

**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 MOLYNEUX 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

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**NOTICE OF MOTION
(Production from Non-Party)**

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 established by the Commercial List office, at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR

(a) an Order requiring Starbucks Corporation d/b/a Starbucks Coffee Canada ("**Starbucks**):

(i) to produce a copy of the video recording taken on the morning of November 1, 2017 between 6:40 a.m. and 7:45 a.m. at Starbucks' retail location at 4 King Street West, near Yonge Street, in Toronto, Ontario, bearing Starbucks internal reference number 4300_INC-1748271 (the "**Starbucks Recording**");

- (ii) to immediately and continually preserve and prevent the deletion or destruction of the Starbucks Recording until such time when it has been produced to the satisfaction of West Face and Boland;
- (b) an Order requiring Cactus Restaurants Ltd. and Cactus Café Coal Harbour Ltd. (together, "**Cactus**"):
 - (i) to produce a copy of all video recordings taken on the evening of November 1, 2017 at Cactus' restaurant "Cactus Club Cafe" located in Vancouver, British Columbia (the "**Cactus Recordings**");
 - (ii) to immediately and continually preserve and prevent the deletion or destruction of the Cactus Recordings until such time when it has been produced to the satisfaction of West Face and Boland;
- (c) an Order requiring Hawk Host Inc. ("**Hawk Host**"):
 - (i) to produce all non-privileged information and documents in its possession, control or power relating to the website "www.wolfpackcorruption.com" and any related accounts, including email accounts, associated with the "wolfpackcorruption.com" domain name, including the following (the "**Hawk Host Records**"):
 - (A) all information and documents that may assist in identifying the person or persons involved with establishing, updating, paying for and/or using the account associated with the website "www.wolfpackcorruption.com" and related email

addresses (including but not limited to “info@wolfpackcorruption.com”) hosted by Hawk Host, including but not limited to the legal names, physical addresses, internet protocol (“IP”) addresses, physical addresses associated with those IP addresses, telephone numbers, payment verification details, email verification details, profile details, telephone or SMS verification details, all “Know Your Client” information related to the account including all customer relationship management (“CRM”) data for the person or persons associated with the account, and any other registration or authentication information for the account or accounts associated with the website;

- (B) a complete cPanel export of the account; all IP address access log information regarding the account associated with the “www.wolfpackcorruption.com” website and related email addresses (including but not limited to “info@wolfpackcorruption.com”), including all logs of customer buying and administrative activity associated with the account, any connections from the users to the account 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;

- (C) a complete export of inbound emails, outbound emails, contacts added, and a full back-up or copy of the entire email server for the domain “wolfpackcorruption.com” and any associated add-on or parked domains, including any email server records at Hawk Host associated with the account (including but not limited to the server record for the email address “info@wolfpackcorruption.com”);
- (D) all communications or correspondence of or with the users of the account associated with the “www.wolfpackcorruption.com” website, including emails, chats, text or SMS messages, social networks, websites, blogs or any other paper or electronic means;
- (E) any and all records related to the publication and dissemination of any materials and communications that appear or appeared on the “www.wolfpackcorruption.com” website, including (i) a copy of any material published on the

website and (ii) any records or logs relating to information about the website's visitors, including the number of visitors and number of unique visitors to the website, the dates when those visitors accessed the website, the number of times the material published on the website was read or shared from the website and the IP addresses and any identifying information related to the first 50 visitors to the website;

(ii) to immediately and continually preserve and prevent the deletion or destruction of:

(A) the Hawk Host Records, until such time when they have been produced to the satisfaction of West Face and Boland; and

(B) any information and documents relating to the website "www.wolfpackcorruption.com" and related email addresses (including but not limited to "info@wolfpackcorruption.com") that are in Hawk Host's possession, control or power and over which privilege is claimed;

(iii) to list and describe any Hawk Host Records that were formerly in Hawk Host's possession, power or control but are no longer in Hawk Host's possession, power or control, whether or not privilege is claimed for them, together with a statement of when and how Hawk Host lost possession or control of or power over them and their present location;

- (iv) with respect to any other website hosted by Hawk Host that is or was established, updated, paid for and/or used by either (i) the same person or persons associated with the “www.wolfpackcorruption.com” website and/or related email addresses (including but not limited to “info@wolfpackcorruption.com”), and/or (ii) other persons using the same IP addresses as the person or persons associated with the “www.wolfpackcorruption.com” website and/or related email addresses (including but not limited to “info@wolfpackcorruption.com”) (the “**Other Relevant Hawk Host Websites and Emails**”), the same items requested herein at subparagraphs (c)(i) to (c)(iii) but as those requests relate to the Other Relevant Hawk Host Websites and Emails;

- (d) an Order requiring Endurance International Group, Inc. (“**Endurance**”) and iPage Hosting, LLC (together with Endurance, “**iPage**”):
 - (i) to produce all non-privileged information and documents in its possession, control or power relating to the website “www.westface.net” and any related accounts, including email accounts, associated with the “westface.net” domain name, except for any such information or documents that iPage may be prohibited from disclosing pursuant to the *Stored Communications Act*, 18 U.S.C. Chapter 121 § 2702 (to the extent the *Stored*

Communications Act applies to iPage), but including the following (the “**iPage Records**”):

- (A) all information and documents that may assist in identifying the person or persons involved with establishing, updating, paying for and/or using the account associated with the website “www.westface.net” and related email addresses, hosted by iPage, including but not limited to the legal names, physical addresses, internet protocol (“IP”) addresses, physical addresses associated with those IP addresses, telephone numbers, payment verification details, email verification details, profile details, telephone or SMS verification details, all “Know Your Client” information related to the account including all CRM data for the person or persons associated with the account, and any other registration or authentication information for the account or accounts associated with the website;

- (B) a complete cPanel export of the account; all IP address access log information regarding the account associated with the “www.westface.net” website and related email addresses, including all logs of customer buying and administrative activity associated with the account, any connections from the users to the account 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;

- (C) a complete export of inbound emails, outbound emails, contacts added, and a full back-up or copy of the entire email server for the domain "westface.net" and any associated add-on or parked domains, including any email server records at iPage associated with the account;
- (D) all communications or correspondence of or with the users of the account associated with the "www.westface.net" website, including emails, chats, text or SMS messages, social networks, websites, blogs or any other paper or electronic means;
- (E) any and all records related to the publication and dissemination of any materials and communications that appear or appeared on the "www.westface.net" website, including (i) a copy of any material published on the website

and (ii) any records or logs relating to information about the website's visitors, including the number of visitors and number of unique visitors to the website, the dates when those visitors accessed the website, the number of times the material published on the website was read or shared from the website and the IP addresses and any identifying information related to the first 50 visitors to the website;

- (ii) to immediately and continually preserve and prevent the deletion or destruction of:
 - (A) the iPage Records, until such time when they have been produced to the satisfaction of West Face and Boland; and
 - (B) any information and documents relating to the website "www.westface.net" and related email addresses that are in iPage's possession, control or power and over which privilege is claimed;
- (iii) to list and describe any iPage Records that were formerly in iPage's possession, power or control but are no longer in iPage's possession, power or control, whether or not privilege is claimed for them, together with a statement of when and how iPage lost possession or control of or power over them and their present location;

- (iv) with respect to any other website hosted by iPage that is or was established, updated, paid for and/or used by either (i) the same person or persons associated with the “www.westface.net” website and/or related email addresses, and/or (ii) other persons using the same IP addresses as the person or persons associated with the “www.wesface.net” website and/or related email addresses, (the **“Other Relevant iPage Websites and Emails”**), the same items requested herein at subparagraphs (d)(i) to (d)(iii) but as those requests relate to the Other Relevant iPage Websites and Emails;
- (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 Arizona in the United States of America asking for their assistance in ordering Endurance to preserve the iPage Records and to produce them to West Face and Boland;
- (g) an Order for the issue of letters of request to the judicial authorities of the State of Massachusetts in the United States of America asking for their assistance in ordering iPage to preserve the iPage Records and to produce them to West Face and Boland;
- (h) an Order declaring that the iPage Records are necessary for the just determination of the Counterclaim and that they should be produced to West Face and Boland;

- (i) 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;
- (j) an Order that all electronic documents to be produced pursuant to this Order be produced in native format preserving all metadata;
- (k) to the extent necessary, an Order validating service of this Notice of Motion on each of Starbucks, Cactus, Hawk Host and iPage (collectively, the “**Respondents**”); and
- (l) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Background

- (m) West Face is a Toronto-based investment management firm, led by its CEO, Boland;
- (n) West Face’s reputation among investors for excellence and integrity is essential to its continued success in the investment community;
- (o) the Plaintiffs in the within Action issued a Statement of Claim against several Defendants, including West Face and Boland;

- (p) 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 Psy Group Inc. (the "**Counterclaim Defendants**");
- (q) in their 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;
- (r) the Plaintiffs by Counterclaim specifically allege that the Counterclaim Defendants retained or caused to be retained Black Cube, a private investigative firm staffed with former Mossad and Israeli Defence Force intelligence operatives, to conduct a series of "stings" on current and former West Face employees, and against Justice Newbould, in an attempt to elicit unlawfully confidential information of West Face, to attack the honour, integrity and conduct of Justice Newbould, in finding for West Face in litigation with Catalyst, and to intimidate or discredit West Face and other perceived enemies of the Counterclaim Defendants (the "**Black Cube Campaign**");
- (s) the Plaintiffs by Counterclaim also 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 (the **"Wolfpack Defamation"**);

- (t) West Face and Boland have reasonable grounds to believe that certain material and records relating to the persons who are perpetrating the Black Cube Campaign and the Wolfpack Defamation against West Face and Boland, including but not limited to the Counterclaim Defendants, are within the possession of the Respondents, who are not parties to the Action or the Counterclaim;
- (u) 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 Black Cube Campaign and the Wolfpack Defamation; and
 - (iii) helping West Face to locate other individuals and persons involved in perpetrating the Black Cube Campaign and the Wolfpack Defamation for the purpose of serving them with the Counterclaim;

Evidence Relevant to the Black Cube Campaign

- (v) the Plaintiffs by Counterclaim have alleged that Black Cube operatives invited current and former employees of West Face for meetings under false pretenses in order to entice them to disclose privileged and confidential information of West Face;
- (w) through its investigative efforts, West Face has reason to believe that Black Cube operatives met with two of its former employees:
 - (i) during the morning of November 1, 2017 between 6:45 a.m. and 7:30 a.m. at a Starbucks location in Toronto, Ontario; and
 - (ii) during the evening of November 1, 2017 at a Cactus restaurant location, “Cactus Club Cafe”, in Vancouver, British Columbia;
- (x) through its investigative efforts, West Face determined that each of Starbucks and Cactus has a practice of making video recordings at its respective locations;
- (y) West Face has confirmed with Starbucks and Cactus that they took video recordings of their respective locations at the relevant times – the Starbucks Recording and Cactus Recording, respectively;
- (z) Starbucks has confirmed that the Starbucks Recording has been preserved and Cactus has confirmed that the Cactus Recording has been preserved;

- (aa) each of Starbucks and Cactus has confirmed that it requires a court Order to produce the preserved video recordings;
- (bb) West Face has reason to believe that the Starbucks Recording and the Cactus Recording capture video images of the meetings that took place between Black Cube operatives and West Face's former employees in furtherance of the Black Cube Campaign and that the video recordings will help to identify the perpetrators of the Black Cube Campaign;
- (cc) Starbucks is the only person in possession of the Starbucks Recording and Cactus is the only person in possession of the Cactus Recording;
- (dd) each of Starbucks and Cactus has confirmed that it does not have a position with respect to the within motion and that it would not appear at the hearing of the motion;

Evidence Relevant to the Wolfpack Defamation

- (ee) 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 (the "**Internet Postings**") and, in particular:
 - (i) on or about October 30, 2017, an Internet Posting entitled "The Wolfpack's Corruption" was published on the website "www.wolfpackcorruption.com";

- (ii) on or about November 6, 2017, an Internet Posting entitled “A Company Desperate to Maintain a False Image” was published on the website “www.westface.net”;
- (ff) the Plaintiffs by Counterclaim allege that the statements made in the Internet Postings and on the websites “www.wolfpackcorruption.com” and “www.westface.net” (the “**Websites**”) 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;
- (gg) West Face subsequently discovered the Twitter account “@WolfPackCorrupt” (the “**Twitter Account**”) that published links to the website “www.wolfpackcorruption.com” and other statements that 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;
- (hh) West Face has limited information about the true identities, whereabouts or contact information of the persons responsible for establishing the Websites and the Twitter Account, but has reason to believe that the Counterclaim Defendants are ultimately responsible;
- (ii) West Face believes that the Websites and the Twitter Account were established 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;

- (jj) through its investigative efforts, West Face determined the IP addresses of the Websites and determined that the Websites "www.wolfpackcorruption.com" and "www.westface.net" are hosted by Hawk Host and iPage, respectively;
- (kk) West Face has reason to believe that an email address appearing on the Twitter Account, "info@wolfpackcorruption.com", is hosted by Hawk Host because it shares the same domain name as the website hosted by Hawk Host, "www.wolfpackcorruption.com";
- (ll) West Face has reason to believe that Hawk Host and iPage have knowledge, information and documents relating to the Websites, including information relating to the identities, whereabouts or contact information of the person and/or persons responsible for the accounts related to the Websites, as sought in paragraph 1;
- (mm) West Face seeks such information and documents (i.e. the Hawk Host Records and the iPage Records) in order to properly identify the person and/or persons directly responsible for the Websites 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;

- (nn) Hawk Host has confirmed that the Hawk Host Records have been preserved and iPage has confirmed that the iPage Records have been preserved;
- (oo) Hawk Host has confirmed that it requires a Court Order to produce the Hawk Host Records;
- (pp) iPage has confirmed that it requires a subpoena or Order issued by a court in the United States of America to produce the iPage Records;
- (qq) iPage does business with Canadian clients and advertises in Canada;
- (rr) Hawk Host and iPage are the only practicable source of the information and documents sought by West Face;
- (ss) Hawk Host has confirmed that it does not have a position with respect to the within motion and that it would not appear at the hearing of the motion;

The Requested Disclosure is Material to the Counterclaim and Proceeding without it would be Unfair to West Face

- (tt) West Face has reason to believe that the Starbucks Recording, the Cactus Recording, the Hawk Host Records and the iPage Records (collectively, the “**Requested Disclosure**”) are relevant to the Counterclaim;
- (uu) West Face has reason to believe that the Starbucks Recording and the Cactus Recording relate to meetings that took place between West Face’s former employees and Black Cube operatives and that this evidence may be helpful:

- (i) in showing that the Counterclaim Defendants are behind a conspiracy, including the Black Cube Campaign; and/or
 - (ii) in identifying the Black Cube operatives or 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;
- (vv) West Face has reason to believe that the Hawk Host Records and the iPage Records relate to the Websites that were used to publish false and defamatory Internet Postings about West Face and Boland and that this evidence may be helpful:
 - (i) in showing that the Counterclaim Defendants are behind a conspiracy and defamatory conduct, including the Wolfpack Defamation; and/or
 - (ii) in identifying the perpetrators who set up the Websites and published defamatory actions 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;
- (ww) such Requested Disclosure would be relevant to material issues in this proceeding;
- (xx) it would be unfair to require West Face to proceed without having this evidence available to it;

- (yy) there would be no unfairness to the Respondents to oblige them to disclose the information requested;
- (zz) the interests of justice favour the disclosure sought by West Face;
- (aaa) West Face is ready, able and willing to reimburse the Respondents for any reasonable costs associated with complying with the Orders requested;
- (bbb) Rules 1.04, 16, 17, 30.10, 34.07, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (ccc) 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
- (ddd) 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:

- (eee) the affidavit of Philip Panet, sworn June 4, 2017;
- (fff) the affidavit of Victoria Kikhard, sworn November 16, 2017;
- (ggg) the affidavit of Yujia Zhu, sworn November 21, 2017;
- (hhh) the affidavit of Peter Brimm, sworn December 21, 2017; and

- (iii) such further and other evidence as counsel may advise and this Honourable Court may permit.

June 5, 2018

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Defendant to the Counterclaim

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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

Court File No. CV-17-587463-00CL

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