

# EXHIBIT F

March 15, 2010

**VIA EMAIL AND US MAIL**

William A. Delgado  
Willenken Wilson Loh & Lieb LLP  
707 Wilshire Boulevard, Suite 3850  
Los Angeles, CA 90017

**Re: *Weather Underground v. Navigation Catalyst Systems, et.al.*  
*Communications per F.R.C.P. 37(a)(1) – Responses to Plaintiff's Requests for  
Production of Documents***

Dear Mr. Delgado:

This letter is sent in compliance with F.R.C.P. 37(a)(1). Because NCS has essentially objected to the production of virtually all of relevant documents in this case, without a good faith basis for doing so, and appears to be actively concealing documents through your affiliated companies, we would ask that you stipulate to an order consistent with the below requests. Recall our agreement to provide NCS an extension to respond to this discovery was NCS assurances that it would provide good faith responses. (*Exhibit A; Correspondence re extension*). At this point, we have little faith that NCS intends on voluntarily producing the documents requested, and, even more troubling, intends on using the artifice of 'no employees' and hiding documents in First Look, Basic Fusion and Connexus for not other purpose than to obstruct legitimate discovery. As you know, discovery timelines are short, experts need to be disclosed and there is no time for obstruction under the court's scheduling order.

While we expect you will argue that you need significant time to respond to this request, we believe that you had more than enough time to formulate your responses and objections (i.e. it has almost been two months since we served this discovery). If we do not hear in writing that NCS is willing to the demands contained herein by Friday, March 19, 2010, we will move forward with a motion to compel.

1. With regard to your General Objection No. 3, our definition indicated: "The words 'You', 'Your', 'NCS' and 'Defendant' as used herein refer to Navigation Catalyst Systems, Inc and any and all parent companies, subsidiaries, divisions, and each of

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those Company's officers, directors, employees, agents, contract consultants, attorneys and affiliates."

You provided the following objection to this statement: "NCS objects to the definition of 'You,' 'Your,' 'NCS,' and 'Defendant' as overbroad. NCS shall interpret these words to refer solely to NCS."

We note that you have not objected to our use of the word "Company" which includes FirstLook, Connexus and Basic Fusion, as well as other affiliated companies. However, you clearly have refused to produce any documents from these companies, even documents relating to your direct operations.

**Plaintiff's Position:** It is clear at this point that NCS, FirstLook, Basic Fusion and Connexus were specifically set up by Connexus were set up in order to insulate NCS from judgments, limit access to discovery and create these types of artificial barriers in litigation. We would ask that you stipulate to withdraw this and related objections made throughout your Responses, and order to produce the requested documents within 14 days.

2. Your General Objections Nos. 4, 5, 6, 7, 9, and 11 are all specific objections which would need to be made in the context of individual discovery requests.

**Plaintiff's Position:** Essentially, you have said that you object to producing documents which are "vague and ambiguous" (your Objection No. 4). We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

3. With regard to Defendant's General Objection No. 7, you have indicated: "NCS objects to the Request to the extent it seeks documents equally or more available to, or already in the possession, custody or control of WU."

**Plaintiff's Position:** There is no objection which would allow you to preclude us to seeing documents or version of documents in your control which you "guess" might also be in our possession. If you have documents that are reasonably identifiable, you have an obligation to produce them, even if they might also be in the possession of Weather Underground. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

4. With regard to your response to Request for Production No. 1, we requested that you "Produce all Documents and other Communications referred to or related to your response to Plaintiff's First Interrogatories."

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You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the basis and to the extent that: it is vague and ambiguous; it does not describe the documents requested with sufficient particularity; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS is preparing its internal registration software modules for production. The blacklist database accompanies these responses."

**Plaintiff's Position:** NCS has incorporated all prior General Objections, which are just a litany of all possible objections under the Court Rules. We do not believe that this approach as to this request, or as used in the remaining responses, is appropriate. We request that you make specific objections to specific requests if and when they are appropriate. We demand that you withdraw your incorporation "General Objections" in each and every response to Request for Production. We further request that you produce documents referred to and related to your answers to Interrogatories. We would be willing to limit the definition of "related to" to include documents which were referred to in responding, or which specifically support or refer to the substance of your response.

5. With regard to your response to Request for Production No. 2, we requested that you "Produce all Communications between Defendant and anyone, internal or external to Defendant, regarding or relating to the claims asserted in the above-captioned Complaint."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS is searching for non-privileged, responsive documents in its possession, custody and/or control and will produce such documents, if any."

**Plaintiff's Position:** NCS' suggestion that communications concerning the Complaint filed in this matter are "neither relevant to this action or reasonably calculated to lead to the discovery admissible evidence" is inappropriate. Moreover, the request is neither "overly broad, unduly burdensome or harassing." We demand that you withdraw these objections and produce communications, internal and external, related to the Complaint filed in these

lawsuits which are not otherwise attorney-client privilege or work product protected within 14 days.

6. With regard to your response to Request for Production No. 3, we requested that you "Produce all business plans, including drafts, for Defendant and all documents gathered and relied upon in the preparation of the same."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine."

**Plaintiff's Position:** We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days. It is our contention that NCS business plan, as outlined in the Complaint, was to cybersquat/typosquat on high traffic domains which you knew or reasonably should have known were trademark protected. Are you serious in stating that business plan documents are not relevant to such action? Are you withdrawing your defense in this action, some of which are noted your answer to the Complaint, your February 26, 2010 letter attached as *Exhibit B* and in the Jacoby Affidavit attached as *Exhibit C*?

As you know, our entire suit is directed at your business model. To suggest that such documents are not relevant to the lawsuit is frivolous and clearly made in bad faith. We demand that you withdraw all objections and stipulate to produce all documents responsive to Request No. 3 within 14 days.

7. With regard to your response to Request for Production No. 4, we requested that you "Produce all Communications between Defendant and any other person or entity concerning business plans for Defendant and all Documents gathered and relied upon in the preparation of the same."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents

protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff’s Position:** See Plaintiff’s Position with regard to Request for Production No. 3.

8. With regard to your response to Request for Production No. 5, we requested that you “Produce all Communications with investors, potential investors or agents for same regarding or relating to Defendant.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff’s Position:** See Plaintiff’s Position to Request for Production No. 3. Request No. 5 is neither vague nor ambiguous. It is not overly broad, unduly burdensome or harassing. Clearly, the documents sought, which include communications with investors concerning your unlawful business model, are directly relevant to both the claims and your defenses in this case. The objections are frivolous and are meant only to obstruct legitimate discovery. We demand you agree to withdraw your objections and produce all documents responsive to Request No. 5 within 14 days.

9. With regard to your response to Request for Production No. 6, we requested that you “Produce all Documents related to presentations or sales pitches given to third parties or potential investors.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff’s Position:** See Plaintiff’s Position with regards to Request Nos. 3 through 5.

10. With regard to your response to Request for Production No. 7, we requested that you “Produce financial statements, profit and loss statements, balance sheets, and accounting information for Defendant.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objection, NCS responds as follows: Together with this response, NCS has produced a report which shows the revenues NCS received from the monetization of the domain names at issue in this matter.”

**Plaintiff’s Position:** It is hard to imagine how Request No. 7 asks for documents which might be attorney-client privilege or work product doctrine. Your objections are clearly meant only to obstruct legitimate discovery.

Your defense in this case is that you only made \$1,500 or so off of cybersquatting Weather Underground’s trademarks; that your cybersquatting activities are minor and inconsequential. This apparently is one of the primary defenses you will be lodging in this case.

It is Plaintiff’s position that you have made hundreds of thousands, and perhaps millions, of dollars off of cybersquatting famous brands, in addition to Plaintiff’s incontestable marks in this case. While you will no doubt suggest to the jury that your registration of the subject domains in this case is of little financial consequence, the jury is also entitled to understand that the approach you is extremely profitable across the tens or hundreds of thousands of trademark protected domains in your portfolio. I would note that 15 USC §1125(d)(1)(B)(i)(vii) specifically lists as a bad faith factor NCS’ registration of other third party domains which are trademark protected. Moreover, that same provision makes it clear that “in determining whether a person has a bad faith intent described in subparagraph (A), a court may consider factors such as, but not limited to-“ the [bad faith] factors listed ..”

Plaintiff’s position that NCS engaged in bad faith cybersquatting is inextricably tied to your overall business model as a mass typosquatter and the financial incentives for you to engage in the unlawful behavior at issue. We demand you stipulate to withdraw your objections to



Request No. 7 and provide a full response and production beyond the “revenues NCS received from monetization of the domain names at issue in this matter” within 14 days.

11. With regard to your response to Request for Production No. 8, we requested that you “Produce all tax returns, including both state and federal, for Defendant from inception to present.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff’s Position:** Tax returns are relevant to economic damages, namely the disgorgement of profits as provided under 15 U.S.C. § 1117(a)(1). Tax returns, which include proof of an income stream, are also relevant to the issue of NCS’s bad faith intent to profit from typosquatting third party trademarks, including those of Plaintiff, under 15 U.S.C. § 1125(d)(1)(A)(i). That fact that typosquatting is extremely profitable, or your position that it is unprofitable for that matter, is relevant to the intent required under the ACPA and goes directly to Plaintiff’s claim and NCS’s defense.

It is also relevant to Defendant NCS’s bad faith intent to create a “shell corporation” sometime after registering many of the domains at issue in this case, taking the domain registrar and parking activities marketed and performed by NCS and splitting them off into sister companies all controlled by NCS and Connexus. We hereby demand that you withdraw your objections to Request No. 8 and provide the documents requested.

12. With regard to your response to Request for Production No. 9, we requested that you “Produce all Documents related to Defendant’s initial capitalization.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”



**Plaintiff's Position:** NCS' capitalization, startup and business plan are all relevant to the issues in this case. It is Plaintiff's Position that NCS started its company full well knowing that its business goal was to register typographical versions of third party trademark protected domains. It is Plaintiff's position that Defendant was set up and capitalized to engage in mass unlawful cybersquatting from the get go, including activities NCS now denies it ever engaged in such as acting as a registrar (now performed by Basic Fusion), offering domain parking software including analytics, (First Look).

Defendant NCS apparently indicated that it never had any "intent" to register trademark protected domains. Defendant NCS apparently argues that its "software" registered domains automatically, thus precluding of any specific "intent" to register domains in bad faith. Thus, NCS has put its business plan, business structure, and capitalization squarely in issue. We hereby demand that you withdraw all objections to Request No. 9 and provide the documents demanded.

13. With regard to your response to Request for Production No. 10, we requested that you "Produce all Documents regarding or relating to bank accounts held by and accounting records for Defendant from inception to present."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: Together with this response, NCS has produced a report which shows the revenues NCS received from the monetization of the domain names at issue in this matter."

**Plaintiff's Position:** Bank account and accounting records are relevant across a variety of issues, including but not limited to: the relationship between NCS and its sister companies Basic Fusion, FirstLook, and Connexus; Defendant NCS' gross revenue generated by mass cybersquatting and "intent" to maximize its revenues by violating trademarks; the identification and amounts paid to NCS vendors; the identity and amounts paid by NCS' vendors to the company; and identification of revenue sources for NCS, including domain parking, as well as the sale of domain names which are or may be trademark protected with third parties. Moreover, NCS compete financial records are relevant because to the issue of disgorgement of NCS profits and the element of "bad faith" under the ACPA. Plaintiff

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demands that NCS withdraw its objection and produce the documents identified in Request No. 10.

14. With regard to your response to Request for Production No. 11, we requested that you "Produce all Documents regarding or relating to payments received, deposits, and accounts receivable for Defendant, including but not limited to any spreadsheets or accounting."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: Together with this response, NCS has produced a report which shows the revenues NCS received from the monetization of the domain names at issue in this matter."

**Plaintiff's Position:** See Plaintiff's Position with regard to Request Nos. 9 and 10.

15. With regard to your response to Request for Production No. 12, we requested that you "Produce all employment or other work-related contracts between Defendant and its employees, officers and directors, from inception through present."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine; it seeks confidential information that would invade the legally protected rights if the identified individuals, including, but not limited to, their right to privacy."

**Plaintiff's Position:** Defendant has taken the position that it has no employees and now apparently is objecting to producing employee contracts? Defendant NCS directly placed the issue of whether or not it has employees and who those employees might be and how they are compensated at issue in this case.

These are all relevant issues in this case. Defendant's objections are frivolous and are meant only to obstruct legitimate discovery. Plaintiff demands that all objections to Request No. 12 be withdrawn. To the extent documents are confidential; a protective order has been entered.

16. With regard to your response to Request for Production No. 13, we requested that you "Produce all Documents regarding corporate expenditures, reimbursements, salaries, employee payments and bonuses."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine; it seeks confidential information that would invade the legally protected rights of the identified individuals, including, but not limited to, their right to privacy."

**Plaintiff's Position:** See Plaintiff's Position with regards to Request No. 9, 10, 11 and 12.

17. With regard to your response to Request for Production No. 14, we requested that you "Produce all organizational charts or other Documents identifying employee, officer and/or director positions at Defendant's company from inception through present."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS has no responsive documents in its possession, custody, and/or control."

**Plaintiff's Position:** Are you really lodging the complete litany of all possible objections to organization charts or other documents identifying who your employees, officers and

directors have been from inception to present? I guess I don't even know where to begin with this objection. While you have indicated that you have no responsive documents in your possession or control, your objection suggests that there may be such documents and you are simply not telling us about because of your objections. Moreover, I take it by your response that such documents may, in fact, exist but are in the possession of one of your sister companies and their employees who work directly for NCS or on its behalf. We demand that you withdraw all objections to Request No. 14 and either confirm or deny that such documents exist, including in your affiliated companies.

18. With regard to your response to Request for Production No. 15, we requested that you "Produce corporate records of Defendant, including bylaws, articles, membership agreements, certificates of incorporation, stock certificates, license resolutions, minutes and all Documents which evidence that Defendant has obeyed the corporate formalities in the operation of their business from inception to present."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS has produced responsive documents together with these responses and is searching for additional responsive documents."

**Plaintiff's Position:** The documents requested are not objectionable on any of the basis that you have indicated. We would request that you withdraw all objections and produce the documents as requested in Request No. 15 without objection.

19. With regard to your response to Request for Production No. 16, we requested that you "Produce all Documents related to the business relationship between CNS and Basic Fusion, Inc., NCS and Connexus Corp., and NCS and FirstLook, Inc., including but not limited to: a. Documents showing money paid to or between each company for each year from inception to the present; b. Contracts and other agreements between the Companies; c. Invoices by and between the Companies; d. Any and all correspondence, faxes, or written documents relating to business between the companies."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS is searching for and will produce its registration agreement with Basic Fusion and its parking agreement with Firstlook."

**Plaintiff's Position:** The objections are not well founded. They should be withdrawn. Your suggestion that you are looking for documents, despite your objections, simply allows you to again argue later on that your objections warranted your refusal to produce in part. Moreover, we have asked for documents related to NCS and Connexus Corp. Apparently, you are unwilling to look for such documents. Your relationship with Connexus is well established.

We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

20. With regard to you response to Request for Production No. 17, we requested that you "Produce all notes, emails, agendas, minutes or other Documents referring or relating to meetings, whether electronic, telephonic or in person, between Defendant and Basic Fusion, Inc."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine."

**Plaintiff's Position:** See Plaintiff's Position with regard to Request No. 16.

21. With regard to you response to Request for Production No. 18, we requested that you "Produce all notes, emails, agendas, minutes or other Documents referring or relating to meetings, whether electronic, telephonic or in person, between Defendant and Connexus Corp."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine."

**Plaintiff's Position:** See Plaintiff's Position with regard to Request No. 16.

22. With regard to you response to Request for Production No. 19, we requested that you "Produce all notes, emails, agendas, minutes or other Documents referring or relating to meetings, whether electronic, telephonic or in person, between Defendant and Firstlook, Inc."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine."

**Plaintiff's Position:** See Plaintiff's Position with regard to Request No. 16.

23. With regard to you response to Request for Production No. 20, we requested that you "Produce all contracts between Defendant and any third party who performs work for Defendant regarding the selection, registration, hosting, development, optimization, content, monetization and/or support of domain names registered by Defendant, at any time since inception, including but not limited to: a. Employment Contracts; b. Independent Contractor Agreements; c. Vendor Agreements; d. Service Provider Agreements; e. License Agreements."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the



discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff’s Position:** Explain how these documents are not relevant. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

24. With regard to your response to Request for Production No. 21, we requested that you “Produce any and all Software code identified by you in Plaintiff’s First Interrogatories, Interrogatory Numbers 3-5.”

You responded as follows: “NCS is preparing its own internal registration software modules for production. The blacklist database accompanies these responses.”

**Plaintiff’s Position:** Apparently, you are only producing software code owned by NCS, not by FirstLook, Basic Fusion or Connexus. See Plaintiff’s Positions above. We demand that you provide software code from all entities as related to your domain registration and monetization scheme.

25. With regard to your response to Request for Production No. 22, we requested that you “Produce all user manuals, training manuals, or other Documents related to the Software identified in Plaintiff’s First Interrogatories, Interrogatory Numbers 3-5.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: NCS has no non-privileged, responsive documents in its possession, custody, and/or control.”

**Plaintiff’s Position:** None of the objections are well founded. They should be withdrawn. Moreover, I assume from your previous objections that you are only producing documents which you say are in the possession and control of NCS and specifically excluding documents in the possession and control of Connexus, Firstlook, and Basic Fusion, despite the fact they are all available to you, apparently located in your offices and used by your company as part



of your business model. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

26. With regard to your response to Request for Production No. 23, we requested that you “Produce all Documents which constitute, refer to or relate to written policies, procedures, processes, metrics, and/or guidelines as they relate to the Software identified in Plaintiff’s First Interrogatories, Interrogatory Numbers 3-5.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses.”

**Plaintiff’s Position:** We demand that you withdraw the objections to this request. Moreover, the Trademark Review Instructions document is hardly responsive. It is also impossible to believe that there is not a single document, memo, email or otherwise which would relate to policies, procedures, processes, metrics and/or guidelines with regards to the software that you have identified. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

27. With regard to your response to Request for Production No. 24, we requested that you “Produce all Documents which constitute, refer to or relate to written policies, procedures, processes, metrics, and/or guidelines as they relate to Your registration of domain names.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses.”

**Plaintiff’s Position:** See Plaintiff’s Position with regard to Request for Production No. 23.

28. With regard to your response to Request for Production No. 25, we requested that you “Produce all Documents which constitute, refer to or relate to written policies, procedures, processes, metrics, and/or guidelines as they relate to Your selection of web site content, parked pages, hyperlinks, or other content displayed at domain names registered by NCS.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses.”

**Plaintiff’s Position:** See Plaintiff’s Position with regard to Request for Production No. 23.

29. With regard to your response to Request for Production No. 26, we requested that you “Produce all Documents which constitute, refer to or relate to the policy, procedure, process, and/or guideline used to ensure domain names do not incorporate, or are confusingly similar to, third party trademarks.”

Your responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses.”

**Plaintiff’s Position:** See Plaintiff’s Position with regard to Request for Production No. 22-25.

30. With regard to your response to Request for Production No. 27, we requested that you “Produce all Documents which constitute, refer to or relate to the policy, procedure, process, and/or guideline used to ensure domain names that incorporate, or are confusingly similar to, a third party trademark are ‘blacklisted’, or otherwise identified so as to preclude registration, from registration.”

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses."

**Plaintiff's Position:** See Plaintiff's Position with regard to Request for Production No. 22-25.

31. With regard to your response to Request for Production No. 28, we requested that you "Produce all Documents related to the purchase and/or use of the United States Patent and Trademark Office database of trademarks and service marks."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: Documents responsive to this request accompany these responses."

**Plaintiff's Position:** The objections to Request for Production No. 28 are not well founded. They should be withdrawn. Moreover, it is unclear whether any of the documents could possibly be protected by the work product doctrine or be attorney-client privileged because they do not directly relate to your representation in this lawsuit. The Court Rules require you to prepare a privilege log identifying each and every document consistent with F.R.C.P. 26(b)(5)(A)(i) and (ii). More importantly, the document you produced is inconsistent with previous documents produced in litigation. You need to go back and make sure you have produced each and every document responsive to this Request.

32. With regard to your response to Request for Production No. 29, we requested that you "Produce all Documents which constitute, refer to or relate to the policy, procedure, process and/or guideline used to "purge," or otherwise delete, domain names You register that incorporate, or are confusingly similar to, a trademark owned by a third party."

You responded as follows: "In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the

bases and to the extent that: it is vague and ambiguous; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, NCS responds as follows: The Trademark Review Instructions document which is responsive to this request has been produced together with these responses.”

**Plaintiff's Position:** Your objections are not well founded. They should be withdrawn. We need to know you have provided all documents responsive to this Request and not withheld any documents purportedly under objection. Again, your response is not credible. You must have some emails, memos or otherwise which are responsive to this request. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

33. With regard to your response to Request for Production No. 30, we requested that you “Produce all Documents which constitute, refer to or relate to the policy, procedure, process and/or guideline regarding the operation of NCS, including employment manuals, not otherwise identified above.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine.”

**Plaintiff's Position:** Your objections are not well founded and should be withdrawn. We hereby demand that you provide all documents responsive to this Request. Again, your response is not credible. You must have some emails, memos or otherwise which are responsive to this request. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

34. With regard to you response to Request for Production No. 31, we requested that you “Produce all Documents related to the registration of each Domain At Issue and for each domain: a. Date of registration; b. Registrar used; c. All WHOIS information, including administrative, technical, and other contracts; d. Archived website displayed, or if archived website is unavailable, a description of website used in connection with the domain name including hyperlinks and meta-tags; e. Revenue, both gross and net, and profits from each domain name; f. Date when You ceased

serving as Registrant; g. Reason for having ceased serving as Registrant; and h. All correspondence received by third parties related to that domain name and all responses thereto.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, CNS responds as follows: A report containing the information sought in this request, to the extent it is in NCS’s possession, custody, and/or control, accompanies these responses.”

**Plaintiff’s Position:** Your objections to this Request are unfounded and must be withdrawn. More importantly, it appears from your defense that you have specifically avoided producing documents which are within your possession and control but held by Basic Fusion, Firstlook, and Connexus. Moreover, you have completely ignored our definition of “Domains at Issue” and specifically avoided producing documentation concerning domains included within that definition. Finally, I find it hard to believe that the information you provided was all the information which touches on the various issues listed above. To the extent you use online reporting tools so that you are able to generate and print such reports, you are obliged to produce them. Again, you seem to define the word “possession” as paper documents rather than information readily available to you in digital format. We would ask that you stipulate to withdraw your objections and order to produce the requested documents within 14 days.

35. With regard to your response to Request for Production No. 32, we requested that you “Produce all Documents related to web traffic statistics for each Domain At Issue, including but not limited to: a. referring links; b. page views; c. internal and external search queries; d. user locations; e. IP addresses; f. keyword use; g. visitor paths; h. entry pages; and i. exit pages.”

You responded as follows: “In addition to the foregoing general objections which are expressly incorporated herein, NCS objects to this Request on the bases and to the extent that: it is vague and ambiguous; it is overly broad, unduly burdensome and harassing; it calls for the production of documents that are neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence; and it calls for the production of documents