

Court File No.: CV-16-11272-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**THE CATALYST CAPITAL GROUP INC.**

Plaintiff

- and -

**BRANDON MOYSE and WEST FACE CAPITAL INC.**

Defendants

**AFFIDAVIT OF BRANDON MOYSE  
AFFIRMED JUNE 2, 2016**

I, Brandon Moyse, of the City of Toronto, SOLEMNLY AFFIRM AS FOLLOWS:

1. I am a defendant in this action, and, as such, have knowledge of the matters set out in this affidavit. To the extent that my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I have previously given evidence in this proceeding through affidavits and cross-examinations. I repeat some of that evidence in this affidavit to consolidate and summarize my evidence before the court at this trial. I previously affirmed affidavits on the following dates, which I attach as exhibits to this affidavit: July 4, 2014 (**Exhibit**

“1”<sup>1</sup>, July 7, 2014 (**Exhibit “2”**),<sup>2</sup> July 16, 2014 (**Exhibit “3”**)<sup>3</sup> October 10, 2014 (**Exhibit “4”**),<sup>4</sup> October 26, 2014 (**Exhibit “5”**),<sup>5</sup> and April 2, 2015 (**Exhibit “6”**)<sup>6</sup>.

3. I was cross-examined twice on motions brought by Catalyst in this proceeding. I attach as an exhibit the transcript from my cross-examination on July 31, 2014 (**Exhibit “7”**)<sup>7</sup> and the answer to an undertaking arising out of that cross-examination (**Exhibit “8”**),<sup>8</sup> the transcript from my cross-examination on May 11, 2015 (**Exhibit “9”**)<sup>9</sup>, the answers to undertakings arising out of that cross examination, (**Exhibit “10”**),<sup>10</sup> and a correction to those answers to undertakings (**Exhibit “11”**).<sup>11</sup>

4. I incorporate all my evidence contained in Exhibits 1-11 to this affidavit by reference.

5. Prior to affirming this affidavit, I reviewed the evidence filed to date in this proceeding by both The Catalyst Capital Group Inc. (“Catalyst”) and West Face Capital Inc. (“West Face”), the discovery evidence of Catalyst’s and West Face’s representatives, as well as a significant number of the documents produced by both Catalyst and West Face through the discovery process. In this affidavit, I make specific reference to Catalyst’s evidence in the affidavits of Newton Glassman, sworn May 27,

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<sup>1</sup> BM001957

<sup>2</sup> BM000624

<sup>3</sup> BM000639

<sup>4</sup> BM001976

<sup>5</sup> WFC0077766

<sup>6</sup> BM001935

<sup>7</sup> WFC0077684

<sup>8</sup> BM001373

<sup>9</sup> TRAN000772

<sup>10</sup> UTS000008

<sup>11</sup> BM0005344

2016 (the “Glassman Affidavit”),<sup>12</sup> of Gabriel De Alba, sworn May 27, 2016 (the “De Alba Affidavit”),<sup>13</sup> and of James Riley, sworn February 18, 2015 (the “Riley Affidavit”).<sup>14</sup>

6. I have also reviewed and make reference to the report of the Independent Supervising Solicitor (“ISS”) appointed to review images of my electronic devices (the “ISS Report”). The ISS found no evidence that any confidential Catalyst information was ever provided to West Face. I attach the ISS Report, as amended, as **Exhibit “12”**,<sup>15</sup> and the Supplemental ISS Report as **Exhibit “13”**.<sup>16</sup>

7. Catalyst alleges that I provided Catalyst’s confidential information and strategy for the purchase of WIND Mobile Canada (“WIND”) to West Face. I did not do so.

8. As I describe in greater detail below, Glassman, De Alba, and Riley’s evidence exaggerates and misrepresents:

- (a) my role on Catalyst’s team for the purchase of WIND, and in particular my involvement in, and understanding of Catalyst’s strategy for the purchase of WIND; and
- (b) my communications with West Face when I was interviewing for a position and hired at that firm between March and June 2014.

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<sup>12</sup> CCG0028711

<sup>13</sup> CCG0028710

<sup>14</sup> CCG0028716

<sup>15</sup> WFC0080681

<sup>16</sup> BM001875

9. Catalyst also alleges that I deleted evidence relevant to the matters at issue in this action with the intention of frustrating Catalyst's ability to pursue its case. I did not do so.

**A. *My background***

10. I am currently 28 years of age. I was born and raised in Montreal, Quebec, and earned a Bachelor of Arts in Mathematics from the University of Pennsylvania. I currently live in Toronto with my fiancée.

11. Prior to working for Catalyst, I was employed at Credit Suisse in New York and RBC Capital Markets in Toronto as a junior banker on their respective Debt Capital Markets desks.

12. After I resigned from my employment at Catalyst in May 2014, I worked briefly at West Face for three weeks in June and July 2014. As a result of this litigation, I was off work at West Face from July 16, 2014, until I resigned on August 31, 2015. I had significant difficulties securing a new job, as this litigation is well known in the Toronto investment community and many of the firms I interviewed with expressed concerns that Catalyst would commence further litigation against them. I eventually secured a position in December 2015 as an investment analyst at Stornoway Portfolio Management Inc. in Toronto.

**B. *My position at Catalyst as an investment analyst***

13. I commenced employment at Catalyst as an analyst on or around November 1, 2012, pursuant to a written employment agreement dated October 1, 2012 (the

"Employment Agreement"). The Employment Agreement is attached as **Exhibit "14"**<sup>17</sup> to this affidavit.

14. Analysts are the lowest level professionals at Catalyst. The hierarchy at Catalyst for the majority of the time that I was employed there was as follows: three partners, two vice presidents and a total of three associates and analysts. Between January 2014 and my resignation from Catalyst on May 24, 2014, the following individuals were investment professionals at Catalyst:

- (a) partners: Newton Glassman, Gabriel De Alba and James Riley;
- (b) vice president: Zach Michaud (the second vice president had resigned in late December 2013, and had not been replaced by the time of my departure);
- (c) associates: Andrew Yeh, who resigned in or around February 2014; and
- (d) analysts: Lorne Creighton and myself.

15. As an analyst at Catalyst, I performed financial and qualitative research both on potential investment opportunities, which were almost exclusively suggested by the partners, and companies already owned by Catalyst. A job description for the analyst position is attached as **Exhibit "15"**<sup>18</sup> to this affidavit. As part of my research of potential investment opportunities, I would normally review publicly available information, such as financial statements, and analyze the company's potential value to

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<sup>17</sup> CCG0018684

<sup>18</sup> BM002035

Catalyst. From time to time, I would also review information provided to Catalyst pursuant to Non Disclosure Agreements (“NDAs”), and meet with management groups of various companies as part of my due diligence activities.

16. At the beginning of my employment with Catalyst I was more involved with researching potential investments. During the last six months of my employment, however, I was focused almost entirely on performing operating reviews of Catalyst-owned companies. In my last month at Catalyst, I became briefly involved with the WIND opportunity, but continued to focus on those other tasks.

17. While I was employed at Catalyst, all potential and actual investments were sourced by the partners. Contrary to Catalyst’s evidence, in my experience, analysts were not actively encouraged to generate ideas for the firm and their thoughts and recommendations were routinely disregarded. Furthermore, as an analyst, I had no direct input into Catalyst’s investment decisions or strategy, but was instead assigned specific research projects by the partners, and vice-president(s).

18. Given the junior nature of my position, I had very little knowledge of Catalyst's potential investments and its strategy for those investments. I regularly attended Catalyst's “Monday meetings” with the Catalyst investment team and other related individuals, including members of Catalyst’s finance and accounting teams. The bulk of those meetings were spent discussing domestic and international economic issues. At most, but not all, Monday meetings, the team would discuss Catalyst’s portfolio companies, and less often, would discuss deals which Catalyst was actively pursuing. Catalyst typically budgeted one and a half to two hours for the meetings, but frequently

the meetings did not run that long. There was no formal agenda. Print-outs of Catalyst's current deal pipeline were distributed. This document was rarely updated, however. When I first joined Catalyst, the meetings took place regularly on a weekly basis, but became less and less frequent by late 2013.

19. While these meetings did at times feature some discussion of Catalyst's investment strategies, it was clear that these were premised on higher-level partners-only discussions that were taking place, to which I was not privy. Catalyst's partners would frequently discuss conversations or correspondence in front of the analysts without providing any context to us. They would also frequently gather after the meetings to discuss matters behind closed doors. I saw nothing inappropriate about the partners having private conversations about deal strategy. My exclusion from those discussions did not affect my ability to complete the assignments given to me by the vice-president(s) and partners.

**C. *My involvement in Catalyst's telecommunications file prior to March 2014***

20. I have carefully reviewed the allegations in the Glassman, De Alba and Riley Affidavits with respect to my involvement in Catalyst's work in the telecommunications sector, and on Catalyst's potential purchase of WIND specifically. I do not believe that they have fairly or accurately characterized my involvement in Catalyst's work in that sector or on that file.

21. I was only involved in the WIND file in an active and significant way for 10 days between May 6, 2014 and May 16, 2014, when Catalyst was invited to bid on the deal and I was involved in due diligence. Between January 2014 and May 6, 2014, I spent

most of my time working on two Catalyst portfolio companies: Advantage Rent-A-Car and Natural Market Restaurants Corp. This required a significant amount of travel throughout the United States, primarily in Florida and New York. I likely went on at least 15-20 business trips during this period, and spent approximately half my time outside the office.

22. I was assigned to the Catalyst telecommunications deal team in late February 2014 or March 2014 in anticipation of Yeh's departure from the firm. Before then, Yeh was the junior Catalyst team member assigned to the telecommunications team. On one or two occasions, when Yeh was away, I assisted him by preparing certain charts or tables on the Mobilicity file. This was the full extent of my involvement in the telecommunications team before the end of February 2014.

23. In response to two undertakings given on De Alba's examination for discovery, Catalyst speculates that I may have edited, or assisted in the preparation of a number of documents Yeh created with respect to negotiations between Catalyst and VimpelCom at the end of 2013. I reviewed the documents identified by Catalyst in the course of preparing this affidavit. I know that I did not edit or assist in the preparation of these documents. I am not sure whether or not I previously saw them.

24. De Alba suggests at paragraph 46 of his affidavit that I was a member of the telecommunications team as early as January 2014. As an example of my involvement, he relies on an email of a news article I sent to Michaud and Yeh with respect to WIND's withdrawal from the government spectrum auction at the time, which I attach as



**Exhibit “16”**<sup>19</sup> to this affidavit. I was not on the telecommunications team at the time, and had no knowledge of any discussions at Catalyst about WIND. I sent this article to Michaud and Yeh because I thought they may find it to be of interest, given their involvement in the Catalyst telecommunications team. I tried to stay current on financial news, and frequently would send articles I thought might be of interest to my colleagues.

25. Prior to being assigned to the telecommunications deal team in late February or early March, I was generally aware of the following with respect to Catalyst’s interest in the telecommunications industry. I knew that Catalyst:

- (a) had an investment in Mobilicity. I likely learned this from discussions with Catalyst and the Monday meetings. Mobilicity at the time was under *Companies Creditors’ Arrangement Act* (“CCAA”) protection, and I understood Catalyst’s interest was in ensuring that any plan of arrangement would make Catalyst whole for its investment. Catalyst’s involvement in that litigation was public knowledge and often the subject of media reports;
- (b) was considering the possibility of building out a fourth wireless carrier in Canada, and this plan potentially involved WIND. This possibility was discussed in the media and was likely the subject of discussion at the Monday meetings from time to time, but I have no specific memory of these discussions. I do not have any memory of being aware of Catalyst’s

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<sup>19</sup> CCG0011410

internal opinion that a fourth wireless carrier could not survive without changes to the existing regulatory structure as described at paragraph 15 of the De Alba Affidavit or paragraph 10 of the Glassman Affidavit;

- (c) planned to bid for wireless spectrum in a forthcoming Canadian spectrum auction (although Catalyst later withdrew). I do not recall if I first learned this from media coverage or internally within Catalyst. I certainly do not recall discussions on this topic which could be described as “strategic, game-theory-related and pragmatic”, as Glassman describes at paragraph 8 of his affidavit.

26. I also developed some basic knowledge about the Canadian regulatory environment of the telecommunications industry through my work at Catalyst, and by reading the business press, which frequently covered this topic. Catalyst expected its employees to pay attention to news that was relevant to Catalyst’s investments. I was aware that telecommunications issues were important to Catalyst, and it may be interested in merging Mobilicity and WIND, but I did not know any further particulars of Catalyst’s strategy or plans with respect to a fourth national carrier.

27. Contrary to the suggestion in paragraph 10 of the Glassman Affidavit, the only time I was involved in discussions with Catalyst’s legal counsel and government relations consultants about the telecommunications industry was during my work on WIND in May 2014. At that time, I was involved in group discussions with Fasken Martineau, Catalyst’s counsel on that transaction. My interactions with members of that firm did not involve Catalyst’s regulatory concerns or strategy. I was also copied on a

number of emails involving Bruce Drysdale, who I understand was Catalyst's government relations advisor.

28. I did not assist in preparing any of the weekly updates for the Catalyst team at its Monday meetings with respect to the telecommunications industry, as suggested at paragraph 10 of the Glassman Affidavit. In fact, I can only recall being called upon to discuss the investments on which I was working three or four times, and only briefly as a status update. None of these status updates related to the telecommunications industry or WIND.

***D. My initial involvement as a member of Catalyst's telecommunications team  
March 2014 – May 6, 2014***

29. I was assigned to Catalyst's telecommunications team in or around March 2014, around the time of Yeh's departure. Although I understood that I was being assigned to the telecommunications team in early March, I was busy on other files and was not assigned to any work on the telecommunications file.

30. On March 6, 2014, I sent an email to De Alba, Michaud and Yeh with respect to WIND. I attach a copy of this email as **Exhibit "17"**<sup>20</sup> to this affidavit. I sent this story of my own initiative to the individuals on the telecommunications deal team, as I thought they may find it helpful.

31. Before May 6, 2014 I was not, as stated in paragraph 45 of the De Alba Affidavit, "intimately aware of, and involved in, [Catalyst's] internal analyses concerning the telecommunications industry". Even after I became more heavily involved in the file in

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<sup>20</sup> CCG0011509

May 2014, I was still not privy to the high-level strategic discussions described in the Glassman and De Alba Affidavits. Prior to this date, I understood that Catalyst's primary focus in the telecommunications industry was in its investment in Mobilicity. I was not aware that Catalyst was actively pursuing WIND until May 6, 2014, shortly before Catalyst was invited into the data room.

**1. Knowledge gained through involvement in Monday morning meetings and other discussions**

32. De Alba and Glassman allege that I had a sophisticated level of knowledge with respect to Catalyst's telecommunications strategy. I disagree with their characterizations. For instance, I do not recall the following being discussed at Monday meetings:

- (a) any Monday meeting in March 2014 which involved discussions of Catalyst's "analyses and conclusions as to how Catalyst would mitigate risk and profit based on the approaches taken by [Industry Canada] and the federal government to a proposed merger of WIND and Mobilicity";<sup>21</sup>
- (b) that Catalyst had reached a confidentiality agreement with respect to the purchase of WIND around that time;<sup>22</sup>
- (c) "comprehensive" discussions of Catalyst's strategies and positions with VimpelCom, Industry Canada and the federal government;<sup>23</sup>  
and

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<sup>21</sup> As described at paragraph 40 of the De Alba Affidavit

<sup>22</sup> As described at paragraph 40 of the De Alba Affidavit

- (d) as De Alba and Glassman describe that in Catalyst's view that:
- (i) the federal government faced lawsuit over retroactive changes made to spectrum licenses it had issued in 2008; and
  - (ii) this litigation was likely to be successful; but,
  - (iii) that Catalyst would not pursue this litigation but would instead pursue certain concessions from the federal government and Industry Canada.

33. I first became aware of Catalyst's view with respect to possible litigation involving the federal government when reviewing the De Alba and Glassman Affidavits. To the extent Catalyst has performed extensive analysis in this respect, as described at paragraph 59 of the De Alba Affidavit, I was not involved in or aware of this analysis. I have not been able to locate any such analysis in the material produced in this litigation.

## 2. Analysis of a possible transaction for WIND, March 2014

34. On March 7, 2014, someone, likely Michaud, asked me to prepare a combined *pro-forma* of WIND and Mobilicity. I prepared the *pro-forma* sent to De Alba under Michaud's supervision. I attach the drafts, and my discussions with Michaud respect to its contents as **Exhibits "18"**,<sup>24</sup> **"19"**,<sup>25</sup> **"20"**,<sup>26</sup> and **"21"**<sup>27</sup> to this affidavit.

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<sup>23</sup> As described at paragraph 45(a) of the De Alba Affidavit

<sup>24</sup> CCG0011520

<sup>25</sup> CCG0011521

<sup>26</sup> CCG0011526

<sup>27</sup> CCG0011535

35. I sent the final version to De Alba on March 8, 2014 attached as **Exhibit “22”**<sup>28</sup> to this affidavit. In that cover email I ask De Alba to let Michaud and me know if he had any questions, which to my recollection, he did not. I note De Alba’s assertion at paragraphs 49 and 50 that this *pro-forma* analysis was critical to Catalyst’s internal analysis of WIND’s value. Given that this table merely collects data that were either known publicly, or at least known to Catalyst, and performs basic acts of addition and division on that date, I am surprised that Catalyst would view it as “critical”. In my experience, Catalyst did not perform such basic analyses when it was pursuing an acquisition.

36. In the *pro-forma* I identified, for each of WIND and Mobilicity, the following information from the following sources:

- (a) spectrum value, or the value of the wireless spectrum owned by each company:
  - (i) for Mobilicity, I found this information in Mobilicity’s consolidated financial statements, dated December 31, 2012, which were in Mobilicity’s September 29, 2013, application record for an initial order under the CCAA. Page 16 of the notes to the financial statements states that the payments Mobilicity made to Industry Canada for spectrum totalled \$243,159,000. That is the value I

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<sup>28</sup> CCG0011536

used for the value of Mobilicity's spectrum. I attach these financial statements as **Exhibit "23"**.<sup>29</sup>

- (ii) for WIND, I likely sourced this information from an older internal WIND management document, or regulatory filings which Catalyst had on hand, but which I have not located in the productions.
- (b) network value, or the cost of hard assets necessary to build a wireless network):
- (i) for Mobilicity, I found this information in the unaudited interim consolidated financial statements for the three and six months ended June 30, 2013, which were in Mobilicity's initial application record. These value the company's property and equipment at \$97,417,634. I attach these financial statements as **Exhibit "24"**.<sup>30</sup>
  - (ii) for WIND, I likely sourced this information from an older internal WIND management document which Catalyst had on hand;
- (c) the total number of subscribers:
- (i) for Mobilicity, I sourced this information from the Fourth Report of the Monitor in the Mobilicity CCAA proceedings. Michaud directed me to use this source. This information is contained at paragraph

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<sup>29</sup> BM0005352

<sup>30</sup> BM0005353

9, footnote 2, of the Affidavit of William Aziz, which is Appendix A to this report. I attach this report as **Exhibit “25”**.<sup>31</sup>

- (ii) for WIND, I sourced this information from VimpelCom’s Q4 2014 and FY2013 results. Michaud directed me to use this source. Page 28 of that document lists the number of customers in Canada. I attach this document as **Exhibit “26”**.<sup>32</sup>

37. I then added each of these items for each of WIND and Mobilicity to generate a total, and calculated how much each company represented of the total.

38. I had no understanding of the purpose of the document. My analysis was extremely simplistic and unsophisticated. This task was unusual for the work I performed at Catalyst, as typically my analysis at Catalyst would be more rigorous and sophisticated. I was easily able to complete this task without any detailed knowledge of the telecommunications industry or Catalyst’s strategic plans for Mobilicity or WIND.

### **3. Presentation to Industry Canada**

39. In March and May 2014, I was involved in the creation of two PowerPoint presentations, which I understood Catalyst presented to Industry Canada representatives. The first presentation took place on or around March 27, 2014, and the second on or around May 12, 2014. The slide decks for both presentations were substantially similar, and I used the first presentation as the basis for the second. Glassman and De Alba dramatically overstate my involvement in each of these

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<sup>31</sup> BM0005357

<sup>32</sup> BM0005354



presentations. I did not “lead” the preparation of either. My role in creating both was essentially administrative and did not require a detailed knowledge of the sector or Catalyst’s strategy.

40. With respect to the March 27 meeting and slide deck, De Alba states at paragraph 60 that these meetings with Industry Canada were critical and the subject of much internal discussion at Catalyst. I first learned I would be required to assist in preparation for this meeting on March 26, 2014, the day before the meeting, when I was instructed to assist in the preparation of the presentation. I did not know any details of Catalyst’s strategy prior to my work on the PowerPoint presentation, as suggested at paragraph 60 of the De Alba Affidavit. I attach a copy of my email to Glassman, De Alba and Riley enclosing the March 26 PowerPoint presentation as **Exhibits “27”**,<sup>33</sup> and **“28”**,<sup>34</sup> to this affidavit.

41. It is misleading to suggest, as stated at paragraph 18 of the Glassman Affidavit and paragraph 60 of the De Alba Affidavit, that I “led” the preparation of this PowerPoint. I generated the slides on a single day. De Alba, Riley, and Michaud worked in an office creating handwritten mockups of slides, which they provided to me. I then transposed the handwritten notes into PowerPoint format. I was not involved in any discussions or debates involving these three to determine the contents of the presentation. They did not ask for my input into the content of the slides and I did not provide any. Because the slides were required for a meeting in Ottawa the next day, the workplace was frantic.

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<sup>33</sup> CCG0011564

<sup>34</sup> CCG0011565

42. I am not sure what De Alba is referring to at paragraph 40 when he says I included “further analysis regarding the telecommunications industry and critical research regarding the federal government’s policies concerning competition in the telecommunications space”. Other than layout and data input, I believe my only contribution to the content of the presentation was to create:

- (a) the table at slide 3 setting out the financial and operational data for the Canadian wireless incumbents, and WIND Canada and Mobilicity; and
- (b) the table at slide 6, which is the *pro-forma* I had prepared earlier that month.

43. With respect to the incumbents, I sourced this information from publicly available filings, and with respect to WIND and Mobilicity I would likely have sourced this from existing Catalyst work product. I do not recall researching the federal government’s policies. The remaining information in the presentation was either given to me on a mockup slide, or relayed verbally by Michaud and De Alba, and possibly Riley.

44. The slides may, as Glassman says at paragraph 16, have been based on extensive internal prior discussions with respect to deal priorities, but I was not involved in any such discussions and I did not draw on any knowledge I had about Catalyst’s interest in the telecommunications industry in creating them. The content was generated by Michaud, De Alba, and Riley. I was certainly not aware, as Glassman states at paragraph 18, of any Catalyst critical analyses concerning the industry, potential competing bidders for WIND, the government’s litigation risk, and the negotiating positions that Catalyst intended to take with the federal government.

45. I acknowledge, as Glassman states at paragraphs 16 and 17, that by transposing notes and creating this PowerPoint, I became privy to Catalyst's deal priorities and high level analysis, but I did not fully understand them because I lacked sufficient context. At the time in March when I prepared these slides, I had very little specific knowledge of or familiarity with Catalyst's interest in the telecommunications sector, other than what little I had learned at Monday meetings. Given the fact I had little context for the presentation, and the hurried manner in which it was created, I put very little thought into the items as I transposed them into the presentation, and was unable to retain much of the contents.

46. I could not say at the time, nor can I say even now, having reviewed the document as part of this litigation, how much of the information contained in the PowerPoint was fact, how much of it represented Catalyst's genuine views, and how much of it represented Catalyst's negotiating position with the government.

47. For example, on March 26 I was not aware of any formal discussions between Catalyst and VimpelCom, and would not have known whether or not the statement at slide 1 that "Catalyst is in advanced discussions with VimpelCom to gain control of WIND Canada" was true or was a bargaining position. I did not ask Michaud or anyone else at Catalyst about this statement, and only learned that Catalyst was in discussions to gain control of WIND on May 6, 2014.

48. Glassman and De Alba both overstate my understanding of the content of the PowerPoint presentation, and the extent to which I would have been able to distinguish Catalyst's positioning towards the government on the one hand, from its honest internal

views on the other. For example, paragraph 16 of the Glassman Affidavit says that I was aware of the critical nature of the regulatory clarifications in this presentation as well as Catalyst's alternative legal strategy. To the contrary, on March 26, 2014, I was not aware of the detailed analysis set out in paragraphs 20-28 of the Glassman Affidavit, nor was I involved in the specific analysis and conclusions found in paragraph 27 of the Glassman Affidavit.

49. Glassman states at paragraph 29 that I "understood [the] dynamic" with respect to the best of the three options set out in the presentation for Catalyst. I did not. I did not understand the options well enough to weigh and evaluate their respective merits to Catalyst, and did not have the necessary background on the file to arrive at such an understanding. I disagree with Glassman's characterization at paragraph 28 of the Glassman Affidavit that I was "intimately aware" of Catalyst's strategy.

50. By way of example, the presentation describes a number of "strategic options" at slides 7 and 8. "Option 1" is described as a "Combination of WIND Canada / Mobilicity to create a 4<sup>th</sup> National Carrier focused on retail market", and "Option 2" is described as a "Combination of WIND Canada / Mobilicity to create a 4<sup>th</sup> National Carrier focused on the wholesale market" on March 26, 2014. I was generally aware that both of these options were potential outcomes within the Canadian wireless industry. I cannot recall where I first learned about each of these options, but know I was aware of them both from public and newspaper reports, but also from discussions at Catalyst.

51. From these slides, I was aware that Catalyst was telling the government that it required the ability to exit its investment (i.e. sell it) with no restrictions in 5 years, and

that Catalyst would undertake that before selling to an incumbent (i.e. Bell, Telus or Rogers), to pursue an IPO or other strategic sale prior to the end of the 5-year period. I was also aware that there was a regulatory risk, as to whether the federal government would allow a new wireless entrant to transfer its spectrum, or be purchased by an incumbent. This was a fairly basic understanding available to anyone who read news reports of the Canadian telecommunications landscape. I did not have the detailed understanding described in the De Alba or Glassman Affidavits.

52. With respect to Catalyst's "Option 3", I was aware of the possibility of a court supervised sale of Mobilicity to Telus, but I was not aware of the potential for litigation with the federal government with respect to conditions imposed on the 2008 licenses, as described in the Glassman and De Alba Affidavits. I expressly deny Glassman's evidence at paragraph 28 that I specifically knew, and was involved in generating the specific analysis and conclusions found in Option 3 due to my involvement in the file. As of March 26, 2014, I had no such involvement or knowledge.

53. At my cross-examination on May 11, 2015, my evidence was that I recalled that this presentation related exclusively to Mobilicity. At that time, I had not seen either presentation or the one I was involved in some months later since I worked on them in 2014. Having now reviewed it as part of Catalyst's disclosure, I acknowledge my recollection of the March presentation was not correct.

54. After completing the presentation, Catalyst partners instructed me to destroy immediately all copies of the notes provided to me by De Alba, Riley and Michaud and

the electronic files. I did so. I understood and appreciated that this information was highly sensitive and confidential.

55. I did not attend the meetings in Ottawa with Industry Canada or the federal government, and never knew any particulars of the outcome or tone of those discussions until reviewing the Glassman and De Alba Affidavits.

**4. Discussions with Catalyst consultant on regulatory and competitive environment**

56. As further evidence of my “extensive involvement” in the Catalyst telecommunications team, De Alba cites my participation in a call with Johanne Lemay, who I understand from De Alba’s affidavit was engaged by Catalyst to assist in understanding critical regulatory issues. This call took place on the morning of March 26, 2014 (the same day as I prepared the PowerPoint presentation for Industry Canada). I have no specific memory of reviewing the presentation which Lemay had provided shortly in advance of the call, which I attach as **Exhibit “29”**.<sup>35</sup> I also have no memory of participating in the call referenced in Michaud’s covering email, attached as **Exhibit “30”**.<sup>36</sup> I have no memory of any further discussions with Michaud or anyone else at Catalyst about that call, and do not believe I ever met Lemay. This was the only time I was ever involved in a call with her.

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<sup>35</sup> CCG0011561

<sup>36</sup> CCG0011563

57. Some weeks later, on May 7, 2014, De Alba asked Michaud, Creighton or me to send him Lemay's contact. I did not have it at the time, and Michaud eventually provided it to De Alba. I attach this email exchange as **Exhibit "31"**.<sup>37</sup>

**5. Further work in March and April 2014**

58. I believe that I did not do any work on Catalyst's telecommunications file, or learn anything further about the status of Catalyst's negotiations with WIND, between the day I worked on the presentation on March 26, 2014, and early May 2014. Following examinations for discovery, Catalyst produced a number of emails I was copied on in mid-April 2014 in which Glassman and Drysdale discuss a proposed transaction involving Mobilicity and Telus. I was not an active participant in these discussions.

59. I was not, as stated in the De Alba and Glassman Affidavits, kept intimately apprised of Catalyst's strategy. I was not involved in any analysis of a potential purchase of WIND, or any "critical tasks necessary to complete a transaction with VimpelCom", as described at paragraph 51 of the De Alba Affidavit.

60. As noted above, I was working on multiple other Catalyst projects during this time, and was spending approximately half my time out of the office.

***E. My involvement in the WIND and telecommunications file May 6, 2014 – May 24, 2014***

61. On May 6, 2014, I found out that Catalyst would be actively pursuing a transaction involving WIND.

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<sup>37</sup> CCG0011614

62. Catalyst's team on the WIND deal consisted of De Alba, Michaud, Creighton, and me. Creighton was not originally on the team, but once Catalyst was invited to the data room, we needed more help, both from Creighton, and external advisors to assist with the work and diligence, including building the financial model for WIND. Catalyst's internal team focused on preparing the investment memorandum (which would set out Catalyst's investment thesis, and at the time of my departure, did not contain any regulatory strategy), and reviewing the external advisors' work. Creighton and I, the junior Catalyst employees, spent those first days learning about WIND, primarily by reviewing information made available by the company through a virtual dataroom.

63. Catalyst was initially working towards a May 23 deadline and the pace of work was frenetic. Though I do not recall precisely how my time was split between WIND and my other Catalyst duties after May 6, 2014, I still spent a significant amount of time on my ongoing responsibilities with respect to Catalyst's other portfolio companies.

64. My involvement on the WIND file was limited to a period of approximately three weeks from May 6 until May 24, 2014, when I resigned. For the last ten days of that three week period, starting May 16, 2014, I was on vacation in Southeast Asia and had almost no direct involvement on the file. My active work on the WIND file was, therefore, largely limited to the ten day period between May 6, 2014 and May 16, 2014, during which time I:

- (a) attended two due diligence meetings with WIND management, Catalyst's internal team, and Catalyst's external advisors;



- (b) assisted with crafting Catalyst's due diligence requests, which were based on information available in the WIND data room and otherwise publicly available;
- (c) briefly worked on Catalyst's operating model, before the task was outsourced to Morgan Stanley; and
- (d) helped Creighton on the initial draft of Catalyst's investment memorandum, which was still not complete at the time of my resignation.

65. As a member of Catalyst's team, I was regularly copied on numerous emails involving Catalyst's external advisors: Fasken Martineau (its legal advisors) and Morgan Stanley (its financial advisors). I reviewed these in the regular course of my duties, before I left for vacation. These emails dealt with various topics, including due diligence, the company's spectrum ownership, possible acquisition structures proposed by WIND, and later, draft share purchase agreements. I likely reviewed all the emails and documents that I received before I went on vacation.

66. I also received a number of emails from WIND, which attached correspondence and documents. I did not know at the time, nor do I know today whether these documents were provided only to Catalyst, or to others who may have been bidding on the WIND deal. Again, I likely reviewed all these documents before I went on vacation.

67. I reviewed these emails in the course of my duties, and by the time I left for vacation had developed some familiarity with Catalyst's diligence priorities and the business model Catalyst intended to pursue.

68. I was not, however, during this period, privy to any high level strategic discussions, as described in the De Alba and Glassman Affidavits. I was not, as stated at paragraph 77 of the De Alba Affidavit, “kept abreast of the inner workings of the deal process and [Catalyst’s] strategic thinking behind the WIND transaction”.

69. I had no particular understanding of Catalyst’s regulatory strategy, as the focus of my work from May 6 onwards was primarily business due diligence.

70. The only regulatory risks related to WIND of which I was aware from my involvement on the file, were:

- (a) whether or not the federal government would allow a new wireless entrant to sell its spectrum and/or be purchased by an incumbent. I learned about this regulatory issue through the extensive media coverage it received in both the general and business news. I understood this was an issue for Catalyst; and
- (b) the requirement for government approval of a sale. For instance, I was copied on an email early in the discussions from De Alba with respect to a draft share purchase agreement, which referred to Catalyst’s need to have conditions related to government approvals. I understood this to mean that the government had to approve the purchase or sale and that Catalyst wanted the transaction to be conditional on obtaining such approval. I was

not involved in any discussions about what De Alba's comment might otherwise have meant. I attach that email as **Exhibit "32"**.<sup>38</sup>

71. I did not analyze the subject of regulatory risk, or any other regulatory issues facing WIND, and if anyone at Catalyst did such an analysis before I left, I was not aware of it.

72. To my knowledge, Catalyst did not yet even have a working model of WIND or a complete investment memorandum when I resigned on May 24, 2014. Catalyst had not yet, to my knowledge, decided on the structure, price or regulatory risk mitigation, and given the status of Catalyst's diligence at the time, they could not have ascertained or resolved those issues.

**1. I first become aware Catalyst pursuing the WIND deal, May 6, 2014**

73. I first became aware that Catalyst would be actively pursuing a deal with WIND as a result of an email De Alba sent to me, and a number of others, on May 6, 2014, which I have attached as **Exhibit "33"**.<sup>39</sup> I have no memory of looking at the documents which were attached to the email, and did not have any real understanding of De Alba's comment in the email that "they are moving on the terms I proposed this a.m."

74. Over the course of that day and the following day, I was one of several recipients of further emails from Glassman and De Alba with respect to the deal, and the government's approach. I attach the balance of the exchange as **Exhibit "34"**.<sup>40</sup> In his email at 4:04 p.m., Glassman refers to a "need [for] condition of govt'al approval". I did

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<sup>38</sup> CCG0011204

<sup>39</sup> CCG0009474

<sup>40</sup> CCG0009482

not know what exactly Glassman was referring to, since “government approval” could mean a number of things.

75. Despite Glassman’s comment in that email that due diligence could be confined primarily to spectrum ownership and opinions, the diligence I was ultimately involved in, described below, had nothing to do with these issues.

76. De Alba responded to Glassman the following day, at 2:35 p.m. From De Alba’s email, I understood that Catalyst’s strategy was to monetize its investment, and that Catalyst’s position with the government was that it required clarity on the ability to sell spectrum and/or monetize the investment. He speculated that the government was “probably watching Mobilicity and ... unwilling to experience a similar mess.” From this I gathered that De Alba was proposing that Catalyst position the situation with Mobilicity (which was in creditor protection and whose future was uncertain), to its advantage as the government would want to avoid that outcome.

77. Glassman responded that evening, May 7, 2014, at 7:59 p.m. that the government had advised Catalyst that they were not willing to give Catalyst, in writing, the right to sell spectrum in five years. Glassman went on to say that this “takes ‘option 1’ off the table and [Catalyst] would only be willing to build a ‘wholesale/leasing business’ specifically w incumbents as the customers”. I became aware of Catalyst’s position, and the status of its discussions with the government through this email.

78. I did not understand from this email, as Glassman asserts at paragraphs 33 and 34 of his affidavit, that:

- (a) Catalyst had knowledge that the federal government and Industry Canada's posture was "softening" and they were concerned about the retroactive treatment of the 2008 spectrum licenses;
- (b) it was Catalyst's strategy to deliver to Industry Canada and the federal government a "dream deal" of merging Mobilicity and WIND;
- (c) Catalyst intended to put the federal government in a position of having no choice but to provide the regulatory approvals requested by Catalyst for its options 1 or 2; or
- (d) Catalyst believed the government's position that it would not provide Industry Canada with a written agreement to sell spectrum licenses in five years to be a negotiation posture.

## 2. May 12, 2014 presentation to Industry Canada

79. In mid-May, 2014, Catalyst's partners made a second presentation to Industry Canada. I attach a copy of my cover email distributing the finalized presentation and the presentation itself as **Exhibits "35"**<sup>41</sup> and **"36"**<sup>42</sup> to this affidavit. As with the presentation in March 2014, my role was largely administrative. I did not "lead" its creation.

80. I was instructed to re-create a modified version of the March slide deck. We were not starting from scratch, but I recall that we did not have an electronic copy of the slides. I had complied with Riley's instructions, and had not retained an electronic copy

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<sup>41</sup> CCG0009516

<sup>42</sup> CCG0009517

or hard copy of the March 2014 presentation. Someone else provided me with a hard copy of the document. I do not recall who that person was.

81. De Alba, Michaud and Riley then marked up that hard copy of the March 24 presentation. They provided me their comments and changes, which I inputted into a new PowerPoint file. I recall that all three of these individuals were, as with the first presentation, providing me with handwritten changes and comments to input into the presentation. As with the first presentation, given the hurried manner in which it was created, and my largely administrative role, I put little thought or analysis into the PowerPoint, and whatever work I did, I was instructed to do by one of De Alba, Michaud or Riley.

82. When I was transcribing the information into the slides, I understood that the presentation was Catalyst's framing of the situation with VimpelCom to the federal government and Industry Canada. I did not know what was fact and what was merely a negotiating position, and I still lacked context to understand certain aspects of the presentation. For example, the fourth slide states that "the feasibility of creating a fourth wireless network has been reduced due to lack of direction." I do not recall there being issues around feasibility in creating a fourth carrier from Catalyst's perspective. I do not understand today what that statement means, and I do not believe I would have understood at the time.

83. The only information or charts in the PowerPoint that I recall creating are:

- (a) the chart on the third slide, a bar diagram. I would likely have pulled the data to create this bar graph from the WIND data room; and

- (b) the chart on the fourth page, which sets out “Mobilicity and WIND Canada: Combined Pro-Forma”, based on the *pro-forma* I created in early March, described above.

84. I still, at this time, did not have sufficient context to understand Catalyst’s analyses, strategies and intended tactics with respect to regulatory concessions as set out in paragraphs 36-38 of the Glassman Affidavit, let alone the ability to present Catalyst’s strategy myself to someone else. In any event, I did not do so.

85. Contrary to the assertion at paragraph 39 of the Glassman Affidavit, I have no recollection of receiving any update from Glassman or any other Catalyst partner about what occurred at that meeting, let alone the immediate update on Industry Canada and the federal government’s position regarding Catalyst’s requested regulatory concessions, which Glassman describes.

### 3. Contributions to Catalyst’s due diligence

86. I was actively involved in Catalyst’s early due diligence commencing on May 7, 2014. Michaud forwarded Lorne and me an email from De Alba, requesting comments on the due diligence list prepared by Morgan Stanley. I attach the email as **Exhibit “37”**<sup>43</sup> and the diligence list itself at **Exhibit “38”**.<sup>44</sup> I reviewed the list quickly, and based on my experience reviewing such lists, identified a number of items which were typically included in such lists, and suggested to Michaud that these missing items be included. Creighton also made a number of suggestions. I attach our emails providing

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<sup>43</sup> CCG0011118

<sup>44</sup> CCG0011121 The document is also included in my productions at BM0004652, as I saved the document on my computer at home for the purposes of reviewing and providing comments on it.

comments as **Exhibit “39”**,<sup>45</sup> and the comments which Michaud passed on to De Alba and Jonathan Levin (of Fasken Martineau) as **Exhibit “40”**.<sup>46</sup>

87. This exchange exemplifies how the work flowed on the WIND deal: De Alba would assign Michaud a particular task, and Michaud would then delegate it to Creighton or me. Despite the statement at paragraph 77 of the De Alba Affidavit that Creighton and I should be copied on all communications so we would be “kept abreast of the inner workings of the deal process and our strategic thinking behind the WIND transaction”, I know now from having reviewed the productions that I was not involved in these discussions.

88. In the following days, Michaud, Creighton and I coordinated Catalyst’s additions to the due diligence list and sent them these to Morgan Stanley. I attach an email I sent to Morgan Stanley as **Exhibit “41”**.<sup>47</sup>

89. On Friday, May 9, 2014, I attended a meeting with Catalyst and its advisors, and WIND’s management team. I believe that the meeting was held at the offices of Vimpelcom’s financial advisors, UBS Investment Bank. I recall the meeting was attended by Michaud, Creighton, De Alba, likely a few people from Morgan Stanley and Faskens, and me.

90. I believe that I took handwritten notes at the meeting, and was instructed to provide these notes to Creighton, who consolidated the notes into what ultimately became the investment memorandum discussed below. I attach the document in which

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<sup>45</sup> CCG0011618

<sup>46</sup> CCG0009483

<sup>47</sup> CCG0011123



Creighton consolidated the participants' notes from the meeting as **Exhibit "42"**.<sup>48</sup> I do not believe I was involved in preparing this document, other than that my notes were incorporated into it. I accept that Creighton's consolidation of the notes would provide a fairly accurate summary of the meeting.

91. On May 14, 2014, I attended a second meeting involving Catalyst, Morgan Stanley, UBS and WIND management. I do not recall attending this meeting, but know that I did so from reviewing the productions in this action. From these documents, it appears that WIND had referred to a number of documents with respect to its spectrum which they could provide to Catalyst. I followed up with Morgan Stanley on this point. I do not recall there being any further follow-up from this email. I attach a copy of the email chain with respect to my request for the documents as **Exhibit "43"**.<sup>49</sup>

#### 4. Investment memorandum

92. Following the meeting on May 9 with WIND management, De Alba wrote to Michaud, Creighton and me requesting that we begin to put together an investment memo based on the Catalyst participants' notes. I attach a copy of De Alba's request as **Exhibit "44"**,<sup>50</sup> and the last draft of the memorandum to which I contributed before I resigned as **Exhibit "45"**.<sup>51</sup> An investment memo, in my experience at Catalyst, contained a summary of the business, its financial history, valuation, the competitive landscape, and follow-up or diligence items.

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<sup>48</sup> CCG0011139

<sup>49</sup> CCG0010037

<sup>50</sup> CCG0011138

<sup>51</sup> CCG0010041

93. While I was involved in drafting the investment memo, Creighton took the lead on it. Given the nature of the document, it made the most sense for one person to take the lead, and for the other to assist him by completing discrete tasks. My contributions were focused on gathering and formatting information which was publicly available into a format which would be useful for the purposes of the memo, and discussing and providing Creighton with feedback. Our email exchange, on May 10, 2014, reflects how we divided the work: Creighton worked on putting the document into memo format, and I worked on charts and tables. I attach this exchange as **Exhibit “46”**.<sup>52</sup>

94. I may have contributed certain individual sentences or paragraphs which I cannot now identify, and some of the content may have been sourced from my notes from the initial May 9 meeting with WIND management. Specifically, upon reviewing this draft of the memo while preparing my affidavit, I believe I made the contributions set out below:

- (a) I assisted Creighton conceptually with the “waterfall analysis” found on page 4, and discussed it with him. This analysis determines what different pieces of the capital structure may be worth. Creighton ultimately did the analysis himself;
- (b) I created the chart on page 11 setting out WIND’s historical financials and performance. I likely obtained this information from the WIND data room;
- (c) I created the charts on pages 12, 13, 14 and 15. I likely sourced the information with respect to WIND from the WIND data room, and with respect to Bell, Telus and Rogers from publicly available information;

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<sup>52</sup> CCG0028667

- (d) I created the chart labelled “Financial Operational Summary” on page 18. I likely obtained this information from the WIND data room; and
- (e) I created the charts on pages 19-22 using information from the WIND data room.

## 5. Early work on operating model

95. On May 8, 2014, Michaud directed Creighton and me to begin work on an operating model for WIND. The email from Michaud containing this assignment is attached at **Exhibit “47”**.<sup>53</sup>

96. I recall that Creighton took the lead on preparing this model, and I provided input to him. We quickly found, however, that we were missing information which would be necessary to build a model, and began to work on a list of questions to obtain the necessary information, including basic questions to help us understand the business. I attach the email exchange among Michaud, Creighton and me setting out our questions, and Creighton’s update on the status of the work as **Exhibit “48”**.<sup>54</sup> We did not do any further work on the operating model, as Morgan Stanley eventually took responsibility for it.

97. After Morgan Stanley took over creating the operating model, I was likely involved in discussions between Morgan Stanley and WIND management’s financial representatives with respect to it, but I have no specific memory of these discussions.

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<sup>53</sup> CCG0011619

<sup>54</sup> CCG0011631

## 6. Catalyst work while on vacation

98. From May 16, 2014, to May 25, 2014, I was on vacation in Southeast Asia and had almost no direct involvement on the file. I was concerned that the WIND project might interfere with my vacation, but no one put any pressure on me, or even suggested that I consider rescheduling the vacation.

99. As described in greater detail below, I received a verbal offer from West Face on May 16, 2014, the first day of my vacation. I told Michaud that day by e-mail that I had an offer, and he put me in touch with one of his connections who had previously worked at West Face.

100. While I was away, I continued to be copied on emails, and reviewed the emails as they arrived to see if anyone had directed a specific task to me. To the extent an email did not assign me a particular task, or request a response, I did not read it or any attachments closely.

101. On May 19, 2014, Michaud asked Creighton and me to review and comment on a preliminary model for WIND prepared by Morgan Stanley. I attach a copy of Michaud's request as **Exhibit "49"**.<sup>55</sup> Because this message made a specific request of me, I reviewed the document and replied. I asked Michaud whether Catalyst was still contemplating buying WIND debt-free, as I thought that the \$300 million purchase price would buy out all of the vendor financing, and shareholder loans would disappear as well. I believe that this was something which was discussed at the due diligence

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<sup>55</sup> CCG0011275

meetings with WIND. The operating model attached to the email marked as Exhibit 49 appeared to me to be modelled on a different approach.

102. Otherwise, I had little involvement in the WIND file while on vacation. I exchanged a number of emails with Creighton on our personal email accounts and in one of those emails I asked him for an update on WIND. I was curious about what was going on with the transaction since I had not been following the emails closely, and did not know what discussions were taking place internally. Creighton responded telling me that at that point he had “no real idea what’s going on or if we’re actually going to do the deal.” This reflected the reality that analysts on the WIND team were not directly involved in strategic or high-level discussions about the deal. I attach my exchange with Creighton as **Exhibit “50”**.<sup>56</sup>

103. On May 23, 2014, before I officially resigned, I exchanged further emails with Creighton on our personal accounts. At this point I had decided to give notice at Catalyst, despite the fact that I had not finalized my written offer with West Face. I asked Creighton if Catalyst had made a WIND bid. That day, May 23, had been the deadline for submitting bids, and I was curious about the status of Catalyst’s deal. Creighton responded that he thought Catalyst had made a bid. I did not read the share purchase agreement which was circulated on my Catalyst email account. The document was lengthy, and given my intention to depart Catalyst, I was not interested in reading it. I attach my exchange with Creighton as **Exhibit “51”**.<sup>57</sup>

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<sup>56</sup> BM0004979

<sup>57</sup> BM0004983

**F. My knowledge of Catalyst's involvement in WIND following my resignation**

104. On May 24, 2014, I sent an email to De Alba and gave Catalyst official notice of my resignation. It was the second-to-last day of my vacation. I deliberately chose to keep my resignation notice as short as possible. I intended to discuss my resignation in person with De Alba when I returned to the office two days later, and I wanted to be able to see De Alba's reaction to my resignation and departure for West Face. Seeing his reaction would allow me to respond appropriately to any concerns he may have, and hopefully maintain a good relationship with my soon to be former employer. I attach a copy of my resignation notice to De Alba as **Exhibit "52"**.<sup>58</sup>

105. I did not, as De Alba and Glassman imply, deliberately withhold the fact I was going to West Face in my May 24 email because I knew that West Face was also pursuing the WIND deal. I did not know this, so it had nothing to do with how I communicated my resignation to Catalyst. I do not recall De Alba stating at any Monday meeting, as he states at paragraph 121 of his affidavit, that West Face was a likely bidder for WIND.

106. On Monday May 26, 2014, I came to work and met with De Alba. De Alba advised me that Catalyst "may view" West Face as a competitor because it has in the past been involved in some deals in which Catalyst also had an interest. De Alba included WIND in this characterization. This was the first time I recall hearing any suggestion that West Face could be interested in WIND. I had no way of verifying the accuracy of De Alba's statements in this respect. I did not learn that West Face may also have been pursuing a WIND transaction until West Face set up a confidentiality

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<sup>58</sup> CCG0018691

wall with respect to the transaction on June 19, 2014, and did not know that West Face had actually been pursuing a WIND transaction until I learned it had closed the deal in September 2014.

107. De Alba told me to stay home for the balance of my notice period (approximately 4 weeks). I did so, and did no Catalyst work during that period. To the best of my recollection, I did not attempt to log on to the Catalyst system during that period.

108. I first learned West Face had closed the WIND deal in September 2014 from Twitter. I was surprised by the news, and thought it was an incredible coincidence that the firm I had gone to, West Face, had bought a company that my former company, Catalyst, had been bidding on. At this point all I knew about West Face's interest in WIND was that they had put up a confidentiality wall with respect to WIND before I started work. I attach a number of the emails which I sent to friends and family at the time of the transaction, expressing my surprise, as Exhibits "53",<sup>59</sup> "54",<sup>60</sup> "55",<sup>61</sup> "56",<sup>62</sup> "57",<sup>63</sup> and "58".<sup>64</sup>

**G. My communications with West Face**

109. Catalyst alleges that I passed on Catalyst confidential information regarding WIND to West Face between March 26, 2014 and June 4, 2014. I did not do so.

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<sup>59</sup> BM0004987

<sup>60</sup> BM0004988

<sup>61</sup> BM0004989

<sup>62</sup> CCG0028632

<sup>63</sup> BM0004990

<sup>64</sup> BM0004991

110. It alleges I was in “near constant” contact with West Face during this period by way of email and phone. This is an overstatement.

111. During this particular period, my communications with West Face representatives were limited to discussions with respect to my recruitment, the terms of my employment, and Catalyst’s position that I was in breach of the Employment Agreement. At no time did I discuss my work at Catalyst in the telecommunications industry, or on WIND with anyone at West Face. At no time did I pass on Catalyst confidential information with respect to WIND, or Catalyst’s telecommunications strategy.

112. In this section I set out all of my meetings and contacts with West Face representatives during this period.

113. By late 2013, I was unhappy with my work at Catalyst, and began to search for a new position. I began to look for a new position in earnest in March 2014. At that time, I contacted a number of potential employers, including West Face. West Face was my top choice throughout the process, but there were a number of delays in their recruitment process, and I was not sure they would offer me a position until I received a verbal offer in mid-May. I attach email exchanges with my girlfriend (now fiancée), in late March and April 2014, in which we discussed my job search as **Exhibits “59”**<sup>65</sup>, **“60”**,<sup>66</sup> and **“61”**.<sup>67</sup>

114. I had previously been in touch with Thomas Dea at West Face when I was looking for a position in Toronto in 2012. We did not stay in regular contact. I sent him

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<sup>65</sup> BM0004982

<sup>66</sup> BM0004968

<sup>67</sup> BM0004969



an email in December 2013 to which he never responded. I emailed him again in March 2013 when I began to look for a job earnest, to tell him I was looking at exploring other employment opportunities. After some back and forth, we arranged to meet for coffee on March 26, 2014. I attach a copy of our exchange scheduling the meeting, and a follow-up question arising from the meeting as **Exhibit "62"**.<sup>68</sup>

115. At our meeting on March 26, Dea and I discussed my background, my duties and the skills I had developed at Catalyst, why I was interested in West Face, and why I was think about leaving my current position. He told me about the type of work West Face did, and about their potential needs, though he was not sure whether or not West Face would be hiring anyone at my level. We did not discuss any of my specific work at Catalyst, and we did not discuss WIND or the telecommunications industry. After our meeting, at 9:31 p.m. that night, Dea sent me a question.

116. At our meeting on March 26, Dea had requested that I send him a number of research and writing samples to gauge my research and writing ability. He specifically asked that I not provide confidential information. On March 27, 2014, at 1:47 a.m., I replied to Dea's 9:31 p.m. message, and attached four company research pieces that I created at Catalyst, three of which contained compilations of public information, and some of which were marked as confidential, along with my resume. I did not answer Dea's question. I intended only to provide West Face with examples of my written work and my research abilities. Providing these documents to West Face was a mistake. I should not have done so.

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<sup>68</sup> WFC0031090

117. Having realised that I should not have sent the confidential documents to West Face, I deleted that message from my email account. I recognize now that deleting the sent item was not the appropriate way of addressing my mistake. I attach a copy of the email and the attached memos contained in West Face's productions as **Exhibit "63"**.<sup>69</sup>

118. A week or so after my meeting with Dea, on April 7, 2014, I sent Dea a follow-up email, and he later responded that West Face would like me to come into the office to meet some other people. I attach this email chain as **Exhibit "64"**,<sup>70</sup> and Dea's email to me a few days later asking me to coordinate a time to come into West Face's office as **Exhibit "65"**.<sup>71</sup> I was very excited to be asked back in, and emailed my girlfriend about it on April 10, 2014. I attach that email as **Exhibit "66"**.<sup>72</sup> I originally thought I would be meeting with Greg Boland, the head of West Face, but I met him a few weeks later.

119. On April 15, 2014, I met with Peter Fraser, Tony Griffin and Yu-Jia Zhu in the West Face office. I met with each of them sequentially for a series of short interviews. My interviews with Fraser and Griffin were very similar to my interview with Dea in March: we discussed my interests and ambitions, the kind of work I had done at Catalyst in general terms without identifying any specific companies, why I was interested in West Face, and why I was thinking of leaving Catalyst. I recall that at my interview with Zhu, in addition to discussing these topics, he also provided me with a hypothetical work problem, and we discussed how I would begin to approach an

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<sup>69</sup> WFC0108593, and its attachments WFC0108597, WFC0108649, WFC0108670, WFC0108694 and WFC0108730

<sup>70</sup> WFC0031096

<sup>71</sup> WFC0031098

<sup>72</sup> BM0004971

analysis of that problem. At no time did I discuss WIND or the telecommunications industry during these meetings.

120. On April 24, 2014, Dea asked me to come back into the office to meet with Boland. I attach the email from Dea requesting I schedule a time to meet with Boland as **Exhibit “67”**.<sup>73</sup> I met with Boland on April 28, 2014, and sent him a thank you email that evening, which I attach as **Exhibit “68”**.<sup>74</sup> My discussion with Boland was brief, and similar to my previous discussions with West Face representatives. We did not discuss WIND or the telecommunications file. In any event, at the time of my interviews with Boland, Fraser, Griffin and Zhu, I was not aware that Catalyst was actively pursuing WIND, or would soon be.

121. On May 2, 2014, I sent Dea a follow-up email advising him of my interview status with another firm, and a few days later he followed up asking for my compensation information. On May 9, 2014, Dea requested a number of additional references, which I provided. I attach that email chain as **Exhibit “69”**.<sup>75</sup> Even though I thought it was a good sign that West Face was asking for additional references, I was stressed that I still did not have a job offer, and frustrated with the slowness of West Face’s process. I was also increasingly unhappy at Catalyst. I expressed my frustration to my girlfriend in emails around this time, which I attach as **Exhibits “70”**<sup>76</sup> and **“71”**.<sup>77</sup>

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<sup>73</sup> WFC0031131

<sup>74</sup> WFC0031144

<sup>75</sup> WFC0031155

<sup>76</sup> BM0004976

<sup>77</sup> BM0004974

122. On May 16, 2014, Dea sent me an email asking that I call him when I had a chance. I did so, and he verbally offered me a position with West Face. While I was thrilled to receive the offer, I did not want to accept Dea's verbal offer until I had a written offer which I could review with legal counsel. On May 22, 2014, I sent Dea a follow-up email asking him for a copy of a written offer. I attach our entire email chain from this period as **Exhibit "72"**.<sup>78</sup>

123. Later that day, May 22, 2014, Alexander Singh, West Face's General Counsel and Secretary, sent me a copy of West Face's written offer for my review. I attempted to set up calls with Singh and Dea to discuss the agreement and my position. I attach copies of these emails as **Exhibits "73"**<sup>79</sup> and **"74"**.<sup>80</sup>

124. As described above, on May 24, 2014, I resigned from Catalyst. I had decided at that point to leave Catalyst regardless of whether or not I had a signed agreement with West Face.

125. On May 26, 2014, West Face and I reached an agreement with respect to the terms of my employment agreement, and both parties executed the agreement. I attach Singh's cover email enclosing the fully executed agreement as **Exhibit "75"**,<sup>81</sup> and the agreement itself as **Exhibit "76"**.<sup>82</sup>

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<sup>78</sup> WFC0031163

<sup>79</sup> WFC0031168

<sup>80</sup> WFC0109294

<sup>81</sup> WFC0032710

<sup>82</sup> WFC0075090

126. On May 26, 2014, after I resigned from Catalyst, I sent Singh an email reporting on my discussions with De Alba, and that Catalyst's counsel would be contacting him. I attach a copy of my reporting email as **Exhibit "77"**.<sup>83</sup>

127. Over the following weeks, before I began work, the only discussions I had with anyone at West Face were with respect to human resources issues, the WIND confidentiality wall, and issues related to this litigation.

128. On June 19, 2014, before I started at West Face, I received a copy of a memorandum from Supriya Kapoor, West Face's Chief Compliance Officer, advising me that a confidentiality wall had been established with respect to WIND under which I was not permitted to discuss any information I had regarding WIND with others at West Face, or to take any active steps regarding WIND. I attach a copy of this memorandum as **Exhibit "78"**<sup>84</sup> to my affidavit. I complied with the instructions in the memorandum.

129. In addition, Singh advised me that West Face was concerned about the Catalyst memos I had provided to Dea.

130. He also reminded me of my confidentiality obligations to Catalyst, and the importance of respecting those obligations.

131. I understand and respect the obligation to preserve the confidentiality of my former employer's information. West Face was absolutely clear with me about the importance of respecting and abiding by that confidentiality obligation.

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<sup>83</sup> WFC0032731

<sup>84</sup> WFC0000050

132. I worked at West Face briefly, between June 23, 2014 and July 16, 2014. During this brief period working at West Face, I did not work on anything related to WIND. I did not discuss WIND with anyone at West Face.

133. As part of this litigation, West Face has produced its phone records recording incoming and outgoing calls to me. I attach this document as **Exhibit "79"**.<sup>85</sup> The following are my recollections of the calls recorded on this table:

- (a) May 22, 2014: this was likely a call I received from Singh with respect to the terms of my employment agreement;
- (b) May 23, 2014: this was a call I made to Dea, likely with respect to my compensation and title;
- (c) June 9, 2014: I have no specific memory of receiving a call from West Face;
- (d) June 16, 2014: I called Alison Campbell who is involved in human resources at West Face. We likely discussed human resources issues;
- (e) June 19, 2014: I do not specifically recall calling Kapoor that day, or receiving a call from West Face, but this was the same day that the Catalyst confidentiality wall went up and our conversation was likely with respect to that topic;

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<sup>85</sup> WFC0109530

- (f) July 8, 2014: I have no specific memory of receiving a call from West Face that day;
- (g) July 15, 2014: I have no specific memory of receiving a call from West Face that day;
- (h) August 8, 2014: I believe this call related to human resources matters;
- (i) August 15, 2014: I do not recall what I discussed on this call with Kapoor;
- (j) November 25, 2014: I do not specifically recall this conversation but at the time I was placing a number of trades, and I believe this call was in relation to clearing those trades;
- (k) February 10, 2015: I do not specifically recall this conversation with Kapoor, but it was likely in relation to records from my securities accounts; and
- (l) September 2, 2015: this call to Phil Panet, West Face's General Counsel, related to my resignation from West Face.

**H. Preservation of relevant documents**

134. Following my resignation from Catalyst and the announcement of my intention to begin working for West Face, Catalyst commenced this action against me and West Face, seeking a variety of relief including injunctive relief. Catalyst expressed concern that, among other things, I would transfer confidential Catalyst information to my new employer.

135. In connection with Catalyst's initial motion for interim relief, I am aware that the parties attended Motion Scheduling Court on June 30, 2014. Although I was not in attendance on that date, and my counsel did not attend, I am aware that Andy Pushalik, West Face's counsel, entered into an undertaking on behalf of West Face and me. I attach a copy of the undertaking as **Exhibit "80"**.<sup>86</sup> That undertaking provided as follows:

Defendants' counsel agree to preserve the status quo with respect to **relevant documents** in the defendants' power, possession or control. (emphasis added)

136. I was advised of that undertaking by my counsel, and I understood and complied with it. I preserved the status quo with respect to any relevant documents in my power, possession or control. After Catalyst commenced this litigation, I did not delete any relevant emails or documents from my computer.

137. On July 16, 2014, the parties consented to an order, which was signed by Mr. Justice Firestone (the "Firestone Order"). I attach a copy of the Firestone Order as **Exhibit "81"**.<sup>87</sup> It included a number of terms with respect to each of the parties, including the following terms relevant to me:

1. THIS COURT ORDERS that pending a determination of an interlocutory injunction or until varied by further Order of this Court, the defendant Brandon Moyse ("Moyse"), or anyone acting on his behalf or at his direction, is enjoined from using, misusing or disclosing any and all confidential and/or proprietary information, including all records, materials, information, contracts, policies, and processes of [Catalyst] and all confidential information and/or proprietary third party information provided to Catalyst.

2. THIS COURT FURTHER ORDERS that until an interlocutory injunction is determined or until varied by further Order of this Court, Moyse is enjoined from engaging in activities competitive to Catalyst and shall fully comply with the restrictive covenants set forth in his Employment Agreement dated October 1, 2012.

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<sup>86</sup> WFC0081951

<sup>87</sup> WFC0081954



3. THIS COURT FURTHER ORDERS that Catalyst shall pay Moyses his [West Face] salary throughout this period.

4. THIS COURT FURTHER ORDERS that Moyses and West Face, and its employees, directors and officers, shall preserve and maintain all records in their possession, power or control, whether electronic or otherwise, **that relate to Catalyst, and/or relate to their activities since March 27, 2014, and/or relate to or are relevant to any of the matters raised in this action**, except as otherwise agreed to by Catalyst.

5. THIS COURT FURTHER ORDERS that Moyses shall turn over any personal computer and electronic devices owned by him or within his power or control (the "Devices") to his legal counsel, Grosman, Grosman and Gale LLP ("GGG") for the taking of a forensic image of the data stored on the Devices (the "Forensic Image"), to be conducted by a professional firm as agreed to between the parties.

6. THIS COURT FURTHER ORDERS that the costs of the Forensic Image shall be sent to and borne by Catalyst.

7. THIS COURT FURTHER ORDERS that the Forensic Image shall be held in trust by GGG pending the outcome of the interlocutory motion.

8. THIS COURT FURTHER ORDERS that prior to the return of the interlocutory motion, Moyses shall deliver a sworn affidavit of documents to Catalyst, including copies of Schedule "A" documents, setting out all documents in his power, possession or control, **that relate to his employment with Catalyst** (the "Documents"). Moyses shall also advise whether any of the Documents have been disclosed to third parties, including West Face, and the details of any such disclosure. (emphasis added.)

138. I understood the terms of the Firestone Order and complied with them in full.

139. Further to the Firestone Order, I agreed to deliver my personal electronic devices, including my computer, to my counsel on Monday July 21, 2014, which was 5 days after the order was issued. I understand that on July 17, 2014, counsel were discussing the terms of the forensic imaging, and that Monday July 21, 2014, was the earliest date on which the image could be made.

140. I understood that, pursuant to the Firestone Order, a forensic image would be created of my computer's hard drive for the purpose of determining what, if any, documents I had in my possession that related to Catalyst or to the issues raised in Catalyst's lawsuit. I had been aware for a number of days before the court appearance

on July 16, 2014, that it was possible that my personal computer would have to be turned over to be reviewed for documents relevant to this matter.

141. I was not concerned that my devices would be reviewed to identify relevant documents that related to Catalyst or to the issues raised in Catalyst's lawsuit: I had good, reasonable explanations for every Catalyst-related document that would be found on my computer, set out in my previous affidavits, and in any event intended to disclose all such documents in my affidavit of documents, as required under the Firestone Order.

142. I was, however, concerned that an image of my computer hard drive would capture not only the Catalyst documents in my possession, which I agreed were relevant to this proceeding and which I would preserve in any event, but also a raft of irrelevant personal information. In particular, I was troubled that Catalyst would have access to my personal Internet browsing history, which was not relevant to the matters in dispute in this litigation but would be embarrassing to have reviewed by others. I use the Internet on my personal computer for, among other things, recreational online gambling, online gaming, and adult entertainment websites. I was particularly concerned that my personal internet browser history would show that I had accessed adult entertainment websites.

143. I was also concerned that the irrelevant information on the images would somehow become part of the public record through this litigation. At that point it was not clear to me what would happen to the images, which would include this irrelevant personal information. The parties had not agreed to appoint an Independent Supervising Solicitor, nor had a Document Review Protocol been implemented to

prevent Catalyst from accessing such irrelevant information and to ensure that it did not end up in the public record.

144. I therefore decided that, prior to delivering my computer to counsel, I would attempt to delete my Internet browsing history from my computer. I did not and do not believe that there was anything improper about my doing so – neither the undertaking nor the Firestone Order required me to maintain my computer “as is” for the 5 days before I was to deliver the computer or to preserve clearly irrelevant files. The focus of both the undertaking and the Firestone Order was to maintain and preserve documents relevant to this action. If the undertaking or the Firestone Order had required me to maintain the computer “as is”, I would not have used it at all prior to the image being taken.

145. Though I am comfortable using my computer and other devices on an everyday basis, I do not have a great deal of advanced knowledge about computers. However, I was aware that the mere act of deleting one’s Internet browsing history through the browser program itself does not fully erase the record, and that a forensic review of a computer would likely capture some or all recently deleted material. I did some Internet searches on how to ensure a complete deletion of my Internet browsing history, and many websites said that cleaning the registry following the deletion of the Internet history would accomplish this.

146. I then did some further online research for “registry cleaning” products, and ultimately purchased two software products from a company called “Systweak”. A print-

out of Systweak's home page ([www.systweak.com](http://www.systweak.com)) is attached as **Exhibit "82"**<sup>88</sup> to this affidavit. The website lists two of its "top products", called "RegCleanPro" and "Advanced System Optimizer". The website describes the "Advanced System Optimizer" product as an "all in one PC tuneup suite," and describes the "RegCleanPro" product as "Software to optimize the registry."

147. I decided to purchase "RegCleanPro" on July 12, 2014 for the purpose of deleting my Internet browser history, out of my concerns about my irrelevant Internet search history becoming part of a public record.

148. Four days later, on July 16, 2014, I purchased "Advanced System Optimizer" from the same company, "Systweak". My intention was to use this program to improve my system's functionality, and it seemed to provide a full suite of optimization products. Both "Advanced System Optimizer" and "RegCleanPro" were relatively inexpensive (approximately \$30-\$40 each).

149. On July 20, 2014, the day before I was to deliver my computer to my counsel, I opened both software products on my computer and looked into how each operated. To the best of my recollection, I ran the "RegCleanPro" software to clean up the computer registry after I deleted my Internet browser history.

150. As described above, I certainly loaded the "Advanced System Optimizer" software onto my computer and investigated what products it offered and what the use of those products would entail. I am certain that I did not run the "Secure Delete" product included in the "Advanced System Optimizer" suite of products, and I can say

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<sup>88</sup> BM002046

with absolute certainty that I did not use that product or any other to delete any Catalyst documents or anything else from my computer that could have been relevant to this litigation. Since my computer was returned to me after the image was taken, I have used “Advanced System Optimizer” a number of times to clean up my computer and optimize its functioning.

151. On July 21, 2014, I delivered my personal electronic devices to my counsel’s office, as scheduled. I understand that an image was then taken of those devices.

152. I understood and respected my obligations under the undertaking and the Firestone Order. I took my obligations under each very seriously, and never intended to breach either.

153. To be perfectly clear, in deleting my Internet browser history, I did not intend to destroy any evidence relevant to this litigation, and I do not believe that I did so. In any event, I did not intend to delete my web browser history in order to affect the outcome of the litigation.

154. I learned for the first time from De Alba’s examination for discovery that Catalyst appears to allege that I sent emails to West Face containing confidential Catalyst information pertaining to the WIND transaction, and that I subsequently destroyed such emails. I absolutely deny this suggestion. I sent no such emails. Moreover, I never deleted or destroyed any emails, or other evidence, in order to affect the outcome of this litigation.

*I. Response to other allegations in the Riley Affidavit*

155. At paragraph 25 of the Riley Affidavit, Riley summarizes certain of Martin Musters' findings in connection with his analysis of my workplace computer. Although I addressed these issues in my earlier affidavits, I think my responses bear repeating here, given Catalyst's allegations.

156. With respect to the specific allegations, I note as follows:

- (a) Regarding paragraph 25(a): At the time I reviewed old Catalyst investor letters, I was intending to leave Catalyst and looked over investor letters to look for potentially negative statements made by Glassman about employees who left the firm. The reason I skimmed the documents quickly was because the personnel updates were always at the end of the letters, so I skipped to the bottom of each letter to check whether it contained any relevant information for my search. Riley also notes many of the letters that I reviewed concerned Catalyst's Stelco investment. I believe that Catalyst exited that investment in 2008, and the company no longer exists.
- (b) Regarding paragraph 25(b): I frequently reviewed old transaction files out of personal curiosity, and in order to enhance my education in the business. It was for this reason that I opened several files pertaining to Catalyst's investment in Stelco. However, due to the complete lack of context I found them very complex and did not take the time to try to understand them.

- (c) Regarding paragraph 25(c): I downloaded these documents from the WIND data room at the beginning of our due diligence review. I downloaded them in quick succession to review them to see if they contained any useful information while doing the due diligence work described above.
- (d) Regarding paragraph 25(d): The Box accounts in question were established either by Catalyst or by Catalyst portfolio companies, with full knowledge of Catalyst, for the purpose of information-sharing. These accounts were not personal to me. The Dropbox account was personal.
- (e) Regarding paragraph 25(e): Analysts at Catalyst were expected to work extremely long hours, including from home and while out of the office. Catalyst's remote access system, which Riley refers to, was very poor quality, particularly when travelling. By the end of 2013 and through the balance of my employment, I was frequently travelling 3-5 days a week. It was generally more efficient, when working outside the office, to email documents to myself and work locally. This was a common practice among Catalyst employees. Moreover, this was my approach to working outside of the office throughout my entire tenure at Catalyst; it was not something I started doing once I decided to resign my employment with Catalyst.

157. In response to the allegation at paragraph 26 of the Riley Affidavit, it is true that I "wiped" the data from my Blackberry prior to returning it to Catalyst. My Blackberry

contained photographs and text messages of a personal and private nature, and I thought it was completely reasonable to take steps to ensure that they would not be accessible to the next user of the company-issued Blackberry. The only email address associated with the Blackberry was my Catalyst email address, and Catalyst had full access to those emails on its server.

158. Riley states, at paragraph 30 of the Riley Affidavit, that I apparently intended to deceive the Court when I stated that there was no basis to search my personal computer in my first affidavit in this action. At the time I made that statement, I did not realize that I had all the documents that I did on my personal computer. I typically set up work folders on my computer to organize my work, and I had deleted all those folders and the documents therein when I left Catalyst but before any preservation order was made in the course of these proceedings. I was unaware that the original copies remained in the “My Documents” and “Downloads” folders (which is where the original documents were stored before being copied into the work folders). As noted in the ISS Report, virtually all the documents on my computer that contained Catalyst information were ultimately located in these folders.

***J. Effect of this litigation on my life and career***

159. I ceased working at West Face as of July 16, 2014, the date of the Firestone Order, and remained off work due to this ongoing litigation. As it became clear that this litigation would not be ending any time soon, my employment was terminated without cause on August 31, 2015. West Face and I mutually agreed that the termination of my employment resulted from my resignation, and West Face provided me a lump sum



payment in lieu of notice. I attach a copy of the termination letter, dated August 24, 2015 as **Exhibit “83”**<sup>89</sup> to this affidavit.

160. It was incredibly stressful for me and my fiancée for me to be off work without any certainty as to when I could resume my career. Even more stressful was the almost year-long period during which Catalyst pursued and prolonged contempt proceedings against me, in which it sought to have me imprisoned.

161. On June 27, 2014, West Face agreed to pay or reimburse me for the reasonable lawyer’s fees and disbursements incurred in the course of defending this litigation. West Face has not agreed to indemnify me for any judgment or order that ultimately may be made to me. Under this agreement, West Face and I are separately represented. I attach a copy of this letter as **Exhibit “84”**.<sup>90</sup>

162. On June 1, 2016, I learned that Catalyst had issued a statement of claim against West Face, and the consortium of investors with which it had purchased WIND in September 2014. I attach a copy of the statement of claim as **Exhibit “85”**.<sup>91</sup>

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<sup>89</sup> BM0005356

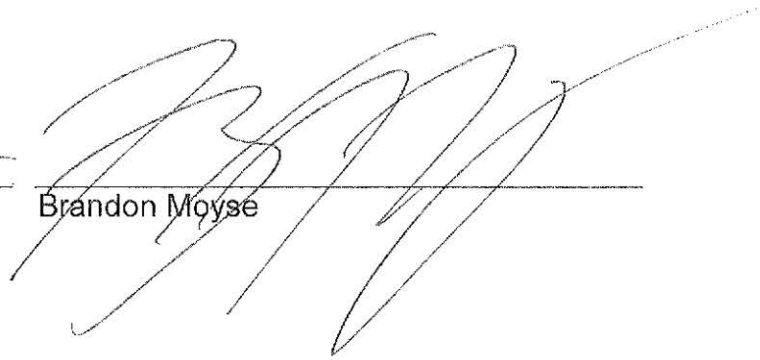
<sup>90</sup> BM0005346

<sup>91</sup> BM0005358

Affirmed before me in the City of  
Toronto in the Province of Ontario on  
June 2, 2016.



Denise Cooney  
A Commissioner for Taking Affidavits



Brandon Moyse

Court File No.: CV-16-11272-00CL

THE CATALYST CAPITAL GROUP INC.  
Plaintiff

-and- BRANDON MOYSE et al.  
Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

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**AFFIDAVIT OF BRANDON MOYSE  
JUNE 2, 2016**

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