

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

CERTUSVIEW TECHNOLOGIES, LLC,

Plaintiff

vs.

USIC, LLC ,
USIC LOCATING SERVICES, LLC and
SAFE SITE, INC.

Defendants.

Case No. 2:14-cv-00373-MSD-DEM

FIRST AMENDED COMPLAINT

Plaintiff CertusView Technologies, LLC (“CertusView”), by and through counsel, hereby seeks damages, injunctive relief, costs and attorneys’ fees against Defendants USIC, LLC f/k/a United States Infrastructure Corporation and USIC Locating Services, LLC (“USICLS”) f/k/a USIC Locating Services, Inc., as well as against Defendant McIntosh Enterprises, Inc. (f/k/a Safe Site, Inc.) (“McIntosh”), for patent infringement in violation of the patent laws of the United States, 35 U.S.C. § 1 *et seq.* (the “Patent Act”), and in contempt of an Order of this Court. CertusView also seeks relief for breach of contract and related claims.

The conduct for which CertusView seeks injunctive relief stems from breach of a Settlement Agreement and Consent Judgment entered between CertusView, on the one hand, and Defendants USIC, LLC and USICLS, on the other, in *CertusView v. United States Infrastructure Corp., et al.*, No. 2:13-cv-00182 (MSD-DEM), D.I. 25 (E.D. Va. Jul. 23, 2013). CertusView also seeks recovery for USIC, LLC’s and USICLS’ past and ongoing infringement of CertusView’s patent rights. Upon information and belief, McIntosh knowingly assisted USIC,

LLC and USICLS in breaching the Settlement Agreement and in violating the Consent Judgment, and is also liable for its own prior infringement of CertusView's patents.

PARTIES

1. Plaintiff CertusView is a Delaware limited liability company organized under the laws of the State of Delaware with its principal place of business located at 3960 RCA Boulevard, Suite 6002, Palm Beach Gardens, Florida 33410.

2. Defendant USIC, LLC is a limited liability company organized under the laws of the State of Delaware with a place of business located at 8167 Mechanicsville Turnpike, Suite H, Mechanicsville, Virginia, 23111.

3. Defendant USICLS is a limited liability company organized under the laws of the State of Indiana with its principal place of business located at 9045 North River Road, Indianapolis, Indiana 46240.

4. Defendant McIntosh is a corporation organized under the laws of the State of Colorado with its principal place of business at 5803 Lockheed Avenue, Loveland, Colorado 80539. Prior to December 2013, McIntosh was known as Safe Site, Inc. Upon information and belief, in November 2013, Safe Site, Inc. executed an Asset Purchase Agreement ("APA") with USICLS which provided for, among other things, the transfer of substantially all the assets of Safe Site, Inc. to USICLS. A copy of what has been purported by McIntosh to be the first several pages of the APA is filed herewith as **Exhibit G**.

JURISDICTION AND VENUE

(Subject Matter Jurisdiction)

5. CertusView's claims arise under a federal statute, the Patent Act. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Plaintiff's claims further arise under a Settlement Agreement ("Settlement Agreement") and Consent Judgment agreed to by CertusView, USIC, LLC, and USICLS and entered by Hon. Judge Mark. S. Davis of the United States District Court for the Eastern District of Virginia on July 23, 2013, over which this Court retained jurisdiction. *See CertusView v. United States Infrastructure Corp., et. al.*, No. 2:13-cv-00182 (MSD-DEM), D.I. 25 (E.D. Va. Jul. 23, 2013) ("Consent Judgment"), attached as **Exhibit A**. Supplemental jurisdiction over the companion contract claims is proper under 28 U.S.C. § 1367.

(Personal Jurisdiction)

7. USIC transacts business in the Commonwealth of Virginia, including in the Eastern District of Virginia. USIC maintains a place of business at 8167 Mechanicsville Turnpike, Suite H, Mechanicsville, Virginia 23111. Both USIC, LLC and USICLS have also appeared and filed an Answer and Counterclaims against CertusView in the present action without contesting jurisdiction.

8. Upon information and belief, McIntosh knowingly assisted the USIC entities in violating an injunction issued by this District Court, and knowingly induced the breach of the accompanying Settlement Agreement. The APA reflects extensive communications and negotiations between Safe Site, Inc. and the USIC entities concerning infringing technology, and it would have been expected and standard practice for Safe Site, Inc. to have discovered or been

informed of the Consent Judgment and the existence of the accompanying Settlement Agreement. Furthermore, CertusView's settlement of patent infringement claims with the USIC entities was well-known in the industry, and the USIC entities have admitted that they informed McIntosh of the settlement. McIntosh deliberately withheld from production the majority of the APA, but it is believed that further investigation will confirm McIntosh's knowledge of the Consent Judgment and Settlement Agreement. Upon information and belief, McIntosh sold infringing technology to the USIC entities with full knowledge that it would be put to use for the benefit of nation-wide operations – including those in the State of Virginia – given the extensive, national scale of the USIC entities' business. Upon information and belief, and based upon McIntosh's own representations, McIntosh also engaged with residents of the State of Virginia via its commercial website prior to the date of the APA. McIntosh is therefore properly called to court in this District.

9. This Court has retained jurisdiction over the enforcement of the Settlement Agreement and Consent Judgment at issue. Accordingly, Defendants are subject to personal jurisdiction in the Eastern District of Virginia.

(Venue)

10. Defendants reside in this judicial district pursuant to 28 U.S.C. §1391(c), and venue in this judicial district is thus proper.

11. Furthermore, venue is proper since the Court has retained jurisdiction over the subject matter of this dispute and the enforcement of the Consent Judgment.

FACTS COMMON TO ALL COUNTS

12. CertusView is an industry leader in the development of technology for the prevention of damage to underground infrastructure. The patents at issue, as set forth in the

paragraphs that follow, relate to devices and methods involving electronic records of underground infrastructure.

13. CertusView is the owner of all right, title, and interest in and to U.S. Patent No. 8,290,204, entitled “Searchable electronic records of underground facility locate marking operations” (the “’204 Patent”). A true and correct copy of the ‘204 Patent is attached as **Exhibit B**.

14. CertusView is the owner of all right, title, and interest in and to U.S. Patent No. 8,543,937, entitled “Methods and apparatus employing a reference grid for generating electronic manifests of underground facility marking operations” (the “’937 Patent”). A true and correct copy of the ’937 Patent is attached as **Exhibit C**.

15. CertusView is the owner of all right, title, and interest in and to U.S. Patent No. 8,630,463 entitled “Searchable electronic records of underground facility locate marking operations” (the “’463 Patent”). A true and correct copy of the ’463 Patent is attached as **Exhibit D**.

16. CertusView is the owner of all right, title, and interest in and to U.S. Patent No. 8,532,341 entitled “Electronically documenting locate operations for underground utilities” (the “’341 Patent”). A true and correct copy of the ‘341 Patent is attached as **Exhibit E**.

17. CertusView is the owner of all right, title, and interest in and to U.S. Patent No. 8,407,001, entitled “Systems and methods for using location data to electronically display dispensing of markers by a marking system or marking tool” (the “’001 Patent”). A true and correct copy of the ‘001 Patent is attached as **Exhibit F**.

CLAIMS FOR RELIEF

COUNT I

BREACH OF SETTLEMENT AGREEMENT BY USIC, LLC and USICLS

18. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

19. CertusView, USIC, LLC, and USICLS entered into a Settlement Agreement, which was a binding contract between the parties, on July 19, 2013 in resolution of a previous patent infringement lawsuit brought by CertusView against USIC, LLC and USICLS for infringement of a number of patents, including the '204 Patent and the '001 Patent.

20. Pursuant to the terms of the Settlement Agreement, CertusView, USIC, LLC, and USICLS agreed to the Consent Judgment. The Consent Judgment was entered by Hon. Judge Mark S. Davis on July 23, 2013 in *CertusView v. United States Infrastructure Corp., et. al.*, No. 2:13-cv-00182 (MSD-DEM), D.I. 25 (E.D. Va. Jul. 23, 2013) ("Consent Judgment"), attached as **Exhibit A**. Under the Settlement Agreement, the USIC entities also represented and warranted that they had ceased use of electronic manifests.

21. According to the terms of the Consent Judgment, USIC, LLC and USICLS are permanently enjoined from infringement of the '204 and '001 Patents by importing, making, using, selling, or offering for sale their "electronic manifests" (or any merely colorable variant thereof), in or into the United States, and from inducing or contributing to others' infringement by performing any of these actions with regard to such electronic manifests during the enforceable terms of the '204 Patent and '001 Patent without CertusView's prior written authorization.

22. On or about November 2013, USICLS entered into the APA with Safe Site, Inc. by which USICLS acquired a significant portion of Safe Site, Inc.'s infringing business

operations. Upon information and belief, USICLS' actions were directed by USIC, LLC, which wholly owns USICLS and acts through USICLS. Indeed, McIntosh has stated that it understood that it was doing business with USIC, LLC when it entered into the APA. USIC, LLC and USICLS are now using Safe Site, Inc.'s legacy technology and business operations to make, use, sell and offer to sell "electronic manifests," also referred to as "Locate Sketches," in a manner that, as described below, infringes the '204 Patent and '001 Patent in violation of the Settlement Agreement and the Consent Judgment. USIC, LLC and USICLS appear to have continued to use the legacy Safe Site, Inc. name and branding for the time being.

23. According to Safe Site, Inc.'s website (which, according to McIntosh, is now owned and operated by USIC), these "Electronic Sketches" that are now used by the USIC entities are "what differentiates Safe Site, Colorado from our competitors." *See* <http://www.safesiteco.com/subsurface-engineering-services/utility-locating/>.

24. CertusView has performed all obligations required under the Settlement Agreement and has not in any way violated the Consent Judgment.

25. Defendants USIC, LLC and USICLS have breached the Settlement Agreement and violated the Consent Judgment by engaging in infringement of the '204 Patent and the '001 Patent, and by making, using, selling and offering to sell technology that amounts to no more than a colorable variation of the electronic manifests identified in the Settlement Agreement. Furthermore, pursuant to Section 14 of the Settlement Agreement, the USIC entities agreed not to challenge the validity of the '204 and '001 Patents, or to assist any other party to challenge their validity, in any proceeding concerning electronic manifests or colorable variants thereof. In violation of that provision, the USIC entities filed an Answer and Counterclaims in this action challenging the validity of the '204 and '001 Patents, and seeking a Declaratory Judgment of

Invalidity of the '204 and '001 Patents. The USIC entities are also working in concert with McIntosh to assist McIntosh in challenging the validity of the '204 and '001 Patents.

26. CertusView has been harmed by the foregoing breaches.

27. As a direct and proximate result of the foregoing breaches, CertusView has suffered, and will continue to suffer, damages which cannot yet be ascertained fully.

28. Defendants should be enjoined from further violations of the Settlement Agreement, including from any further making, using, selling, or offering for sale of "electronic manifests" (also referred to as "Locate Sketches"), or any colorable variants thereof, and from continuing to challenge the validity of the '204 and '001 Patents. CertusView should be awarded damages for Defendants' breaches.

COUNT II
**BREACH OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING BY USIC, LLC AND USICLS**

29. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

30. Pursuant to Delaware law, which governs the Settlement Agreement, an implied covenant of good faith and fair dealing attaches to every contract.

31. The express terms of the Settlement Agreement make entry of the Consent Judgment a condition precedent to the Settlement Agreement. Furthermore, in consideration for the settlement, the USIC entities represented and warranted in the Settlement Agreement that they had ceased all use of electronic manifests. Clearly implied within the Settlement Agreement is a covenant not to continue to use the electronic manifests in the future, and to abide by the terms of the Consent Judgment.

32. On or about November 2013, USICLS entered into the APA with Safe Site, Inc. by which USICLS acquired a significant portion of Safe Site, Inc.'s infringing business operations. Upon information and belief, USICLS' actions were directed by USIC, LLC, which wholly owns USICLS and acts through USICLS. Indeed, McIntosh has stated that it understood that it was doing business with USIC, LLC when it entered into the APA. USIC, LLC and USICLS are now using Safe Site, Inc.'s legacy technology and business operations to make, use, sell and offer to sell "electronic manifests," also referred to as "Locate Sketches," in a manner that, as described below, infringes the '204 Patent and '001 Patent in violation of the Settlement Agreement and the Consent Judgment. USIC, LLC and USICLS appear to have continued to use the legacy Safe Site, Inc. name and branding for the time being.

33. According to Safe Site, Inc.'s website (which, according to McIntosh, is now owned and operated by USIC), these "Electronic Sketches" that are now used by the USIC entities are "what differentiates Safe Site, Colorado from our competitors." *See* <http://www.safesiteco.com/subsurface-engineering-services/utility-locating/>.

34. CertusView has performed all obligations required under the Settlement Agreement and has not in any way violated the Consent Judgment.

35. Defendants USIC, LLC and USICLS have breached the covenant of good faith and fair dealing implied in the Settlement Agreement and violated the Consent Judgment by engaging in infringement of the '204 Patent and the '001 Patent, and by making, using, selling and offering to sell technology that amounts to no more than a colorable variation of the electronic manifests identified in the Settlement Agreement and Consent Judgment.

36. As a direct and proximate result of the foregoing breaches, CertusView has suffered, and will continue to suffer, damages arising out of Defendants' ongoing infringement which cannot yet be ascertained fully.

COUNT III
BREACH OF THE CONSENT JUDGMENT AGREEMENT BY USIC, LLC AND USICLS

37. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

38. The Consent Judgment, which was separately executed by the USIC entities and CertusView, constitutes a valid contract among the parties.

39. According to the terms of the Consent Judgment, USIC, LLC and USICLS were prohibited from infringement of the '204 and '001 Patents by importing, making, using, selling, or offering for sale their "electronic manifests" (or any merely colorable variant thereof), in or into the United States, and from inducing or contributing to others' infringement by performing any of these actions with regard to such electronic manifests during the enforceable terms of the '204 Patent and '001 Patent without CertusView's prior written authorization.

40. On or about November 2013, USICLS entered into the APA with Safe Site, Inc. by which USICLS acquired a significant portion of Safe Site, Inc.'s infringing business operations. Upon information and belief, USICLS' actions were directed by USIC, LLC, which wholly owns USICLS and acts through USICLS. Indeed, McIntosh has stated that it understood that it was doing business with USIC, LLC when it entered into the APA. USIC, LLC and USICLS are now using Safe Site, Inc.'s legacy technology and business operations to make, use, sell and offer to sell "electronic manifests," also referred to as "Locate Sketches," in a manner that, as described below, infringes the '204 Patent and '001 Patent in violation of the Settlement

Agreement and the Consent Judgment. USIC, LLC and USICLS appear to have continued to use the legacy Safe Site, Inc. name and branding for the time being.

41. According to Safe Site, Inc.'s website (which, according to McIntosh, is now owned and operated by USIC), these "Electronic Sketches" that are now used by the USIC entities are "what differentiates Safe Site, Colorado from our competitors." *See* <http://www.safesiteco.com/subsurface-engineering-services/utility-locating/>.

42. Defendants USIC, LLC and USICLS have breached the contract embodied in the Consent Judgment by engaging in infringement of the '204 Patent and the '001 Patent, and by making, using, selling and offering to sell technology that amounts to no more than a colorable variation of the electronic manifests identified in the Consent Judgment.

43. As a direct and proximate result of the foregoing breaches, CertusView has suffered, and will continue to suffer, damages arising out of Defendants' ongoing infringement which cannot yet be ascertained fully.

COUNT IV
CONTEMPT BY USIC, LLC, USICLS, AND McINTOSH

44. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

45. According to the terms of the Consent Judgment, USIC, LLC and USICLS – and all those acting in concert therewith – were permanently enjoined from infringement of the '204 and '001 Patents by importing, making, using, selling, or offering for sale their "electronic manifests" (or any merely colorable variant thereof), in or into the United States, and from inducing or contributing to others' infringement by performing any of these actions with regard to such electronic manifests during the enforceable terms of the '204 Patent and '001 Patent without CertusView's prior written authorization.

46. Upon information and belief, as discussed above, McIntosh (then Safe Site, Inc.) had actual notice of the Consent Judgment.

47. On or about November 2013, USICLS entered into the APA with Safe Site, Inc. by which USICLS acquired a significant portion of Safe Site, Inc.'s infringing business operations. Upon information and belief, USICLS' actions were directed by USIC, LLC, which wholly owns USICLS and acts through USICLS. Indeed, McIntosh has stated that it understood that it was doing business with USIC, LLC when it entered into the APA. USIC, LLC and USICLS are now using Safe Site, Inc.'s legacy technology and business operations to make, use, sell and offer to sell "electronic manifests," also referred to as "Locate Sketches," in a manner that, as described below, infringes the '204 Patent and '001 Patent in violation of the Settlement Agreement and the Consent Judgment. USIC, LLC and USICLS appear to have continued to use the legacy Safe Site, Inc. name and branding for the time being.

48. According to Safe Site, Inc.'s website (which, according to McIntosh, is now owned and operated by USIC), these "Electronic Sketches" that are now used by the USIC entities are "what differentiates Safe Site, Colorado from our competitors." *See* <http://www.safesiteco.com/subsurface-engineering-services/utility-locating/>.

49. Defendants USIC, LLC, USICLS and McIntosh are in contempt of the Consent Judgment by engaging in infringement of the '204 Patent and the '001 Patent, and by making, using, selling and offering to sell technology that amounts to no more than a colorable variation of the electronic manifests identified in the Consent Judgment.

50. As a direct and proximate result of the foregoing breaches, CertusView has suffered, and will continue to suffer, damages arising out of Defendants' ongoing contempt which cannot yet be ascertained fully.

COUNT V
**INTENTIONAL INTERFERENCE WITH CONTRACT AND
INDUCED BREACH BY McINTOSH**

51. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

52. Upon information and belief, McIntosh was aware, prior to the execution of the APA, that USIC, LLC and USICLS had entered into the Settlement Agreement and Consent Judgment with CertusView, and was further aware that USIC was prohibited from making, using, selling, or offering for sale “electronic manifests” or colorable variants thereof. The APA reflects extensive communications and negotiations between McIntosh (then known as Safe Site, Inc.) and the USIC entities concerning infringing technology, and it would have been expected and standard practice for Safe Site, Inc. to have discovered or been informed of the Consent Judgment and the existence of the accompanying Settlement Agreement. Furthermore, CertusView’s settlement of patent infringement claims with the USIC entities was well-known in the industry, and the USIC entities have admitted that they informed McIntosh of the settlement. McIntosh deliberately withheld from production the majority of the APA, but it is believed that further investigation will confirm McIntosh’s knowledge of the Consent Judgment and Settlement Agreement. By agreeing to sell infringing assets to the USIC entities, McIntosh intentionally induced the USIC entities’ breach of the Settlement Agreement and the Consent Judgment as set forth above. Furthermore, McIntosh is litigating this case in conjunction with the USIC entities, and is actively assisting the USIC entities to challenge the validity of the ‘204 and ‘001 Patents in violation of Section 14 of the Settlement Agreement. For this additional reason, McIntosh is liable for intentional interference with contract and induced breach.

53. CertusView has been injured as a result of the foregoing acts of McIntosh, and should be awarded damages sufficient to compensate for the harm.

COUNT VI
PATENT INFRINGEMENT ('204 PATENT) BY USIC, LLC and USICLS

54. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

55. Subsequent to May 17, 2013, USIC, LLC and USICLS have infringed, and continue to infringe, directly and/or indirectly, literally and/or under the doctrine of equivalents, the '204 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '204 Patent and by actively and intentionally inducing others to infringe one or more claims of the '204 Patent. Specifically, USIC, LLC and USICLS have, and continue to, directly infringe the '204 Patent by making, using, offering to sell, and/or selling "electronic manifests" (also referred to as "Locate Sketches") and colorable variants thereof. USIC, LLC and USICLS are indirectly infringing by inducing, with prior knowledge of the '204 Patent, contractors and customers to infringe. USIC, LLC and USICLS knew of the '204 and '001 Patents from past litigation with CertusView, and were alerted again to their infringement of the '204 Patent in conjunction with the initiation of the present action. To the extent that USIC, LLC and USICLS direct or control the actions of such contractors and customers, USIC, LLC and USICLS are directly infringing the '204 Patent.

56. CertusView has sustained damages as a result of the foregoing acts of infringement of the '204 Patent, and should be compensated..

57. USIC, LLC's and USICLS' infringement of the '204 patent is and has been willful.

58. CertusView has no adequate remedy at law for USIC, LLC's and USICLS' continued infringement of the '204 Patent, such that CertusView is entitled to injunctive relief from and against USIC, LLC's and USICLS' further acts of infringement.

COUNT VII
PATENT INFRINGEMENT ('204 PATENT) BY McINTOSH

59. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

60. McIntosh has infringed, literally and/or under the doctrine of equivalents, the '204 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '204 Patent and by actively and/or directing others to infringe one or more claims of the '204 Patent. Specifically, when McIntosh was known as Safe Site, Inc., it made, used, offered to sell, and/or sold "electronic manifests" (also referred to as "Locate Sketches") that infringe upon the '204 Patent, and directed contractors and customers to do the same. Furthermore, McIntosh sold infringing assets to the USIC entities. To the extent such conduct was done with knowledge of the '204 Patent, the infringement was willful, and McIntosh is also liable for induced infringement.

61. CertusView has sustained damages as a result of the foregoing acts of infringement of the '204 Patent, and should be compensated.

62. To the extent that either or both of the USIC entities should be held liable for McIntosh's past infringement, then CertusView will proceed against those entities on this Claim.

COUNT VIII
PATENT INFRINGEMENT ('937 PATENT) BY USIC, LLC AND USICLS

63. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

64. USIC, LLC and USICLS have infringed, and continue to infringe, directly and/or indirectly, literally and/or under the doctrine of equivalents, the '937 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '937 Patent and by actively and intentionally inducing others to infringe one or more claims of the '937 Patent. Specifically, USIC, LLC and USICLS have, and continue to, directly infringe the '937 Patent by making, using, offering to sell, and/or selling "electronic manifests" (also referred to as "Locate Sketches") and colorable variants thereof. USIC, LLC and USICLS are indirectly infringing by inducing, with prior knowledge of the '937 Patent, contractors and customers to infringe. USIC, LLC and USICLS knew of the '204 and '001 Patents from past litigation with CertusView, and were further specifically alerted to their infringement of the '937 Patent in conjunction with the initiation of the present action. To the extent that USIC, LLC and USICLS direct or control the actions of such contractors and customers, USIC, LLC and USICLS are directly infringing the '937 Patent.

65. CertusView has sustained damages as a result of the foregoing acts of infringement of the '937 Patent, and should be compensated..

66. USIC, LLC's and USICLS' infringement of the '937 patent is and has been willful.

67. CertusView has no adequate remedy at law for USIC, LLC's and USICLS' continued infringement of the '937 Patent, such that CertusView is entitled to injunctive relief from and against USIC, LLC's and USICLS' further acts of infringement.

COUNT IX
PATENT INFRINGEMENT ('937 PATENT) BY McINTOSH

68. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

69. McIntosh has infringed, literally and/or under the doctrine of equivalents, the '937 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '937 Patent and by actively and/or directing others to infringe one or more claims of the '937 Patent. Specifically, when McIntosh was known as Safe Site, Inc., it made, used, offered to sell, and/or sold "electronic manifests" (also referred to as "Locate Sketches") that infringe upon the '937 Patent, and directed contractors and customers to do the same. Furthermore, McIntosh sold infringing assets to the USIC entities. To the extent such conduct was done with knowledge of the '937 Patent, the infringement was willful, and McIntosh is also liable for induced infringement.

70. CertusView has sustained damages as a result of the foregoing acts of infringement of the '937 Patent, and should be compensated.

71. To the extent that either or both of the USIC entities should be held liable for McIntosh's past infringement, then CertusView will proceed against those entities on this Claim.

COUNT X
PATENT INFRINGEMENT ('463 PATENT) BY USIC, LLC AND USICLS

72. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

73. USIC, LLC and USICLS have infringed, and continue to infringe, directly and/or indirectly, literally and/or under the doctrine of equivalents, the '463 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '463 Patent and by actively and intentionally inducing others to infringe one or more claims of the '463 Patent. Specifically, USIC, LLC and USICLS have, and continue to, directly infringe the '463 Patent by making, using, offering to sell, and/or selling "electronic manifests" (also referred to as "Locate Sketches") and colorable variants thereof. USIC, LLC and USICLS are indirectly

infringing by inducing, with prior knowledge of the '463 Patent, contractors and customers to infringe. USIC, LLC and USICLS knew of the '204 and '001 Patents from past litigation with CertusView, and were further specifically alerted to their infringement of the '463 Patent in conjunction with the initiation of the present action. To the extent that USIC, LLC and USICLS direct or control the actions of such contractors and customers, USIC, LLC and USICLS are directly infringing the '463 Patent.

74. CertusView has sustained damages as a result of the foregoing acts of infringement of the '463 Patent, and should be compensated..

75. USIC, LLC's and USICLS' infringement of the '463 patent is and has been willful.

76. CertusView has no adequate remedy at law for USIC, LLC's and USICLS' continued infringement of the '463 Patent, such that CertusView is entitled to injunctive relief from and against USIC, LLC's and USICLS' further acts of infringement.

COUNT XI
PATENT INFRINGEMENT ('341 PATENT) BY USIC, LLC and USICLS

77. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

78. USIC, LLC and USICLS have infringed, and continue to infringe, directly and/or indirectly, literally and/or under the doctrine of equivalents, the '341 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '341 Patent and by actively and intentionally inducing others to infringe one or more claims of the '341 Patent. Specifically, USIC, LLC and USICLS have, and continue to, directly infringe the '341 Patent by making, using, offering to sell, and/or selling "electronic manifests" (also referred to as "Locate Sketches") and colorable variants thereof. USIC, LLC and USICLS are indirectly

infringing by inducing, with prior knowledge of the '341 Patent, contractors and customers to infringe. USIC, LLC and USICLS knew of the '204 and '001 Patents from past litigation with CertusView, and were further specifically alerted to their infringement of the '341 Patent in conjunction with the initiation of the present action. To the extent that USIC, LLC and USICLS direct or control the actions of such contractors and customers, USIC, LLC and USICLS are directly infringing the '341 Patent.

79. CertusView has sustained damages as a result of the foregoing acts of infringement of the '341 Patent, and should be compensated..

80. USIC, LLC's and USICLS' infringement of the '341 patent is and has been willful.

81. CertusView has no adequate remedy at law for USIC, LLC's and USICLS' continued infringement of the '341 Patent, such that CertusView is entitled to injunctive relief from and against USIC, LLC's and USICLS' further acts of infringement.

COUNT XII
PATENT INFRINGEMENT ('341 PATENT) BY McINTOSH

82. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

83. McIntosh has infringed, literally and/or under the doctrine of equivalents, the '341 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '341 Patent and by actively and/or directing others to infringe one or more claims of the '341 Patent. Specifically, when McIntosh was known as Safe Site, Inc., it made, used, offered to sell, and/or sold "electronic manifests" (also referred to as "Locate Sketches") that infringe upon the '341 Patent, and directed contractors and customers to do the same.

Furthermore, McIntosh sold infringing assets to the USIC entities. To the extent such conduct

was done with knowledge of the '341 Patent, the infringement was willful, and McIntosh is also liable for induced infringement.

84. CertusView has sustained damages as a result of the foregoing acts of infringement of the '341 Patent, and should be compensated.

85. To the extent that either or both of the USIC entities should be held liable for McIntosh's past infringement, then CertusView will proceed against those entities on this Claim.

COUNT XIII
PATENT INFRINGEMENT ('001 PATENT) BY USIC, LLC AND USICLS

86. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

87. Subsequent to May 17, 2013, USIC, LLC and USICLS have infringed, and continue to infringe, directly and/or indirectly, literally and/or under the doctrine of equivalents, the '001 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '001 Patent and by actively and intentionally inducing others to infringe one or more claims of the '001 Patent. Specifically, USIC, LLC and USICLS have, and continue to, directly infringe the '001 Patent by making, using, offering to sell, and/or selling "electronic manifests" (also referred to as "Locate Sketches") and colorable variants thereof. USIC, LLC and USICLS are indirectly infringing by inducing, with prior knowledge of the '001 Patent, contractors and customers to infringe. USIC, LLC and USICLS knew of the '204 and '001 Patents from past litigation with CertusView, and were alerted again to their infringement of the '001 Patent in conjunction with the initiation of the present action. To the extent that USIC, LLC and USICLS direct or control the actions of such contractors and customers, USIC, LLC and USICLS are directly infringing the '001 Patent.

88. CertusView has sustained damages as a result of the foregoing acts of infringement of the '001 Patent, and should be compensated.

89. USIC, LLC's and USICLS' infringement of the '001 patent is and has been willful.

90. CertusView has no adequate remedy at law for USIC, LLC's and USICLS' continued infringement of the '001 Patent, such that CertusView is entitled to injunctive relief from and against USIC, LLC's and USICLS' further acts of infringement.

COUNT XIV
PATENT INFRINGEMENT ('001 PATENT) BY McINTOSH

91. CertusView incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

92. McIntosh has infringed, literally and/or under the doctrine of equivalents, the '001 Patent at least by making, using, offering to sell, and/or selling devices and/or services covered by the claims of the '001 Patent and by actively and/or directing others to infringe one or more claims of the '001 Patent. Specifically, when McIntosh was known as Safe Site, Inc., it made, used, offered to sell, and/or sold "electronic manifests" (also referred to as "Locate Sketches") that infringe upon the '001 Patent, and directed contractors and customers to do the same. Furthermore, McIntosh sold infringing assets to the USIC entities. To the extent such conduct was done with knowledge of the '001 Patent, the infringement was willful, and McIntosh is also liable for induced infringement.

93. CertusView has sustained damages as a result of the foregoing acts of infringement of the '001 Patent, and should be compensated.

94. To the extent that either or both of the USIC entities should be held liable for McIntosh's past infringement, then CertusView will proceed against those entities on this Claim.

DEMAND FOR JURY TRIAL

CertusView hereby demands a trial by jury of all issues so triable in this action.

PRAYER FOR RELIEF

WHEREFORE, CertusView respectfully requests that the Court award CertusView the following relief:

A. injunctive relief from and against USIC, LLC and USICLS and each of their respective affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for them, on their behalf, or in concert with them, from further infringement of the '204 Patent, the '937 Patent, the '463 Patent, and '341 Patent, and the '001 Patent, as alleged herein;

B. injunctive relief enforcing the Settlement Agreement and the accompanying Consent Judgment in *CertusView v. United States Infrastructure Corp., et. al.*, No. 2:13-cv-00182 (MSD-DEM), D.I. 25 (E.D. Va. Jul. 23, 2013);

C. compensatory damages, costs, prejudgment interest, and post-judgment interest for infringement of the '204 Patent, the '937 Patent, the '463 Patent, the '341 Patent, and the '001 Patent;

D. a judgment that USIC, LLC's and USICLS' infringement has been willful;

E. an award of attorneys' fees incurred in prosecuting this action, on the basis that this is an exceptional case;

F. compensatory damages, costs, prejudgment interest, and post-judgment interest due to USIC, LLC's and USICLS' breaches of the Settlement Agreement and Consent Judgment;

G. compensatory damages, costs, prejudgment interest, and post-judgment interest due to McIntosh's intentional interference with the Settlement Agreement and Consent

Judgment;

H. sanctions for contempt against the Defendants; and

I. such other and further relief as this Court may deem just and proper.

Dated: September 5, 2014

Respectfully submitted,

By: /s/ Lori A. Rubin

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2014, I filed with the Clerk of Court the foregoing FIRST AMENDED COMPLAINT using the CM/ECF system, thereby serving the foregoing upon each Defendant.

/s/ Lori A. Rubin
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