

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Friday....., THE *6th*
DAY OF *July*....., 2018



THE HONOURABLE)
MR. JUSTICE HAINEY)

BETWEEN:

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

AND BETWEEN:

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

ORDER
(Production from Non-Party)

THIS MOTION, made by the Defendants (Plaintiffs by Counterclaim), West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**", and together with West Face, the "**Moving Parties**") against the Non-Party Respondents (as defined in paragraph 8, below) for the relief sought herein was heard on this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Moving Parties, dated June 6, 2018, filed;

AND UPON HEARING the submissions of the lawyers for the Moving Parties and the Plaintiff, no one appearing for the Non-Party Respondents or for any other person on the service list, although duly served;

1. THIS COURT ORDERS that the non-party respondent Starbucks Corporation d/b/a Starbucks Coffee Canada ("**Starbucks**"):

- (a) within twenty (20) days, 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**");
 - (b) 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;
2. THIS COURT ORDERS that the non-party respondents Cactus Restaurants Ltd. and Cactus Café Coal Harbour Ltd. (together, the "**Cactus Respondents**"):
 - (a) within twenty (20) days, produce a copy of the video recording taken on the evening of November 1, 2017 at the Cactus Café Coal Harbour Ltd. restaurant located at 1085 Canada Place, Vancouver, British Columbia (the "**Cactus Recording**");
 - (b) immediately and continually preserve and prevent the deletion or destruction of the Cactus Recording until such time when it has been produced to the satisfaction of West Face and Boland;
3. THIS COURT ORDERS that the non-party respondent Hawk Host Inc. ("**Hawk Host**"):
 - (a) within twenty (20) days, 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**”):

- (i) 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;

- (ii) 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;

- (iii) 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");
- (iv) 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;
- (v) 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;

- (b) immediately and continually preserve and prevent the deletion or destruction of:
 - (i) the Hawk Host Records, until such time when they have been produced to the satisfaction of West Face and Boland; and
 - (ii) 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;
- (c) within twenty (20) days, 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;

- (d) 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 within the same timeframes as set out at subparagraphs 3(a) to (c) of this Order, but as those items relate to the Other Relevant Hawk Host Websites and Emails;

4. THIS COURT ORDERS that the non-party respondents Endurance International Group, Inc. (“**Endurance**”) and iPage Hosting, LLC (“**iPage**” and, together with Endurance, the “**iPage Respondents**”):

- (a) within twenty (20) days, produce all non-privileged information and documents in their 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 the iPage Respondents may be prohibited from disclosing pursuant to 18 U.S.C. § 2701, *et seq.* (the “**Stored Communications Act**”) (to the extent the *Stored Communications Act*

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

- (i) 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 the iPage Respondents (or either one of them), including but not limited to the legal names, physical addresses, 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;
- (ii) a complete cPanel export of the account and 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;

- (iii) 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 in the power, possession or control of the iPage Respondents (or either one of them) that are associated with the account;
- (iv) 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;
- (v) 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;

- (b) immediately and continually preserve and prevent the deletion or destruction of:
 - (i) the iPage Records, until such time when they have been produced to the satisfaction of West Face and Boland; and
 - (ii) any information and documents relating to the website "www.westface.net" and related email addresses that are in the possession, control or power of the iPage Respondents (or either one of them) and over which privilege is claimed;
- (c) within twenty (20) days, list and describe any iPage Records that were formerly in the possession, power or control of the iPage Respondents (or either one of them) but are no longer in the possession, power or control of the iPage Respondents (or either one of them), whether or not privilege is claimed for them, together with a statement of when and how the iPage Respondents (or either one of them) lost possession or control of or power over them and their present location;
- (d) with respect to any other website hosted by the iPage Respondents (or either one of them) 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.westface.net” website and/or related email addresses, (the “**Other Relevant iPage Websites and Emails**”), the same items within the same timeframes as set out at subparagraphs 4(a) to (c) of this Order, but as those items relate to the Other Relevant iPage Websites and Emails;

5. THIS COURT DECLARES that the Starbucks Recording, Cactus Recording, Hawk Host Records and iPage Records are necessary for the just determination of the Counterclaim and that they should be produced to West Face and Boland;

6. THIS COURT ORDERS that the Registrar prepare and issue a letter of request in the form attached hereto as Schedule “A” addressed to the judicial authorities of the State of Arizona in the United States of America, asking for their assistance in ordering Endurance and iPage to preserve the iPage Records and to produce them to West Face and Boland;

7. THIS COURT ORDERS that the Registrar prepare and issue a letter of request in the form attached hereto as Schedule “B” addressed to the judicial authorities of the State of Massachusetts in the United States of America, asking for their assistance in ordering Endurance and iPage to preserve the iPage Records and to produce them to West Face and Boland;

8. THIS COURT ORDERS that each of Starbucks, the Cactus Respondents, Hawk Host and the iPage Respondents (collectively, the “**Non-Party Respondents**”) produce any electronic documents, to the extent such documents are ordered to be produced pursuant to this Order, in native format, preserving all metadata;

9. THIS COURT ORDERS that this Order is without prejudice to the right of any party to move before this Court for access to the fruits of the production ordered herein.

10. THIS COURT ORDERS that the word “document” used herein be interpreted in the broadest possible sense to include, 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;

11. THIS COURT ORDERS that the Moving Parties shall reimburse the Non-Party Respondents for reasonable costs to preserve and produce the foregoing documents;

12. THIS COURT ORDERS that there shall be no costs of this Motion.


(Signature of Judge)

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 06 2018

PER / PAR:



SCHEDULE "A"
to Order

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

AND BETWEEN:

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

**LETTER OF REQUEST
(LETTER ROGATORY REQUESTING INTERNATIONAL JUDICIAL ASSISTANCE
OBTAINING EVIDENCE FOR A CIVIL MATTER)**

TO THE JUDICIAL AUTHORITIES OF:

THE STATE OF ARIZONA, UNITED STATES OF AMERICA

**THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
SANDRA DAY O'CONNOR U.S. COURTHOUSE
401 W. WASHINGTON ST., SUITE 130, SPC 1
PHOENIX, AZ 85003-2118**

A PROCEEDING IS PENDING IN THIS COURT at the City of Toronto, in the Province of Ontario, Canada, between, among other parties, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") (together, Defendants in the Action and Plaintiffs by Counterclaim) and, among other parties, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**") (together, Plaintiffs in the Action and Defendants by Counterclaim). On June 6, 2018, West Face Capital Inc. and Gregory Boland (together, the "**Moving Parties**") commenced a motion for production of evidence that is relevant to the Action/Counterclaim and that is in the possession, control

or power of Endurance International Group, Inc. ("**Endurance**") and its affiliate, iPage Hosting, LLC (together, the "**Endurance Respondents**"), non-party respondents to the motion.

The Plaintiffs (Defendants by Counterclaim) have alleged claims of, *inter alia*, defamation, injurious falsehood, intentional interference with economic relations, civil conspiracy and unjust enrichment against, among other Defendants, West Face and Boland, seeking damages of \$450,000,000 and punitive and/or aggravated damages of \$5,000,000.

West Face and Boland have commenced a Counterclaim against, among other Defendants by Counterclaim, Catalyst and Callidus, seeking damages of \$500,000,000 for, *inter alia*, defamation, conspiracy, breach of confidence, inducing breach of confidence, inducing breach of contract, inducing breach of fiduciary duty and the tort of unlawful means and punitive damages in the amount of \$50,000,000.

The Counterclaim commenced by West Face and Boland alleges that the Defendants by Counterclaim have posted defamatory content on the website "westface.net". West Face and Boland commenced a motion for production and preservation of relevant evidence from the Endurance Respondents, non-parties to the Action/Counterclaim, after they discovered that Endurance's affiliate hosts the website "westface.net". West Face and Boland seek all evidence in the possession, control or power of Endurance related to the website "westface.net".

The names and addresses of the parties to the Action/Counterclaim, and their representatives, along with the names and addresses of the non-party respondents to the

within motion, and their representatives (as applicable) are attached hereto as **Schedule "1"**.

IT HAS BEEN SHOWN TO THIS COURT that it is necessary for the purpose of justice, proportional to the needs of the Action/Counterclaim and not unduly intrusive or unduly burdensome that all evidence potentially relevant to the Action/Counterclaim that is in the possession, control or power of the Endurance, an entity located at 1500 N Priest Drive, Suite 200, Tempe, Arizona 85281 in the United States of America, be immediately preserved and produced to the Moving Parties.

YOU ARE REQUESTED, in furtherance of justice, to cause Endurance, by the means ordinarily used in your jurisdiction, to immediately take steps to preserve and produce to the Moving Parties all evidence relevant to the proceeding that is in the possession, control or power of Endurance.

IN PARTICULAR, YOU ARE REQUESTED, in furtherance of justice, to cause Endurance, by the means ordinarily used in your jurisdiction, to preserve and produce the following documents, attached hereto, which documents have been shown to this Court to be relevant to the Action/Counterclaim and which preservation and production has been so ordered by this Court:

1. All documents relating to the website www.westface.net hosted by Endurance (or its affiliate).
2. All documents concerning the person or persons involved with establishing, updating, paying for or using the account associated with the website "www.westface.net"

and all documents that may assist with identifying such persons, including, but not limited to, all email addresses, legal names, physical addresses, 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, all customer relationship management ("CRM") data, and any other registration or authentication information for the account or accounts associated with the website www.westface.net.

3. Please produce a complete cPanel export of the account associated with the website "www.westface.net."

4. All IP address access log information regarding the account associated with the "www.westface.net" website and all IP address access information regarding the email addresses associated with that website, 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.

5. All 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 associated with the account.

6. All communications with users of the account associated with the "www.westface.net" website, including, but not limited to emails, chats, text or SMS messages, social networks, websites, and blogs.

7. All documents related to the publication and dissemination of any information that currently appears or has appeared on the "www.westface.net" website, including (i) a copy of all 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.

8. With respect to any other website hosted by Endurance (or its affiliate) 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.westface.net" website and/or related email addresses (the **"Other Relevant Endurance Websites and Emails"**), please produce all documents responsive to Requests 1 to 7 above as they relate to the Other Relevant Endurance Websites and Emails.

YOU ARE REQUESTED, in furtherance of justice, to return the executed request to the lawyers in the United States for West Face:

Steven E. Sexton
Sidley Austin LLP
One South Dearborn St.
Chicago, IL 60603
ssexton@sidley.com
(312) 853-2179

AND WHEN YOU REQUEST IT, the courts of Ontario are ready and willing to do the same for you in a similar case.

THIS LETTER OF REQUEST is signed and sealed by order of the Court made on

_____.

Date _____

Issued by _____

Local Registrar
Superior Court of Justice
Address of court office: 330 University Avenue, 7th Floor
Toronto ON M5G 1R7

**Schedule “1”
to Letter of Request**

SCHEDULE "1"

LIST OF MOVING PARTIES, NON-PARTY RESPONDENTS AND PARTIES

LAWYERS FOR THE MOVING PARTIES

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Lawyers for the Moving Parties
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West Face Capital Inc. and Gregory Boland

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US Lawyers for the Moving Party,
(Defendant / Plaintiff by Counterclaim),
West Face Capital Inc.

NON-PARTY RESPONDENTS

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Clarityspring Inc. and Nathan Anderson

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Defendant

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Lawyers for the Third Party,
Canaccord Genuity Corp.

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Cube

INVOP LTD.

Company number 51-517203-9
Via Adv. Hayut Grinberg
7 Menahem Begin St., (12 floor)
Ramat Gan, 5268102

Defendant to the Counterclaim

THE CATALYST CAPITAL GROUP INC. et al. WEST FACE CAPITAL INC. et al. -and- CANACCORD GENUITY CORP.
al. Plaintiffs Defendants Third Party
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs by Counterclaim Defendants to the Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

LETTER OF REQUEST

**(LETTER ROGATORY REQUESTING INTERNATIONAL JUDICIAL
ASSISTANCE OBTAINING EVIDENCE FOR A CIVIL MATTER)**

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Lawyers for the Defendants (Plaintiffs by Counterclaim),
West Face Capital Inc. and Gregory Boland

**SCHEDULE “B”
to Order**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

AND BETWEEN:

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

**LETTER OF REQUEST
(LETTER ROGATORY REQUESTING INTERNATIONAL JUDICIAL ASSISTANCE
OBTAINING EVIDENCE FOR A CIVIL MATTER)**

TO THE JUDICIAL AUTHORITIES OF:

THE STATE OF MASSACHUSETTS, UNITED STATES OF AMERICA

**THE UNITED STATES DISTRICT FOR THE DISTRICT OF MASSACHUSETTS
1 COURTHOUSE WAY
BOSTON, MASSACHUSETTS 0221**

A PROCEEDING IS PENDING IN THIS COURT at the City of Toronto, in the Province of Ontario, Canada, between, among other parties, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") (together, Defendants in the Action and Plaintiffs by Counterclaim) and, among other parties, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**") (together, Plaintiffs in the Action and Defendants by Counterclaim). On June 6, 2018, West Face Capital Inc. and Gregory Boland (together, the "**Moving Parties**") commenced a motion for production of evidence that is relevant to the Action/Counterclaim and that is in the possession, control or power of Endurance International Group, Inc. ("**Endurance**") and its affiliate, iPage

Hosting, LLC ("iPage", and together with Endurance, the "Endurance Respondents"), non-party respondents to the motion.

The Plaintiffs (Defendants by Counterclaim) have alleged claims of, *inter alia*, defamation, injurious falsehood, intentional interference with economic relations, civil conspiracy and unjust enrichment against, among other Defendants, West Face and Boland, seeking damages of \$450,000,000 and punitive and/or aggravated damages of \$5,000,000.

West Face and Boland have commenced a Counterclaim against, among other Defendants by Counterclaim, Catalyst and Callidus, seeking damages of \$500,000,000 for, *inter alia*, defamation, conspiracy, breach of confidence, inducing breach of confidence, inducing breach of contract, inducing breach of fiduciary duty and the tort of unlawful means and punitive damages in the amount of \$50,000,000.

The Counterclaim commenced by West Face and Boland alleges that the Defendants by Counterclaim have posted defamatory content on the website "westface.net". West Face and Boland commenced a motion for production and preservation of relevant evidence from the Endurance Respondents, non-parties to the Action/Counterclaim, after they discovered that iPage hosts the website "westface.net". West Face and Boland seek all evidence in the possession, control or power of the Endurance Respondents related to the website "westface.net".

The names and addresses of the parties to the Action/Counterclaim, and their representatives, along with the names and addresses of the non-party respondents to the

within motion, and their representatives (as applicable) are attached hereto as **Schedule "1"**.

IT HAS BEEN SHOWN TO THIS COURT that it is necessary for the purpose of justice, proportional to the needs of the Action/Counterclaim and not unduly intrusive or unduly burdensome that all evidence potentially relevant to the Action/Counterclaim that is in the possession, control or power of the Endurance Respondents, entities that are domiciled and with their principal places of business at 10 Corporate Drive, Suite 300, Burlington, Massachusetts, 01803, United States of America, be immediately preserved and produced to the Moving Parties.

YOU ARE REQUESTED, in furtherance of justice, to cause the Endurance Respondents, by the means ordinarily used in your jurisdiction, to immediately take steps to preserve and produce to the Moving Parties all evidence relevant to the proceeding that is in the possession, control or power of the Endurance Respondents.

IN PARTICULAR, YOU ARE REQUESTED, in furtherance of justice, to cause the Endurance Respondents, by the means ordinarily used in your jurisdiction, to preserve and produce the following documents, which documents have been shown to this Court to be relevant to the Action/Counterclaim and which preservation and production has been so ordered by this Court:

1. All documents relating to the website www.westface.net hosted by the Endurance Respondents (or either of them).

2. All documents concerning the person or persons involved with establishing, updating, paying for or using the account associated with the website "www.westface.net" and all documents that may assist with identifying such persons, including, but not limited to, all email addresses, legal names, physical addresses, 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, all customer relationship management ("CRM") data, and any other registration or authentication information for the account or accounts associated with the website www.westface.net.

3. Please produce a complete cPanel export of the account associated with the website "www.westface.net."

4. All IP address access log information regarding the account associated with the "www.westface.net" website and all IP address access information regarding the email addresses associated with that website, 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.

5. All 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 associated with the account.

6. All communications with users of the account associated with the "www.westface.net" website, including, but not limited to emails, chats, text or SMS messages, social networks, websites, and blogs.

7. All documents related to the publication and dissemination of any information that currently appears or has appeared on the "www.westface.net" website, including (i) a copy of all 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.

8. With respect to any other website hosted by the Endurance Respondents (or either of them) 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.westface.net" website and/or related email addresses (the "**Other Relevant Endurance Websites and Emails**"), please produce all documents responsive to Requests 1 to 7 above as they relate to the Other Relevant Endurance Websites and Emails.

YOU ARE REQUESTED, in furtherance of justice, to return the executed request to the lawyers in the United States for West Face:

Steven E. Sexton
Sidley Austin LLP
One South Dearborn St.
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(312) 853-2179

AND WHEN YOU REQUEST IT, the courts of Ontario are ready and willing to do the same for you in a similar case.

THIS LETTER OF REQUEST is signed and sealed by order of the Court made on

_____.

Date _____

Issued by _____

Local Registrar
Address of Superior Court of Justice
court office: 330 University Avenue, 7th Floor
Toronto ON M5G 1R7

**Schedule “1”
to Letter of Request**

SCHEDULE "1"

LIST OF MOVING PARTIES, NON-PARTY RESPONDENTS AND PARTIES

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INVOP LTD.

Company number 51-517203-9
Via Adv. Hayut Grinberg
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Ramat Gan, 5268102

Defendant to the Counterclaim

THE CATALYST CAPITAL GROUP INC. et al.

Plaintiffs

WEST FACE CAPITAL INC. et al.

Plaintiffs by Counterclaim

WEST FACE CAPITAL INC. et al.

Defendants

THE CATALYST CAPITAL GROUP INC. et al.

Defendants to the Counterclaim

-and- CANACCORD GENUITY CORP.

Third Party

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

**ONTARIO
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West Face Capital Inc. and Gregory Boland

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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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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West Face Capital Inc. and Gregory Boland