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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN

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4

5 THE WEATHER UNDERGROUND, INC.,)
a Michigan Corporation,)

6)

Plaintiff,)

7)

vs.) Case No. 2:09-CV-10756

8)

NAVIGATION CATALYST SYSTEMS,) Volume I

9 INC., a Delaware corporation;)

BASIC FUSION, INC., a Delaware)

10 corporation; CONNEXUS CORP., a)

Delaware corporation; and)

11 FIRSTLOOK, INC., a Delaware)

corporation,)

12)

Defendants.)

13)

14

- CONFIDENTIAL - UNDER SEAL -

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17

DEPOSITION OF ARTHUR V. SHAW

18

Los Angeles, California

19

Wednesday, June 8, 2011

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22

23

24 Reported by: Linda D. White

CSR No. 12009

25

NDS Job No.: 142760

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09:31:47 1 A. Yes, CEO.

09:31:59 2 Q. When was NetBlue created relative to your
3 affiliation with the company? I assume prior to
4 your affiliation?

09:32:09 5 A. Prior, yes.

09:32:11 6 Q. How long had it been around?

09:32:16 7 A. I don't know. I can estimate 18 months.

09:32:25 8 Q. So it was a relatively new company?

09:32:28 9 A. Yes.

09:32:31 10 Q. And when you became affiliated with
11 NetBlue, what was it doing? What kind of business
12 did NetBlue do?

09:32:39 13 A. Online marketing.

09:32:45 14 Q. And when you joined NetBlue in 2005, did
15 it have any other subsidiary companies that it was
16 affiliated with?

09:33:01 17 A. Did NetBlue have subsidiaries?

09:33:03 18 Q. Correct.

09:33:04 19 A. I don't recall.

09:33:14 20 Q. When you joined NetBlue in 2005, was it
21 involved in the acquisition and monetization of high
22 traffic domain names?

09:33:32 23 A. I'm not sure I understand the question.

09:33:34 24 Q. All right. We'll come back, because we're
25 going -- I want to discuss what eventually Connexus

1 and Traffic Marketplace and Firstlook and Basic
2 Fusion and Navigation Catalyst all did, and what
3 their business model was. And so it's probably
4 easier to circle back.

09:33:57 5 A. Okay. Sure.

09:33:58 6 Q. All right. At some point did NetBlue have
7 subsidiary companies underneath it?

09:34:12 8 A. I don't recall the legal structure of
9 NetBlue.

09:34:18 10 Q. Do you recall when you joined NetBlue,
11 whether Navigation Catalyst was affiliated with
12 NetBlue? Or is that something that was created
13 under your watch?

09:34:27 14 A. No.

09:34:30 15 Q. I'm sorry.

09:34:30 16 A. Not --

09:34:31 17 Q. It was a poor -- it was a poor question,
18 because I asked you two questions --

09:34:33 19 A. Two questions --

09:34:34 20 Q. -- at one time.

09:34:35 21 A. Navigation Catalyst was not part of
22 NetBlue.

09:34:47 23 Q. Was Navigation Catalyst a company that was
24 created while you were at NetBlue?

09:34:59 25 A. I don't know when Navigation Catalyst was

1 created.

09:35:02 2 Q. Were you involved in the formation or
3 creation of Navigation Catalyst?

09:35:06 4 A. No.

09:35:16 5 Q. At some point did Navigation Catalyst
6 become a -- an affiliated subsidiary of NetBlue or
7 NetBlue Vendare, Media or Connexus?

09:35:32 8 A. Yes to. The best of my knowledge,
9 Navigation Catalyst was started by Vendare.

09:35:41 10 Q. So when NetBlue merged, you inherited
11 Navigation Catalyst?

09:35:46 12 A. Correct.

09:35:57 13 Q. All right. Are you familiar with Basic
14 Fusion, the company?

09:36:03 15 A. Yes.

09:36:04 16 Q. And what did Basic Fusion do or what do
17 they do?

09:36:17 18 A. Well, I'm --

09:36:24 19 Q. How would you personally describe what
20 they do?

09:36:30 21 A. I'm not sure I have clarity on what was in
22 the Basic Fusion versus Navigation Catalyst.

09:36:40 23 MR. CLARK: And Will doesn't get to testify.
24 Okay. That's a fair answer.

25 ///

1 BY MR. CLARK:

09:36:46 2 Q. So your comment was is that you're having
3 difficulty distinguishing which company performed
4 what function?

09:36:54 5 A. Correct.

09:36:58 6 Q. Okay. Was Basic Fusion a Vendare Media
7 company, do you recall? Did they bring that to --

09:37:06 8 A. Yes, I believe so.

09:37:07 9 Q. -- NetBlue?

09:37:08 10 A. I believe so. They bought that to the
11 combination of Vendare NetBlue.

09:37:18 12 Q. All right. What about a company called
13 Firstlook, are you familiar with Firstlook?

09:37:22 14 A. Yes.

09:37:23 15 Q. And how would you describe what Firstlook
16 does as a company?

09:37:29 17 A. Firstlook owns domains. And monetizes
18 traffic.

09:37:52 19 Q. All right. And was Firstlook a Vendare
20 company that you inherited in the merger? And when
21 I say "you," NetBlue, in the merger or is that
22 something that NetBlue created?

09:38:02 23 A. Inherited under a different name. It was
24 renamed Firstlook.

09:38:08 25 Q. All right. What was it when the companies

1 merged?

09:38:12 2 A. I believe it was called New.net. And,
3 yes, it was inherit -- it was from the Vendare side.

09:38:40 4 Q. When NetBlue and Vendare merged companies,
5 what was the name of the survivor company of that
6 merger?

09:38:52 7 A. I believe the parent company was called
8 Vendare NetBlue.

09:39:05 9 Q. Can you describe in general terms what the
10 merger entailed?

11 Was it a stock transfer where one company
12 offered stock to the other in exchange for as a --
13 and resulted in the merger of the companies, or was
14 it a purchase acquisition? How would you describe
15 it?

09:39:44 16 A. I don't recall.

09:39:46 17 Q. Were you involved in the discussions or
18 negotiations concerning that merger?

09:39:53 19 A. Yes, I was.

09:39:53 20 Q. All right. And from the NetBlue
21 perspective, what was attractive about what Vendare
22 was doing at the time of the merger that interested
23 your company?

09:40:08 24 A. It was a breath of online businesses.

09:40:21 25 Q. And what did Vendare do in general terms?

1 If you could -- if you would list those for me.

09:40:27 2 A. There was a business called Traffic
3 Marketplace, which was predominantly a display
4 business.

09:40:39 5 Q. Advertising display?

09:40:40 6 A. Yeah. Display is the picture that shows
7 up on a website, generally speaking. There was the
8 New.net business. There was an affiliate business.

09:40:53 9 Q. Now, the New.net, that was what eventually
10 became Firstlook?

09:40:59 11 A. Correct.

09:41:00 12 Q. And you referenced that they own and
13 monetize a domain names or sites?

09:41:09 14 A. Correct.

09:41:13 15 Q. Can you tell me a little bit more about
16 the New.net/Firstlook business model, what was that?

09:41:22 17 A. The business was the registration of
18 domains. A process of optimization around the
19 domain. And a Yahoo feed, which was the --
20 essentially the primary sole source of the revenue.

09:41:57 21 Q. All right. The Yahoo feed would result in
22 the monetization aspect of the -- of the model?

09:42:03 23 A. Correct.

09:42:10 24 Q. All right. And that model came to NetBlue
25 intact from Vendare; is that correct?

09:42:20 1 A. Correct.

09:42:23 2 Q. Did you indicate that that was a --
3 shortly after you became CEO in '05, that that
4 merger took place or did it take place?

09:42:30 5 A. Middle of 2006.

09:42:32 6 Q. 2006. When you inherited the -- we'll
7 just call it the Firstlook, I guess, business model,
8 just so we can keep it straight.

9 Did you -- do you also inherit the systems
10 that were in place for selecting and acquiring the
11 domains that were being monetized?

09:43:07 12 A. Yes.

09:43:07 13 Q. Did you inherit -- and when I say "you,"
14 of course I mean NetBlue.

15 Did you inherit employees that went along
16 with that process?

09:43:22 17 A. Yes.

09:43:31 18 Q. Was Chris Pirrone a part of NetBlue at the
19 time of that merger? Am I saying the name
20 correctly?

09:43:45 21 A. Pirrone.

09:43:45 22 Q. Pirrone.

09:43:46 23 A. I believe not.

09:43:51 24 Q. And did NetBlue Vendare Media hire Chris
25 at some later time?

09:43:56 1 A. Yes.

09:43:57 2 Q. Do you know approximately when? In
3 relationship to the merger.

09:44:07 4 A. Six months to a year after the merger.
5 There was an existing general counsel from Vendare
6 at the merger, he was there for a few months. And
7 then Chris -- and then I recruited Chris.

09:44:24 8 Q. Were you familiar with Chris from some
9 other employment?

09:44:27 10 A. No.

09:44:39 11 Q. When the merger took place between Vendare
12 and NetBlue, did you inherit with the merger? And,
13 again, did NetBlue inherit any lawsuits that claimed
14 trademark infringement from the registration of the
15 domain and monetization of the domain names, do you
16 recall?

09:45:05 17 A. I don't recall.

09:45:12 18 Q. All right. Let's talk about Traffic
19 Marketplace. You indicated that they were the
20 display side. Tell me a little bit about what
21 Traffic Marketplace did when you acquired it.

09:45:28 22 A. At the time of acquisition Traffic
23 Marketplace would work with brand advertisers and
24 display their ads on the Internet -- across the
25 Internet, across sites on the Internet.

09:45:52 1 Q. In the five years or so since the
2 acquisition, has Traffic Marketplace's basic
3 business model changed at all?

09:46:03 4 A. That part hasn't changed. How we do that
5 has changed significant.

09:46:14 6 Q. At the time of the merger between NetBlue
7 and Vendare, what was NetBlue's primary business at
8 that time?

09:46:26 9 A. It was -- it was delivering cost
10 performance -- cost per performance advertising. So
11 advertisers would pay when someone would perform an
12 action.

09:46:45 13 Q. Such as what?

09:46:46 14 A. Such as sign up for Netflix.

09:46:55 15 Q. And explain to me a little bit more about
16 how that would work. Was that a website that
17 NetBlue would set up and own or was that something
18 different?

09:47:11 19 A. It was both a website that NetBlue would
20 have and people who would have websites, we would
21 have a direct relationship with the advertiser, like
22 Netflix, they wouldn't. But they could put that ad
23 up on their site. And so -- and if someone signed
24 up, they would get paid.

09:47:32 25 Q. I see.

09:47:33 1 A. Because we had a direct relationship often
2 with the client.

09:47:36 3 Q. So it wasn't necessarily paper click, they
4 actually had to sign up?

09:47:40 5 A. For something, yes.

09:47:41 6 Q. In order for the revenue to generate?

09:47:44 7 A. Generally speaking, correct.

09:47:52 8 Q. And was it when you acquired Firstlook and
9 its business model that you began incorporating, for
10 instance, a pure paper click revenue side business
11 model into NetBlue or NetBlue Vendare?

09:48:16 12 A. I'm not sure the question.

09:48:19 13 Q. Well --

09:48:20 14 A. Is it the First -- sorry.

09:48:21 15 Q. You described the Firstlook business model
16 in general terms and indicated it involved the
17 registration of domains.

09:48:29 18 A. Correct.

09:48:29 19 Q. Which were generally, as I understand it,
20 higher traffic domain so that people would go to
21 them. Yes, or is that a misunderstanding?

09:48:40 22 A. We would purchase domains. I don't know
23 how you would define higher traffic.

09:48:50 24 Q. All right.

09:48:50 25 THE REPORTER: Are you saying higher, hiring

1 traffic?

09:48:50 2 THE WITNESS: Higher, H-I-G-H-E-R.

3 The NetBlue model was not predominantly a
4 cost per click model.

5 BY MR. CLARK:

09:48:58 6 Q. All right.

09:48:59 7 A. That's the --

09:49:00 8 Q. How would you describe it, in terms of the
9 nomenclature?

09:49:04 10 A. Cost per action.

09:49:06 11 Q. Cost per action. And --

09:49:11 12 A. So -- so generally speaking, there's a
13 cost per impression, where you tend to pay for
14 someone to see your ad, that's what Traffic
15 Marketplace did. It's a cost per action where
16 someone does something, and there's a cost per
17 click, which was what the Firstlook model was based
18 on.

09:49:36 19 Q. All right. I think I understand.

20 All right. You indicated that you -- you
21 were the CEO of the merged Vendare NetBlue merger?

09:49:50 22 A. Correct.

09:49:51 23 Q. Did Vendare's CEO play a role in the new
24 company at all?

09:49:57 25 A. No. There was an acting CEO when the

1 merger occurred, who had been a board member, who
2 went back to becoming a board member.

09:50:14 3 Q. And you indicated that Vendare NetBlue
4 eventually became Connexus?

09:50:19 5 A. Correct.

09:50:20 6 Q. By way of a name change?

09:50:22 7 A. Correct.

09:50:22 8 Q. All right. Was that -- was that in '07?
9 Does that sound about right?

09:50:29 10 A. That sounds about right.

09:50:32 11 Q. I won't hold you to it. I just remember
12 --

09:50:35 13 A. It's a good estimate.

09:50:36 14 Q. -- looking at documentation that rings
15 familiar.

16 All right. Let's say in 2007, when the
17 name change occurred -- and, by the way, why did the
18 name change occur?

09:50:54 19 A. We thought the name Connexus, which sounds
20 like connection, Connexus, was a more powerful name
21 than a name that was a combination of prior names.

09:51:08 22 Q. All right. Did it have anything to do
23 with branding then?

09:51:13 24 A. Yes. It was -- we thought was a better
25 corporate brand.

09:51:16 1 Q. All right. In '07, what companies were
2 underneath the Connexus umbrella, if you will?

3 We talked about Firstlook, Basic Fusion,
4 Traffic Marketplace. Now, you also indicated that
5 you inherited Navigation Catalyst as well; is that
6 correct?

09:51:47 7 A. I believe the Basic Fusion and Navigation
8 Catalyst were under Firstlook.

09:51:53 9 Q. Okay. Did there ever come a point in time
10 where Basic Fusion and Navigation Catalyst were not
11 a subsidiary of Firstlook?

09:52:15 12 A. I don't know the legal structure.

09:52:24 13 Q. What was the function or business model of
14 Navigation Catalyst, if you know?

09:52:41 15 A. I don't know the distinction between Basic
16 Fusion and Navigation Catalyst.

09:52:46 17 Q. All right. So in terms of the function of
18 each one of those entities, you're not sure which
19 one does what?

09:52:54 20 A. Correct.

09:52:55 21 Q. Okay. Are there two functions that you're
22 aware of that -- that those two businesses would do?

09:53:08 23 A. There are multiple functions --

09:53:10 24 Q. Okay.

09:53:11 25 A. -- in Firstlook.

09:53:18 1 Q. All right. Is one of the functions that
2 Firstlook does is the registration of domain names?

09:53:23 3 A. Yes.

09:53:24 4 Q. Okay. Is that also a function of
5 Navigation Catalyst, if you know?

09:53:33 6 A. I believe so. I don't know. I guess I
7 should say, I'm not sure.

09:53:38 8 Q. Okay. And that's a fair answer. If
9 you're not sure, you don't know.

09:53:42 10 A. Of the legal structure, correct.

09:53:44 11 Q. All right. It's an acceptable answer.
12 All right. Tell me a little bit about
13 Basic Fusion. What did -- as a company, what did it
14 do? What was it responsible for?

09:54:03 15 A. Same answer.

09:54:07 16 Q. Not -- not quite certain?

09:54:08 17 A. Not clear what existed within Basic Fusion
18 separate from Navigation Catalyst.

09:54:16 19 Q. As the CEO of the combined enterprise
20 NetBlue and Vendare, was it important to you to have
21 an entity that held and registered the domain names?

09:54:42 22 MR. DELGADO: Objection. Vague and ambiguous.

09:54:47 23 MR. CLARK: You can go ahead and answer if you
24 understand the question.

09:54:50 25 THE WITNESS: I'm not going to answer, if he

1 wants to object.

09:54:52 2 MR. DELGADO: No, no, no. You should answer,
3 unless I instruct you not to answer.

09:54:55 4 MR. CLARK: From time to time -- and I should
5 have said this in the ground rules, Mr. Shaw, Will
6 and myself, if Will's asking the questions or
7 happens to -- might object to a question.

09:55:06 8 THE WITNESS: Right. I should still answer it
9 and someone will decide later?

10 BY MR. CLARK:

09:55:09 11 Q. Yeah. And usually -- and usually it as to
12 form, the form of the question. If you understand
13 the question, you can go ahead and answer. If
14 Mr. Delgado instructs you not to answer, it would be
15 because of privilege or confidentiality or some
16 other objection. And then, in fact, you would not
17 answer, based upon the instruction of your own
18 counsel.

09:55:30 19 A. As part of the Firstlook entity we had an
20 entity that would register names. As part of the
21 Firstlook business I should say.

09:55:43 22 Q. All right. Why have an entity that would
23 simply register names, do you know?

09:55:52 24 A. I'm not familiar with the why behind the
25 legal structure.

09:56:06 1 Q. All right. Let's go back and take a look
2 at Exhibit 285. I think we went over some of the
3 inaccuracies relative to your biography. It also
4 indicates up at the top that you're serving as the
5 co-chief executive officer of Epic Advertising, Inc.
6 Alternate name is Epic Media Group.

7 To your knowledge, is there a company
8 called Epic Advertising, Inc., an entity?

09:56:47 9 A. I believe there is.

09:56:49 10 Q. Do you know?

11 And the reason I ask you the question --
12 I'm not trying to trick you -- I haven't been able
13 to find it, which doesn't mean it doesn't exist, it
14 just means that I haven't been able to locate the
15 registration for that entity.

09:57:09 16 A. So Epic Advertising, Inc. I believe was
17 the company that acquired Connexus.

09:57:25 18 Q. All right.

09:57:27 19 A. And I became co CEO. First I became CEO
20 and then I became chairman and co CEO of the
21 combined companies.

09:57:41 22 Q. All right. Let's --

09:57:42 23 A. Which we named, for branding purposes,
24 Epic Media Group.

09:57:47 25 Q. All right. And as I understand it, the

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1 and put him under Mark as well, for streamlining the
2 process of operations.

10:10:54 3 Q. I see. Did it have anything do with the
4 pending discussions with Epic?

10:11:12 5 A. I don't believe so.

10:11:26 6 Q. When you were employed with Connexus, did
7 you receive a paycheck?

10:11:35 8 A. Yes.

10:11:35 9 Q. All right. Who issued the paycheck?
10 Which company? Was it Connexus?

10:11:43 11 A. I believe so.

10:11:45 12 Q. You say "I believe so," are you uncertain?

10:11:49 13 A. I'm not 100 percent sure.

10:11:51 14 Q. If it -- if --

10:11:53 15 A. But I believe it was Connexus.

10:11:55 16 Q. All right. Were there other entities
17 under the Connexus umbrella that would have issued
18 paychecks to employees of Connexus and any one of
19 those subsidiaries other than Connexus, do you know?

10:12:09 20 A. I don't know that.

10:12:20 21 Q. So you're not sure what the accounting
22 side was with respect to payroll issues, with
23 respect to yourself first off; is that correct?

10:12:31 24 A. I'm not positive. My belief is that I was
25 paid by Connexus. That's -- that's my

10:15:58 1 THE WITNESS: (Witness complies.)

2 BY MR. CLARK:

10:16:05 3 Q. Dated June 13th, 2008. It indicates, by
4 way of the resolution, that Arthur Shaw is elected
5 as the sole director of Navigation Catalyst Systems,
6 Inc. Is that accurate?

10:16:37 7 A. I believe that that's what that indicates.

10:16:39 8 Q. All right. This is as of 2008, but do you
9 believe that the business structure was as is since
10 the acquisition of Navigation Catalyst Systems?
11 Were you the sole director of that company during
12 your tenure with Connexus?

10:17:03 13 A. I don't know that.

10:17:11 14 Q. Okay. Who would know, do you know?

10:17:13 15 A. I believe Chris Pirrone would know this
16 and other issues of legal structure.

10:17:21 17 Q. All right.

10:17:22 18 A. And corporate structure.

10:17:23 19 Q. So back in 2008, as general counsel, would
20 Chris have been responsible for, for instance,
21 drafting these documents, or what that be something
22 outside counsel would do?

10:17:34 23 A. I believe Chris would do that.

10:17:41 24 MR. CLARK: All right. Let's mark and label
25 this as 289.

1 (Whereupon Exhibit 289 was marked for identification)

10:17:55 2 THE VIDEOGRAPHER: Time is 10:17 a.m. We are
3 off the record.

4 (A break was taken)

10:30:30 5 THE VIDEOGRAPHER: The time is 10:30 a.m. We
6 are on the record.

7 BY MR. CLARK:

10:30:36 8 Q. Very good. I think when we left we were
9 looking at Deposition Exhibit 289. And, Mr. Shaw,
10 you want to take a look at that document for just a
11 minute, and we'll ask you some questions about it.

10:30:50 12 A. (Witness complies.) Okay.

10:31:46 13 Q. All right. And it purports to be a
14 written consent again from Navigation Catalyst
15 Systems. And it says, as of April 9th, 2007, and it
16 involves this time the election of officers as
17 opposed to the election of you as the director of
18 Navigation Catalyst.

19 And it appears as though the resolution
20 provides, insofar as corporate officers are
21 concerned, that you would be the chief executive
22 officer and president, and Chris Pirrone the vice
23 president and secretary of Navigation Catalyst
24 Systems, Inc.

25 Do you recall that?

10:32:35 1 A. I don't recall it, but that is my
2 signature.

10:32:38 3 Q. All right.

10:32:39 4 A. I'm confident I signed this.

10:32:41 5 Q. All right. And my question to you is
6 this: It appears as though Navigation Catalyst
7 System -- Systems, Inc., at least as of 2007/2008
8 time frame, were set up to where you were the
9 director, and then you were the chief executive
10 officer and president, and Chris Pirrone vice
11 president and secretary with respect to officers.

12 And I'm wondering, were the other Connexus
13 companies set up the same way in terms of
14 directorship and officers?

10:33:24 15 A. I don't know.

10:33:25 16 Q. All right.

10:33:27 17 A. Similarly, I didn't recall this, but I --
18 that is my signature.

10:33:35 19 Q. All right. So you -- in terms of
20 Firstlook, Traffic Marketplace, those other
21 companies, you don't -- you're not sure whether it's
22 set up in a similar fashion for officers and
23 directors?

10:33:48 24 A. Correct.

10:33:51 25 Q. Now, what about Connexus, the parent

1 company? You're the chief executive officer there,
2 correct?

10:34:02 3 MR. DELGADO: Did you say you were or you are?

10:34:05 4 MR. CLARK: Were.

10:34:06 5 THE WITNESS: Were. Yes, I was.

6 BY MR. CLARK:

10:34:07 7 Q. All right. And let's talk about premerger
8 acquisition, Epic now.

10:34:13 9 A. Okay.

10:34:14 10 Q. Same time frame, 2007/2008.

11 You were also on the board, correct?

10:34:21 12 A. Correct.

10:34:22 13 Q. And you've testified that you were not --
14 you didn't hold a position on the board other than
15 board member; is that correct? Or did you?

10:34:31 16 A. I was CEO of the company Connexus and
17 board member.

10:34:42 18 Q. Who composed the Connexus board of
19 directors in that time frame, say, 2008?

10:34:49 20 A. I believe there were seven folks.

10:34:54 21 Q. You remember their names?

10:34:55 22 A. Yes. Myself, Linda Levinschien, Deven
23 Parekh, Marcia Goodstein, Fred Harmon, Mark Flynn,
24 and Bill Gross.

10:35:34 25 Q. That's seven. Was the board the same in

1 a -- also a Connexus board intact after the Epic
2 Advertising deal, correct or incorrect?

10:39:09 3 A. There was a board of --

10:39:12 4 Q. Directors?

10:39:12 5 A. -- Epic Media Group.

10:39:14 6 Q. I see. All right. Let me ask you this
7 question, while we're on the topic: Was there a
8 board of directors after the -- after the Epic
9 Advertising deal in place with Connexus? Or, I'm
10 sorry --

10:39:42 11 MR. DELGADO: Objection to the extent it calls
12 for speculation.

10:39:47 13 THE WITNESS: Can you repeat the question.

14 BY MR. CLARK:

10:39:49 15 Q. Sure. After the deal, was there -- was
16 there a Connexus board of directors?

10:39:58 17 MR. DELGADO: Same objection.

10:40:04 18 THE WITNESS: I don't know.

19 BY MR. CLARK:

10:40:16 20 Q. You remained the CEO of Connexus after the
21 Epic Advertising deal, correct?

10:40:25 22 A. I became CEO of Epic Media Group.

10:40:30 23 Q. Co CEO?

10:40:31 24 A. Co -- I became CEO.

10:40:34 25 Q. Okay.

1 (Whereupon Exhibit 290 was marked for identification)

10:45:40 2 THE WITNESS: Do you have 289? I have 289.

3 Excuse me.

4 BY MR. CLARK:

10:46:15 5 Q. All right. Take a look at that, Mr. Shaw.

6 It's entitled, A Memorandum of Understanding between

7 Azoogole, Inc., dba, Epic Advertising and Connexus

8 Corporation, dated January 2010. And it looks like

9 the document that proposed conceptually the deal.

10 And I'll ask you a couple of questions about that.

11 All right. Your signature's on that

12 document, correct?

10:50:07 13 A. Yes, it is.

10:50:08 14 Q. And it's entitled A Memorandum of

15 Understanding.

10:50:11 16 A. Yes.

10:50:12 17 Q. And describe for me what this document is

18 or your understanding of what the document is.

10:50:21 19 A. It -- it basically by agreeing to the

20 consideration points that I referenced before.

21 Again, the three being most important, the preferred

22 ratio, the preference amount, and the common ratio.

23 It essentially then put us into a period

24 of essentially exclusive due diligence without

25 shopping for another deal.

10:50:52 1 Q. All right.

10:50:52 2 A. And it also set, essentially, that the
3 Epic side would have a majority of the board of
4 directors.

10:51:02 5 Q. All right. And it looks like the -- the
6 points that you've referenced, in terms of ratios,
7 it didn't change a whole lot between the Memorandum
8 of Understanding and the actual deal; is that
9 accurate or not?

10:51:14 10 A. I think that's correct.

10:51:22 11 Q. What is your understanding of how the deal
12 actually was consummated?

13 This Memorandum of Understanding, for
14 instance, references the fact that it's possible
15 that the companies might form a new company, and
16 each have the stock ratios that you've indicated.
17 Was that what happened? Or was this a different
18 deal structure, do you know?

10:51:53 19 A. My understanding is that the Epic lawyers
20 reviewed legal structures and chose the acquisition
21 as the structure, and wrote the documents, which
22 were then distributed to the Connexus lawyers for
23 review.

10:52:25 24 Q. All right. Ultimately, Mr. Shaw, did you
25 receive Epic stock as a result of the transaction?

1 purchases. So to create our own destiny, without
2 waiting for someone to come looking, we thought
3 scale would be helpful.

10:59:40 4 Q. Now, we talked about the fact that the
5 resultant company was going to have four Epic board
6 seats and three Connexus board seats. Did that, in
7 fact, happen?

10:59:58 8 A. Yes.

10:59:58 9 Q. All right. Who -- right after the merger?

11:00:02 10 A. Yes.

11:00:03 11 Q. Who were the Connexus board members that
12 sat on the Epic board of directors?

11:00:09 13 A. Myself, Deven Parekh and Marcia Goodstein.

11:00:21 14 Q. Are you still on the board?

11:00:23 15 A. I am not.

11:00:24 16 Q. Who replaced you, Art, do you know?

11:00:26 17 A. I don't believe anyone has.

11:00:28 18 Q. What about Deven and Marcia?

11:00:30 19 A. I believe they're still on the board.

11:00:39 20 Q. Did the Epic board have seven board member
21 seats prior to the deal, do you know?

11:00:49 22 A. I don't recall the number. I do recall
23 they had more board members that ended up on the
24 post transaction board. They had more than four
25 board members prior to the transaction. I don't

11:02:35 1 Q. All right. So after the merger,
2 immediately after the -- the deal, you remained the
3 CEO of Connexus or no?

11:02:57 4 A. I don't know. I know I became the CEO. I
5 believe I became the CEO of Epic Media Group.

11:03:07 6 Q. As -- as the deal concluded?

11:03:09 7 A. Yes. I don't know if I remained CEO of a
8 unit called Connexus or not.

11:03:18 9 Q. Would that hold true of any Connexus
10 subsidiaries? Assuming that the document suggests
11 that you were on a board and officers of those
12 subsidiaries?

11:03:27 13 A. Yes. I don't know how those changed, from
14 a legal standpoint, as a result of the transaction.

11:03:38 15 Q. After the transaction, do you recall
16 attending any board meetings for Connexus or any of
17 the subsidiaries?

11:03:45 18 A. Board meetings?

11:03:47 19 Q. Board meetings.

11:03:48 20 A. No, I don't recall doing that.

11:03:53 21 Q. What happened, then, on the date of
22 closing to Don Mathis, who was the former CEO, and
23 is now the current CEO of Epic Media Group?

24 Your testimony was, is that you became the
25 CEO for a period of time, and you became the co CEO

11:14:47 1 Q. Were there any Connexus employees after
2 the deal was done or did they all become Epic
3 employees or some other company?

11:15:08 4 A. I don't know. I believe they were paid --
5 the Connexus employees were paid by Connexus through
6 the end of the year, at least.

11:15:19 7 Q. Of -- of 2010?

11:15:21 8 A. Yes.

11:15:27 9 Q. And -- and do you know thereafter, did
10 they become employees of Epic or no?

11:15:36 11 A. I don't know the legal structure of the
12 employees.

11:15:40 13 Q. All right. Do you know whether your
14 paycheck, January 1st of '11, came from a different
15 source or no?

11:15:54 16 A. I can find out.

11:15:58 17 Q. Just wondered if you knew if you sat -- as
18 you sat here.

11:16:11 19 A. I don't know for sure.

11:16:12 20 Q. Okay. Let me see if we can ask some more
21 questions to flush that out a little bit.

22 Did Connexus maintain any bank accounts
23 after the -- after the deal?

11:16:26 24 A. Yes, I believe so.

11:16:27 25 Q. Okay. Did it maintain any bank accounts

1 after the first of this year 2011?

11:16:34 2 A. I don't know. No, I don't know.

3 Yes, I believe we maintained -- to the
4 best of my knowledge, we maintain -- Connexus
5 maintains separate bank accounts.

11:16:49 6 Q. Okay. That was going to be one of my
7 questions on the accounting side. And maybe we'll
8 take a look at that here in just a minute. Let's
9 follow up the other line of questioning.

10 When you became a director of Epic --

11:17:07 11 A. Correct.

11:17:08 12 Q. Did you attend some board meetings after
13 the merger?

11:17:11 14 A. I did.

11:17:11 15 Q. All right. And you didn't -- you didn't,
16 as I understand it, attend any board meetings for
17 Connexus after the merger or the deal, whatever you
18 want to call it?

11:17:24 19 A. Correct.

11:17:38 20 Q. And you indicated you didn't -- you don't
21 know whether you retained the CEO title at Connexus
22 after the deal; is that correct?

11:17:48 23 A. Correct. What I do know, as I said, is I
24 became CEO of Epic Media Group.

11:17:59 25 Q. Right.

11:17:59 1 A. My holdings in the subsidiary companies, I
2 don't know the structure of that.

11:18:06 3 Q. Sure. And what I'm trying to get a
4 conceptual framework around is, after the deal, you
5 would be at an Epic board meeting, for instance.
6 And you would be reviewing the performance of the
7 different subsidiary companies. And, you know, in
8 terms of Connexus, you know, would you sit there and
9 review the Connexus numbers and point at somebody,
10 and say, this is the guy who needs to step it up, or
11 he's doing a great job or --

11:18:42 12 A. So we would --

11:18:43 13 Q. Structure wise, I'm trying to get my brain
14 about how that whole thing worked.

11:18:49 15 A. So to the question how did -- what would I
16 review at a board meeting?

11:18:54 17 Q. Well, if you were attending Epic
18 Advertising board meetings after the transaction --

11:18:59 19 A. Epic Media Group.

11:19:01 20 Q. Epic Media Group.

11:19:02 21 A. Yeah.

11:19:03 22 Q. And you were reviewing performance of
23 subsidiaries like Connexus or Basic Fusion or
24 whatever, and I assume that stuff went on?

11:19:15 25 A. So what we would do is, we would review

1 business units with the knowledge that Firstlook as
2 a business unit was a Connexus business unit.
3 Traffic Marketplace was a Connexus unit. The
4 balance sheets we would review as separate balance
5 sheets, Connexus. And then we would review the Epic
6 business unit, called Epic Direct, and the Epic
7 Advertising. And then we would show a consolidated
8 picture. And that was the process.

11:20:01 9 Q. Okay. So the --

11:20:02 10 A. And it was a business unit discussion,
11 which tied to our knowledge of the businesses as
12 they had existed before. But I can't speak to the
13 legal structure of that.

11:20:16 14 Q. Who's the guy who was accountable for
15 Connexus, if it wasn't you? Maybe it was you. I
16 don't know.

11:20:21 17 A. Well, there was a guy accountable for
18 Traffic Marketplace.

11:20:25 19 Q. Okay.

11:20:26 20 A. And there was a guy accountable for
21 Firstlook.

11:20:29 22 Q. Seth Jacoby?

11:20:31 23 A. And there's a guy accountable for Epic
24 Direct but, yeah.

11:20:40 25 Q. All right. Seth Jacoby was the president

1 in -- since the merger concerning the issue of
2 holdback?

11:38:21 3 A. Any discussions?

11:38:23 4 Q. Let me rephrase the question. It's very
5 general.

11:38:25 6 A. Yeah.

11:38:25 7 Q. Have you been involved in any
8 conversations or discussions with anyone at either
9 Epic or Connexus or associated with those companies,
10 since the plan of merger, that involved whether or
11 not the -- the stock shares were -- were or were not
12 going to be released in terms of, hey, you guys
13 misrepresented something concerning your company and
14 we're going to holdback some stock?

11:38:54 15 A. Not to my knowledge.

11:38:57 16 Q. Those -- those issues, to your knowledge,
17 haven't been raised, at least as far as you know?

11:39:04 18 A. Correct.

11:39:06 19 Q. All right. When you were in the process
20 of --

11:39:11 21 A. Or not to me.

11:39:12 22 Q. Not to you, right.

23 If they were discussed, you don't have any
24 knowledge of it?

11:39:17 25 A. Correct. About whether or not the stock

1 would actually be moved.

11:39:22 2 Q. Correct. Or whether there were any issues
3 that may prevent the stock from -- from being moved,
4 that you were involved in?

11:39:40 5 A. I -- I don't remember all the -- I don't
6 recall, I guess is the clearest.

11:39:46 7 Q. All right. When you were doing the
8 negotiations, after you signed the Letter of
9 Understanding, saying everybody wants to go forward
10 with the deal provided everything checks out, you
11 were doing your due diligence, so to speak, and they
12 were doing their due diligence, was there
13 information requested by Epic concerning pending
14 lawsuits?

11:40:15 15 A. In the due diligence, was there
16 information requested by Epic about lawsuits? Yes,
17 I believe there was.

11:40:23 18 Q. All right. Did it matter to you that Epic
19 had -- may have had lawsuits pending?

11:40:34 20 A. Yes, it did.

11:40:35 21 Q. Okay. On your end, the Connexus end, what
22 did you guys do to investigate pending litigation
23 that they -- they had ongoing at the time?

11:40:50 24 A. Chris basically looked at their lawsuits
25 and met with their general counsel.

11:41:03 1 Q. Okay. Did they do the same thing with
2 respect to any lawsuits that you may have had going
3 on -- ongoing at the time?

11:41:10 4 A. I believe so.

11:41:11 5 Q. Okay. And would Chris have been involved
6 in that -- those disclosures?

11:41:17 7 A. Yes.

11:41:17 8 Q. And due diligence?

11:41:18 9 A. Yes.

11:41:21 10 Q. Were you directly involved?

11:41:25 11 A. On legal issues?

11:41:27 12 Q. Correct.

11:41:28 13 A. I don't recall being directly involved.

11:41:35 14 Q. At the time that the deal was signed in
15 March of 2009, did Connexus -- I'm not asking you,
16 and I don't want you to disclose any amounts -- have
17 a reserve on the Weather Underground lawsuit?

11:41:56 18 MR. DELGADO: Can I get that read back.

19 (The requested testimony was read back)

11:42:15 20 MR. CLARK: A loss reserve.

11:42:17 21 MR. DELGADO: I'm going to object to the date.
22 I think you're off on a year. I don't know if you
23 want to rephrase your question.

11:42:24 24 MR. CLARK: I will.

11:42:24 25 MR. DELGADO: Okay.

1 BY MR. CLARK:

11:42:24 2 Q. So we got -- we got -- we got March of
3 2010 as the date. Were there -- were there any
4 discussions at the time that this deal was signed in
5 March of 2010, or was there a loss -- was there a
6 loss reserve put on the Weather Underground lawsuit
7 or not? There may or may not have been.

11:42:50 8 A. I don't believe so.

11:43:05 9 Q. During the due diligence, did Epic ask you
10 to put one on? A loss reserve on the case?

11:43:12 11 A. I do not believe so.

11:43:24 12 Q. As of the time that you left in March of
13 this year, which entity, if you know, was paying the
14 legal fees associated with the Weather Underground
15 lawsuit?

11:43:43 16 A. I don't know that for sure.

11:44:13 17 Q. As you sit here today, do you know whether
18 there has been a loss reserve placed on the Weather
19 Underground lawsuit?

11:44:23 20 A. I do not know that there has been one
21 placed.

11:45:27 22 MR. CLARK: Let's have this one marked and
23 labeled. I don't have a third copy of this. I'm
24 not going to -- back this.

11:45:46 25 MR. DELGADO: Okay.

11:55:13 1 A. Correct.

11:55:20 2 Q. Now, am I correct, Connexus itself was a
3 parent company and it really wasn't a unit and
4 didn't really have any ongoing business on its own;
5 is that accurate?

11:55:35 6 A. From a descriptive point of view, Connexus
7 was a -- yes, three with Matchpoint, two without
8 Matchpoint business lines. The corporate was at the
9 Connexus level.

11:55:48 10 Q. Right.

11:55:49 11 A. One legal team under Chris. One HR team,
12 which became under Chris as he -- but separate
13 technologies in the groups. Separate sales,
14 separate businesses within the two.

11:56:03 15 Q. Right.

11:56:03 16 A. So there was no sale staff for business
17 line that reported into Connexus with a revenue
18 line, separate from those three and then two
19 businesses.

11:56:14 20 Q. So am I correct, that there probably
21 wouldn't be an operating unit committee of Connexus
22 reporting to Don, it would simply be the units, or
23 do you know?

11:56:26 24 A. I don't believe there is one but -- I
25 believe it would be a collection of the folks on

1 that page.

11:56:38 2 Q. A collection of the folks?

11:56:40 3 A. Who are on his page reporting to Don.

11:56:45 4 Q. In the prior page that we looked at?

11:56:47 5 A. Correct.

11:56:48 6 Q. I understand. Okay.

7 The next page is a page entitled

8 "Immediate Cost Reductions." And it looks like some

9 folks didn't make the cut relative to the

10 combination of the companies. Is that -- am I

11 correct, is that what we're looking at?

11:57:16 12 A. We're looking at three, two founders from

13 the Epic side, and the chair from Epic side, who

14 were making salary that were no longer going to be

15 making salary, or the founders case, as much salary

16 as they had before.

17 One director of distribution that wasn't

18 replaced. And then we're looking at corporate staff

19 from the Connexus side, as we consolidated the

20 corporate staff units.

11:57:56 21 Q. All right. Is Sandeep still with the

22 company?

11:57:59 23 A. No, he's not.

11:58:01 24 Q. He was the controller. Did he find a spot

25 with another company prior to the merger?

11:58:07 1 A. No. That was Mark Lambert.

11:58:09 2 Q. Mark Lambert.

11:58:10 3 A. Who was the CFO. Sandeep worked for Mark
4 and Sandeep stayed, and we told Sandeep, you won't
5 be here, and we gave him a package after he stayed
6 for some time. So.

11:58:25 7 Q. Okay. Let's go to the next page under
8 Finance and Accounting. Future cost savings. These
9 are projected cost savings, I presume?

11:58:37 10 A. Correct.

11:58:38 11 Q. Let's take a look at those and see what
12 they say. Finance and accounting: Deployment of
13 Connexus NOLs, and I assume that's Net Operating
14 Loss?

11:58:49 15 A. Yes.

11:58:49 16 Q. All right. Tell me what the deployment of
17 the Connexus NOLs were?

11:58:55 18 A. So Connexus over time had losses that were
19 not able to be used, to the best of my
20 understanding, against income. To the extent that
21 the combined entity had income, that was once a
22 worthless asset to Connexus, is now potentially an
23 asset to be leveraged and save tax over time
24 appropriately, as they could be deployed. Which
25 there's a lot of finance rules what can and can't be

1 done. So we have to put it through that process.

2 And as is appropriate, that would be what was once
3 not worth something, is now worth something.

11:59:36 4 Q. All right. Were these prior carryover
5 losses from Connexus that could now be used for the
6 benefit of the Epic entity?

11:59:47 7 A. Correct.

11:59:48 8 Q. Okay.

11:59:49 9 A. I believe so.

11:59:55 10 Q. All right. And it says, the next -- next
11 one is, "One audit, one tax firm expected by end of
12 year."

13 And I think you already -- you touched on
14 that. You moved out the Connexus accounting folks
15 and the Epic folks assumed that role?

12:00:15 16 A. Yeah. So the Epic systems became the
17 finance and accounting systems over time. There
18 were still Connexus systems. I don't know where
19 that is now. The Epic audit firm became over time
20 the audit firm. We only need one tax firm so, yes.

12:00:36 21 Q. Sure. One valuation. And I think that
22 dovetails back into the question of Connexus when --
23 obviously when it was its own entity and its own
24 parent company, had a consolidated financial
25 statement.

1 of -- all of those items are projections, but it
2 says, "Financials combined." What's that mean?
3 What's going to happen there?

12:29:49 4 A. We -- my sense was, I'll have to go back
5 in time a year. My sense was that meant was, we
6 were presenting it as Epic legacy and Connexus
7 legacy. We were now going to present it as Epic
8 Media Group, which would include both of those.

9 So it would say Firstlook, Epic Direct,
10 and Traffic Marketplace, as units going to an Epic
11 revenue line, consolidated -- Epic consolidated
12 expense line. As opposed to two pages, it would now
13 be one.

12:30:30 14 Q. All right.

12:30:32 15 A. That's my sense. I think, I believe it
16 did not mean balance sheets combined. I think those
17 remain separate, but the presentations of the P & L
18 would be one P & L now called consolidated Epic
19 Media Group as opposed to --

12:30:49 20 THE REPORTER: Now called what? Consolidated?

12:30:53 21 THE WITNESS: Consolidated -- sorry.

12:30:54 22 THE REPORTER: Epic Group?

12:30:54 23 THE WITNESS: Media Group. I'm sorry.

24 BY MR. CLARK:

12:30:57 25 Q. All right. Let's look at slide number 11.

12:31:01 1 A. (Witness complies.)

12:31:06 2 Q. And that looks like the second quarter
3 2010 financials, Epic Media Group total. Epic Media
4 Group total, Page 11. And it has first quarter and
5 second quarter revenue totals. And under revenue
6 and also margin totals, it has Epic Direct, TMP,
7 which is Traffic Marketplace, Firstlook, and then
8 the same categories under gross margin.

9 And my question is: It doesn't say
10 Connexus, how come?

12:31:55 11 A. We didn't use the labels Epic Advertising,
12 we used Epic Direct.

12:31:59 13 Q. All right.

12:32:00 14 A. And we didn't use Connexus because it
15 didn't have a revenue line. As we talked about
16 prior. The revenue lines for Connexus were Traffic
17 Marketplace and Firstlook.

18 So you could say Connexus with those two
19 points or you could just list those two, as those
20 were the operating revenue units of Connexus.

12:32:23 21 Q. All right. Let's look at Page 19.

12:32:34 22 A. (Witness complies.)

23 Do you mind if I just leaf through this
24 real quick --

12:32:39 25 Q. Sure.

12:35:11 1 Q. Okay. All right. We talked about the
2 loss carryovers of Connexus being able to be
3 utilized by Epic, I guess.

12:35:34 4 A. Correct. By the combined consolidated
5 entity.

12:35:37 6 Q. Yes. All right. Let's -- let's move on
7 to Page 38.

12:35:48 8 A. (Witness complies.)
9 Just give me a second.

12:36:31 10 MR. CLARK: Let's go ahead and mark the next
11 one.

12:36:45 12 THE WITNESS: Okay.
13 (Whereupon Exhibit 295 was marked for identification)

12:36:45 14 MR. CLARK: Mr. Shaw, before I ask you the
15 question about this page, I want to ask you a quick
16 question about what we've marked and labeled as
17 Exhibit 295.

12:36:52 18 THE WITNESS: Okay.

12:36:53 19 MR. CLARK: It's entitled Minutes of a Meeting
20 of the Board of Directors of Connexus, June 30th of
21 2008.

12:37:00 22 THE WITNESS: Okay.

23 BY MR. CLARK:

12:37:00 24 Q. And it was really just a small part of
25 this document that I want to look at. On the first