

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; BASIC FUSION, INC.,
a Delaware corporation; CONNEXUS CORP.,
a Delaware corporation; and FIRSTLOOK, INC.,
a Delaware corporation,

Defendants.

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Lead Counsel for Defendants

DECLARATION OF ENRICO SCHAEFER

Enrico Schaefer, being first duly sworn, deposes and states as follows:

1. I am an attorney licensed to practice law in the state of Michigan with the law firm of Traverse Legal, PLC, counsel for The Weather Underground, Inc.

2. I have knowledge of the facts set forth herein and, if called to testify as a witness hereto, could do so competently under oath.

3. Unfortunately, no meet and confer on the issues raised in this motion was ever even attempted by Defense Counsel. Many of the issues are already resolved, and most others will be resolved prior to the hearing.

4. In response to Defendant NCS's allegations contained in their Motion to Compel Further Responses and Production of Documents, the following background facts are provided.

a. Unlike NCS, Plaintiff provided discovery responses as required under F.R.C.P. 34(b)(2)(A) in a timely fashion without extension on February 22, 2010. Plaintiff advised NCS that it was still awaiting the verification from its client for the responses to interrogatories, which was provided on March 5, 2010. Defendant NCS seems to be suggesting that documents must be provided with responses to requests for production. No such requirement exists under F.R.C.P. 34(b)(2). In fact, F.R.C.P. 34(b)(2)(B) only requires written responses and further allows for a date and time for inspection of documents or production of same. Regardless, Plaintiff had already identified a company to scan, OCR, Bates number and identify on a page basis confidential documents as of the date of the response and was well on its way to providing documents in a format which was identifiable and searchable by both parties.

b. Defendant NCS suggests that Plaintiff produced documents on only two dates, March 22, 2010, and April 12, 2010. In fact, Plaintiff has continued to supplement its responses, after digital production with an outside vendor, and has provided further documents on April 26, 2010.

c. Defendant's suggestion that documents were produced in a disorganized fashion is unfounded. In fact, NCS refuses to produce documents where individual pages are Bates number and all documents that can be OCR'd to make them searchable. Plaintiff's production has been comprehensive, professionally produced for maximum identification and searchability.

d. To the extent individual documents were not "readable", Plaintiff has provided updated copies in each and every instance requested by Mr. Delgado on April 26, 2010. Moreover, NCS has never requested to see originals, although they would be available in each instance. NCS's suggestion that original documents have to be produced to them is unfounded in the Court Rules. Defendant NCS has not produced a single original document in this case. In fact, NCS has produced unsigned version of contracts, refuses to provide versions of documents as they existed over time, and refuses to produce the underlying documents from spreadsheets it has created to summarize documents which they admit exist.

4. NCS complaints concerning various language related to the use of the word "relevant" as part of Plaintiff's responses to requests for production. Plaintiff's position has been consistent throughout this litigation that it is willing to work on

appropriate language as long as both parties are playing by the same rules. Pursuant to an agreement between the parties concerning that language in response to requests for production, Plaintiff has agreed to modify its responses to Requests No. 7, 10-14, 16 and 38 to remove the word "relevant."


5. Defendant's arguments concerning legible documents is interesting, since at no time has Plaintiff ever suggested that it was unwilling to re-produce any documents requested. In fact, Plaintiff has produced in each and every instance copies of any documents which NCS has complained about. (See *Exhibit A*; letters to Defense counsel with production). To Plaintiff's knowledge, there are no documents which have not been reproduced as requested.

6. Overall, Plaintiff has produced 7,094 pages of documents to Defendant NCS. As is clear from the Motion filed in comparison to Plaintiff's Motion, Plaintiff has done a comprehensive job at discovery.

7. With regard Exhibit C of the Delgado Declaration accompanying Defendant's Motion to Compel Further Responses and Production of Documents, NCS never requested color copies of documents. They are available for inspection or copying at NCS's option.

I declare under penalty of perjury under the laws of the State of Michigan that the foregoing statements are true and corrected based on my personal knowledge, information and belief and that if called to testify on the statements set forth above I could and would testify competently thereto.

Executed on March 26, 2010, at Traverse City, Michigan.



Enrico C. Schaefer

EXHIBIT A

TRAVERSE[®]legal

ATTORNEYS & ADVISORS

March 19, 2010

VIA FED EX ONLY

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

Re: Wunderground Discovery Documents

Dear Will:

Enclosed is a jump drive which includes the Bates stamped documents thus far. We will continue to supplement as additional documents responsive to your discovery requests become available. I am sending this with the caveat that we have not gone through these files a final time for privileged documents. If we should find documents which are privileged, we will send a Privilege Log documenting the same. Pursuant to the Protective Order entered on February 22, 2010, some of the documents have been watermarked "Confidential" and should be treated as such.

Sincerely,

TRAVERSE LEGAL, PLC



Enrico Schaefer
enrico@traverselegal.com

ES/cad
Enclosure

TRAVERSElegal[®]

ATTORNEYS & ADVISORS

April 9, 2010

VIA FED EX ONLY

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

Re: Wunderground Discovery Documents

Dear Will:

Enclosed is a disc which includes Bates stamped documents to supplement our previous production. Pursuant to the Protective Order entered on February 22, 2010, some of the documents have been watermarked "Confidential" and should be treated as such.

Sincerely,

TRAVERSE LEGAL, PLC

A handwritten signature in black ink, appearing to be 'ES' with a large flourish underneath.

Enrico Schaefer
enrico@traverselegal.com

ES/cad
Enclosure

TRAVERSE[®]legal

ATTORNEYS & ADVISORS

April 26, 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 Production

Dear Will:

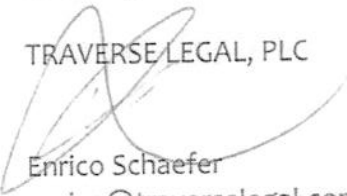
Enclosed is a disc which contains the discovery sent to you on April 9, 2010. This discovery has been re-Bated (Vol. 1) so that the documents mentioned in your April 22, 2010, email (WU4021-6931) are in their proper format and searchable.

Also enclosed on that same disc is our supplemental discovery (Vol. 2; WU6729-7094).

If you have any additional problems with what is produced, please let us know as soon as possible so that we can fix the problem and return the documents to you.

Sincerely,

TRAVERSE LEGAL, PLC


Enrico Schaefer
enrico@traverselegal.com

ES/cad
Enclosure
cc: Michael Huget (w/enc.)