

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-CV-10756
Hon. Marianne O. Battani

NAVIGATION CATALYST SYSTEMS, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; FIRSTLOOK, INC.,
a Delaware corporation; and EPIC MEDIA
GROUP, INC., a Delaware corporation,

Defendants.

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**DECLARATION OF WILLIAM A. DELGADO IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFF’S MOTION AND MEMORANDUM FOR
RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION OF ORDER
REGARDING DEFENDANTS’ DAUBERT MOTION TO STRIKE REPORT OF
CHRISTOPHER SCHWERZLER AND EXCLUDE HIS TESTIMONY AT TRIAL**

I, William A. Delgado, declare as follows:

1. I am over the age of eighteen and am lead counsel for Defendants in this matter. I have personal knowledge of the facts stated herein except where stated on information and belief, and, as to those matters, I believe them to be true.

2. Attached hereto as Exhibit A to this declaration is a true and correct copy of an excerpt from Document #224 on this Court's docket, the transcript of the September 15, 2011 hearing in this matter on the *Daubert* Motion to Strike Report of Christopher Schwerzler and Prohibit His Testimony on Same at Trial ("*Daubert* Motion") of defendants Connexus Corporation, Firstlook, Inc., and Navigation Catalyst Systems, Inc. ("Defendants").

3. In advance of filing Defendants' *Daubert* Motion, on August 10, 2011, I e-mailed Plaintiff's counsel, Enrico Schaefer and Brian Hall, in an effort to meet and confer regarding the motion, but Plaintiff's counsel never responded. Mr. Schaefer has since said that he was on vacation, but no excuse has been provided as to why his partner, Mr. Hall, did not respond.

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4. During the meet and confer process regarding Plaintiff's Motion for Reconsideration, I did not "indicate[] that [I] was open to the proposition that Mr. Schwerzler could run scripts on the terabyte drive and indicate what is contained therein." (Mot. [Doc. #225], p. vi-vii, ¶ 14.) To the contrary, I stated that this Court's September 21, 2011 Order precludes the testimony of Mr. Schwerzler about the subject terabyte drive and its contents (among other things).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 25th day of October 2011 at Los Angeles, California.

/s/William A. Delgado

William A. Delgado

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2011, I electronically filed the foregoing paper with the Court using the ECF system which will send notification of such filing to the following:

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