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 11 BASIC FUSION, INC.

2008 MAY 15 PM 12:20
 U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

FILED

12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 14 **WESTERN DIVISION**

15 VERIZON CALIFORNIA INC.;
 16 VERIZON TRADEMARK SERVICES
 17 LLC; and VERIZON LICENSING
 COMPANY,

18 Plaintiffs,

19 vs.

20 NAVIGATION CATALYST
 21 SYSTEMS, INC.; and BASIC FUSION,
 INC.,

22 Defendants.

Case No. CV08-02463 ABC (Ex)

Assigned to Judge Audrey B. Collins
 Magistrate Judge Charles Eick
 Courtroom 680

**ANSWER AND COUNTERCLAIMS
 OF DEFENDANTS NAVIGATION
 CATALYST SYSTEMS, INC. AND
 BASIC FUSION, INC.**

DEMAND FOR JURY TRIAL

23 **ANSWER**

24 Defendants Navigation Catalyst Systems, Inc. ("Navigation") and Basic
 25 Fusion, Inc., ("Basic Fusion") (collectively "Defendants"), hereby respond and
 26 answer Plaintiffs' Complaint for Cybersquatting; Trademark Infringement; False
 27 Designation of Origin; Dilution; and Unfair Competition (the "Complaint") as
 28

1 follows:

2 1. Defendants admit that Plaintiffs have asserted claims under 15 U.S.C.
3 §1125(d), 15 U.S.C. § 114(1), 15 U.S.C. § 1125(a), 15 U.S.C. §1125(c), and section
4 17200 of the California Business & Professional Code, as well as claims of
5 trademark infringement and unfair competition under California common law.
6 Defendants deny liability under the same. Defendants further admit that this Court
7 has subject matter jurisdiction. Otherwise, Denied.

8 2. Defendants admit that this Court has supplemental jurisdiction over
9 Plaintiffs' state law claims, although Defendants note that such jurisdiction is
10 discretionary. Otherwise, Denied.

11 3. Defendants admit that venue in the Central District of California
12 Western Division is proper. Otherwise Denied.

13 4. Defendants are without sufficient knowledge or information to form a
14 belief as to the truth of Plaintiffs' allegations in paragraph 4 of the Complaint and
15 therefore deny the same.

16 5. Defendants are without sufficient knowledge or information to form a
17 belief as to the truth of Plaintiffs' allegations in paragraph 5 of the Complaint and
18 therefore deny the same.

19 6. Defendants are without sufficient knowledge or information to form a
20 belief as to the truth of Plaintiffs' allegations in paragraph 6 of the Complaint and
21 therefore deny the same.

22 7. Navigation admits that it is a Delaware Corporation with its principal
23 place of business in El Segundo, California, and that this Court has jurisdiction of
24 Navigation. Navigation denies the other allegations in paragraph 7 of the Complaint.

25 8. Basic Fusion admits that it is a Delaware Corporation with its principal
26 place of business in El Segundo, California, and that this Court has jurisdiction of
27 Navigation. Navigation denies the other allegations in paragraph 8 of the Complaint.

28 9. Denied. Defendants are both wholly owned subsidiaries of FirstLook,

1 Inc., (Firstlook), which is a wholly owned subsidiary of the Connexus Corporation
2 (“Connexus”). Denies the remaining allegations in Paragraph 9. To the extent that
3 Paragraph 9 asserts a legal conclusion, no response is necessary.

4 10. Denied. Defendants are corporate affiliates. Denies the remaining
5 allegations in Paragraph 10. To the extent that Paragraph 10 asserts a legal
6 conclusion, no response is necessary.

7 11. Defendants admit that there are “Verizon Companies” that provide a
8 variety of telecommunications goods and services, and that they are large and well-
9 known, but Defendants are otherwise without sufficient knowledge or information to
10 form a belief as to the truth of Plaintiffs’ allegations in paragraph 11 of the Complaint
11 and therefore deny the same.

12 12. Defendants are without sufficient knowledge or information to form a
13 belief as to the truth of Plaintiffs’ allegations in paragraph 12 of the Complaint and
14 therefore deny the same.

15 13. Defendants are without sufficient knowledge or information to form a
16 belief as to the truth of Plaintiffs’ allegations in paragraph 13 of the Complaint and
17 therefore deny the same.

18 14. Defendants are without sufficient knowledge or information to form a
19 belief as to the truth of Plaintiffs’ allegations in paragraph 14 of the Complaint and
20 therefore deny the same.

21 15. Defendants are without sufficient knowledge or information to form a
22 belief as to the truth of Plaintiffs’ allegations in paragraph 15 of the Complaint and
23 therefore deny the same.

24 16. Defendants are without sufficient knowledge or information to form a
25 belief as to the truth of Plaintiffs’ allegations in paragraph 16 of the Complaint and
26 therefore deny the same.

27 17. Defendants are without sufficient knowledge or information to form a
28 belief as to the truth of Plaintiffs’ allegations in paragraph 17 of the Complaint and

1 therefore deny the same.

2 18. Defendants are without sufficient knowledge or information to form a
3 belief as to the truth of Plaintiffs' allegations in paragraph 18 of the Complaint and
4 therefore deny the same.

5 19. Defendants are without sufficient knowledge or information to form a
6 belief as to the truth of Plaintiffs' allegations in paragraph 19 of the Complaint and
7 therefore deny the same.

8 20. Defendants are without sufficient knowledge or information to form a
9 belief as to the truth of Plaintiffs' allegations in paragraph 20 of the Complaint and
10 therefore deny the same.

11 21. Defendants are without sufficient knowledge or information to form a
12 belief as to the truth of Plaintiffs' allegations in paragraph 21 of the Complaint and
13 therefore deny the same.

14 22. Defendants are without sufficient knowledge or information to form a
15 belief as to the truth of Plaintiffs' allegations in paragraph 22 of the Complaint and
16 therefore deny the same.

17 23. Defendants are without sufficient knowledge or information to form a
18 belief as to the truth of Plaintiffs' allegations in paragraph 23 of the Complaint and
19 therefore deny the same.

20 24. Defendants are without sufficient knowledge or information to form a
21 belief as to the truth of Plaintiffs' allegations in paragraph 24 of the Complaint and
22 therefore deny the same.

23 25. Defendants are without sufficient knowledge or information to form a
24 belief as to the truth of Plaintiffs' allegations in paragraph 25 of the Complaint and
25 therefore deny the same.

26 26. Defendants are without sufficient knowledge or information to form a
27 belief as to the truth of Plaintiffs' allegations in paragraph 26 of the Complaint and
28 therefore deny the same.

1 27. Defendants are without sufficient knowledge or information to form a
2 belief as to the truth of Plaintiffs' allegations in paragraph 27 of the Complaint and
3 therefore deny the same.

4 28. Defendants are without sufficient knowledge or information to form a
5 belief as to the truth of Plaintiffs' allegations in paragraph 28 of the Complaint and
6 therefore deny the same.

7 29. Defendants are without sufficient knowledge or information to form a
8 belief as to the truth of Plaintiffs' allegations in paragraph 29 of the Complaint and
9 therefore deny the same.

10 30. Defendants are without sufficient knowledge or information to form a
11 belief as to the truth of Plaintiffs' allegations in paragraph 30 of the Complaint and
12 therefore deny the same.

13 31. Defendants are without sufficient knowledge or information to form a
14 belief as to the truth of Plaintiffs' allegations in paragraph 31 of the Complaint and
15 therefore deny the same.

16 32. Defendants are without sufficient knowledge or information to form a
17 belief as to the truth of Plaintiffs' allegations in paragraph 32 of the Complaint and
18 therefore deny the same.

19 33. Defendants are without sufficient knowledge or information to form a
20 belief as to the truth of Plaintiffs' allegations in paragraph 33 of the Complaint and
21 therefore deny the same.

22 34. Defendants are without sufficient knowledge or information to form a
23 belief as to the truth of Plaintiffs' allegations in paragraph 34 of the Complaint and
24 therefore deny the same.

25 35. Defendants are without sufficient knowledge or information to form a
26 belief as to the truth of Plaintiffs' allegations in paragraph 35 of the Complaint and
27 therefore deny the same.

28 36. Defendants are without sufficient knowledge or information to form a

1 belief as to the truth of Plaintiffs' allegations in paragraph 36 of the Complaint and
2 therefore deny the same.

3 37. Defendants are without sufficient knowledge or information to form a
4 belief as to the truth of Plaintiffs' allegations in paragraph 37 of the Complaint and
5 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "37" –
6 Defendants' answer to both is the same.

7 38. Defendants are without sufficient knowledge or information to form a
8 belief as to the truth of Plaintiffs' allegations in paragraph 38 of the Complaint and
9 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "38" –
10 Defendants' answer to both is the same.

11 39. Defendants are without sufficient knowledge or information to form a
12 belief as to the truth of Plaintiffs' allegations in paragraph 39 of the Complaint and
13 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "39" –
14 Defendants' answer to both is the same.

15 40. Defendants are without sufficient knowledge or information to form a
16 belief as to the truth of Plaintiffs' allegations in paragraph 40 of the Complaint and
17 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "40" –
18 Defendants' answer to both is the same.

19 41. Defendants are without sufficient knowledge or information to form a
20 belief as to the truth of Plaintiffs' allegations in paragraph 41 of the Complaint and
21 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "41" –
22 Defendants' answer to both is the same.

23 42. Defendants are without sufficient knowledge or information to form a
24 belief as to the truth of Plaintiffs' allegations in paragraph 42 of the Complaint and
25 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "42" –
26 Defendants' answer to both is the same.

27 43. Defendants are without sufficient knowledge or information to form a
28 belief as to the truth of Plaintiffs' allegations in paragraph 43 of the Complaint and

1 therefore deny the same. Verizon's Complaint lists two paragraphs numbered "43" –
2 Defendants' answer to both is the same.

3 44. Verizon's Complaint lists two paragraphs numbered "44." Defendants
4 are without sufficient knowledge or information to form a belief as to the truth of
5 Plaintiffs' allegations in the first paragraph numbered "44" (on page 10 of the
6 Complaint), Basic Fusion admits the allegations in the second paragraph numbered
7 "44" (on page 11 of the Complaint) that it is an ICANN accredited registrar.
8 Otherwise Denied.

9 45. Verizon's Complaint lists two paragraphs numbered "45." Defendants
10 are without sufficient knowledge or information to form a belief as to the truth of
11 Plaintiffs' allegations in the first paragraph numbered "45" (on page 11 of the
12 Complaint), In response to the allegations in the second paragraph numbered "45"
13 (on page 12 of the Complaint), Navigation admits that, as a Registrant, it has
14 registered and sampled large numbers of domain names. Basic Fusion admits that, as
15 a Registrar, it has processed the registration of many domain names for its clients,
16 one of which is Navigation. Otherwise Denied.

17 46. Navigation admits that it has used from time to time in the past an
18 automated process to sample domain names which were available for registration by
19 the general public in conjunction with human screeners. Otherwise, Denied.

20 47. Denied.

21 48. Denied. Navigation admits that it may have at one point have registered
22 some of the domain names in Exhibits 5 or 7 of the Complaint. Otherwise Denied.

23 49. Navigation is a registrant of some of the domain names at issue. Basic
24 Fusion is a registrar. Otherwise Denied.

25 50. Denied. Navigation admits that it may have at one point have registered
26 some of the domain names in Exhibits 5 or 7 of the Complaint. Otherwise Denied.

27 51. Basic Fusion is a registrar. It may have been the registrar for some of
28 the Defendants' Domain Names. Otherwise Denied.

1 52. Basic Fusion, as an ICANN-accredited registrar, has direct access to
2 register domain names, as a registrar, via Internet registries, including the .com and
3 .net registries operated by VeriSign, Inc.

4 53. Navigation admits that it arranged for another service provider,
5 Overture, Inc., to host websites at various domain names and that certain of those
6 sites had links to advertiser websites, but otherwise Denied.

7 54. Admitted.

8 55. Navigation admits that it has in the past registered some of the domain
9 names listed in paragraph 55 of the Complaint, but that, many were never registered,
10 it cancelled the registrations for many prior to notice of this dispute, and that it has
11 transferred the rest to Plaintiffs' counsel, but otherwise Denied.

12 56. Navigation admits that in the past it has sampled domain names for
13 short periods, but denies that such names were registered, and further denies that it
14 has done so with respect to the complained of domain names, but otherwise Denied.

15 57. Denied.

16 58. Denied

17 59. Navigation admits that it arranged for another service provider,
18 Overture, Inc., to host websites at various domain names and that certain of those
19 sites had links to advertiser websites, but otherwise Denied.

20 60. Navigation admits that certain ads appeared on users' computer screens
21 when they accessed certain websites at certain of the complained of domain names,
22 but Navigation notes that no such ads appear any longer at its websites. As
23 previously noted, Navigation has transferred control of the complained of domain
24 names to Plaintiffs' counsel of record. Otherwise Denied.

25 61. Navigation admits that it received a relatively small amount of revenue
26 from users' clicking on ads and/or links appearing on screens when users accessed
27 certain of the complained of domain names. Otherwise, Denied.

28 62. Denied.

1 63. Denied.

2 64. In response to paragraph 64 of the Complain, Defendants hereby
3 reallege and incorporate by reference its responses in paragraphs 1-63 above.

4 65. Denied.

5 66. Denied.

6 67. Denied.

7 68. Denied.

8 69. Defendants admit that they do not have any “intellectual property
9 rights” in the VERIZON and VERIZON FIOS or VZ marks as Defendants
10 understand such term, but notes that trademark rights are not rights “in gross” and
11 that anyone – including Defendants – has the right to lawfully use another’s
12 trademark in certain ways. Otherwise Denied.

13 70. Defendants admit that none of the domain names complained of include
14 its names. Otherwise, Denied.

15 71. Navigation admits that the advertised links offered in connection with
16 the use of the domain names complained of were offered via advertising by
17 Navigation’s service providers, such as Overture, Inc., Otherwise, Denied.

18 72. Navigation admits that the advertised links offered in connection with
19 the use of the domain names complained of were offered via advertising by
20 Navigation’s service providers, such as Overture, Inc. Otherwise, Denied.

21 73. Navigation admits that the advertised links offered in connection with
22 the use of the domain names complained of were offered via advertising by
23 Navigation’s service providers, such as Overture, Inc. Otherwise, Denied.

24 74. Denied.

25 75. Denied.

26 76. Denied.

27 77. Denied.

28 78. In response to paragraph 78 of the Complain, Defendants hereby

1 reallege and incorporate by reference its responses in paragraphs 1-77 above.

2 79. Denied.

3 80. Denied.

4 81. Denied.

5 82. Denied.

6 83. Denied.

7 84. Denied.

8 85. Denied.

9 86. Denied.

10 87. Denied.

11 88. Denied.

12 89. In response to paragraph 88 of the Complain, Defendants hereby

13 reallege and incorporate by reference its responses in paragraphs 1-89 above.

14 90. Denied.

15 91. Denied.

16 92. Denied.

17 93. Denied.

18 94. Denied.

19 95. Denied.

20 96. Denied.

21 97. Denied.

22 98. Denied.

23 99. Denied.

24 100. In response to paragraph 100 of the Complain, Defendants hereby

25 reallege and incorporate by reference its responses in paragraphs 1-99 above.

26 101. Denied.

27 102. Denied.

28 103. Denied.

1 104. Denied.

2 105. Denied.

3 106. Denied.

4 107. Denied.

5 108. Denied.

6 109. In response to paragraph 109 of the Complain, Defendants hereby
7 reallege and incorporate by reference its responses in paragraphs 1-108 above.

8 110. Denied.

9 111. Denied.

10 112. Defendants admit that Plaintiffs allege that their state law claim for
11 trademark infringement arises under California State Law, but otherwise Denied.

12 113. Denied.

13 114. Denied.

14 115. Denied.

15 116. In response to paragraph 116 of the Complain, Defendants hereby
16 reallege and incorporate by reference its responses in paragraphs 1-115 above.

17 117. Defendants admit that Plaintiffs allege that their state law claim for
18 unfair trade practices arises under California State Law, but otherwise Denied.

19 118. Denied.

20 119. Denied.

21 120. Denied.

22 **ADDITIONAL DEFENSES**

23 1. Prior to the filing of this action, Defendants did not receive a request or
24 demand from any of the Plaintiffs regarding any of the domain names complained of
25 by Plaintiffs. Upon learning of this action, Navigation promptly ceased allowing any
26 advertising at any such domains and offered to transfer all such domains to Plaintiffs
27 free of charge. Navigation promptly transferred the domain names to Plaintiffs by
28 providing Plaintiffs' counsel of record with control over such domain names.

1
2 **NATURE OF THE COUNTERCLAIMS**

3 1. Navigation, owns or licenses a portfolio of trademarks from its
4 corporate parents, Firstlook and Connexus.

5 2. Verizon engages in a practice known as DNS Wildcarding, whereby,
6 when customers to its Internet Service type typographical errors of domain names
7 into their web browsers, they are redirected to a website hosted by Verizon. Verizon
8 monetizes the traffic from these domain names with contextually relevant
9 advertising.

10 3. When Verizon monetizes the traffic from the domain names typed in
11 error by its customers it “traffics in” or “uses” the domain names in bad faith, within
12 the meaning of 15 U.S.C. §1125(d).

13 4. Upon information and belief, Verizon traffics in domain names
14 consisting of the intellectual property rights of Navigation, its corporate parents,
15 Firstlook and Connexus Corporation, and its affiliates. Navigation brings this
16 counterclaim for Cybersquatting under 15 U.S.C. § 1125(d) to stop Verizon from
17 trafficking on Navigation’s intellectual property rights.

18 5. Navigation seeks injunctive relief, in the nature of an order to keep
19 Verizon from engaging in the practice of DNS Wildcarding, for statutory damages,
20 attorneys fees and such further relief as the Court deems just and proper.

21 **PARTIES**

22 6. Counterclaim Plaintiff Navigation is a corporation organized under the
23 laws of Delaware with a principal place of business at 2101 Rosecrans Ave., El
24 Segundo California, 90245.

25 7. Upon information and belief, the Verizon entities are corporations
26 organized under California laws and doing business in California.

27 **JURISDICTION AND VENUE**

28 8. This Court has jurisdiction over the subject matter of this action

1 pursuant to Section 39 of the Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C.
2 §1121, and under Sections 1331, 1338(a) and 1338(b) of the Judicial Code, 28 U.S.C.
3 §§ 1331, 1338(a) and 1338 (b).

4 9. This Court has personal jurisdiction over Verizon because Verizon
5 continuously and systematically conducts, transacts and solicits business in this
6 district and Verizon entities have a principal place of business and are otherwise
7 located in this district.

8 10. Venue is proper in this district pursuant to Sections 1391 (b) and (c) of
9 the Judicial Code, 28 U.S.C. § 1391 (b) and (c), because Verizon resides in this
10 district, because Verizon is subject to personal jurisdiction in this district and because
11 a substantial portion of the events at issue have arisen and will arise in this judicial
12 district. Verizon has also consented to this Court’s jurisdiction by filing the
13 Complaint at issue in this action.

14 **FACTS**

15 11. Navigation and its affiliated companies own or license numerous
16 trademarks, which are valid, and listed on the publicly-available database maintained
17 by the United States Patent and Trademark Office (“USPTO”) at its www.uspto.gov
18 website. Navigation’s marks include the following, without limitation, (the
19 “Navigation Marks”):

20

Word Mark	Serial Number	Reg. Number	Registrant
ACROPHOBIA	75561096	2948164	FLIPSIDE, INC.
ACROPHOBIA	75262393	2209677	FLIPSIDE, INC.
BACKSTAGE PASS	76001112	2610334	FLIPSIDE, INC.
BLINK	75783011	3307658	BLINK.COM, INC.
BLOWOUT BINGO	75736261	2496867	FLIPSIDE, INC.
CONNEXUS	77161390	77161390	CONNEXUS CORPORATION
COSMIC CONSENSUS	75703895	2500776	FLIPSIDE, INC.
DOT TRAVEL	76574487	2924877	NEW.NET, INC.

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1	FLIPSIDE	75872664	2559730	FLIPSIDE, INC.
2	IMGAMES	75857858	2493448	FLIPSIDE, INC.
3	IMGAMES	75857855	2493447	Berkeley Systems, Inc.
4	NEW.NET	76225820	2755007	New.Net, Inc.
5	NEW.NET	76225634	2802891	NEW.NET, INC.
6	NEW.NET	76976490	2846296	NEW.NET, INC.
7	NEW.NET	78019419	3194831	NEW.NET, INC.
8	TRAFFICMARKETPLACE	78530163	3067753	Trafficmarket place.com, Inc.
9	UPROAR	76075745	2482118	FLIPSIDE, INC.
10	UPROAR	75370335	2280473	FLIPSIDE, INC.
11	VENDARE MEDIA	78703938	3126763	CONNEXUS CORPORATION
12	VENDARE MEDIA	78703935	3126762	CONNEXUS CORPORATION
13	VIRTUAL LAS VEGAS	75509370	2596493	FLIPSIDE, INC.

12. Verizon engages in a practice known as DNS Wildcarding, whereby Verizon Internet Service Customers type domain names into their web browsers, and, when they type a domain name not presently registered with a Registry, are redirected by Verizon, to its own web pages with paid advertising links (the “Wildcard Names”).

13. Verizon monetizes the traffic through these links, including, without limitation, on Navigation’s trademarks, as well as the trademarks of others.

14. Verizon’s practice has been criticized by its customers, watchdog agencies, academics and others. Verizon’s practice has also been the subject of several litigations, which, upon information and belief, settled.

CLAIM OF RELIEF FOR CYBERSQUATTING (15 U.S.C. §1125(D))

15. Navigation realleges the above paragraphs as if set forth fully herein.

16. Verizon has *trafficked in* and/or *used*, or caused to be trafficked in and/or used, domain names consisting of confusingly similar names to the Navigation Marks, with full knowledge of Navigation’s rights and a bad faith intent to profit

1 from Navigation's Marks, in violation of the Anticybersquatting Consumer
2 Protection Act of 1999, as amended at 15 U.S.C. § 1125(d).

3 17. Verizon is not authorized to use any of the Navigation Marks as part of
4 a domain name.

5 18. Verizon's trafficking or use of the Wildcard Names has caused and will
6 continue to cause irreparable harm to Navigation unless the Court orders Verizon to
7 stop its practice of DNS Wildcarding. Navigation has no adequate remedy at law.

8 WHEREFORE, Navigation respectfully demands judgment as follows:

9 19. That a permanent injunction be issued enjoining Verizon, and any of its
10 respective officers, agents, privies, shareholders, principals, directors, licensees,
11 attorneys, servants, employees, affiliates, subsidiaries, successors and assigns, and all
12 those persons in concert or participation with any of them, and any entity owned or
13 controlled in whole or in part by Verizon, from:

14 a. Using the Navigation Marks or any other unauthorized mark in its
15 domain name monetization scheme.

16 20. Directing that Verizon file with the Court and serve upon Navigation's
17 counsel within thirty (30) days after entry of judgment a report in writing under oath,
18 setting forth in detail the manner and form in which they have complied with the
19 above.

20 21. Awarding Navigation, statutory damages in the amount of \$100,000 per
21 domain name pursuant to 15 U.S.C. 1117(d).

22 22. Awarding Navigation exemplary and punitive damages to deter any
23 further willful infringement as the Court finds appropriate.

24 23. Awarding Navigation its costs and disbursements incurred in this action,
25 including reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

26 24. Awarding Navigation interest, including pre-judgment interest on the
27 foregoing sums.

28 25. Awarding Navigation such other and further relief as the Court may

1 deem just and proper.

2

3

JURY DEMAND

4 Counterclaim-Plaintiff, Navigation respectfully demands trial by jury pursuant
5 to Fed. R. Civ. P. 38(b) for all issues so triable.

6 DATED: May 15, 2008

7

8

9 By: Michael King / EG
10 MICHAEL G. KING
11 JANICE M. KROLL
12 HENNELLY & GROSSFELD LLP
13 Attorneys for Defendants
14 NAVIGATION CATALYST
15 SYSTEMS, INC., and BASIC FUSION,
16 INC.

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Service List

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