

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'
MOTION IN LIMINE NO. 4

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. As lead counsel in this matter, I was responsible for overseeing NCS's responses and document production throughout the discovery process. Although NCS initially believed that it had not retained the cease-and-desist letters it had received over the years, Lily Stevenson had, in fact, retained them. She provided me with various cease-and-desist letters and UDRP complaints that were produced to Plaintiff. The sum total of pages produced for that particular set of documents exceeded 20,000 pages.

3. Attached as Exhibit A are true and correct copies of the hearing transcript from the hearing before Magistrate Judge Morgan on May 19, 2010.

4. During the course of discovery, I was informed by Mavi Llamas that she discovered an old, out-of-commission laptop that she had in her house from her early days (2004-2005) at the predecessor company of Connexus Corporation. The contents of that laptop were reviewed for responsiveness to Plaintiff's requests for production, and responsive documents, which included e-mails and registration spreadsheets from that time frame, were produced.

5. During the course of the deposition of Navigation Catalyst Systems (with Donnie Misino appearing as the 30(b)(6) designee), a question arose regarding a letter I had sent referring to 600,000 e-mails that NCS had identified for review. After Mr. Misino testified that he had no knowledge as to the status of that review and as page 138 of the Misino deposition transcript indicates, the parties went off the record, and I specifically informed Mr. Schaefer that:

(i) NCS client had provided me approximately 600,000 e-mails, (ii) that I had reviewed each and every one of the e-mails, (iii) that only 1,500 e-mails were responsive to a discovery request, and (iv) that the remaining e-mails were spam e-mails. A true and correct copy of the relevant excerpts from that deposition transcripts are attached as Exhibit B.

6. The 600,000 e-mails referred to in the NCS/Misino deposition refer only to an *initial* production of e-mails that was very limited in scope as the result of Magistrate Judge Morgan's May 2010 order.

7. Eventually (and much after the deposition), Plaintiff identified a broad group of search terms. At my instruction, Defendants executed an e-mail search across multiple e-mail boxes of relevant custodians for those search terms. Responsive, non-privileged e-mails (which included e-mails from 2006-2010) were then produced on January 26, 2011 and that production exceeded 19,000 pages.

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 24th day of February 2012 at Los Angeles, California.

/s/William A. Delgado
William A. Delgado

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2012, 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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