight line amortization. The Company also corrected for the use of an outdated forfeiture rate in calculating share-based compensation expense under the plans.

The following additional adjustments were also included in this restatement:

- Correction of certain amounts related to customer refunds and credits

- Recognition of co-branded credit card bounty revenue and promotion expense over the estimated term of the credit card relationships. Previously the revenue was incorrectly recognized when the card was issued.

- Reduction in the restructuring accrual and correction of the related expense due to a 2008 sublease benefit which was previously excluded from the accrual calculation and the accretion of interest expense related to the restructuring accrual, which was not previously recorded.

- Change in the Company s accounting for external audit fees to the as incurred method instead of the ratable method.

- Other miscellaneous adjustments, none of which were material either individually or in the aggregate. Certain of these adjustments were related to a reduction in revenue and cost of goods sold in equal amounts for certain consideration the Company received from vendors, an increase in inventory, accounts payable and accrued liabilities to record the Company s sales return allowance on a gross basis, an adjustment to

the Company s cash and restricted cash balances due to compensating balance arrangements and an adjustment to record redeemable common stock for certain shares previously issued to employees.

The (increase) decrease to net loss attributable to common shares of the above adjustments is as follows (in thousands):

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	Three months ended March 31, 2008	Three months ended March 31, 2009
The effect of the adjustments related to (1) amounts the Company paid to partners or deducted from payments to partners related to return processing services and product costs and (2) amounts the Company paid to a freight vendor based on incorrect invoices from the vendor.	$ 927	$ (1,606)
The effect of the adjustments related to accounting for certain of the Company s share-based compensation plans.	(71)	(340)
The effect of the adjustments related to customer refunds and credits.		9
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.	221	48
The effect of the adjustments related to restructuring expense and interest expense related to the accretion of the restructuring accrual.		(17)
The effect of the adjustments related to external audit fees.	(316)	(221)
The effect of other miscellaneous adjustments	53	271
Total impact of the effect of the adjustments	$ 814	$ (1,856)

The effect of the adjustments on the Consolidated Results of Operations for the three months ended March 31, 2008 and 2009 is to decrease net loss attributable to common shares and increase net loss attributable to common shares by $814,000 and $1.9 million, respectively. The effect of the adjustments on loss per common share from continuing operations for the three months ended March 31, 2008 and 2009 is to decrease loss per common share by $0.03, and increase loss per common share by $0.08 respectively.

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The consolidated statements of operations, balance sheets and statements of cash flows have been restated as follows:

Consolidated Statements of Operations (unaudited)

(in thousands, except per share data)

	Three months ended March 31, 2008		
	As Previously Reported	**Adjustments**	**As Restated**
Revenue, net			
Direct	$ 51,764	$ (109)	$ 51,655
Fulfillment partner	151,050	(905)	150,145
Total net revenue	202,814	(1,014)	201,800
Cost of goods sold			
Direct	44,803	(106)	44,697
Fulfillment partner	124,040	(1,549)	122,491
Total cost of goods sold	168,843	(1,655)	167,188
Gross profit	33,971	641	34,612
Operating expenses:			
Sales and marketing	15,019	4	15,023
Technology	14,516	(27)	14,489
General and administrative	9,563	(171)	9,392
Total operating expenses	39,098	(194)	38,904
Operating loss	(5,127)	835	(4,292)
Interest income	1,304		1,304
Interest expense	(901)		(901)
Net loss	$ (4,724)	$ 835	$ (3,889)
Deemed dividend related to redeemable common stock		(21)	(21)
Net loss attributable to common shares	$ (4,724)	$ 814	$ (3,910)
Net loss per common share basic and diluted	$ (0.20)	$ 0.03	$ (0.17)
Weighted average common shares outstanding basic and diluted	23,345		23,345

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	Three months ended March 31, 2009		
	As Previously Reported	Adjustments	As Restated
Revenue, net			
Direct	$ 35,059	$ (177)	$ 34,882
Fulfillment partner	152,308	(1,461)	150,847
Total net revenue	187,367	(1,638)	185,729
Cost of goods sold			
Direct	30,478	(81)	30,397
Fulfillment partner	119,198	3	119,201
Total cost of goods sold	149,676	(78)	149,598
Gross profit	37,691	(1,560)	36,131
Operating expenses:			
Sales and marketing	13,540	47	13,587
Technology	13,789	(198)	13,591
General and administrative	13,454	380	13,834
Total operating expenses	40,783	229	41,012
Operating loss	(3,092)	(1,789)	(4,881)
Interest income	123		123
Interest expense	(866)	(56)	(922)
Other income (expense), net	1,736		1,736
Net loss	$ (2,099)	$ (1,845)	$ (3,944)
Deemed dividend related to redeemable common stock		(11)	(11)
Net loss attributable to common shares	$ (2,099)	$ (1,856)	$ (3,955)
Net loss per common share basic and diluted	$ (0.09)	$ (0.08)	$ (0.17)
Weighted average common shares outstanding basic and diluted	22,803		22,803

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Consolidated Balance Sheet (unaudited)

(in thousands)

	As of December 31, 2008		
	As Previously Reported	Adjustments	As Restated
Assets			
Current assets:			
Cash and cash equivalents	$ 100,577	$ (4,120)	$ 96,457
Restricted cash		4,262	4,262
Marketable securities	8,989		8,989
Accounts receivable, net	6,985	115	7,100
Notes receivable	1,250		1,250
Inventories, net	17,723	6,996	24,719
Prepaid inventories, net	761		761
Prepaids and other assets	9,694	(142)	9,552
Total current assets	145,979	7,111	153,090
Fixed assets, net	23,144	1,580	24,724
Goodwill	2,784		2,784
Other long-term assets, net	538		538
Total assets	$ 172,445	$ 8,691	$ 181,136
Liabilities and Stockholders Equity (Deficit)			
Current liabilities:			
Accounts payable	$ 62,120	$ (4,139)	$ 57,981
Accrued liabilities	25,154	8,943	34,097
Deferred revenue	19,026	206	19,232
Total current liabilities	106,300	5,010	111,310
Other long-term liabilities	2,572	1,679	4,251
Convertible senior notes, net	66,558		66,558
Total liabilities	175,430	6,689	182,119
Commitments and contingencies			
Redeemable common stock, $0.0001 par value, 98 shares outstanding as of December 31, 2008		1,263	1,263
Stockholders equity (deficit):			
Preferred stock, $0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2008			
Common stock, $0.0001 par value, 100,000 shares authorized, 25,438 shares issued and 22,645 shares outstanding as of December 31, 2008	2		2
Additional paid-in capital	338,620	(913)	337,707
Accumulated deficit	(264,985)	1,652	(263,333)
Treasury stock, 2,793 as of December 31, 2008	(76,670)		(76,670)
Accumulated other comprehensive income	48		48
Total stockholders deficit	(2,985)	739	(2,246)
Total liabilities and stockholders deficit	$ 172,445	$ 8,691	$ 181,136

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	As of March 31, 2009		
	As Previously Reported	Adjustments	As Restated
Assets			
Current assets:			
Cash and cash equivalents	$ 78,607	$ (4,120)	$ 74,487
Restricted cash		4,285	4,285
Accounts receivable, net	9,693	(200)	9,493
Inventories, net	11,695	4,377	16,072
Prepaid inventories, net	1,401		1,401
Prepaids and other assets	8,733	(165)	8,568
Total current assets	110,129	4,177	114,306
Fixed assets, net	20,513	1,778	22,291
Goodwill	2,784		2,784
Other long-term assets, net	2,920		2,920
Total assets	$ 136,346	$ 5,955	$ 142,301
Liabilities and Stockholders Equity (Deficit)			
Current liabilities:			
Accounts payable	$ 31,476	$ (2,688)	$ 28,788
Accrued liabilities	27,234	6,362	33,596
Deferred revenue	17,683	158	17,841
Total current liabilities	76,393	3,832	80,225
Other long-term liabilities	2,823	1,626	4,449
Convertible senior notes, net	61,730		61,730
Total liabilities	140,946	5,458	146,404
Commitments and contingencies			
Redeemable common stock, $0.0001 par value, 55 shares outstanding as of March 31, 2009 (Note 13)		687	687
Stockholders equity (deficit):			
Preferred stock, $0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of March 31, 2009			
Common stock, $0.0001 par value, 100,000 shares authorized, 25,586 shares issued and 22,758 shares outstanding as of March 31, 2009	2		2
Additional paid-in capital	339,479	3	339,482
Accumulated deficit	(267,084)	(193)	(267,277)
Treasury stock, 2,828 shares at cost as of March 31, 2009	(76,997)		(76,997)
Accumulated other comprehensive income			
Total stockholders deficit	(4,600)	(190)	(4,790)
Total liabilities and stockholders deficit	$ 136,346	$ 5,955	$ 142,301

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Consolidated Statement of Cash Flows (unaudited)

(in thousands)

	Three months ended March 31, 2008			Three months ended March 31, 2009		
	As Reported	Adjustments	As Restated	As Reported	Adjustments	As Restated
Cash flows from operating activities:						
Net loss	$ (4,724)	$ 835	$ (3,889)	$ (2,099)	$ (1,845)	$ (3,944)
Adjustments to reconcile net loss to net cash used in operating activities:						
Depreciation and amortization, including internal-use software and website development	6,497	64	6,561	4,185	(198)	3,987
Realized loss on marketable securities				39		39
Loss on disposition of fixed assets				184		184
Stock-based compensation to employees and directors	1,184	71	1,255	849	340	1,189
Stock-based compensation to consultants for services	(14)		(14)	10		10
Stock-based compensation to performance share plan	150		150			
Issuance of common stock from treasury for 401(k) matching contribution	19	(19)				
Amortization of debt discount	87		87	74		74
Gain from early extinguishment of debt				(1,926)		(1,926)
Notes receivable accretion	(136)		(136)			
Changes in operating assets and liabilities:						
Restricted cash		(67)	(67)		(23)	(23)
Accounts receivable, net	1,931		1,931	(2,708)	315	(2,393)
Inventories, net	7,673		7,673	6,028	2,619	8,647
Prepaid inventories, net	1,004		1,004	(640)		(640)
Prepaids and other assets	(2,546)		(2,546)	(707)	23	(684)
Other long-term assets, net				(716)		(716)
Accounts payable	(37,519)		(37,519)	(30,644)	1,451	(29,193)
Accrued liabilities	(12,669)	(1,234)	(13,903)	2,080	(2,581)	(501)
Deferred revenue	(1,775)	283	(1,492)	(1,343)	(48)	(1,391)
Other long-term liabilities	(206)		(206)	251		251
Net used in operating activities	(41,044)	(67)	(41,111)	(27,083)	53	(27,030)
Cash flows from investing activities:						
Puchases of marketable securities	(6,539)		(6,539)			
Maturities of marketable securities	22,911		22,911			
Sale of marketable securities prior to maturity				8,902		8,902
Expenditures for fixed assets, including internal-use software and website development	(1,313)		(1,313)	(1,736)		(1,736)
Collection of notes receivable	502		502	1,250		1,250
Net cash provided by investing activities	15,561		15,561	8,416		8,416
Cash flows from financing activities:						
Payments on capital lease obligations	(3,794)		(3,794)			
Drawdowns on line of credit	5,268		5,268	1,612		1,612
Payments on line of credit	(5,268)		(5,268)	(1,612)		(1,612)
Paydown on direct financing arrangement					(53)	(53)
Payments to retire convertible senior notes				(2,976)		(2,976)
Purchase of treasury stock	(12,000)		(12,000)	(327)		(327)

Net cash used in financing activities	(15,794)		(15,794)	(3,303)	(53)	(3,356)
Effect of exchange rate changes on cash	(23)		(23)			
Net increase (decrease) in cash and cash equivalents	(41,300)	(67)	(41,367)	(21,970)		(21,970)
Cash and cash equivalents, beginning of period	101,394	(8,587)	92,807	100,577	(4,120)	96,457
Cash and cash equivalents from continuing operations, end of period	$ 60,094	$ (8,654)	$ 51,440	$ 78,607	$ (4,120)	$ 74,487

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4. RESTRUCTURING EXPENSE

During the fourth quarter of 2006, the Company began a facilities consolidation and restructuring program designed to reduce the overall expense structure in an effort to improve future operating performance. The facilities consolidation and restructuring program was substantially completed by the end of the second quarter of 2007.

Restructuring liabilities along with charges to expense associated with the facilities consolidation and restructuring program are as follows as of March 31, 2009 (in thousands) (Restated):

	Balance 12/31/2008	Accretion Expense	Net Cash Payments	Adjustments	Balance 3/31/2009
Lease and contract termination costs liability	$ 2,988	$ 72	$ (140)	$	$ 2,920

5. ACQUISITION AND SUBSEQUENT DISCONTINUED OPERATIONS

On July 31, 2005 the Company acquired all the outstanding capital stock of Ski West, Inc. (Ski West) for an aggregate of $25.1 million (including $111,000 of capitalized acquisition related expenses). Ski West became a wholly-owned subsidiary of the Company and changed its name to OTravel.com, Inc (OTravel).

In the second quarter of 2007, the Company completed the sale of OTravel.com to Castles Travel, Inc., an affiliate of Kinderhook Industries, LLC, and Castles Media Company LLC, for $17.0 million. The Company received cash proceeds, net of cash transferred, of $9.9 million and two $3.0 million promissory notes. The $3.0 million senior note matured three years from the closing date and bore interest, payable quarterly, of 4.0%, 10.0% and 14.0% per year in the first, second and third years, respectively. The $3.0 million junior note matured five years from the closing date and bore interest of 8.0% per year, compounded annually, and was payable in full at maturity.

On January 21, 2009, the Company entered into a Note Purchase Agreement to settle the senior and junior promissory notes to Castles Travel, Inc. for approximately $1.3 million in cash and recognized a loss on the settlement of these notes and interest receivable of approximately $3.9 million during the year ended December 31, 2008.

6. MARKETABLE SECURITIES

The Company s marketable securities are reported at fair value with the related unrealized gains and losses included in accumulated other comprehensive income (loss), a component of stockholders equity, net of any tax effect. Realized gains or losses on the sale of marketable securities are determined using the specific-identification method and recognized in the statement of operations.

The Company evaluates its investments periodically for possible other-than-temporary impairment by reviewing factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and the Company s ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery of market value. The Company records an impairment charge to the extent that the carrying value of its available-for-sale securities exceeds the estimated fair market value of the securities and the decline in value is determined to be other-than-temporary. The Company did not record any impairment charges related to other-than-temporary decline in value of its marketable securities during the three months ended March 31, 2008. The Company held no marketable securities at March 31, 2009. There were no realized gains and losses on sales of marketable securities during the three months ended March 31, 2008 and realized losses on the sales of marketable securities were $39,000 for the three months ended March 31, 2009.

7. OTHER COMPREHENSIVE LOSS

The Company follows SFAS No. 130, *Reporting Comprehensive Income.* This Statement establishes requirements for reporting comprehensive income (loss) and its components. The Company s comprehensive loss is as follows (in thousands):

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	Three months ended March 31,			
	2008 (Restated)		2009 (Restated)	
Net loss	$	(3,889)	$	(3,944)
Net unrealized gain on marketable securities		122		
Reclassification adjustment for amountsincluded in net loss				(48)
Foreign currency translation adjustment		(23)		
Comprehensive loss	$	(3,790)	$	(3,992)

8. BORROWINGS

Wells Fargo Credit Agreement

The Company has a credit agreement (the Credit Agreement) with Wells Fargo Bank, National Association (Wells Fargo). The Credit Agreement provides a revolving line of credit to the Company of up to $30.0 million which the Company uses primarily to obtain letters of credit to support inventory purchases. Interest on borrowings is payable monthly and accrues at either (i) 1.0% above LIBOR in effect on the first day of an applicable fixed rate term, or (ii) at a fluctuating rate per annum determined by the bank to be one half a percent (0.50%) above daily LIBOR in effect on each business day a change in daily LIBOR is announced by the bank. The Credit Agreement expires on January 1, 2010, and requires the Company to comply with certain covenants, including restrictions on mergers, business combinations or transfer of assets.

Borrowings and outstanding letters of credit under the Credit Agreement are required to be completely collateralized by cash balances held at Wells Fargo and, therefore, the facility does not provide additional liquidity to the Company.

At March 31, 2009, no amounts were outstanding under the Credit Agreement, and letters of credit totaling $2.0 million were issued on behalf of the Company supported by cash balances held at Wells Fargo, which is included in restricted cash in the accompanying Consolidated Balance Sheets.

Wells Fargo Retail Finance Agreement

On January 6, 2009, Overstock.com, Inc. entered into an Amended and Restated Loan and Security Agreement dated January 6, 2009 (the Amended WFRF Agreement) with Wells Fargo Retail Finance, LLC (WFRF). The Amended WFRF Agreement replaces the Company s Loan and Security Agreement dated December 12, 2005 with WFRF, which had previously been amended and had terminated in accordance with its terms.

The Amended WFRF Agreement provides for advances to the Company and for the issuance of letters of credit for its account of up to an aggregate maximum of $35.0 million.

The amount actually available to the Company may be less and may vary from time to time, depending on, among other factors, the amount of its eligible inventory and receivables. The Company s obligations under the Amended WFRF Agreement and all related agreements are collateralized by all or substantially all of the Company s and its subsidiary s assets. The Company s obligations under the Amended WFRF Agreement are cross-collateralized with its assets pledged under its $30.0 million credit facility with Wells Fargo Bank, N.A. The Amended WFRF Agreement contains standard default provisions. The conditions to the Company s use of the facility include a 45-day advance notice requirement.

Advances under the Amended WFRF Agreement bear interest at either (a) the rate announced, from time to time, within Wells Fargo at its principal office in San Francisco as its prime rate or (b) a rate based on LIBOR plus a varying percentage between 1.25% and 1.75%; however, the annual interest rate on advances under the Amended WFRF Agreement will be at least 3.50%. The Amended WFRF Agreement includes affirmative covenants as well as negative covenants that prohibit a variety of actions without the lender s approval, including covenants that limit the Company s ability to (a) incur or guarantee debt, (b) create liens, (c) enter into any merger, recapitalization or similar transaction or purchase all or substantially all of the assets or stock of another person, (d) sell assets, (e) change its name or the name of any of its subsidiaries, (f) make certain changes to its business, (g) optionally prepay, acquire or refinance indebtedness, (h) consign inventory, (i) pay dividends on, or purchase, acquire or redeem shares of, its capital stock, (j) change its method of accounting, (k) make investments, (l) enter into transactions with affiliates, or (m) store any of its inventory or equipment with third parties.

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At March 31, 2009, no amounts were available to the Company under the Amended WFRF Agreement.

Wells Fargo Commercial Purchasing Card Agreement

The Company has a commercial purchasing card agreement (the Purchasing Card) with Wells Fargo. The Company uses the Purchasing Card for business purpose purchasing and must pay it in full each month. The Company is required to maintain a cash balance of $1.4 million at Wells Fargo as collateral for the Purchasing Card and therefore the facility does not provide additional liquidity to the Company. These amounts are included in restricted cash in the accompanying Consolidated Balance Sheets. At March 31, 2009, $452,000 was outstanding and $798,000 was available under the Purchasing Card.

Capital leases

The Company leased certain software and computer equipment under three non-cancelable capital leases that expired at various dates through 2008.

Software and equipment relating to the capital leases totaled $19.8 million at December 31, 2008 and March 31, 2009, with accumulated depreciation of $19.3 million and $19.8 million at those respective dates. Depreciation expense of assets recorded under capital leases was $1.4 million and $474,000 for the three months ended March 31, 2008 and March 31, 2009, respectively. As of March 31, 2009, the Company had no remaining capital leases.

3.75% Convertible Senior Notes

In November 2004, the Company completed an offering of $120.0 million of 3.75% Convertible Senior Notes due 2011 (the Senior Notes). Proceeds to the Company were $116.2 million, net of $3.8 million of initial purchaser s discount and debt issuance costs. The discount and debt issuance costs are being amortized using the straight-line method which approximates the effective interest method. The Company recorded amortization of discount and debt issuance costs related to this offering totaling $87,000 and $74,000 during the three months ended March 31, 2008 and 2009, respectively. Interest on the Senior Notes is payable semi-annually on June 1 and December 1 of each year. The Senior Notes mature on December 1, 2011 and are unsecured and rank equally in right of payment with all existing and future unsecured, unsubordinated debt and senior in right of payment to any existing and future subordinated indebtedness.

The Senior Notes are convertible at any time prior to maturity into the Company s common stock at the option of the note holders at a conversion price of $76.23 per share or, approximately 820,000 shares in aggregate (subject to adjustment in certain events, including stock splits, dividends and other distributions and certain repurchases of the Company s stock, as well as certain fundamental changes in the ownership of the Company). Beginning on or after December 1, 2009, the Company has the right to redeem the Senior Notes, in whole or in part, for cash at 100% of the principal amount plus accrued and unpaid interest. Upon the occurrence of a fundamental change (including the acquisition of a majority interest in the Company, certain changes in the Company s board of directors or the termination of trading of the Company s stock) meeting certain conditions, holders of the Senior Notes may require the Company to repurchase, for cash, all or part of their notes at 100% of the

principal amount plus accrued and unpaid interest.

The indenture governing the Senior Notes requires the Company to comply with certain affirmative covenants, including making principal and interest payments when due, maintaining the Company s corporate existence and properties, and paying taxes and other claims in a timely manner.

On February 17, 2009, the Board of Directors approved a debt repurchase program that authorizes the Company to use up to $20.0 million in cash to repurchase a portion of its Senior Notes. Under the repurchase program, the Company retired $4.9 million of the Senior Notes during the three months ended March 31, 2009 for $3.0 million in cash, resulting in a gain of $1.9 million on early extinguishment of debt, net of $63,000 of associated unamortized discount. As of March 31, 2009, $61.7 million of the Senior Notes remain outstanding (see Note 11 Stock and Debt Repurchase Program).

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9. COMMITMENTS AND CONTINGENCIES

Summary of future minimum lease payments for all operating leases

Minimum future payments under all operating leases as of March 31, 2009, are as follows (in thousands) (Restated):

2009 (remainder)	$	5,941
2010		8,534
2011		8,490
2012		7,948
2013		7,305
Thereafter		14,763
	$	52,981

Rental expense for operating leases totaled $2.9 million and $1.8 million for the three months ended March 31, 2008 and 2009, respectively. Estimated sublease income of $4.9 million is expected over the next five years of which $1.3 million is anticipated to be received in the next 12 months.

Legal Proceedings

From time to time, the Company receives claims of and becomes subject to consumer protection, employment, intellectual property and other commercial litigation related to the conduct of the Company s business. Such litigation could be costly and time consuming and could divert its management and key personnel from its business operations. The uncertainty of litigation increases these risks. In connection with such litigation, the Company may be subject to significant damages or equitable remedies relating to the operation of its business and the sale of products on the Company s Website. Any such litigation may materially harm its business, prospects, results of operations, financial condition or cash flows. However, the Company does not currently believe that any of its outstanding litigation will have a material adverse effect on its financial statements. The information contained in this note reflects the status of legal proceedings through the current filing date of March 31, 2010,

On August 11, 2005, along with shareholder plaintiffs, the Company filed a complaint against Gradient Analytics, Inc.; Rocker Partners, LP; Rocker Management, LLC; Rocker Offshore Management Company, Inc. and their respective principals in the Superior Court of California, County of Marin. Subsequently, the Company filed amended complaints alleging libel, intentional interference with prospective economic advantage and violations of California s unfair business practices act and also adding as defendants Cathy Longinotti, Mark Montgomery, Phillip Renna and Terrence Warzecha, all former or existing general partners of Copper River Partners, L.P. (formerly known as Rocker Partners, LP). Defendants Longinotti, Renna and Warzecha successfully quashed the summons as to them. On November 9, 2007, Copper River Partners, L.P. filed a cross-complaint against the Company and certain of its current and former directors. The Copper River cross-complaint alleged cross-defendants engaged in violations of California s state securities laws, violations of California s unfair business practices act, tortuous interference with contract and prospective business advantage, and deceit. In January 2008, each of the cross-defendants filed various motions in opposition to this cross-complaint. On April 23, 2008, the court dismissed Copper River s cross claims against various former directors of the Company, and dismissed various claims against the Company in the cross-complaint. The court declined to dismiss Copper River s securities fraud claims and its request for an injunction for unfair business practices against the Company and Patrick Byrne and the claims for tortuous

interference with contract and prospective business advantage against the Company, Patrick Byrne and John Fisher, though later all claims against John Fisher were dismissed. On October 10, 2008, the Company and Patrick Byrne reached a confidential settlement agreement with Gradient Analytics and its current and former principals. Shortly thereafter, those claims against those Gradient defendants were dismissed. Subsequently, on December 8, 2009, the Company entered a settlement with the remaining defendants. Under the settlement Copper River Partners, L.P. and Copper River Funds jointly paid the Company $5 million and Copper River Partners L.P. dismissed its claims. Once the Company received payment, the Company dismissed its claims. Following settlement, the court dismissed the case.

On February 2, 2007, along with five shareholder plaintiffs, the Company filed a lawsuit in the Superior Court of California, County of San Francisco against Morgan Stanley & Co. Incorporated, Goldman Sachs & Co., Bear Stearns Companies, Inc., Bank of America Securities LLC, Bank of New York, Citigroup Inc., Credit Suisse (USA) Inc., Deutsche Bank Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., and UBS Financial Services, Inc. In September 2007, the Company filed an amended complaint adding two plaintiff shareholders, naming Lehman Brothers Holdings Inc. as a defendant