

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

SUPPLEMENTARY MOTION RECORD

July 15, 2014

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**REPLY AFFIDAVIT OF JAMES A. RILEY
(SWORN JULY 14, 2014)**

I, James A. Riley, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I previously swore an affidavit in support of Catalyst's motion for interim relief on June 26, 2014. Since then, the defendants Brandon Moyse ("Moyse") and West Face Capital Inc. ("West Face") have served responding affidavits, which I have reviewed. The purpose of this affidavit is to briefly reply to matters raised in those responding affidavits.

Catalyst and West Face are Competitors

3. I note that both Moyse and Thomas Dea, a partner at West Face ("Dea"), attempt to describe West Face in a manner that suggests it is not a competitor to Catalyst. This suggestion is incorrect.

4. Dea's description of the Alternative Credit Fund that West Face launched in December 2013 is very similar to the investment approach that Catalyst takes in its investment funds: to commit capital to long-term investments that are immune to short-term vagaries of the market.

5. Notably, while Dea states that West Face's Alternative Credit Fund is not intended "primarily" to see a controlling interest or position of influence in a company, he indicates that this is a possible form of investment for this fund. Dea also confirms that West Face is active in the distressed investments industry.

6. While Dea attempts to contrast West Face's Long-Term Opportunities Fund with Catalyst's business model, he does not make the same distinction with the Alternative Credit Fund, which West Face expressly describes as a special situations and private credit fund and which competes directly with Catalyst.

Moyse's Comments Regarding Catalyst's Work Environment are Irrelevant to this Dispute

7. Paragraphs 23-26 of Moyse's affidavit refer to an alleged "toxic work environment" at Catalyst. I do not intend to dignify those comments with a response, other than to point out that when Moyse resigned from Catalyst, he told me that the reason he was leaving was because he was not interested in reviewing the operations of companies Catalyst had invested in, and that he wanted to devote more time to the "deal-making" side of the business. Moyse said nothing to me about an alleged "toxic work environment".

8. In any event, Moyse's alleged reasons for leaving Catalyst are irrelevant to the matters in dispute in this litigation.

Moyse had Accrued Significant Interest under the 60/40 Scheme

9. Moyse's statements in his affidavit about his compensation, and in particular about the 60/40 Scheme, are inaccurate. As of the date of his resignation, Moyse had accrued over \$500,000 in profit-sharing interest as compensation for his contribution to the deals he had worked on. This information would have been made available to Moyse had he asked.

10. It is true that Catalyst's employees only receive their 60/40 Scheme payments after a fund returns its capital and an eight per cent return to investors. This is consistent with Catalyst's "investors-first" approach to managing its funds. The 60/40 Scheme is potentially very lucrative, but Catalyst ensures that its investors receive a minimum rate of return before it begins to accrue profits for the firm, which are then shared on a 60/40 basis between employees and the firm, respectively.

11. Catalyst deliberately designed the 60/40 Scheme to function as a long-term incentive plan for its employees to align their interests with the interests of its investors and the firm. If Moyse had remained at Catalyst for the long-term, his 60/40 Scheme entitlement would likely have increased significantly by the time he was entitled to receive payment of his 60/40 Scheme interest. In this way, our employees accrue a partner-like interest in the performance of Catalyst's funds.

Moyse's and West Face's Treatment of Catalyst's Confidential Information

12. Apparently, in March 2014, Moyse intentionally sent Catalyst's confidential information to West Face as part of his efforts to secure employment there. Moyse's statement that these

documents did not contain any confidential information is incorrect. Moyse's analyses of active and potential investments contain highly confidential information belonging to Catalyst which Moyse should not have shared with a competitor such as West Face under any circumstances.

13. Prior to receiving this affidavit, West Face did not inform us that it received this confidential information or that it intended to file Catalyst's confidential information as part of its responding motion record.

Moyse Wiped his Blackberry

14. I recently learned from Martin Musters, Catalyst's forensic IT expert, that Moyse wiped his company-issued Blackberry before he returned it to Catalyst. Attached as Exhibit "A" to my affidavit is a report from Mr. Musters regarding a forensic examination of the Blackberry smartphone Catalyst provided Moyse (the "Blackberry"). According to Musters' report, the Blackberry was "wiped" of all data sometime after June 17, 2014, thereby destroying evidence of, among other things, Moyse's communications with West Face.

15. I have made inquiries at Catalyst – no one at Catalyst wiped the Blackberry. I am certain that the Blackberry was wiped by Moyse before he returned it to Catalyst.

Moyse Emailed Catalyst Documents to his Personal Email Accounts

16. After Moyse's departure from Catalyst, Catalyst learned that Moyse operated personal "Hotmail" and "Gmail" accounts to which he often forwarded Catalyst documents. Attached as Exhibit "B" are just a few of the dozens of emails that Moyse sent to personal email accounts from his work email account, to which he attached Catalyst documents. These documents include:

- (a) A March 2014 presentation relating to an internal review of potential financing for a Catalyst investment;
- (b) A draft asset purchase agreement sent to Catalyst by U.S. counsel for internal review;
- (c) A document entitled "Weekly Report – w 8 2014 v 10CM"; and
- (d) A December 2013 Catalyst presentation to the U.S. Federal Trade Commission relating to Catalyst's efforts to purchase Advantage Rent A Car.

17. Moyse did not disclose this activity in his affidavit.

Catalyst's Former Employees Honoured their Non-Competition Covenants

18. In my original affidavit, I explained how Catalyst learned that Moyse was reviewing Catalyst's confidential documents in circumstances that Musters concluded are consistent with copying documents to an online file storage account. Moyse's reasons as to why he was reviewing these documents are illogical.

19. In particular, Moyse's suggestion that he was reviewing Catalyst's letters to its investors to look for comments about former Catalyst employees makes no sense. To the best of my knowledge, Catalyst has never "denigrated" a former employee in its investment letters.

20. Quite the contrary: I am unaware of any situation where another employee who resigned from Catalyst to work for a competitor did not comply with the non-competition covenant in his employment contract. In those situations, Catalyst and the former employees have remained on satisfactory terms.

21. Moreover, to the best of my knowledge, Moyse is the only former Catalyst employee who has refused to comply with the non-competition covenant in his employment contract.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on July 14, 2014



Commissioner for Taking Affidavits
(or as may be)

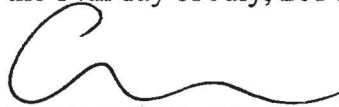
ANDREW WINTON



JAMES A. RILEY

TAB A

This is Exhibit "A" referred to in the
Affidavit of James A. Riley,
sworn the 14th day of July, 2014.

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Andrew Winton
A Commissioner for taking Affidavits



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Computer Forensics Inc.
1011 Upper Middle Road
East, Suite 1431
Oakville, Ontario
L6L 5K2

Forensic Analysis Report

Re: Brandon Moyse Blackberry Q10

Martin Musters

July 9, 2014



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1011 Upper Middle Road
East, Suite 1431
Oakville, Ontario
L6L 5K2

Andrew Winton
Lax O'Sullivan Scott Lisus
145 King Street West, Suite 2750
Toronto, ON M9H 1J8

RE: Brandon Moyse Blackberry

Dear Mr. Winton:

Computer Forensics Inc. (CFI) has prepared this report for you following our analysis of the evidence provided. The purpose and scope of the analysis is based off of our understanding of your request which is described in Section 1.0.

Any information provided to us, outside of the evidence itself, that was used as a premise within the forensic analysis has been summarized within Section 3.0 of the report.

Should you have any questions or concerns, please do not hesitate to contact me.

Marty Musters B.Math, CISSP, CFE, CISA, CPP
Director of Forensics
Computer Forensics Inc.
Cell: 647 302-0067
Email: mmusters@computerforensics.ca



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Section 1.0 – Purpose of Report

At your request, CFI conducted a forensic analysis of Blackberry Q10 shown below. You had asked us to retrieve all information possible from the Blackberry.





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The BlackBerry was examined on July 2, 2014 at the offices of Lax O'Sullivan Scott Lisus and was identified as a model Q10 with IMIE number 356760052268934 and PIN 2B8C2CA2.



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Section 2.0 – Independence and Qualifications

The writing of this report and the forensic analysis that is described in the report was conducted by Marty Musters, Director of Forensics for Computer Forensics Inc. The conclusions expressed within the report represent the opinions of Marty Musters. A statement of qualifications for Mr. Musters is attached as Appendix A.

Marty Musters has acted independently and objectively in the preparation and analysis of this report. To the best of his knowledge, there are no conflicts of interest that may have affected this report or the analysis of the evidence. Our fees were not contingent on the conclusions or findings of our analysis or on the actions or events resulting from the use of the report.



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Section 3.0 – Background Information

For the purpose of this report the following information that was provided to CFI and was considered to be factual:

1. CFI did not rely on any third party information for the purposes of this report.



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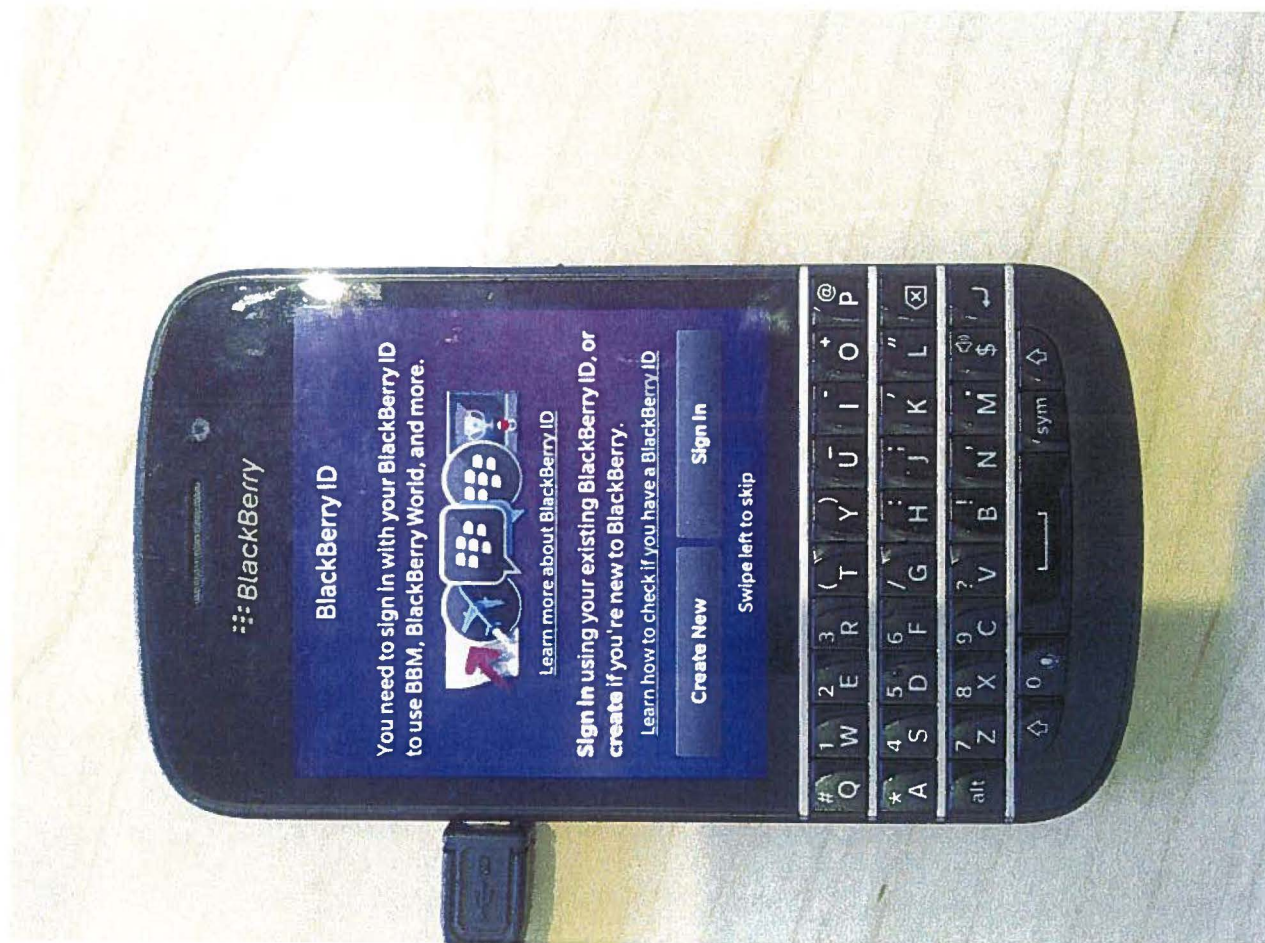
Section 4.0 – Analysis

The Blackberry Q10 was turned on and the following screens appeared.



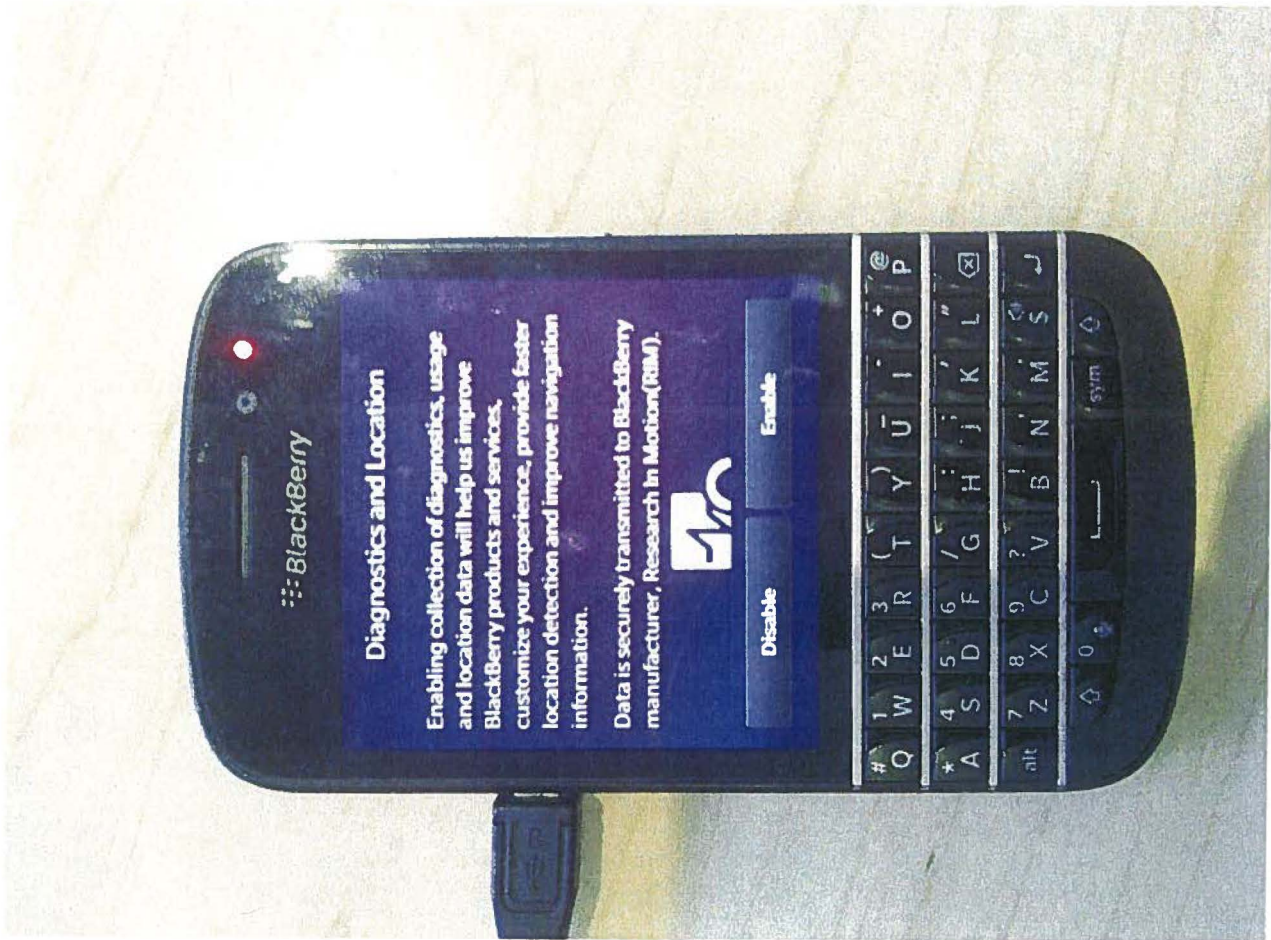


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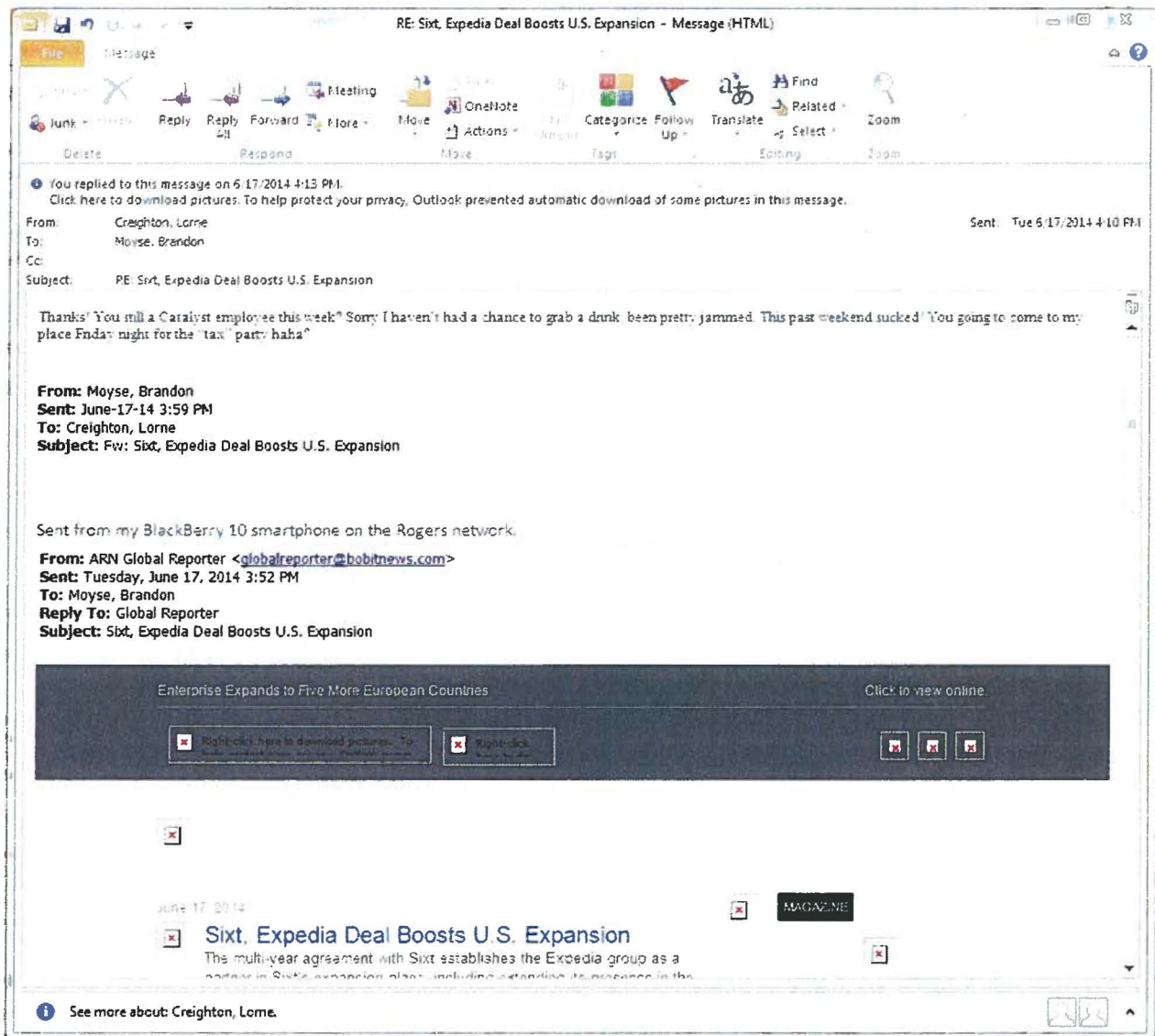
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The above screens show that the Blackberry Q10 was "wiped" or re-initialized to its factory settings. Given this, no data can be retrieved from this Blackberry as the re-initialization process destroys all user data on the device.

A search was conducted of the desktop belonging to Brandon Moyse to determine when the last time the Blackberry belonging to Brandon was used. Below is an email sent from Brandon Moyse to Lorne Creighton dated June 17, 2014 at 3:59 p.m.



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I trust the above report has provided the information requested. If you have any questions or concerns about the report, I would be pleased to offer any clarification necessary.

Marty Musters B.Math, CISSP, CFE, CISA, CPP, PI
Director of Forensics
Computer Forensics Inc.
Cell: 647 302-0067
mmusters@computerforensics.ca



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Appendix A – Marty Musters Credentials

Certifications/Associations

- Certified Fraud Examiner (CFE)
- Certified Information Systems Security Professional (CISSP)
- Certified Information Systems Security Auditor (CISA)
- Certified Protection Professional (CPP)
- Certified in Steganographic Analysis
- Certified in Advanced Cell Phone Forensics
- Member of the High Tech Crime Consortium (HTCC)
- Licensed Private Investigator in the Province of Ontario

Expert

- R. v. Agil, Khumane by the Ontario Superior Court, June 2012, Participation in a Criminal Organization. Declared an Expert in Computer Forensics
- R. v. Prazeres by the Ontario Court of Justice in April 2008. Police officer charged with public mischief, conspiracy to prosecute a person for an alleged offence, fabrication of evidence and breach of trust. Declared an Expert in Computer Forensics
- R. v. Rogers by the Superior Court of Justice in March 2009. First Degree Murder x 2. Declared an Expert in Cell Phone Forensics and Call Detail Records
- R. v. Young Offender by the Superior Court of Justice in April 2009. Sexual Interference of a child under 14, Forcible Confinement and Sexual assault. Declared an Expert in Computer Forensics and Cell Phone Forensics.
- R. v. Brzezinski by the Superior Court of Justice. Possession of Child Pornography. Declared an Expert in Computer Forensics in September of 2009.

Speaking Engagements

- Workplace Investigations Conference (17th Annual) 2012
- International Financial Crimes Conference, 2011, 2009
- Workplace Investigations Conference (16th Annual) 2011
- ACFE Certified Fraud Examiners Conference held in Toronto Sept 29, 2010
- ASIS Best Practices Seminar Toronto, Ontario May 22, 2008
- Forensic Conference Regina, Saskatchewan Sept 17-18, 2008
- Canadian Technical Security Conference – Toronto May 16, 2007



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- Association of Certified Fraud Examiners 13th Annual Conference in Toronto – May 2007 (Speaker)
- Golden Horseshoe Homicide Investigators Conference (GHHIA) May 2006 (Speaker)
- Niagara International Fraud Conference May 2006 (Speaker)

Committees

- Member of the CACP (Canadian Association of Chiefs of Police) Public/Private Sector Liaison Committee. The committee's mandate is to develop strategies on how law enforcement and the private sector can better work together. April 2009 – Present.

Published Books

- ACFE Computer Fraud Case Studies by Joseph T. Wells – Contributing Author

Published Articles

- Canadian Security Magazine 2010-11 Monthly Columnist
- The Litigator – 2010 Current Trends that can affect your case
- Steganography – Today's risk to your organization published Dec 2007
- Trends in Digital Forensics published Nov 2006
- Cell Phone Forensics published Feb. 2006
- The Trojan Horse Defense published Dec. 2005
- Preserving Digital Evidence published Sept. 2005
- Benford's Law and Fraud Detection published June 2005
- It Wasn't Me published May 2005
- Cyber Terrorism - Is it a Real Threat published Feb. 2005

TAB B

This is Exhibit "B" referred to in the
Affidavit of James A. Riley,
sworn the 14th day of July, 2014.

A handwritten signature in black ink, appearing to be 'Andrew Winton', written above a horizontal line.

Andrew Winton
A Commissioner for taking Affidavits

From: [Moyse, Brandon](#)
To: ["brandonmoyse@hotmail.com"](mailto:brandonmoyse@hotmail.com)
Subject: FW: Advantage Presentation
Date: March-14-14 4:58:00 PM
Attachments: [Advantage Catalyst Presentation March 2014 vF.PDF](#)

From: De Alba, Gabriel
Sent: Friday, March 14, 2014 11:07 AM
To: Moyse, Brandon; Creighton, Lorne; mpascucci@deloitte.com; Bill Plamondon (Bill.Plamondon@advantage.com)
Subject: FW: Advantage Presentation

Please review and put together a comparable analysis of all proposals by the end of the day.

From: Paul Uffermann [<mailto:paul.uffermann@db.com>]
Sent: March-14-14 10:57 AM
To: De Alba, Gabriel
Cc: Creighton, Lorne; Moyse, Brandon; Robert Sheldon; William Strobel; Maxton Allen; Sean Sirois; Kien Nguyen
Subject: RE: Advantage Presentation

Gabriel,

Attached please find a term sheet outlining a proposal for a financing facility for Advantage. We think it makes sense to have a brief call to walk through our thoughts on the structure. Do you have any availability for a call this afternoon?

We look forward to discussing the proposal with you.

Regards,

Paul

Paul Uffermann
 Structured Credit

Deutsche Bank AG, Canada
 Global Markets
 199 Bay Street, Suite 4700
 M5L 1E9 Toronto, Canada
 Tel. +1 (416) 682-8016
 Mobile +1 (416) 627-3819
 Email paul.uffermann@db.com

From: De Alba, Gabriel [<mailto:gdealba@catcapital.com>]
Sent: Friday, March 14, 2014 9:55 AM
To: Robert Sheldon; Creighton, Lorne

Cc: William Strobel; Paul Uffelmann; Moyse, Brandon; Sean Sirois
Subject: RE: Advantage Presentation

Hi Robert:

Can you please circulate a term sheet to discuss.

Best regards,

Gabriel

From: Robert Sheldon [<mailto:robert.sheldon@db.com>]
Sent: March-14-14 9:47 AM
To: De Alba, Gabriel; Creighton, Lorne
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon; Sean Sirois
Subject: RE: Advantage Presentation

Gabriel:

Thank you for the information you have sent through to us. We have reviewed and have some financing thoughts.

Would like to schedule some time to meet and show you our ideas. However, am sensitive to your timeline.

If works for you, we are available today to jump on call and provide initial feedback.

If our proposal is interesting, would suggest a follow up meeting in short order

Let us know what works from your end.

Best regards, Robert

Robert Sheldon
Managing Director
Structured Credit
Deutsche Bank Securities Inc
212 250 4493 (work)
917 627 7297 (cell)
robert.sheldon@db.com

From: De Alba, Gabriel [<mailto:gdealba@catcapital.com>]
Sent: Monday, March 10, 2014 7:16 PM
To: Robert Sheldon; Creighton, Lorne
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: Re: Advantage Presentation

Yes, we will get you the details.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Robert Sheldon
Sent: Monday, March 10, 2014 7:13 PM
To: Creighton, Lorne; De Alba, Gabriel
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: RE: Advantage Presentation

Thanks Lorne.

Let me come back to you around the call. Just for us to understand, can you give us some guidance on your purchases. What is the discount to MSRP and what this looks like per vehicles type?

Thanks Robert

From: Creighton, Lorne [<mailto:L.Creighton@catcapital.com>]
Sent: Monday, March 10, 2014 3:57 PM
To: Robert Sheldon; De Alba, Gabriel
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: RE: Advantage Presentation

Robert,

The only dispositions the Company has had are the Hertz sublease vehicles that were transferred in December 2012. They were not bought new, the Company could not sell any until June 2013, and the Company was unable to confirm the cap cost less incentive.

The vehicles that we have bought or leased will not be sold until June 2014 or later.

We are happy to get on a call though, together with members from the Company, to walk you through the process the Company goes through to forecast residual value, or provide copies of the GDP programs, if desired.

Best regards,
Lorne

From: Robert Sheldon [<mailto:robert.sheldon@db.com>]
Sent: March-10-14 3:39 PM
To: Creighton, Lorne; De Alba, Gabriel
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: RE: Advantage Presentation

Lorne --

Thanks for this information. Do you also have recent disposition data i.e book value versus sales price for vehicles disposed in last 12 months?

Best regards, Robert

From: Creighton, Lorne [<mailto:L.Creighton@catcapital.com>]
Sent: Friday, March 07, 2014 3:01 PM

To: Robert Sheldon; De Alba, Gabriel
Cc: William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: RE: Advantage Presentation

Robert,

Please find attached Advantage's current fleet composition plan. Let us know if you have any questions or how else we can be helpful.

Thanks,
Lorne

From: Robert Sheldon [<mailto:robert.sheldon@db.com>]
Sent: March-07-14 11:50 AM
To: De Alba, Gabriel
Cc: Creighton, Lorne; William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: RE: Advantage Presentation

Gabriel. Yes. That would be very helpful. Best regards, Robert

Sent with Good (www.good.com)

-----Original Message-----

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: Friday, March 07, 2014 09:49 AM Eastern Standard Time
To: Robert Sheldon
Cc: Creighton, Lorne; William Strobel; Paul Uffelmann; Moyse, Brandon
Subject: Re: Advantage Presentation

Thanks Robert:

You need the fleet table correct?

Gabriel

On Mar 7, 2014, at 9:36 AM, "Robert Sheldon" <robert.sheldon@db.com> wrote:

Gabriel

Very pleased we connected. Hope we can find a way to work together. We are look forward to getting the data we discussed and scheduling a date to visit and present our proposal. Will be in touch shortly. Best regards, Robert

Robert A Sheldon
Managing Director
Deutsche Bank Securities Inc
60 Wall Street
New York,

212-250-4493 (w)
917-627-7297 (c)

Sent with Good (www.good.com)

-----Original Message-----

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: Wednesday, March 05, 2014 02:09 PM Eastern Standard Time
To: Creighton, Lorne; William Strobel; Robert Sheldon; Paul Uffelmann
Cc: Moyse, Brandon
Subject: RE: Advantage Presentation

Great talking to you today!!

Best regards,

Gabriel de Alba
Managing Director & Partner
The Catalyst Capital Group Inc.
Ph: 416.945.3020
Cell Toronto: 416.276.1377
Cell US: 917.312.6701

From: Creighton, Lorne
Sent: March-05-14 1:19 PM
To: william.strobel@db.com; robert.sheldon@db.com; paul.uffelmann@db.com
Cc: De Alba, Gabriel; Moyse, Brandon
Subject: Advantage Presentation

Please find attached the Advantage Presentation we are currently discussing.

Best regards,
Lorne

Lorne E. Creighton

Catalyst Capital Group Inc.
TD North Tower
77 King Street West
Suite 4320, P.O. Box 212
Toronto, ON M5K 1J3

T: 416.945.3035
F: 416.945.3060
C: 647.825.5752
lcreighton@catcapital.com

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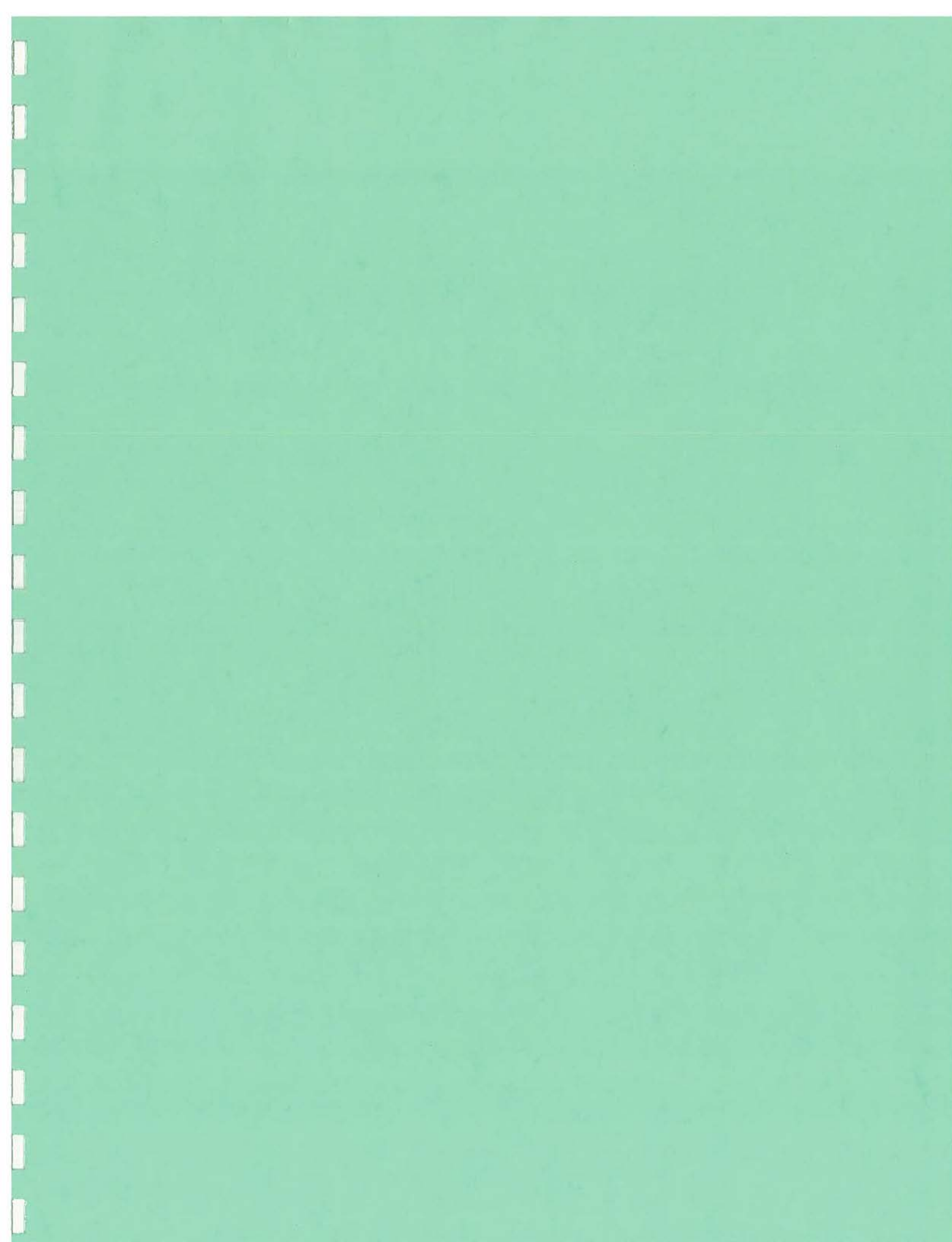
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From: Moyse, Brandon
To: Brandon Moyse
Subject: Fw: APA
Date: November-14-13 5:36:05 PM
Attachments: CH-1692782-v6 CatalystAdvantage -- Asset Purchase Agreement.docx

From: RICHARD.MELLER@lw.com
Sent: Tuesday, November 12, 2013 10:38 AM
To: De Alba, Gabriel; Zachary.Judd@lw.com; RasileM@bennettjones.com; Moyse, Brandon; Horrox, Mark
Cc: Creighton, Lorne; RICHARD.LEVY@lw.com; Orzyr@bennettjones.com; Gabriel.Edelson@lw.com
Subject: RE: APA

Attached please find the initial draft of the APA for your review and comment. Please let us know when you would like to discuss. We would like to get this to the Company by tomorrow morning, but of course, if you need a longer time to review, we can hold off sending.

Thanks
Rick Meller

Richard S. Meller

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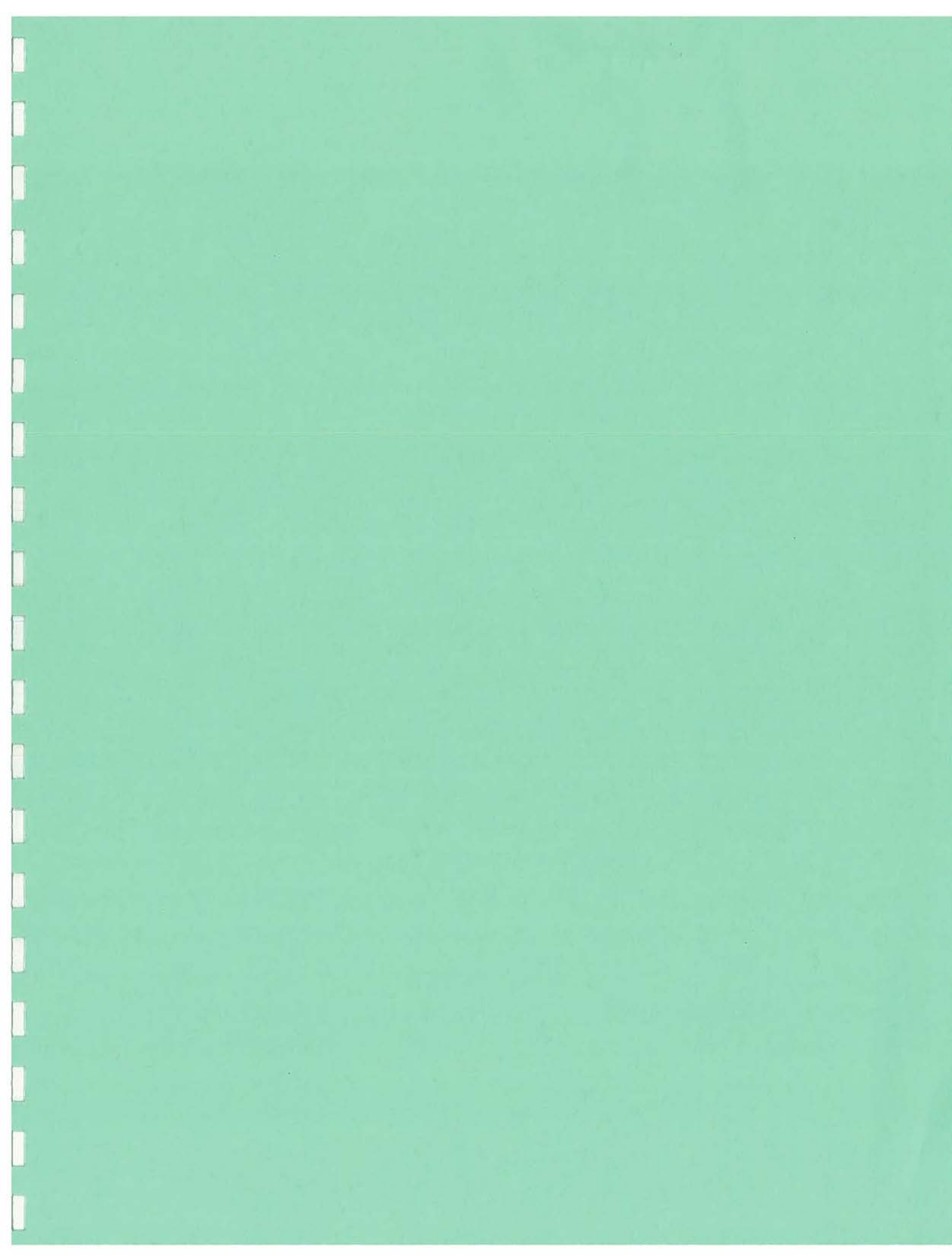
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Latham & Watkins LLP



From: Moyse, Brandon
To: Brandon Moyse
Subject: Fw: Week 8 Report
Date: February-26-14 8:23:35 PM
Attachments: Weekly report - w 8 2014 v10CM.xlsx

4600001FAF03



From: Moyse, Brandon
To: "brandonmoyse@hotmail.com"
Subject: FTC Presentation
Date: December-14-13 5:31:00 PM
Attachments: Catalyst FTC Presentation v3.pptx
Concessions v2.xlsx

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120

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