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6 **Attorney for Plaintiff,**
7 **TIM PAGE**

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 TIM PAGE, an individual,

CASE NO. CV-09-03042 GHK(AGRx)

12 Plaintiff

**FIRST AMENDED COMPLAINT
FOR FRAUDULENT CONVEYANCE;
CONVERSION AND
CONSTRUCTIVE TRUST**

13 v.

14 ANDREEA PORCELLI, an individual;
15 MONTALCINO INTERNATIONAL
HOLDINGS, S.A., a Luxembourg company;
16 BANK JULIUS BAER & CO. LTD, A Swiss
entity, aka THE JULIUS BAER GROUP, a
17 Swiss entity; JULIUS BAER INVESTMENT
FUNDS, a Swiss entity; DISCOVERY ADVISOR
18 COMPANY, A Swiss entity, business form
unknown; MARCUS WINKLER, an individual
19 and DOES 1-10, inclusive,

[DEMAND FOR JURY TRIAL]

20 Defendants.

21 _____ /
22 For its Complaint against Andreea Porcelli, Montalcino International Holdings, S.A.,
23 Bank Julius Baer & Co., Ltd. aka The Julius Baer Group, Julius Baer Investment Funds,
24 Discovery Advisor Company, Plaintiff alleges as follows:
25 ///

1 **JURISDICTION AND VENUE**

2 1. This action is brought and jurisdiction lies within this Court pursuant to 28 U.S.C. §§
3 1332(a) and 1350 in that it is (i) a civil action between citizens of or subjects of a foreign state
4 as Plaintiffs and citizens of a State or different States and the matter in controversy exceeds the
5 sum of \$75,000 exclusive of interests and costs ; and (ii) a civil action by an alien for a tort
6 committed in violation of a treaty of the United States. Venue lies within and is proper in this
7 District and Court pursuant to 28 U.S.C. §§1391 and 1392 because one or more Defendants
8 reside in or are subject to personal jurisdiction in this District, and because a substantial part of
9 the events, acts or omissions giving rise to the claims herein occurred in the County of Los
10 Angeles, State of California.

11 **PARTIES**

12 2. Plaintiff, TIM PAGE (hereinafter referred to as "Plaintiff"), at all material times, is a
13 resident of this judicial district.

14 3. Upon information and belief, Defendant ANDREEA PORCELLI, a United States
15 citizen (hereinafter referred to as "Porcelli") is an individual residing in Las Vegas, Nevada.

16 4. Upon information and belief, Defendant MONTALCINO INTERNATIONAL
17 HOLDINGS, S.A. (hereinafter referred to as "Montalcino) is a Luxembourg company, owned
18 and controlled by Defendant Andrea Porcelli, the beneficiary.

19 5. Upon information and belief, Defendants THE JULIUS BAER GROUP and JULIUS
20 BAER INVESTMENT FUNDS (hereinafter collectively "JBG"), are Swiss companies operating
21 under the laws of the nation of Switzerland. Defendant JULIUS BAER BANK AND TRUST
22 CO. LTD., is a foreign citizen, an entity formed and operated under the laws of the Cayman
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1 Islands. Defendants are each citizens or subjects of a State or different States or foreign states,
2 with some of them located in and residing within the State of California. A substantial part of
3 the events, acts or omissions which give rise to the claims asserted herein or the harms resulting
4 therefrom occurred in the County of Los Angeles, State of California. The amount in controversy
5 is in excess of the sum of \$75,000.

6
7 6. Upon information and belief, Marcus Winkler, is an individual located in Zurich,
8 Switzerland and the direct owner and manager of Defendant, Discovery Advisor Company, a
9 Swiss entity, business form unknown, resident and located in Zurich, Switzerland.

10 **FIRST CLAIM FOR RELIEF FOR FRAUDULENT CONVEYANCE**

11 **(Against All Defendants)**

12 7. In or about October, 2007, Canturio Funds agreed to sell 4.14 million shares of
13 Today.com stock for a total of \$2,025,000.00 to Defendants. Canturio Funds subsequently
14 assigned all its rights against the Defendants herein to Plaintiff, Tim Page.

15
16 8. The agreement was that Defendant Porcelli would sell this stock to Investors and pay
17 the proceeds to Plaintiff. The Escrow Agents in the contract were Continental Advisors, of
18 which Defendant Porcelli is a Founding Partner. On information and belief, Defendant Porcelli
19 had no intention of paying Plaintiff any amount and intended to deceive and defraud Plaintiff by
20 transferring the stock to third parties and keep all the proceeds therefrom for herself.

21 9. In or about October, 2007, the amount of 1.5 million shares of stock for a total price
22 of Seven Hundred Fifty Thousand Dollars (\$750,000) was fraudulently transferred by Defendant
23 Porcelli to Defendant JBG. In addition, the amount of 1 million shares for a total price of Five
24 Hundred Thousand Dollars (\$500,000) was sold to Defendant Discovery Advisors and 200,000
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1 shares for a total price of One Hundred Thousand Dollars (\$100,000) was sold to Defendant
2 Montalcino.

3 10. Defendant Porcelli received the money for the stock but proceeded to convert it to her
4 own use and never paid Plaintiffs.

5 11. Subsequently 1.44 million shares of stock was returned to Plaintiffs, however 2.7
6 million shares remains outstanding in breach of the agreement between Plaintiff and Defendants.

7 12. As a proximate result of the Fraudulent Conveyance and the fraudulent and dishonest
8 conduct on the part of Defendant Porcelli, Plaintiff has been damaged in the amount of
9 \$2,025,000 with interest at the legal rate of 10% per annum from the date said money was due
10 Plaintiffs. This amount represents the 2.7 million shares which are remaining in the Defendants'
11 hands.
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13 **SECOND CLAIM FOR RELIEF FOR CONSTRUCTIVE TRUST**

14 **(Against Defendants, Julius Baer, Discovery Advisors and Montalcino)**

15 13. Plaintiff hereby incorporates by reference paragraphs 1 through 12 hereinabove
16 as though fully set forth in full hereat.
17

18 14. In or about October, 2007, Plaintiff agreed to sell 4.14 million shares of stock for a
19 total of Two Million Twenty Five Thousand Dollars (\$2,025,000.00). The agreement was that
20 Porcelli would sell this stock to Investors and pay the proceeds to Plaintiff.

21 15. Due to the fraudulent and wrongful conveyance of Plaintiff's stock, Defendants JBG
22 currently holds 1.5 million shares of stock for a total price of Seven Hundred Fifty Thousand
23 Dollars (\$750,000). Plaintiff has not received payment for these shares. JBG holds the value of
24 the shares as of the time they were wrongfully transferred to JBG in constructive trust for the
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1 Plaintiff.

2 16. Defendant Discovery Advisors wrongfully received 1 million shares for a total of
3 \$500,000 and Defendant Montalcino, a company owned and controlled by Andreea Porcelli holds
4 200,000 shares for a total of \$100,000.

5 17. Due to the fact that Plaintiffs have not received payment for these shares, Defendants
6 Discovery Advisors and Defendant Montalcino holds the value of these shares in Constructive
7 Trust for the Plaintiff who demands that said value be paid to Plaintiff.

8 18. As a proximate result of the Defendants fraudulent misrepresentations and otherwise
9 wrongful conduct as alleged herein, Plaintiff has been damaged in the amount of \$2,025,000 with
10 interest at the legal rate of 10% per annum from the date said money was due Plaintiffs. This
11 amount represents the 2.7 million shares which is remaining in the Defendants' hands.

12 19. By reason of the fraudulent and otherwise wrongful manner in which the defendants,
13 and each of them, obtained their alleged right, claim or interest in and to the stock, defendants,
14 and each of them, have no legal or equitable right, claim or interest therein, but, instead,
15 Defendants, and each of them are involuntary Trustees holding said stock and profits therefrom
16 in constructive trust for Plaintiff with the duty to convey the same to Plaintiff forthwith.

17 **THIRD CLAIM FOR RELIEF FOR CONVERSION**

18 **(Against Defendant, Andreea Porcelli)**

19 20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 hereinabove
20 as though fully set forth in full hereat.

21 21. In or about October, 2007, Plaintiffs agreed to sell 4.14 million shares of Today.com
22 stock now known as OSSI for a total of Two Million Twenty Five Thousand Dollars
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27 **First Amended Complaint for Breach of Contract, Conversion and Constructive Trust**

1 (\$2,025,000.00). The agreement was that Porcelli would sell this stock to Investors in OSSI and
2 pay the proceeds to Plaintiff.

3 22. Defendant Porcelli received money for the stock but proceeded to convert it to her
4 own use and never paid Plaintiffs. After numerous phone calls and demands, eventually 1.44
5 shares of stock was returned to Plaintiffs however 2.7 million shares is outstanding in the
6 remaining Defendants' hands.

7
8 23. As a proximate result of this conversion by Defendant Porcelli, Plaintiff has
9 suffered loss in the amount of \$2,025,000 with interest at the legal rate of 10% per annum from
10 the date said money was due Plaintiffs. This amount represents the 2.7 million shares which is
11 remaining in the Defendants' hands.

12 24. The wrong done by Defendant was aggravated by the wanton disregard of the rights
13 of Plaintiff and the intentional character of Defendant's conduct, in that Defendant Porcelli
14 knowingly and willfully converted and detained, and continues to detain Plaintiff's money in the
15 amount of \$2,025,000 with interest at the legal rate of 10% per annum from the date said money
16 was due Plaintiff, without cause or explanation, despite Plaintiff's requests for the return of the
17 remaining 2.7 million shares of stock. Therefore, Plaintiff is entitled to punitive damages for this
18 intentional deceitful, oppressive and malicious conduct, in an amount that will deter Defendant
19 from any such future misconduct.

20
21 WHEREFORE, Plaintiff prays for damages against Defendants, and each of them, jointly
22 and severally, as follows:

23 **On The First Claim for Relief Against Defendants, and each of them:**

- 24
25 1. **Against Defendant JBG:** The amount of Seven Hundred Fifty Thousand Dollars

1 (\$750,000) with interest at the legal rate of 10% per annum from the date said money was due
2 Plaintiffs;

3 2. Against Defendant Discovery Advisors: The amount of Five Hundred Thousand
4 Dollars (\$500,000) with interest at the legal rate of 10% per annum from the date said money was
5 due Plaintiffs;

6 3. Against Defendant Montalcino: The amount of One Hundred Thousand Dollars
7 (\$100,000) with interest at the legal rate of 10% per annum from the date said money was due
8 Plaintiffs; and

9 4. Against Defendant Porcelli: The amount of Two Million Twenty Five Thousand
10 Dollars (\$2,025,000) with interest at the legal rate of 10% per annum from the date said money
11 was due Plaintiffs.
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13 On the Second Claim for Relief Against Defendants, Julius Baer, Discovery Advisors,
14 Montalcino:
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16 5. Against Defendant JBG: The amount of Seven Hundred Fifty Thousand Dollars
17 (\$750,000) with interest at the legal rate of 10% per annum from the date said money was due
18 Plaintiffs;

19 6. Against Defendant Discovery Advisors: The amount of Five Hundred Thousand
20 Dollars (\$500,000) with interest at the legal rate of 10% per annum from the date said money was
21 due Plaintiffs;

22 7. Against Defendant Montalcino: The amount of One Hundred Thousand Dollars
23 (\$100,000) with interest at the legal rate of 10% per annum from the date said money was due
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1 Plaintiffs; and

2 8. Against Defendant Porcelli: The amount of Two Million Twenty Five Thousand
3 Dollars (\$2,025,000) with interest at the legal rate of 10% per annum from the date said money
4 was due Plaintiffs.

5 On the Third Cause of Action Against Defendants and each of them:

6 9. For damages in the amount \$2,025,000 with interest at the legal rate of 10% per annum
7 from the date said money was due Plaintiffs.

8 10. For punitive damages in an amount that will deter Defendants, and each of them,
9 from such future conduct.

10 On All Causes of Action:

11 11. For attorneys fees and costs of suit incurred herein; and

12 12. For such other additional relief as the Court deems just and proper.

13 DATED: June 2, 2009

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PAUL J. WRIGHT, ESQ.
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: June 2, 2009



PAUL J. WRIGHT, ESQ.
Attorney for Plaintiffs