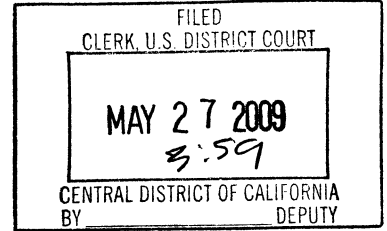


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6 Attorneys for Plaintiffs
7 THOUGHT CONVERGENCE, INC. and NAME
INTELLIGENCE, LLC
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 THOUGHT CONVERGENCE, INC.,
a Delaware Corporation and NAME
13 INTELLIGENCE, LLC, a Delaware
limited liability company,

Case No. CV 03088-R (AJWx)

**FIRST AMENDED COMPLAINT
FOR:**

14 Plaintiffs,

- 1) BREACH OF SECURITIES EXCHANGE AGREEMENT;
- 2) BREACH OF EMPLOYMENT, NON-COMPETE AND INFORMATION AND INVENTION AGREEMENTS;
- 3) FRAUDULENT INDUCEMENT;
- 4) INTERFERENCE WITH CONTRACT;
- 5) BREACH OF FIDUCIARY DUTY;
- 6) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING; AND
- 7) ACCOUNTING

15 v.

16 JAY WESTERDAL, an individual;
17 PER WESTERDAL, an individual;
RAY BERO, an individual;
18 CAMERON JONES, an individual;
and NAME INTELLIGENCE, INC., a
19 Washington corporation;
DOTMOVIE, an unknown entity,

20 Defendants.
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DEMAND FOR JURY TRIAL

1 Plaintiffs Thought Convergence, Inc. (“TCI”) and Name Intelligence, LLC
2 (“NIL” and collectively with TCI, “Plaintiffs”), hereby demand a jury trial on their
3 Complaint and allege as follows:

4 **INTRODUCTION**

5 1. This case concerns a blatant breach of contract by the sellers of an
6 internet business to TCI, the breach of an employment agreement and noncompete
7 agreement by one of sellers’ principals, Jay Westerdal, and Mr. Westerdal’s breach
8 of fiduciary duties owed to Plaintiffs. Despite Mr. Westerdal’s assurances that his
9 business was set for immediate and explosive growth and that Mr. Westerdal would
10 commit his full business effort to running the business after its acquisition, neither
11 proved to be true. Rather, Mr. Westerdal materially misrepresented and omitted
12 key information about the condition and nature of his business to extract a
13 hyperinflated purchase price. Following the acquisition, Mr. Westerdal failed to
14 assist the business in any meaningful way, used company assets as his own personal
15 bank account and began developing a competing business in violation of his duties
16 and contractual obligations to Plaintiffs. Plaintiffs have suffered untold damage by
17 virtue of these breaches, creating substantial offsets to the purchase price for the
18 business. By this action, Plaintiffs are exercising their right to set-off the amounts
19 to which they are entitled by virtue the claims described herein against the First
20 and/or Second Post-Closing Payment due to Name Intelligence, Inc. (“NII”), if any.

21 **JURISDICTION AND VENUE**

22 2. Jurisdiction is based on 28 U.S.C. §1332(c) as Plaintiffs and
23 Defendants are citizens of different states and the amount in controversy exceeds
24 \$75,000 exclusive of interest and costs.

25 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(2) as a
26 substantial amount or part of the events or omissions giving rise to the claim
27 occurred in this district. Venue is also proper in this Court pursuant to Section 7.11
28 of the Securities Exchange Agreement, which requires that any action arising out of

1 or relating to the agreement be brought in the State of California, County of Los
2 Angeles.

3 **PARTIES**

4 4. Plaintiff TCI is, and at all times herein mentioned was, a corporation
5 duly organized pursuant to the laws of the state of Delaware, with its principal place
6 of business in Los Angeles, California. TCI is an industry-leading provider of
7 domain management, monetization and development tools and technologies for
8 premium domain owners and aggregators of high quality domain portfolios.

9 5. Plaintiff Name Intelligence, LLC (“NIL”) is, and at relevant times
10 herein mentioned was, a limited liability company organized in the state of
11 Delaware with citizenship in California.

12 6. On information and belief, Defendant Mr. Jay Westerdal (“J.
13 Westerdal”) is an individual residing in Mercer Island, Washington. J. Westerdal
14 was the co-founder, former CEO and President of NII, is the Chief Product Officer
15 of NIL and TCI and is a member of the TCI board of directors.

16 7. On information and belief, Defendant Mr. Per Westerdal (“P.
17 Westerdal”) is an individual residing in Bellevue, Washington.

18 8. On information and belief, Defendant Mr. Ray Bero (“R. Bero”) is an
19 individual residing in Seattle, Washington.

20 9. On information and belief, Defendant Mr. Cameron Jones (“C. Jones”)
21 is an individual residing in Seattle, Washington.

22 10. J. Westerdal, P. Westerdal, R. Bero and C. Jones were each controlling
23 shareholders of NII (the “Shareholders”).

24 11. On information and belief, Defendant NII is, and at all times herein
25 mentioned was, a corporation duly organized pursuant to the laws of the state of
26 Washington, with its principal place of business in Bellevue, Washington.

27 12. On information and belief, Defendant DotMovie is a business entity
28 with a website located at www.dotmovieregistry.com (“DotMovie”). On

1 information and belief, DotMovie has its principle place of business in Mercer
2 Island, Washington and J. Westerdal is its CEO and founder.

3 13. TCI is informed and believes, and on that basis alleges, that the
4 Defendants named herein are the partners, joint venturers, alter egos, agents,
5 principals, representatives, employees, servants, successors or predecessors of the
6 other Defendants, each and all of them, with respect to the matters alleged herein.
7 The Defendants named herein acted within the course and scope of their authority
8 as such partners, joint venturers, alter egos, agents, principals, representatives,
9 employees, servants, successors or predecessors, and with the consent, ratification
10 and approval of their co-Defendants in doing the things alleged herein.

11 **THE TRANSACTION**

12 14. In late 2007, representatives of TCI's predecessor in interest
13 approached J. Westerdal concerning the potential acquisition of NII's businesses,
14 Name Intelligence, LLC and Spry.Com, Inc. ("Spry" and together with NIL, the
15 "NIL Businesses").

16 15. The NIL Businesses consisted of online tools for domain data
17 aggregation, analysis and management, and a virtual private server web hosting
18 services business.

19 16. During the negotiations, J. Westerdal detailed how the NIL Businesses
20 would be complimentary to TCI's business operations and assured TCI that the NIL
21 Businesses would be immediately accretive to TCI's bottom line. J. Westerdal also
22 promised that the NIL Businesses were growing year to year, and set for
23 "immediate and explosive growth." Indeed, J. Westerdal assured TCI that the
24 second and third installment of the agreed upon purchase price (as described below)
25 would be "easily paid by the net profits" of the NIL Businesses as reflected in the
26 Financial Statements of the NIL Businesses.

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1 17. To coax TCI into the transaction, J. Westerdal also presented TCI with
2 an Executive Summary of the NIL Businesses. The Executive Summary detailed
3 that revenue generated from a portion of the NIL Businesses totaled between \$3 and
4 \$4 million dollars. The Executive Summary further indicated that the businesses'
5 Domain Roundtable Conferences would be held twice a year and that it would
6 contribute significant additional revenue to the NIL Businesses.

7 18. J. Westerdal further detailed that he had received another offer to
8 purchase the NIL Businesses for a guaranteed sum of \$60 million in cash and that
9 he would proceed with that transaction unless TCI immediately agreed to purchase
10 the NIL Businesses.

11 19. Based on these representations, and others, TCI agreed to acquire the
12 NIL Businesses for \$16 million dollars and stock in TCI.

13 **THE TRANSACTION DOCUMENTS**

14 20. The transaction to acquire the NIL Businesses included several
15 agreements, including, among others, the Securities Exchange Agreement dated
16 May 2, 2008, by and among TCI, TrafficZ, Inc., NII, and each of the Shareholders
17 (the "Securities Exchange Agreement")¹, Offer Letters dated May 28, 2009
18 between NIL and/or Spry.com, Inc. and the individual Shareholders (the "Offer
19 Letters")², Restricted Stock Agreements dated May 2, 2008, by and among TCI and
20 NII, J. Westerdal, P. Westerdal, R. Bero and C. Jones (the "Restricted Stock
21 Agreement")³, Noncompetition Agreements dated May 2, 2008, by and between
22 TCI and each individual Shareholder (the "Noncompetition Agreement")⁴ and the
23 Confidential Information and Invention Assignment Agreement ("Information and
24

25 ¹ A true and correct copy of the Securities and Exchange Agreement is attached
hereto as Exhibit A and incorporated herein by this reference.

26 ² A true and correct copy of the Offer Letter between NIL and J. Westerdal is
attached hereto as Exhibit B and incorporated herein by this reference.

27 ³ A true and correct copy of the Restricted Stock Agreement is attached hereto as
Exhibit C.

28 ⁴ A true and correct copy of the Noncompetition Agreement between TCI and J.
Westerdal is attached hereto as Exhibit D and incorporated herein by this reference.

1 Invention Agreement”).⁵ The foregoing agreements are collectively referred to
2 herein as the “Transaction Documents.”⁶

3 21. As part of the purchase of the NIL Businesses, Shareholders made
4 certain representations and warranties concerning the transaction. Among others,
5 Shareholders represented and warranted as follows:

6 3.6 Financial Statements. The Company has delivered to
7 Parent the unaudited balance sheet, and the related unaudited
8 statements of operations, changes in shareholders’ equity and
9 cash flows of the Company as of and for the twelve (12)
10 months ended December 31, 2007 (the “Financial
11 Statements”). The Financial Statements (a) are true, accurate
12 and compete in all material respects, (b) are consistent with the
13 books and records of the Company, (c) present fairly and
14 accurately the financial condition of the Company in all
15 material respects as of the date thereof and the results of
16 operations, changes in shareholders’ equity and cash flows of
17 the Company for the periods covered thereby, and (d) have
18 been prepared in accordance with GAAP, applied on a
19 consistent basis through the periods covered.

20 ***

21 3.13 Intellectual Property.

22 (g) *No Violation; Restriction*.

23 (i) ... the operation of the Business as it is
24 currently conducted, including, but not limited to, the design,
25 development, use, import, branding, advertising, promotion,
26 marketing, manufacture and sale of any of the Company’s or
27 any of its Subsidiaries’ products (including any currently
28 under development) or services, does not and will not, and will
not when operated by Parent, any of its subsidiaries or NI LLC
substantially in the same manner following the Closing,

⁵ A true and correct copy of the Information and Invention Agreement is attached
hereto as Exhibit E.

⁶ Except were otherwise noted, capitalized terms shall have the same meaning
specified in the Transaction Documents.

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infringe or misappropriate any IP rights of any Person ... or constitute unfair competition or trade practices under the laws of any jurisdiction ...

3.14 Taxes.

(a) All Tax Returns required to be filed by, or with respect to, the Company or any of its Subsidiaries on or prior to the Effective Date have been timely filed and all Taxes that are due and payable (whether or not shown on any Tax Return) have been timely paid or have been accrued for on the Financial Statements. Neither the Company nor any of its Subsidiaries is delinquent in the payment of assessment or governmental charge with respect to such Tax Returns. All federal, state, local and foreign income Tax Returns filed by, or with respect to, the Company or any of its Subsidiaries are true, correct and compete in all material respects....

3.18 Compliance with Laws. The Company and its Subsidiaries are, and have been in compliance in all material respects with all Legal Requirements applicable to the Company or any of its Subsidiaries or their operations....

3.24 Full Disclosure. None of the representations or warranties made by the Company herein or in the Disclosure Schedule, the other Transaction Documents or any certificate furnished by the Company pursuant to this Agreement, when all such documents are read together in their entirety, contains or will contain any untrue statement of material fact, or omits to state any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which made, not misleading.

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3.28 Shareholder Domain Names. Schedule 3.28 contains a true and complete list of each Domain Name registered in the name of any Shareholder (the "Shareholder Domain Names"). The Shareholder Domain Names have not been acquired using any of the assets of the Company

22. Shareholders also covenanted to, among other things, the following:

5.1 Expenses. Whether or not the Transaction is consummated, except as otherwise provided herein, all fees and expenses incurred in connection with the Transaction, including, but not limited to, all legal, accounting, financial, advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of such Transaction Documents and the Transaction, shall be the obligation of the respective party incurring such fees and expenses; provided, that Shareholders shall pay all fees and expenses of the Company or Shareholders incurred in connection or with, or otherwise arising as a result of, the Transaction Documents and the Transaction....

5.9 Confidentiality and Assignment Agreements. Shareholders shall take all commercially reasonable measures to obtain confidentiality and assignment agreements in the form acceptable to Parent from each of the current and former employees of the Company who prior to the Closing Date have not signed a form of such agreement...

5.10 Third Party Consents. If any of the Required Contents as defined and set forth in Schedule 3.3 are not obtained and delivered by the Company or Shareholders immediately prior to or as of the Closing, but notwithstanding, the Transaction contemplated hereunder is consummated, following the Closing, Shareholders shall take all commercially reasonable measures to obtain such Required Consents from third parties...

1 23. In addition to the representations, warranties and covenants, J.
2 Westerdal also agreed to devote his full attention to the business operations after the
3 acquisition and not to compete with TCI.

4 24. Specifically, in the Offer Letter J. Westerdal agreed that:

5 **Obligations to the Company.** During your Employment, you
6 shall devote your full business efforts and time to the Company.
7 During your Employment, without prior written approval of the
8 Company's Chief Executive Officer, you shall not render
9 services in any capacity to any other person or entity and shall
10 not act as a sole proprietor or partner of any other person or
11 entity or own more than five percent of the stock of any other
12 corporation.

13 25. Likewise in the Noncompetition Agreement, J. Westerdal
14 acknowledged and agreed that:

15 C. As a condition to its willingness to close the Exchange
16 pursuant to the Exchange Agreement, Thought Convergence
17 has required that Stockholder agree, and Stockholder has
18 agreed, to the noncompetition and nonsolicitation covenants
19 and the confidentiality agreements provided in this Agreement.

20 D. By his signature below, Stockholder acknowledges and
21 agreed that (a) his execution and delivery of this Agreement is a
22 material inducement for Thought Convergence to enter into the
23 Exchange Agreement and consummate the transactions
24 contemplated thereby and (b) he will receive material financial
25 benefits and other goods and valuable consideration from the
26 Exchange.

27 ***

28 1. Noncompetition.

(b) During the period which shall commence at the
Closing (as defined in the Exchange Agreement) . . .
Stockholder shall not (i) enter into, participate in, provide
advisory services in connection with, or otherwise assist with or

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be interested economically in the Restricted Business (as defined below) anywhere in the Business Area (as defined below), (ii) directly or indirectly (including without limitation, through any Affiliate (as defined below) of Stockholder, own, manage, operate, control or otherwise engage or participate in, or be connected as an owner, partner, principal, creditor, salesman, guarantor, advisor, member of the board of directors of, employee of or consultant in ... (B) any entity or business, division, group, or other subset of any business, engaged (or to Stockholders' knowledge, planning to engage) in the Restricted Business in the Business Area or (iii) make preparations to provide assistance to any Restricted Business or to form a Restricted Business in the Business Area, including but not limited to any research or development efforts aimed at ultimately benefiting a Restricted Business.

26. Finally, in the Information and Invention Agreement, J. Westerdal agreed that:

2. **Duties.** I will perform for the Company such duties as may be designated by the Company from time to time or that are otherwise within the scope of the Relationship and not contrary to the instructions from the Company. During the Relationship, I will devote my entire best business efforts to the interests of the Company and will not engage in other employment or in any activities detrimental to the best interests of the Company without the prior written consent of the Company.

27. On May 2, 2008, the transaction closed and TCI began operating the NIL Businesses as a subsidiary of TCI.

J. WESTERDAL AND DEFENDANTS' BREACH

28. Following the transaction close and the integration of the NIL Businesses into TCI, TCI began to uncover material differences between the representations made and the reality of the NIL Businesses.

29. For example, despite assertions that the NIL Businesses were growing year over year and set for explosive and immediate growth, the NIL Businesses produced flat revenues for all of 2008.

30. Additionally, despite Shareholders' assertions that the net profits from

1 the NIL Businesses would pay for the second and third installments of the purchase
2 price, the net profits were severely deficient to meet that obligation.

3 31. Likewise, TCI discovered that Shareholders failed to honor the
4 representations, warranties and covenants in the Securities Exchange Agreement.
5 By way of example, Shareholders did not provide true, accurate and complete
6 Financial Statements in accordance with GAAP and those Financial Statements did
7 not fairly or accurately represent the NIL Businesses' then present financial
8 condition.

9 32. TCI also discovered that J. Westerdal was shirking his responsibilities,
10 duties and obligations to TCI. J. Westerdal failed to keep regular business hours,
11 failed to attend strategy and other business meetings and failed to manage
12 employees and clients. Instead, J. Westerdal would take extended vacations and
13 brag to third parties that he need not attend to his duties as Chief Product Officer of
14 NIL.

15 33. J. Westerdal also used company assets as his own personal bank
16 account, loaning himself money and giving himself raises without authorization.
17 When challenged, J. Westerdal informed TCI that the purpose of the loan and raise
18 was to bolster his application for a bank loan to purchase his primary residence.

19 **TCI's PERFORMANCE AND SET-OFF RIGHTS**

20 34. As a result of the breaches and fraud alleged herein, TCI was, and is,
21 entitled to set-off the damages it has suffered against the Post Closing Payments
22 due NII pursuant to the Securities Exchange Agreement.

23 35. On that basis, on or about May 8, 2009, TCI wire transferred \$4
24 million to NII and transferred \$1.5 million into an interest bearing escrow account
25 pending a determination on the set-off amount against the Post Closing Payments.

26 36. TCI continued to investigate the amounts of its set-off claims between
27 May 8, 2009 and May 26, 2009. That investigation revealed that much of the
28 misconduct, while egregious and startling, was difficult to monetize and continues

1 to be a moving and growing target. While the amount of set-off is likely to be well
2 in excess of \$1.5 million, a final determination will require additional time and the
3 retention of consultants and experts in order to fix an amount to its substantial
4 claims.

5 37. TCI also had no desire to break-up the recovery of funds between set-
6 offs and other sources of repayment based on the tortious activity of J. Westerdal.

7 38. On that basis, on May 26, 2009, TCI released the \$1.5 million held in
8 escrow to NII and notified NII that it would pursue all set-offs and damages in this
9 litigation.

10 39. TCI has, therefore, performed by paying the First Post Closing
11 Payment. All additional payment(s) are subject to all off-set due to Defendants
12 breaches described herein as permitted by sections 6.7 and 6.8 of the Securities
13 Exchange Agreement.

14 **FIRST CLAIM FOR RELIEF**

15 Breach of Contract

16 (Against NII and Shareholders)

17 40. Plaintiffs reallege and incorporate by reference paragraphs 1 though 39
18 above as though fully set forth herein.

19 41. Plaintiffs have complied with and fully performed its obligations,
20 conditions, covenants and promises required pursuant to the Securities Exchange
21 Agreement, or is otherwise excused from said performance based on the breaches
22 alleged herein.

23 42. Shareholders have violated their contractual obligations under the
24 Securities Exchange Agreement by, among other things:

25 a) breaching the representations and warranties in section 3.6 by,
26 among other things:

27 (i) misrepresenting or omitting material information
28 concerning the financial condition of the NIL Businesses;

- 1 (ii) failing to provide a fair and accurate financial condition
- 2 of the NIL Businesses;
- 3 (iii) failing to provide Financial Statements in accordance with
- 4 GAAP;
- 5 b) failing to properly account for and pay pre-acquisition tax
- 6 obligations;
- 7 c) using TCI funds to make payments to employees under the Stock
- 8 Right Cancellation Agreements between NII and such employees;
- 9 d) using TCI funds to pay NII's attorney fees related to the acquisition
- 10 and attorneys fees related to litigation with Stephen Douglas;
- 11 e) breaching the representation and warranty in Section 3.28 of the
- 12 Exchange Agreement that none of the Shareholder Domain Names (as defined in
- 13 the Exchange Agreement) were acquired using any of the assets of NII;
- 14 f) breaching the covenant in Section 5.9 of the Exchange Agreement
- 15 to use commercially reasonable efforts to obtain confidentiality and assignment
- 16 agreements from current and former employees that had not signed such an
- 17 agreement as of the closing date; and
- 18 g) breaching the covenant in Section 5.10 of the Exchange Agreement
- 19 to use commercially reasonable efforts to obtained all required consents from third
- 20 parties.

21 43. As a consequence of Shareholders' breach, Plaintiffs have suffered

22 damage in an amount to be proven at trial.

23 44. Plaintiffs are entitled to damages and/or to offset the remaining Post-

24 Closing Payments as a set-off pursuant to section 6.7 of the Security Exchange

25 Agreement.

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SECOND CLAIM FOR RELIEF

Breach of Contract

(Against J. Westerdal)

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4 45. Plaintiffs reallege and incorporate by reference paragraphs 1 though 44
5 above as though fully set forth herein.

6 46. Plaintiff has complied with and fully performed its obligations,
7 conditions, covenants and promises required pursuant to the Offer Letter, the
8 Noncompetition Agreement and the Information and Invention Agreement with J.
9 Westerdal, has notified J. Westerdal that it is ready, willing and able to perform, or
10 is otherwise excused from said performance based on the breaches alleged herein.

11 47. J. Westerdal has violated and/or breached his obligations under the
12 Offer Letter, the Noncompetition Agreement and the Information and Invention
13 Agreement by, among other things:

- 14 a) founding, developing, owning and operating a competing
15 DotMovie company during his employment with TCI;
- 16 b) raising \$2 to \$5 million in capital for the DotMovie company at the
17 same time J. Westerdal was supposed to be devoting his full business effort and
18 time to the company;
- 19 c) usurping TCI business opportunities by attending conferences on
20 behalf of TCI, but promoting his own business opportunities, including the
21 DotMovie company;
- 22 d) using TCI funds for the benefit of his DotMovie business;
- 23 e) unilaterally raising his salary without authorization; and
- 24 f) submitting expenses under the guise that they were incurred in
25 connection with TCI's business;
- 26 g) disclosing confidential information concerning the NIL Businesses
27 and TCI.

28 48. In the Noncompetition Agreement, J. Westerdal agreed that breach of

1 “the provisions of this Agreement (including but not limited to those set forth in
2 Section 1(b) below) would cause irreparable harm to Company and Thought
3 Convergence, which harm will not be adequately and fully redressed by the
4 payment of damages to Company and Thought Convergence.”

5 49. As a consequence of J. Westerdal’s breaches, Plaintiffs have suffered
6 damages in an amount to be proven at trial.

7 50. As a consequence of J. Westerdal’s breaches, Plaintiffs are also
8 entitled to injunctive relief, enjoining J. Westerdal from wrongfully competing
9 against TCI.

10 **THIRD CLAIM FOR RELIEF**

11 **Fraudulent Inducement**

12 **(Against J. Westerdal)**

13 51. Plaintiffs reallege and incorporate by reference paragraphs 1 through 50
14 above as though fully set forth herein.

15 52. To induce action on the part of Plaintiffs, J. Westerdal repeatedly made
16 express and implied representations to Plaintiffs, and/or omitted informing
17 Plaintiffs of material information regarding the accuracy and viability of the NIL
18 Businesses, including among other things:

19 a) misrepresenting or omitting material information concerning the
20 financial condition of the NIL Businesses;

21 b) failing to properly account for, disclose, and pay pre-acquisition
22 tax obligations;

23 c) failing to disclose that he would use TCI funds to make
24 payments to employees under the Stock Right Cancellation Agreements between
25 NII and such employees;

26 d) failing to disclose the use of TCI funds to pay NII’s attorney
27 fees related to the acquisition and attorneys fees related to litigation with Stephen
28 Douglas;

1 e) failing to disclose that some of the Shareholder Domain Names
2 (as defined in the Exchange Agreement) were acquired using assets of NII; and

3 f) misrepresenting that J. Westerdal had another buyer for the NII
4 Businesses ready, willing and able to acquire the NII Businesses for \$60 million,
5 when in fact no such offer existed.

6 53. J. Westerdal's representations and/or omissions were false and
7 misleading, and J. Westerdal either knew or should have known that Plaintiffs
8 would rely on them.

9 54. Plaintiffs did reasonably rely on J. Westerdal's false and misleading
10 representations and omissions.

11 55. As a direct and proximate result, Plaintiffs have been damaged and
12 will continue to be damaged in an amount to be proven at trial.

13 **FOURTH CLAIM FOR RELIEF**

14 Interference with Contract

15 (Against DotMovie)

16 56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55
17 above as though fully set forth herein.

18 57. Plaintiffs entered into contracts with J. Westerdal, such that J.
19 Westerdal committed to devote his full business effort and time to TCI and the NIL
20 Businesses.

21 58. DotMovie had actual knowledge of the contract between Plaintiffs and
22 J. Westerdal and knew that Plaintiffs expected to obtain the benefits of J.
23 Westerdal's full attention and devotion to TCI and the NIL Businesses.

24 59. In blatant disregard of the contract between Plaintiffs and J. Westerdal,
25 DotMovie interfered with the contracts between them by, among other things,
26 usurping J. Westerdal's time and energy.

27 60. As a direct result of DotMovie's interference with the contracts,
28 Plaintiffs have suffered damages in an amount to be proven at trial.

1 likelihood that this conduct would injure TCI and NIL. Plaintiffs therefore requests
2 an award of exemplary damages in an amount sufficient to punish J. Westerdal for
3 his conduct.

4 **SIXTH CLAIM FOR RELIEF**

5 Breach of the Covenant of Good Faith and Fair Dealing
6 (Against NII and Shareholders)

7 69. Plaintiffs reallege and incorporate by reference paragraphs 1 though 68
8 above as though fully set forth herein.

9 70. California law implies a covenant of good faith and fair dealing in all
10 contracts between parties entered in the State of California.

11 71. As a result of the actions set forth hereinabove, Defendants breached
12 the covenant of good faith and fair dealing implied in the Transaction Documents,
13 and as a result thereof, Plaintiffs are entitled to damages as prayed.

14 **SEVENTH CLAIM FOR RELIEF**

15 Accounting
16 (Against NII and J. Westerdal)

17 72. Plaintiffs reallege and incorporate by reference paragraphs 1 through
18 71 above as though fully set forth herein.

19 73. J. Westerdal covenanted in the Securities Exchange Agreement that he
20 expended \$430,000 in connection with the legitimate business expenses for the
21 Company.

22 74. Plaintiffs are entitled to an Accounting to determine if those
23 expenditures were in fact legitimate business expenses.

24 75. Plaintiffs seek an Order form the Court for such an accounting, access
25 to J. Westerdal's book and records, and the issuance of tax and financial
26 information concerning those expenditures.


PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. Judgment in favor of Plaintiffs as to all causes of action;
2. Compensatory damages, as well as incidental and consequential damages in a sum according to proof, but not less than \$1.5 million;
3. Exemplary damages according to proof at trial,
4. For an injunction, enjoining J. Westerdal from wrongfully competing against TCI or NIL or otherwise breaching is obligations and duties to TCI and NIL;
5. For an Order that an appropriate accounting be made, access be provided to all appropriate books and records of J. Westerdal and J. Westerdal's financial and tax documents be issued;
6. For an award of reasonable attorneys' fees as authorized by section 7.12 of the Securities Exchange Agreement and applicable statutory provisions;
7. For costs of suit herein incurred, and
8. For such other and further relief as the Court deems proper.

Dated: May 27, 2009

KENT B. GOSS
CHRISTOPHER J. CHAUDOIR
ORRICK HERRINGTON & SUTCLIFFE LLP



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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: May 27, 2009

KENT B. GOSS
CHRISTOPHER J. CHAUDOIR
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