

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE)

FRIDAY, THE 6th

MR. JUSTICE HAINEY)

DAY OF JULY, 2018

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, MSV 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-Parties)

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 Google LLC and Google, Inc. (collectively “**Google**”), PayPal Inc. and PayPal Canada Co. (collectively “**PayPal**”), and Canadian Web Hosting Inc. (“**CWH**”) (collectively, the “**Non-Party Respondents**”) 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 the Amended Notice of Motion of the Moving Parties, dated June 21, 2018, filed;

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

1. THIS COURT ORDERS that PayPal:

- (a) Within 20 days, 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

- (b) 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, and any information and documents relating to the PayPal Information that are in PayPal's possession, control or power and over which privilege is claimed;
- (c) within twenty (20) days, list and describe any PayPal Information that was formerly in PayPal's possession, power or control but is no longer in PayPal's possession, power or control, whether or not privilege is claimed for it, together with a statement of when and how PayPal lost possession or control of or power over it and its present location or locations;

2. THIS COURT ORDERS that CWH:

- (a) within twenty (20) days, 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; and
 - (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;
- (b) 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 any information and documents relating to CWH User

that are in CWH's possession, control or power and over which privilege is claimed;

- (c) within twenty (20) days, list and describe any CWH Information that was formerly in CWH's possession, power or control but are no longer in CWH's possession, power or control, whether or not privilege is claimed for it, together with a statement of when and how CWH lost possession or control of or power over it and its present location or locations;

3. THIS COURT DECLARES that the PayPal Information and the CWH Information are necessary for the just determination of the Counterclaim and that they should be produced to West Face and Boland;

4. 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 California in the United States of America, asking for their assistance in ordering PayPal to preserve the PayPal Information and to produce it to West Face and Boland;

5. THIS COURT ORDERS that each of PayPal and CWH produce any electronic documents, to the extent such documents are ordered to be produced pursuant to this Order, in native format, preserving all metadata;

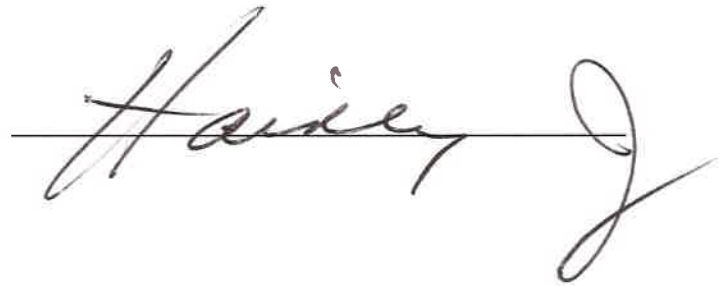
6. THIS COURT ORDERS that the word "document" used herein be interpreted in the broadest possible sense to include, without limiting the generality of the foregoing, paper and electronic documents and data or data compilations, in any format, and stored in any medium whatsoever;

6a. *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 order herein.*

7. THIS COURT ORDERS that the Moving Parties shall reimburse PayPal and CWH for reasonable costs to preserve and produce the foregoing documents;

8. THIS COURT ORDERS that this motion is otherwise adjourned to a date to be fixed by the Court;

9. THIS COURT ORDERS that there shall be no costs of this Motion as against the Non-Party Respondents PayPal and CWH.

A handwritten signature in black ink, appearing to read "Hainey J.", written over a horizontal line.

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

JUL 06 2018

PER / PAR:

Handwritten initials in blue ink, possibly "pl", written over the printed text "PER / PAR:".

Schedule "A"

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

**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, MSV 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

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 CALIFORNIA, UNITED STATES OF AMERICA

**THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 450 GOLDEN GATE AVENUE, BOX 36060, SAN FRANCISCO,
CALIFORNIA, 94102-3489, 415-522-2000**

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 PayPal, Inc. and/or PayPal Canada Co. (collectively “**PayPal**”), a non-party respondent 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 various locations on the internet, and have used PayPal's internet payment services in order to facilitate doing so, in particular by making payments connected with the posting of defamatory content. West Face and Boland commenced a motion for production and preservation of relevant evidence from PayPal, a non-party to the Action/Counterclaim. West Face and Boland seek all evidence in the possession, control or power of PayPal related to the use of PayPal in connection with the posting of defamatory content about West Face and Boland.

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 PayPal, an entity that is domiciled and with its principal place of business at 2211 North 1st Street, San Jose, California, 95131, United States of America, be immediately preserved and produced to the Moving Parties.

YOU ARE REQUESTED, in furtherance of justice, to cause PayPal, 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 PayPal.

IN PARTICULAR, YOU ARE REQUESTED, in furtherance of justice, to cause PayPal, 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. 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");

- (a) 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;

- (b) 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;

- (c) 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;

- (d) 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;
- (e) All documents that may lead to information about security checks for PayPal Accounts; and
- (f) 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.

YOU ARE REQUESTED, in furtherance of justice, to return the executed request to the lawyers for the Moving Parties:

Tycho Manson
Chernos Flaherty Svonkin LLP
220 Bay Street, Suite 700.
Toronto, ON M5J 2W4, CANADA
tmanson@cfscounsel.com
(416) 855-0406

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

Schedule "1"

MOORE BARRISTERS

Suite 1600
393 University Avenue
Toronto ON M5G 1E6

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Tel: 416.581.1818 ext. 222
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Anson Catalyst Master Fund LP, ACF GP, Moez Kassam, Adam Spears and Sunny Puri

LERNERS LLP

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Fax: 416.867.9192

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Clarityspring Inc. and Nathan Anderson

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Symon Zucker

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Barristers and Solicitors
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Canaccord Genuity Corp.

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EMMANUEL ROSEN

ID No. 56548456
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Hod Hasaron 4538409

Defendant to the Counterclaim

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Gord McGuire

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Fax: 416.689.2059

Email: gmcguire@agbllp.com

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Defendants to the Counterclaim,
B.C. Strategy Ltd. d/b/a Black Cube and B.C. Strategy UK Ltd. d/b/a Black 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

PayPal, Inc. and PayPal Canada Co.

661 University Avenue

Toronto, ON M5G 1M1

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

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

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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

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

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

**ONTARIO
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ORDER

CHERNOS FLAHERTY SVONKIN LLP
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Lawyers for the Defendants, Plaintiffs by Counterclaim, West
Face Capital Inc. and Gregory Boland