

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

and

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL
LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON
CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM
SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON,
BRUCE LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEAUX and JOHN
DOES #1-10**

Defendants

and

CANACCORD GENUITY CORP

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

**THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK CUBE
and INVOP LTD. d/b/a PSY GROUP**

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Defendants to the Counterclaim

AMENDED NOTICE OF MOTION

(Production from Non-Parties)

The Defendants (Plaintiffs by Counterclaim), West Face Capital Inc. (“**West Face**”) and Gregory Boland (“**Boland**”), will make a motion to a Judge presiding over the Commercial List on a date to be determined, at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

- (a) An Order requiring Google Inc. and/or Google LLC (collectively referred to as “Google”) to produce the data and information as set out in the subparagraphs below (the “Google Information”) for each of the following email addresses:

sambeth381@gmail.com;

walkeralex420@gmail.com;

outlawbdsny@gmail.com;

navsma20@gmail.com;

francescogianelli10@gmail.com;

jordanbr9921@gmail.com;

wolfpackcorruption@gmail.com;

davidjkelsey@gmail.com;

david@kelseymedia.com; and

bethajohnson85@gmail.com (collectively the “Google Email Addresses”):

- (i) All documents that may lead to the identification of the person or persons involved with establishing and/or using the email address, including but not limited to the legal name, physical address, internet protocol (“IP”) address, physical address associated with the IP address, telephone number, Apple ID (if any), 2-step authentication phone number, backup and/or secondary email addresses, social security/social insurance number or equivalent, and any other registration information for the actual user of the email address;
- (ii) All IP address access log information within Google’s possession, power or control in respect of the complete Google account associated with the email account, including any connections from the user(s) to the email account or other Google services since creation of the account to the present day, the date, time and time zone for each connection or login to the service by the subscriber, the date, time and time zone for each disconnection or logout for each connection/session, the originating IP address for each and every connection/session to the account since the creation of the account, the user agent details for each access, including

browser and version, operating system and version, and any other logged information for each connection/session, and time zone used for the log information requested, and also including information within Google's possession on any other Google users (including other Gmail accounts) that accessed any Google services using the same originating user characteristics (including user email addresses, recovery or alternate email addresses, telephone numbers, SMS information or originating IP addresses);

- (iii) All information in connection with all emails, chats, or other electronic communications sent from or received by the account, except for content information that Google is prohibited by law from disclosing under the United States *Stored Communications Act* (or related statutes), but including all email headers from such emails;
 - (iv) All data, information and content relating to Google AdWords activity;
 - (v) Any other data retained by Google relating to online activity by the users of the address, including Google search histories; and
 - (vi) An order requiring Google to immediately and continually preserve, and prevent the deletion or destruction of, the Google Information until such time as it has been produced to the satisfaction of West Face and Boland;
- (b) An order requiring Google to produce all information associated with Google AdWords account 452-842-9784;

- (c) An Order requiring PayPal, Inc. and PayPal Canada Co. (collectively referred to as “PayPal”) to produce the data and information as set out in the sub-paragraphs below (the “PayPal Information”) for any PayPal account associated with each of the following email addresses:

walkeralex420@gmail.com;

francescogianelli10@gmail.com;

jordanbr9921@gmail.com;

outlawbdsny@gmail.com;

wolfpackcorruption@gmail.com;

davidjkelsey@gmail.com;

david@kelseymedia.com; and

ivanazurak@mail.com (the “PayPal Accounts”);

- (i) All documents that may lead to the identification of the person or persons involved with establishing and/or using each PayPal Account, if any, including but not limited to the legal name, physical address, internet protocol (“IP”) address, physical address associated with the IP address, Apple ID (if any), telephone number, bank account information, information associated with any other form of payment, social security/social insurance number or equivalent, and any other registration information for the actual user of the PayPal Account;
- (ii) All IP address access log information regarding the PayPal Accounts, including any connections from the users to the account(s) since creation

of the account to present day, the date, time and time zone for each connection or login to the service by the subscriber, the date, time and time zone for each disconnection or logoff for each connection/session, the originating IP address for each and every connection/session to each account since its creation, the user agent details for each access, including browser and version, operating system and version, and any other logged information for each connection/session, and time zone used for the log information requested;

- (iii) All communications between the PayPal Accounts and/or their users, on the one hand, and PayPal, on the other hand, including over the phone, by email, or any other means of correspondence;
- (iv) A list of all transactions conducted by the PayPal Accounts including, but not limited to, the transaction date, amount of transaction, other person or persons involved in each transaction, and payment method including but not limited to credit card and/or bank account information;
- (v) All documents that may lead to information about security checks for PayPal Accounts;
- (vi) All recorded conversations or communications from or to the PayPal Accounts, including by phone, email, chat, or any other form of communication;

- (vii) All documents that may lead to information about all person or persons who made payments to or received payments from the accounts associated with each PayPal Account, including, but not limited to, documents showing each user's legal name, physical address, IP address, physical address associated with that IP address, email address, Apple ID, telephone number, a list of all bank accounts tied to the account, a list of all credit cards tied to the account, information associated with any other form of payment, social security/social insurance number and any other registration information; and
 - (viii) An order requiring PayPal to immediately and continually preserve, and prevent the deletion or destruction of, the PayPal Information until such time as it has been produced to the satisfaction of West Face and Boland;
- (d) An Order requiring Canadian Web Hosting Inc. ("CWH") to produce all non-privileged information within its possession, power or control that may lead to the identification of any person or persons contracting with CWH to use a Virtual Private Server ("VPS") using the IP Address 23.111.69.177 during the period June 2017 to December 2017 (the "CWH User"), as set out in the subparagraphs below (the "CWH Information"):
 - (i) All information that may lead to the identification of the CWH User, including but not limited to account registration information including the email address or addresses, legal name, physical address,, telephone number, 2-step authentication phone number (if any), backup and/or

secondary email addresses, social security/social insurance number or equivalent, all payment and billing information for the CWH User, and any other registration information for the CWH User;

(ii) all IP address access log information within CWH's possession, power or control in respect of any connections from the CWH User to CWH since creation of the account to the present day, the date, time and time zone for each connection or login to the service by the CWH User, the date, time and time zone for each disconnection or logout for each connection/session, the originating IP address for each and every connection/session to the account since the creation of the account, the user agent details for each access, including browser and version, operating system and version, and any other logged information for each connection/session, and time zone used for the log information requested; and

(iii) An order requiring CWH to immediately and continually preserve and prevent the deletion or destruction of the CWH Information until such time as it has been produced to the satisfaction of West Face and Boland; and

(e) An Order that the disclosure and production to be made pursuant to this Order be made within twenty (20) days of this Order;

(f) An Order for the issue of letters of request to the judicial authorities of the state of California in the United States of America asking for their assistance in ordering

Google to preserve the Google information and to produce it to West Face and Boland, and (if necessary) for their assistance in ordering PayPal to preserve the PayPal Information and to produce it to West Face and Boland;

- (g) An order declaring that the Google Information and the PayPal Information are necessary for the just determination of the Counterclaim and should be produced to West Face and Boland;
- (h) To the extent necessary, an Order that the word “document” used herein is used in the broadest possible sense, and includes, without limiting the generality of the foregoing, paper and electronic documents and data or data compilations, in any format, and stored in any medium whatsoever;
- (i) An Order that all electronic documents to be produced pursuant to this Order be produced in native format preserving all metadata;
- (j) To the extent necessary, an Order validating service of this Amended Notice of Motion on each of Google, PayPal and CWH;
- (k) To the extent necessary, an Order abridging the time for service and filing of this Amended Notice of Motion; and
- (l) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (a) West Face is a Toronto-based investment management firm, led by its CEO, Boland;
- (b) West Face's reputation among investors for excellence and integrity is essential to its continued success in the investment community;
- (c) the Plaintiffs in the within Action issued a Statement of Claim against several Defendants, including West Face and Boland;
- (d) the Plaintiffs by Counterclaim commenced the within Counterclaim against The Catalyst Capital Group Inc. ("**Catalyst**"), Callidus Capital Corporation ("**Callidus**"), Newton Glassman, Gabriel De Alba, James Riley, Virginia Jamieson, Emmanuel Rosen, B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd. d/b/a Black Cube and Invop Ltd. d/b/a Psy Group Inc. (the "**Counterclaim Defendants**");
- (e) in their Amended Fresh as Amended Statement of Defence and Counterclaim, the Plaintiffs by Counterclaim allege that the Counterclaim Defendants have, among other things, defamed West Face and Boland and participated in a conspiracy to harm West Face and Boland;
- (f) the Plaintiffs by Counterclaim allege that the Counterclaim Defendants repeatedly, publicly and falsely mounted a campaign of defamation in which they wrongfully accused West Face of conspiring with others, as part of a "wolfpack"

of conspirators, to manipulate illegally the share prices of Callidus and other companies related to Callidus and to Catalyst;

- (g) the person or persons responsible for the Internet Postings have engaged in deliberate and sophisticated practices to mask or obscure their identities, and thereby leave West Face with no other means of accessing information as to their identities other than through a court order;
- (h) West Face and Boland have reasonable grounds to believe that certain material and records relating to the persons who are perpetrating the conspiracy and defamation against West Face and Boland, including but not limited to the Counterclaim Defendants, are within the possession of the Google, PayPal and CWH (collectively the “Respondents”), who are not parties to the Action or the Counterclaim;
- (i) West Face and Boland believe that the material and records in the Respondents’ possession could assist West Face and Boland by:
 - (i) providing factual details that would assist West Face in proving its Counterclaim;
 - (ii) identifying other individuals and persons, not yet known to West Face or Boland, who were also involved in the conspiracy and defamation; and
 - (iii) helping West Face to locate other individuals and persons involved in perpetrating the conspiracy and defamation, for the purpose of serving them with the Counterclaim;

Why West Face Needs the Information Sought in This Motion

- (j) the Plaintiffs by Counterclaim allege that on or about September 19, 2017, a series of internet postings about West Face and Boland began to appear in a variety of locations on the internet, as specifically set out at paragraphs 129 through 171 of the Amended Fresh as Amended Statement of Defence and Counterclaim (the “**Internet Postings**”);
- (k) the Plaintiffs by Counterclaim allege that the statements made in the Internet Postings are false and defamatory to West Face and Boland because they contain language that would tend to diminish the reputation of each of West Face and Boland, particularly in the investment community;
- (l) West Face has limited or no information about the true identities, whereabouts or contact information of the persons responsible for making the Internet Postings, but has reason to believe that the Counterclaim Defendants are ultimately responsible;
- (m) West Face believes that the Internet Postings were posted at the direction of the Counterclaim Defendants by persons whose true identities are presently unknown to West Face, as part of a campaign to damage West Face’s reputation in the investment community and, in particular, as part of the Wolfpack Defamation;
- (n) Through its investigative efforts, and as set out in more detail below, West Face has determined that the email addresses associated with the Google Information, the PayPal Information and the CWH Information were connected with the

Internet Postings, or were used to make the Internet Postings, or were in other ways associated with the Internet Postings;

- (o) West Face seeks the Google Information, the PayPal Information and the CWH Information in order to assist in identifying the individuals responsible for the Internet Postings, to enable it to prove the involvement of the Counterclaim Defendants, to identify any additional wrongdoers involved in the above-noted conduct, and to obtain evidence that it would otherwise be unable to obtain to prove its Counterclaim;

The Requested Disclosure is Material to the Counterclaim and Proceeding Without it Would Be Unfair to West Face

- (p) West Face has reason to believe that the Google Information, the PayPal Information, and the CWH Information (collectively, the “**Requested Disclosure**”) are relevant to the Counterclaim, as follows;

Relevance of the Google Information

- (q) The email domain “gmail.com” is an email host owned and operated by Google;
- (r) West Face believes that information related to all email addresses on gmail.com, including the Google Information sought in this motion, is within the possession, power and control of Google and therefore may be produced by Google;
- (s) The websites www.westface.net was established on October 24, 2017 under the pseudonym “Jordan Brown” and was used to publish statements defamatory of West Face and Boland.

- (t) The pseudonym “Jordan Brown” appears to have been associated with the email address jordanbr9921@gmail.com, which is one of the Google Email Addresses for which information is sought in this motion. There is therefore a *prima facie* connection between that email address and the defamatory statements made about West Face and Boland;
- (u) As well, the email address jordanbr9921@gmail.com was used to establish a domain under the name gregboland.net, although no website associated with that domain name has yet become active;
- (v) West Face has reason to believe that the other email addresses associated with the Google Information were used to post the Internet Postings, and were also used by the posters of the Internet Postings and/or the operators of websites used to post the Internet Postings to communicate with one another as part of their conspiracy to defame West Face and Boland. In particular:
 - (i) sambeth381@gmail.com: Also known as “Samantha Beth”, she was the primary actor, at least in respect of the initial Internet Postings. She also communicated, along with walkeralex420@gmail.com, with Amin Razvi (“Razvi”), an agent in India, and instructed him to post defamatory statements about West Face and Boland;
 - (ii) walkeralex420@gmail.com: This email address was used by an individual using the name “Alex Walker,” who worked with “Samantha Beth” and introduced her to Razvi for the purpose of facilitating the posting of the Internet Postings;

- (iii) outlawbdsny@gmail.com: “Walker” also used this email address in connection with a website in New York State that opposed the “Boycott, Divestment, Sanctions” movement, a pro-Palestinian political group;
- (iv) navsma20@gmail.com: This email address was used to lease at least two IP addresses that were used by the user of the sambeth381@gmail.com account;
- (v) francescogianelli10@gmail.com: This email address was used by an individual who emailed “Alex Walker,” and the user of this address was also indirectly involved in making payments to Razvi for posting defamatory statements. “Gianelli” also instructed other agents, including an individual living in Croatia named Maja Bogovic, to make payments in connection with the Internet Postings and was also involved in making payments to David Kelsey, whose involvement is set out below;
- (vi) wolfpackcorruption@gmail.com: This email address was used to create a Google AdWords account with the ID number 452-842-9784, which was used to draw internet users to a website or websites containing the Internet Postings. This email was also used by a YouTube user who created a YouTube video that, among other things, instructed viewers of the video to visit the website wofpackcorruption.com, on which certain of the Internet Postings were posted;
- (vii) davidjkelsey@gmail.com and david@kelseymedia.com: West Face has obtained information showing that these accounts are one and the same.

The user of these accounts emailed with “Alex Walker” numerous times, including during September 2017, and also received payments from Maja Bogovic, on the instructions of “Francesco Gianelli”; and

- (viii) bethajohnson85@gmail.com: This email address was used to arrange for the printing of 7,000 newspapers opposing the BDS movement (as referred to above) that were distributed at Columbia University in New York City. This email address was also used to set up a website that was apparently connected with the newspaper. “Francesco Gianelli” instructed Maja Bogovic to make a payment to the company that was hired to print those newspapers;

- (w) All of the email addresses other than david@kelseymedia.com are Gmail addresses. West Face has reason to believe that the email address david@kelseymedia.com is hosted on a Google platform. As such, the requested information for that email address is available to Google and is properly part of the Google Information;

- (x) Apart from certain information that has already been disclosed to West Face through a subpoena process in the United States, the Google Information is not available to West Face and Boland in any other way;

Relevance of the PayPal Information

- (y) With respect to the PayPal Accounts, West Face has determined that several of the posters responsible for the Internet Postings were paid through the PayPal accounts associated with the PayPal Email Addresses. In particular:
- (i) sambeth381@gmail.com: Amin Razvi was paid through PayPal by “Samantha Beth” for postings critical of West Face and Boland, including certain of the Internet Postings;
 - (ii) jordanbr9921@gmail.com; the user of this address communicated with other users whose information is being sought on this motion;
 - (iii) walkeralex420@gmail.com and outlawbdsny@gmail.com: Amin Razvi was introduced to “Samantha Beth” for the purpose of doing work for her by the user of the Gmail address walkeralex420@gmail.com, who also used the Gmail address outlawbdsny@gmail.com;
 - (iv) ivanazurak@mail.com: Razvi received payment through PayPal for one of the Internet Postings from a PayPal user using this email address;
 - (v) francescogianelli10@gmail.com: The user of this email address made several payments related to the Internet Postings to Maja Bogovic using PayPal, and also instructed Bogovic to make payments to Razvi using PayPal;

- (vi) davidjkelsey@gmail.com and david@kelseymedia.com: “Francesco Gianelli” also instructed Maja Bogovic to make a payment through PayPal to an entity called DK Media using the address davidjkelsey@gmail.com. As stated above, that email account and david@kelseymedia.com are one and the same;
- (z) The PayPal information is not available to West Face and Boland in any other way;

Relevance of the CWH Information

- (aa) A Skype user, walkeralex420, who is associated with at least one of the Google Email Addresses, walkeralex420@gmail.com, facilitated the posting of certain of the Internet Postings and also conducted text chats with others in connection with the Internet Postings, through the IP address 23.111.69.177. That IP address is also the primary address associated with the Gmail account walkeralex420@gmail.com. West Face has traced that IP address to the Canadian web-hosting company CWH. CWH therefore has information likely to be relevant to identifying the user of the Gmail address walkeralex420@gmail.com;
- (bb) The CWH Information is not available to West Face and Boland in any other way;

Preservation of the Information

- (cc) Google has confirmed that the Google Information has been preserved for all of the Google Email Addresses except wolfpackcorruption@gmail.com, which was purged from Google’s systems around December 31, 2017. However, West Face

still seeks whatever remaining information Google may still possess concerning that account;

- (dd) PayPal has not yet confirmed whether the PayPal Information has been preserved;
- (ee) CWH has not confirmed that the CWH Information has been preserved and has confirmed that it requires a court order before it will produce the CWH Information;
- (ff) West Face has reason to believe that insofar as the Google Information, the PayPal Information and the CWH Information relate or may relate to the false and defamatory Internet Postings about West Face and Boland, and/or to the Internet Postings themselves, the Requested Disclosure is required:
 - (i) to show that the Counterclaim Defendants are behind a conspiracy and defamatory conduct, including the Internet Postings; and/or
 - (ii) to identify the perpetrators who published the Internet Postings, and other parties that ought to be named as defendants to the Counterclaim, or that may be material witnesses to the matters pleaded in the Counterclaim;
- (gg) To West Face's knowledge, Google, PayPal and CWH have no direct connection to the Internet Postings except as set out above;
- (hh) West Face has to date been unable to identify the person or persons responsible for the Internet Postings and believes that in order to do so, it requires the Requested Disclosure;

- (ii) The person or persons responsible for the Internet Postings have engaged in deliberate and sophisticated practices to mask or obscure their identities and leave West Face with no other means of accessing information as to their identities other than through a court order.
- (jj) the Requested Disclosure would be relevant to material issues in this proceeding;
- (kk) it would be unfair to require West Face to proceed without having this evidence available to it;
- (ll) there would be no unfairness to the Respondents to oblige them to disclose the information requested;
- (mm) the interests of justice favour the disclosure sought by West Face;
- (nn) the documents and information sought (as described herein), whether in the Respondents' possession, power or control at its domestic or foreign locations, are relevant to the parties' dispute, proportionate to the needs of the case, not unduly intrusive or unduly burdensome, and are subject to disclosure;
- (oo) West Face is ready, able and willing to reimburse the Respondents for any reasonable costs associated with complying with the Orders requested;
- (pp) Rules 1.04, 16, 17, 30.10, 34.07, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

- (qq) this Honourable Court's inherent and equitable jurisdiction to grant the relief sought, including pursuant to section 96 of the *Courts of Justice Act*, R.S.O. 1990, c. C 43; and
- (rr) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The affidavit of Philip Panet sworn June 4, 2018;
- (b) The affidavit of Maja Bogovic sworn April 25, 2018;
- (c) The affidavit of Amin Razvi sworn May 24, 2018; and
- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated: June 4, 2018

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THE CATALYST CAPITAL GROUP INC., et al.
Plaintiffs

WEST FACE CAPITAL INC., et al.
Plaintiffs by Counterclaim

BRUCE LANGSTAFF
Plaintiff by Counterclaim

- and - WEST FACE CAPITAL INC., et al.
Defendants

- and - THE CATALYST CAPITAL GROUP INC., et al.
Defendants to the Counterclaim

- and - THE CATALYST CAPITAL GROUP INC., et al.
Defendants to the Counterclaim

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

AMENDED NOTICE OF MOTION

**CHERNOS FLAHERTY SVONKIN
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