

Court File No. CV-14-507120

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**AMENDED REPORT OF THE INDEPENDENT SUPERVISING  
SOLICITOR**

**PART I - BACKGROUND & NATURE OF THE PROCESS**

1. This report describes the results of the review by our firm as Independent Supervising Solicitor, of certain electronic data recovered through the forensic analysis of a personal computer, an Apple iPad device, and a Samsung Android smartphone device (the "Devices"), supplied by the Defendant Brandon Moyse ("Moyse") (the "Review"). Moyse is a former employee of the Plaintiff ("Catalyst") who departed his employment and took up employment with the Defendant West Face Capital Inc. ("West Face").

2. The three devices supplied by Moyse were imaged for purposes of preservation and potential review as a result of an interim consent order of Justice Firestone dated July 16, 2014. On November 10, 2014, after a contested motion, Justice Lederer ordered that the images were to be reviewed by an independent supervising solicitor in accordance with a protocol to be agreed upon by the parties (reported at 2014 ONSC 6442). The general

purpose of the review, as characterized by Justice Lederman in paragraph 83 of his decision, is “to identify what, if any, material these images may contain that are confidential to Catalyst”.

3. We were appointed to conduct that Review by the parties pursuant to, and in accordance with the terms of, a Document Review Protocol executed by counsel for all parties to this action on December 12, 2014 (the “Protocol”). A copy of the Protocol is attached hereto as **Appendix “A”**. While the specific language of the Protocol has governed the conduct of the Review, the process adopted was in essence designed to protect all three parties’ privacy/confidentiality interests, *i.e.* to protect:

- (a) Moyse’s confidential information from being accessed by Catalyst;
- (b) Catalyst’s confidential information from being accessed by its alleged competitor West Face; and
- (c) West Face’s confidential information from being accessed by Catalyst.

4. To that end, distinctive features of the Protocol adopted in this matter include:

- (a) A requirement that communications with the ISS remain in writing only unless they are by way of a minuted teleconference with counsel for Moyse and Catalyst;
- (b) A prohibition (subject to Court order or Catalyst’s consent) on Catalyst’s proposed search terms being disclosed to West Face by any party or by the ISS;
- (c) A prohibition on the ISS providing Catalyst with access to any of the images or “work product” generated during the Review;

- (d) The provision of a draft report to Moyse and Catalyst and a ten-day period for Moyse to object to the inclusion of any document referred to therein before the report is finalized;
- (e) The production, both to Moyse and to Catalyst, of all those documents referred to in the final report;
- (f) In the event that the ISS were to find evidence that Catalyst Confidential Information was transferred to West Face, the provision of a redacted version of the report to West Face.

## PART II - THE CONDUCT OF THE REVIEW PROCESS

5. On December 10, 2014, I was supplied with a series of sixty-seven (67) proposed search terms by Catalyst counsel. These search terms were intended to be employed by the forensic expert selected and appointed by the ISS to run a keyword search of all of the data resident on the Devices and provide all those documents which contained one or more such keywords to the ISS for review. This communication from Catalyst counsel, including the list of keywords, is attached as **Appendix "B"**. Under the Protocol, Moyse's counsel was to have five business days to register any objection to any such search term. In the event of objection, ISS was to have sole discretion to decide whether or not to use such a term.

6. On December 15, 2014, the parties convened a conference call to discuss the process. On that call, the parties approved my proposed retainer of Digital Evidence International ("DEI") to serve as forensic expert. Moyse's counsel agreed to make arrangements to ship the images of the Devices directly to DEI. The parties confirmed as well that Moyse's counsel would be stating their position on the proposed search terms in writing. I also raised

with counsel the prospect that the list of keywords might generate an excessively large number of "hits", which in my experience often indicate that a keyword is insufficiently distinctive and is returning large volumes of irrelevant or duplicative data. The parties agreed that "if any of the search terms generate an excessive number of hits requiring a recalibration of the process, the parties will discuss that in a subsequent call and agree on an alternative approach." I undertook to ask DEI to report to me on this possibility at the earliest stage in the search process. Attached as **Appendix "C"** is a copy of the Minutes of this telephone conference, which I circulated and which counsel for Moyse and counsel for Catalyst subsequently approved.

7. Later on December 15, 2014, Moyse's counsel confirmed that they did not object to the search terms proposed, while expressing reservations about the possible over-responsiveness of certain terms such as "telephone", "cellular" and "box". I supplied the search terms to DEI thereafter.

8. On December 16, 2014, in response to direction from Moyse's counsel, the custodian of the images of the Devices advised that he would provide a copy of the images to DEI by courier on Thursday, December 18, 2014. On Friday, December 19, 2014, DEI confirmed to me and to Moyse's forensic expert that the images had been received at DEI's offices.

9. On December 22, 2014, I received initial feedback from DEI with respect to the number of "hits" generated by applying the search terms to the images. I was concerned with the large volume of overall "hits" in view of the parties' direction in the Protocol that this matter be concluded by January 30, 2015, or sooner if possible. Therefore, I sought further clarification and a breakdown of how many "hits" each search term was generating from DEI.

On Tuesday, December 23, 2014, Wayne Doney of DEI provided me with a full breakdown of the number of "hits" generated by each such search term. Mr. Doney also offered some suggested automated filtering techniques that could be used to reduce the number of actual files necessary for review while avoiding the exclusion of potentially relevant documents.

10. Accordingly, later on December 23, 2014, I wrote to counsel for Moyse and counsel for Catalyst by email. As contemplated by our December 15, 2014 telephone conference, I advised them that the search terms applied had resulted in what I regarded as an excessive number of "hits" for purposes of manual document review. I supplied two image files I had received from DEI which listed the number of hits generated by each search term, and indicated that it would be necessary to agree on filtering techniques in order to reduce potential duplication and capture of irrelevant material, and result in a manageable review process for ISS in view of the parties' desired timetable. I then proposed several methods of filtering and asked for the parties' approval to implement those filters. This correspondence of December 23, 2014 is attached hereto as **Appendix "D"**.

11. By January 5, 2015, I had not had a response or direction from either of the parties. Accordingly, I wrote to request a response to my December 23, 2014 correspondence. On January 6, 2015, counsel for Catalyst responded, accepting certain of my recommendations as to filters. In short, Catalyst agreed that in the case of keywords with extremely large "hit counts", I should restrict the file-types that I would receive to the most commonly used user files, *i.e.*, Microsoft Office documents, Adobe PDF documents, email messages, and applying similar restrictions to the items on the Apple iPad and Samsung Android smartphone.

12. In response, counsel for Moyse suggested that a time-frame filter be applied so that nothing dated prior to December, 2013 should be reviewed. Catalyst counsel objected to this proposal and asked that I review documents prior to that date as well. The parties were unable to come to an agreement on an approach after several further email exchanges, and so later on January 6, 2015 (at 5:09 p.m.), I informed the parties of the approach that I would take. A copy of that communication from myself is attached as **Appendix "E"**. Ultimately, given the number of documents eventually delivered (as set out below), I did not find it necessary to apply that date restriction. Instead, my colleague Naomi Greckol-Herlich and I reviewed all material from the beginning of Moyse's employment at Catalyst in November, 2012, to the date of the imaging of the Devices.

13. That same evening of January 6, 2015, I directed DEI to proceed to limit the data it produced to me in accordance with the limitations to which counsel for Catalyst had agreed in an effort to limit the number of actual documents provided. Furthermore, I directed DEI to automate the process of de-duplication, so that any document or file which was identified as a "hit" from more than one keyword would only be produced once, and not produced in multiple copies which would have to repetitively reviewed for no substantive reason. I directed DEI to nevertheless preserve a record of the number of "hits" each keyword had generated after applying the other agreed-upon filters, in the event such information later proved to be of interest or relevance. DEI confirmed to me that it would proceed in accordance with this direction.

14. The morning of January 7, 2015, counsel for Moyse and counsel for Catalyst had another disagreement as to how to proceed to review the material. In an effort to move

forward, I wrote to inform counsel for these parties how we would be proceeding. A copy of this communication is attached as **Appendix "F"**.

15. On January 8, 2015, Catalyst's counsel wrote me to request a more detailed breakdown of the number of "hits" that had been provided by file-type. In addition, Catalyst's counsel now requested that I have a further set of fourteen (14) keywords used to run a second search of the images of the Devices, subject to Moyses's right to object to those additional terms within a five-day period. (If Moyses were to object, then the Protocol provided for my absolute discretion in deciding whether to employ such terms or not). This communication including this second list of search terms is attached as **Appendix "G"**. I initially directed DEI to prepare the detailed breakdown of "hits" requested but, as matters developed and for reasons described below, did not ultimately obtain or provide this breakdown.

16. On January 13, 2015, DEI informed me that in the course of preparing the data for my review, they had determined that a very substantial amount of document duplication existed on the Devices particularly with respect to email messages. I was informed that this was due to Moyses's practice of using multiple archival functions on his various email accounts so that multiple copies of the same messages were stored in numerous places. I instructed DEI to de-duplicate the email messages to the greatest extent possible without disturbing the file structure of the archives.

17. On January 14, 2015, a further dispute emerged. I received correspondence from Jeff Hopkins, one of Moyses's counsel. Mr. Hopkins enclosed a Notice of Motion that had been served by counsel for Catalyst the previous day (January 13) which sought substantial relief

against West Face, including an order precluding West Face from “participating in the management and/or strategic direction” of Wind Mobile Inc., and from participating in the 30 MHz Wireless Spectrum Auction to be held by Industry Canada in March of this year. The notice of motion further sought an order directing an independent supervising solicitor to image West Face’s computers and mobile devices for purposes of a review similar in nature to the review I have conducted of Moyse’s Devices.

18. Mr. Hopkins’ letter expressed an objection to the Catalyst notice of motion because among the grounds listed by Catalyst for the relief it seeks are references to the number of “hits” generated by the original sixty-seven search terms, as described in Appendix “D”. Mr. Hopkins objected to any further provision of information to Catalyst until the provision of my report, including the then-outstanding request for further details on the nature of the “hits” generated by the various search terms. A copy of his letter is attached as **Appendix “H”**.

19. After considering Mr. Hopkins’ position, I became concerned that his objection meant that it would become impossible for me to seek direction from counsel jointly on technical issues without the ability to communicate about the output of DEI’s search and document production process. Accordingly, given the limited time remaining before the parties’ stated deadline of January 30, I wrote to counsel for Moyse and for Catalyst on January 15. I indicated that given this objection, I could only proceed if the parties agreed and/or clarified that I was to have sole discretion to make any decisions with respect to how to complete the review (including giving any direction or imposing any limitation I thought necessary to DEI in terms of what was produced for our manual review). Alternatively, I would move for directions. I attach my letter of January 14, 2015 as **Appendix “I”**.



20. On January 15, 2015, I received correspondence from Moyses's counsel confirming that Moyses agreed that I should have sole discretion in the circumstances to determine how to complete the process. Moyses's counsel also expressed an objection to the use of the additional list of fourteen (14) search terms supplied by Catalyst. Later on January 15, 2015, I received correspondence from Catalyst's counsel, again confirming that I should have sole discretion to determine how to complete the process. Catalyst advised that it wished me to over-ride Moyses's objection and to employ these further search terms. Ultimately, I determined that I would indeed use these search terms having regard to the volume of material involved, and I did review the material resulting therefrom. Attached as **Appendix "J"** are copies of both of these letters of January 15, 2015.

21. Late in the day on Friday, January 16, 2015, I received approximately 6.6 gigabytes of data from DEI contained on two DVD-ROM disks for our review, produced in accordance with my exchanges and instructions to them as described herein. We were able to have this data installed on our server for review at the outset of Monday, January 19, 2015. My associate Naomi Greckol-Herlich and myself began the physical process of document and email review that day and continued through the week and into the week of January 26, 2015 leading to the preparation of this report. My conclusions from that review are described in the next section. The total volume of the material provided, while occupying a large volume of data, consisted of only 1,197 unique file items (totalling approximately 3 gigabytes), with the balance consisting of email material. It is not possible to accurately quantify the total number of unique emails due to the fact that there remained substantial duplication, but in excess of 23,000 email items were provided to us in total (totalling, including attached files, approximately 3.6 gigabytes of data).

22. While we began the process of manual review, I next received correspondence from Jeff Mitchell, counsel to West Face, the evening of January 19, 2015. Mr. Mitchell's correspondence, attached as **Appendix "K"**, expressed further concerns about the content of the Catalyst notice of motion. Mr. Mitchell further requested that:

(a) I disclose to him the details concerning what "interim reporting" had been done to Catalyst which had led to the references to the "hit counts" in Catalyst's notice of motion;

(b) I attend at a scheduled attendance at Practice Court on Wednesday, January 21, booked to establish a timetable for the Catalyst motion, in order to answer any questions the Court might have about the Review.

23. While continuing the process of review, I replied to Mr. Mitchell on January 20, 2015, and attach this response as **Appendix "L"**. In short, I expressed the intention to attend Practice Court and provided limited disclosure (consistent with the restrictions in the Protocol) of the information that had been relayed to Catalyst's and Moyse's counsel for purposes of narrowing the manual review process. Subsequently, Catalyst's counsel expressed the position that if I were to attend Practice Court, that Catalyst would not accept responsibility for my fees for that attendance.

24. I elected to attend Practice Court on January 21, 2015 notwithstanding this position, and in the event no party will accept responsibility for my account for that attendance, I will seek directions in due course from the Court. By the time of that attendance, my review had progressed sufficiently to be able to advise the parties and the Court that I did expect, having regard to the volume of actual material to review after de-duplication, to complete my report

by January 30, 2015 and to provide it (in draft form in accordance with the Protocol) to counsel for Moyse and Catalyst.

25. Later on January 21, 2015, I received the exported content of Moyse's iPad and Samsung Android phone from DEI for manual review, and installed it in our file server for that purpose. Taking into account the de-duplication completed by DEI (resulting in no email messages being produced), the material reviewed consisted of the following:

- (a) A list of content resident in a Dropbox folder;
- (b) Twitter messages and postings;
- (c) Phone call logs;
- (d) Text messages;
- (e) A list of downloaded files and associated file-paths;
- (f) A list of contacts.

26. Later on January 21, 2015, I received further correspondence from West Face. West Face counsel expressed more concerns about the possibility that West Face confidential information was also contained within Moyse's Devices, and asked how I intended to protect that information. I ultimately replied on January 23, 2015 to address Mr. Mitchell's expressed concerns. Copies of these two letters are attached hereto as **Appendix "M"**.

27. Meanwhile, having regard to the progress of the review and in order to ensure that its objectives were met, I considered the further set of fourteen (14) search terms supplied by Catalyst. On January 22, I determined and proceeded to direct DEI to use these search terms

to search the Devices and to provide me with any results that were not duplicative of earlier provided documents or emails. This resulted in the provision of a very small number of unique additional items (5 files in total, and 179 emails) for review.

### **PART III - CONCLUSIONS AS TO CONFIDENTIAL CATALYST INFORMATION MAINTAINED ON MOYSE'S DEVICES**

28. My colleague Naomi Greckol-Herlich and I manually reviewed each of the files and emails provided by DEI as described above. In doing so, we had regard to the two Affidavits of Documents sworn by Moyses on July 22 and July 29, 2014, which outline some 833 items (including duplicates) which Moyses acknowledges to either be items containing Catalyst confidential information, or items that are in any event relevant to the issues in this proceeding.

29. Owing to an earlier suggestion by Moyses's counsel that only documents subsequent to December 1, 2013 be reviewed (on the theory that Moyses had not begun to contemplate leaving Catalyst's employment until that time), we had directed DEI to segregate the files it provided so that those that were last accessed prior to December 1, 2013 were grouped together separately from those last accessed subsequent to December 1, 2013. We prioritized the review of the post-December 1, 2013 documents, but were ultimately able to review all of the material provided. In the interest of timely completion of this report, we have reported separately on the results of the two groups of documents.

30. In drawing conclusions as to what was Catalyst confidential information,<sup>1</sup> we had regard to (a) the motion material provided to us by Catalyst counsel; (b) the content of

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<sup>1</sup> Including both matters appearing to be confidential to Catalyst itself, and information provided to Catalyst in confidence by its clients or other entities.

Moyse's email communications (reviewed separately as described below); and (c) the names and contents of the documents themselves. It is possible that some of the items may not contain "confidential information" based on (a) subsequent public release of such items; or (b) its public disclosure through other means. In a small number of cases, we were not able to determine the identity of the information source, but have included reference to these documents so that the parties can, through their further evidence, make submissions to the Court concerning the status of such materials if that proves necessary.

#### Post-December 1, 2013 Documents and Files

31. We first reviewed all documents with a date modified record after December 1, 2013 (a total of 845 documents). Among those items, we identified twelve (12) documents which appear to be West Face-related documents, six of which appear to contain confidential West Face information or analysis and five of which are duplicate copies of Moyse's employment contract.

32. Of the remaining documents, we have assessed the next listed items to contain Catalyst confidential information subject to the caveats expressed above. These items were found in several different source folders within Moyse's computer: "Users/Brandon Moyse/AppData.../Content.MSO"; "Users/Brandon Moyse/Documents"; and "Users/Brandon Moyse/Downloads". We also reviewed a series of files contained at "Users/Brandon Moyse/Desktop" and at "Users/Brandon Moyse/Dropbox" but identified no items there that contained Catalyst confidential information. We have grouped the following list according to the folder in which it was found. Where those documents have been previously disclosed by Moyse, we have made a notation to that effect in the final column, which cross-references the

document to the document numbering in Moyses's two affidavits of documents. Where the document is marked "N/A", the item was not disclosed in those affidavits.

**Users/Brandon Moyses/AppData/Microsoft/Windows/Temporary Internet Files/Content.MSO**

Filename	Description of item	Document #
2B65A333.wmf	Image file containing Catalyst financial analysis appearing to relate to Advantage Rent A Car	N/A
25BC51FF.emf	Image file containing Catalyst funding reconciliation related to Homburg restructuring	N/A
658831A1.wmf	Image file containing personnel analysis of Advantage Rent A Car	N/A
A32A9B98.wmf	Image file containing Catalyst financial analysis appearing to relate to Advantage Rent A Car	N/A
F522C3F4.emf	Image file containing Catalyst funding reconciliation related to Homburg restructuring	N/A

**Users/Brandon Moyses/Documents<sup>2</sup>**

Filename	Description of item	Document #
[Q1 2013 Letter V6.docx]	Contains file named "image1.emf" which contains Therapure financial data	35
14-02-11 NMFG-Piper Jaffray Meeting Notes.docx	Word document containing notes re team meeting	1
14-02-19 BCG meeting.docx	Word document containing notes re team meeting	2
14-02-19 Minutes from NMFG-BCG Meeting.docx	Word document containing notes re team meeting	3
14-02-26 NMFG Real Estate Committee Call.docx	Word document containing notes re team meeting	4
Additional WIND Due Diligence Questions.docx	Word document containing questions to be answered re WIND	7
Avis-Budget Earnings Summary.docx	Word document containing written synopsis of Avis' finances	9

<sup>2</sup> In the interest of timely completion of this report, we have not broken out each individual sub-folder, where applicable, in which these items were found.

Filename	Description of item	Document #
Bonding Analysis.xlsx	Excel spreadsheet containing financial data, client unknown	10
Cash Rec.xlsx	Excel spreadsheet containing financial data, client unknown	12
EWR.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data, revenue projections	17
Forward looking to actual.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data, revenue projections	21
Fresh Market Earnings.docx	Word document containing letter to "Team" and financial assessment of Fresh Market	22
Natural Markets Restaurants Corp.docx	Word document describing financial status of NMRC	28
NMFG Weekly Report - Week 8.pdf	Financial summary for NMFG	29
NMRC FAQs.docx	Word document setting out FAQ's re financial analysis of NMRC	30
NYC-BWI Sensitivities.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	33
Preqin Data.xlsx	Spreadsheet containing yearly analysis of multiple funds	34
Sprouts Summary.docx	Word document containing analysis re financial health of Sprouts	36
What adjustments are in adjusted EBITDA each year.docx	Word document explaining the use of EBITDA in NMFG reports	37

**Users/Brandon Moyse/Downloads<sup>3</sup>**

Filename	Description of item	Document #
032014_AtlanticPower_DrewMallozzi FINAL.pdf	Drew Mallozzi analysis re Atlantic Power	39
13-01-04 Geneba News Tracker.xlsx	Spreadsheet containing data re Geneba Properties	46
13-02-09 Geneba News Tracker.xlsx	Template for data re Geneba Properties	48
13-02-16 Geneba News Tracker.xlsx	Data re Geneba Properties	49

<sup>3</sup> In the interest of timely completion of this report, we have not broken out each individual sub-folder, where applicable, in which these items were found.

13-02-16	Geneba	News	Tracker.xlsx	Additional copy from folder "[14-01-28 DIP Funding Request.xlsx]"	49
13-02-23	Geneba	News	Tracker (1).pdf	Data re Geneba Properties	50
13-02-23	Geneba	News	Tracker.pdf	Data re Geneba Properties	51
13-02-23	Geneba	News	Tracker.xlsx	Data re Geneba Properties	52
13-09-24			NMRC Presentation.pptx	NMFG Presentation "2013 Overview"	55
13-09-27			Funding Memo v2.docx	NMRC Funding Request	56
13-12-09	Geneba	News	Tracker.xlsx	Data re Geneba Properties	63
13-12-11		Concessions	Analysis.xlsx	Financial data re Advantage Rent-a-Car concessions	64
13-12-14	Geneba	News	Tracker.xlsx	Data re Geneba Properties	65
13-12-16			Reservation Outlook.xlsx	Spreadsheet containing data on Advantage Rent-a-Car reservations	66
13-12-21	Geneba	News	Tracker.xlsx	Spreadsheet containing data re Geneba Properties	67
14-01-06			Funding Memo.docx	NMFG Funding request	70
14-01-28	DIP	Funding	Request.xlsx	Spreadsheet containing financial data of Advantage Rent-a-Car	71
14-02-08	NMRC	Presentation	Slide 2.pptx	Slide from NMRC presentation	72
14-02-08	NMRC	Presentation	NMRC Presentation.pptx	NMFG PowerPoint presentation February 2014	73
14-02-10	NMRC	Presentation	NMRC Presentation v10.pptx	NMFG PowerPoint presentation February 2014	76
14-02-10	NMRC	Presentation	NMRC Presentation v10 (1).pptx	Duplicate	74
14-02-10	NMRC	Presentation	NMRC Presentation v10 (2)	Duplicate	75
14-02-10	NMRC	Presentation	NMRC Presentation v12.pptx	NMFG PowerPoint presentation February 2014	77
14-02-12	NMRC	Presentation	NMRC Presentation vF.PDF	PDF version of NMFG PowerPoint presentation February 2014	80
14-02-12	NMRC	Presentation	NMRC Presentation vF (1).PDF	Duplicate	78
14-02-12	NMRC	Presentation	NMRC Presentation vF (2).PDF	Duplicate	79
14-02-12	NMRC	Presentation	NMRC Presentation vF.pptx	NMFG PowerPoint presentation February 2014	81
14-02-13	NMRC	Presentation	NMRC Presentation vF.pdf	PDF version of NMFG PowerPoint presentation February 2014	82
14-02-20			Airport Concessions.pdf	PDF version of spreadsheet detailing	83



	Advantage Rent-a-Car airport locations	
14-02-20 Airport Concessions.xlsx	Spreadsheet detailing Advantage Rent-a-Car airport locations	84
14-02-21 NMFG Operating Model - BM version.xlsx	Spreadsheet containing NMFG financial data	86
14-02-21 NMFG Operating Model - BM version (1).xlsx	Duplicate	85
14-02-25 NMFG Operating Model.xlsx	Spreadsheet containing NMFG financial data	88
14-02-25 NMFG Operating Model (1).xlsx	Duplicate	87
14-04-04 SunTrust Presentation v10.pptx	PowerPoint presentation for NMFG "Management Update," April 4, 2010	89
19-02-16 NMFG Operating Model - BM version.xlsx	Spreadsheet containing NMFG financial data	94
2013_11_30ADVNov MTD Flash PL.pdf	PDF containing Advantage Rent-a-Car financial data	119
2013_12_05ADV Dec MTD Flash PL.pdf	PDF containing Advantage Rent-a-Car financial data	121
2013_12_05ADV Dec MTD Flash PL (1).pdf	Duplicate	120
2014 03 26 - Therapure payroll wire for approval - Cda.pdf	Fax re: Wire Transfer Directions	125
2014 03 26 - Therapure payroll wire for approval - Cda (1).pdf	Duplicate	124
2014 03 26 - Therapure payroll wire for approval - US.pdf	Fax re: Wire Transfer Directions	127
2014 03 26 - Therapure payroll wire for approval - US (1).pdf	Duplicate	126
2014 Operating Plan v5.pptx	PowerPoint presentation "2014 Operating Plan," February 6, 2014	129
2014 Operating Plan v6.pptx	Further version	131
2014 Operating Plan v6 (1).pptx	Duplicate	130
2014_Marketing_CA[2].pptx	PowerPoint presentation "2014 Marketing Overview," February 5, 2014	135
2014_Marketing_CA[6].pptx	Further version	137
20140204 Natural Markets Food Group.pdf	PDF titled "Natural Markets Food Group: Delivering Breakthrough Profitable Growth" authored by McKinsey, marked "proposal document" and "confidential and proprietary"	134
ABS deals.xlsx	Spreadsheet re Auto rental/leasing 2013 ABS transactions	156
ABQ Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	155

ADV - Feb 2014 sold days.xlsx	Spreadsheet re Advantage Rent-a-Car "Sold days"	159
ADV - Feb 2014 Stmt.pdf	Counter product Statement, February 2014 "Sold Days"	160
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20.xlsx	Financial data re Advantage Rent-a-Car, Simply Wheelz LLC	163
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20 (1).xlsx	Duplicate	161
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20 (2).xlsx	Duplicate	162
Advantage - DIP Funding Borrowing Certificate 3-13-2014.pdf	DIP Loan facility agreement	165
Advantage - Fleet Planning Template 1.23.2014 v2.xlsx	Advantage Rent-a-Car fleet data	166
Advantage - FP - Master Copy 2 4 14 PM.xlsx	Advantage Rent-a-Car fleet financing data	167
Advantage - FP - Master Copy 2.4.14 PM.xlsx	Duplicate	168
Advantage - Funding Request #9 3-13-2014.xlsx	Advantage Rent-a-Car funding request	169
Advantage - Interest Rate Rider.pptx	Single PowerPoint slide showing Advantage Rent-a-Car fleet carrying costs, marked "confidential"	170
Advantage - Updated Business Plan Model - 1.16.2014 DRAFT for Mgmt.xlsx	Financial data re Advantage Rent-a-Car, Simply Wheelz LLC	173
Advantage - Updated Business Plan Model - DRAFT - v3.xlsx	Financial data re Advantage Rent-a-Car, Simply Wheelz LLC	174
Advantage - Updated Business Plan Model - DRAFT - v5.xlsx	Further version	176
Advantage - Updated Business Plan Model - DRAFT - v5 (1).xlsx	File unopenable - content assessed by name	175
Advantage - Updated Business Plan Model - DRAFT - v6.xlsx	Further version	177
Advantage - Updated Business Plan Model - DRAFT - v7.xlsx	Further version	178
Advantage Catalyst Presentation March 2014 vF.PDF	Advantage Rent-a-Car presentation by Deutsche Bank marked "confidential"	179
Advantage corporate budget - FY2014 (1-24-14) DRAFT.xlsx	File is password protected. Content assessed by file name	180
Advantage Model.xlsx	Advantage Rent-a-Car "2014 Budget and 2015 Projection"	182

Advantage Overview Presentation 2-11-14.pdf	Presentation of strategic overview re Advantage Rent-a-Car	183
Advantage Preliminary Budget Review.pptx	Presentation re Advantage Rent-a-Car budget review	186
Advantage Rent A Car - 2014 Budget 2015 Projection (1-22-14) DRAFT.xlsx	Advantage Rent-a-Car 2014 Budget and 2015 Projection	187
Advantage Rent A Car - 2014 Budget 2015 Projection (1-25-14) DRAFT.xlsx	Further version	188
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT (1).xlsx	Duplicate	189
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT (2).xlsx	Duplicate	190
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT.xlsx	Further version	191
Advantage Rent A Car - 2014 Budget 2015 Projection (1-29-14) DRAFT v3.xlsx	Further version	192
Advantage Rent A Car - 2014 Budget 2015 Projection (2-4-14) DRAFT.xlsx	Further version	197
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EL-The Catalyst Capital Group Inc.pdf	Letter from Deloitte+Touch confirming retainer marked confidential	344
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HOU Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	426
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MIA Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	510
MKE Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	515
NMFG Model.xlsx	Spreadsheet containing NMFG financial data	526
NMFG Operating Model.xlsx	Spreadsheet containing NMFG financial data	561



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NMRC Bank Presentation v1.pptx	Presentation titled "Natural Food Markets Group – Update 2013"	569
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NMRC Board Presentation v11.pdf	Presentation titled "Natural Food Markets Group – Board of Directors Meeting, October 22, 2013"	572
NMRC comps v5.xlsx	Spreadsheet containing financial data and comparative analysis re NMRC, competitors	573
NMRC Model - Feb 2014 (PwC Model).xlsx	Spreadsheet containing NMRC financial data, analysis and forecast	574
NMRC Model - Feb 2014.xlsx	Spreadsheet containing NMRC financial data, analysis	575
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NMRC Run-Rate by Store (1).pdf	Duplicate of below	584

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NMRC_09302013 Valuation Memo.pdf		Catalyst memo re NMFG valuation, September 30, 2013	586
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NMRC_12312013 Valuation Memo v4.pdf		Duplicate of below	590
NMRC_12312013 Valuation Memo.pdf		Catalyst memo re NMFG valuation, December 31, 2013	591
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OKC Monthly Revenue Report.pdf		Advantage Rent-a-Car location monthly revenue report	598
OMA Monthly Revenue Report .pdf		Advantage Rent-a-Car location monthly revenue report	599
ONT Monthly Revenue Report & CFC.pdf		Advantage Rent-a-Car location monthly revenue report	600
Operating Summary v3.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	603
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OperatingSummary 20131212.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	627
ORD Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	627
ORD MonthlyCFC.pdf	Advantage Rent-a-Car location monthly revenue report	629
ORF Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	630
P11 Funding Request.pdf	NMFG Funding request, November 25, 2013	638
P12 Cash Model v12.xlsx	Further version of below	639
P12 Cash Model.xlsx	Spreadsheet containing NMFG financial data and analysis	640
P12 Funding Sources and Uses v5.xlsx	Spreadsheet containing NMFG financial data	641
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Period 4 2014 MDA (final).pptx	Presentation titled "Period 4, 2014: Management Discussion and Analysis, May 2, 2014"	648
Period 13 MDA (10 Jan 2014).pptx	Presentation titled "Period 13, 2013: Management Discussion and Analysis, January 10, 2014"	647
PHX - Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	649
PIT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	650
PNS Monthly Revenue Report &	Advantage Rent-a-Car location monthly	651

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PR_Catalyst Group 27JAN2014 draft (1).pdf	Capital	Duplicate of below	655
PR_Catalyst Group 27JAN2014 draft (2).pdf	Capital	Duplicate of below	656
PR_Catalyst Group_27JAN2014_draft.pdf	Capital	Report titled "Mrs. Green's Natural Market: Strategy, Execution and Roadmap Support," marked confidential	657
PR_Catalyst Group_NMFG_LEK Credentials.pdf	Capital	Report titled "Introduction to L.E.K. Consulting," marked confidential	658
Project Turbine - Preliminary Diligence Request List.xls		Document containing due diligence questions for project turbine	654
PVD Monthly Revenue Report & CFC.pdf		Advantage Rent-a-Car location monthly revenue report	659
Q4 2013 Letter v7 - Newton's Mark Up.pdf		Document containing portfolio reports on Therapure, Advantage Rent-a-Car and Homburg, including handwritten revision notes	663
Quarterly Letter v3 (1).docx		Duplicate of below	665
Quarterly Letter v3.docx		Document containing narrative updates on numerous Catalyst clients, tracked changes	666
Quarterly Letter v4.docx		Letter containing updates on many Catalyst clients	667
Quarterly Letter v4.pdf		Duplicate of above, PDF format	668
RDU Monthly Revenue Report.pdf		Advantage Rent-a-Car location monthly revenue report	671
Real Estate Development and Controls (27 Jan 2014) (1).pptx		Duplicate of below	672
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Reforecast DIP Budget (WE12-7) (1).xlsx		Duplicate of below	680
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Reservation Outlook 11252013nf (1).xlsx		Duplicate of below	684
Reservation 11252013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	685
Reservation Outlook 12022013nf (1).xlsx		Duplicate of below	686
Reservation	Outlook	Spreadsheet containing Advantage	687

12022013nf.xlsx	Rent-a-Car reservation outlook data by location	
Reservation Outlook 12092013nf (1).xlsx	Duplicate of below	688
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Reservation Outlook 12162013nf (1).xlsx	Duplicate of below	690
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Reservation Outlook 12302013nf (3).xlsx	Duplicate of below	698
Reservation Outlook 12302013nf.xlsx	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	699
Reservation Outlook 20140106nf.xlsx	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	700
RNO Monthly Revenue Report .pdf	Advantage Rent-a-Car location monthly revenue report	703
RON Initial Memo v10.pdf	Catalyst memo re RONA Inc, November 2012, marked confidential	704
RSW Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	705
SAN Forecast.xlsx	Spreadsheet containing financial data and forecasting for Advantage Rent-a-Car San Diego location	706
SAN Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	707
SAT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	708

SDF Exhibit I - Oct 2013.xlsx	Spreadsheet for Advantage Rent-a-Car location monthly report	717
SDF Monthly Revenue Report &CFC.pdf	Advantage Rent-a-Car location monthly revenue report	718
SEA Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	719
SFB Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	724
SFO Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	725
simply wheelz doc WL master lease agreement 20140220 (2).doc	Draft of lease agreement between Westlake Inc. And Advantage Rent-a-Car, tracked changes	726
SJC Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	727
SLC Monthly Revenue Report & CFC2.pdf	Advantage Rent-a-Car location monthly revenue report	728
SMF Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	729
SNA Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	730
SRQ Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	732
Summary of Advantage AP Agreements - 12-Dec-2013.doc	Chart summarizing Advantage Rent-a-Car rental and lease agreements by location	741
TFM_News_2013_5_29_Financial Releases.pdf	Unopenable	743
Therapure Payroll - 3-21.pdf	Fax re wire transfer directions for Therapure	748
Therapure - Advanced Manufacturing Fund - Proposal v7 without comments.docx	Report summarizing business and financial strategy of Therapure	747
TPA Exhibit B - Oct 2013.xlsx	Monthly rental activity for Tampa, FL Advantage Rent-a-Car location	754
TPA Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	755
TUL Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	759
UNTITLED.PPTX	PowerPoint slides, client unknown, marked confidential	763
VINs at 11-5-13 v 12 19 (MASTER) 3.10.14.xlsx	Advantage Rent-a-Car fleet summary	765
VPS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	766
Weekly report - W18 2014.xlsx	Spreadsheet containing Mrs. Green's	770

	financial data	
Weekly report - w 8 2014 v10CM (1).xlsx	Further version of above	768
Weekly report - w 8 2014 v10CM.xlsx	Further version of above	769

33. We conclude that with respect to this group of post-December 1, 2013 documents, that all of the documents generated by the search process are items previously disclosed in Moyse's affidavit of documents, other than the five (5) image files identified in the "AppData...Content.MSO" folder and listed above.

34. We did not find specific evidence from this process concerning the possibility of Moyse supplying these documents to West Face.

#### Pre-December, 2013 Documents and Files

35. We then reviewed all of the pre-December, 2013 documents and files generated. The following are documents which we concluded contain Catalyst confidential information. As in the previous table, where those documents have been previously disclosed by Moyse, we have made a notation to that effect in the final column, which cross-references the document to the document numbering in Moyse's two affidavits of documents. Where the document is marked "N/A", the item was not disclosed in those affidavits.

Filename	Description of item	Document #
4F7F4274.emf	Image file containing an excerpt from an Excel spreadsheet of financial data from Geneva Properties NV.	N/A
Advantage Agenda - Nov18.docx	A meeting agenda for a meeting with Advantage Rent-A-Car on November 18, 2013	8
III Analysis v79.xlsx	Extensive analysis spreadsheet of Homburg Investments	26
III Analysis v80.xlsx	Extensive analysis spreadsheet of Homburg	27



Filename	Description of item	Document #
	Investments	
NMRC Gant Chart.xlsx	Single-page spreadsheet of employee hiring process	31
Q1 2013 Letter V6.docx	Draft of results reporting letter addressed to Catalyst Fund Limited Partnership II/III/IV Investors	35
13-10-11 Geneba News Tracker.xlsx	Spreadsheet containing notes as to key developments affecting Geneba tenants, financial results, and regional economic data	57
13-10-25 Geneba News Tracker(1).xlsx	Different version of previous item	58
13-10-25 Geneba News Tracker.xlsx	Different version of previous item.	59
13-11-01 Geneba News Tracker.xlsx	Different version of previous item	60
13-11-15 Geneba News Tracker.xlsx	Different version of previous item	61
13-11-28 MAG and Rent Calculation.xlsx	A payables spreadsheet associated with Advantage Rent-A-Car	62
Advantage – Business Plan Model 11-15-13 DRAFT.xlsx	Large, multi-sheet spreadsheet outlining Advantage Rent-A-Car's business plan	164
Advantage – Memo 10 2013 v3.docx	Draft Catalyst analysis memo of Advantage Rent-a-Car	172
Advantage – Memo 10 2013 v15.docx	Different version of previous item	171
Advantage Data.xlsx	Spreadsheet of rental data from Advantage Rent-A-Car	181
Advantage PPA (Concessions Summary) Updated.xlsx	Spreadsheet of value of airport concessions held by Advantage Rent-A-Car	184
Advantage PPA FINAL Report.pdf	KPMG valuation report of Advantage assets provided to Adreca Holdings Corp.	185
Advantage Rent A Car Additional Hertz KPI and Revenue Data(1).xlsx	Table of revenue data from Advantage Rent-A-Car	198
Advantage Rent A Car Additional Hertz KPI and Revenue Data.xlsx	Duplicate of previous item	199
Advantage Rent A Car – Hertz Discussion Materials (10-22-13).pdf	Presentation prepared for a without prejudice negotiation between Advantage and Hertz	202
Advantage Rent A Car – Operating Data Template for Review (11-30-13)	Table of operating data	203

Filename	Description of item	Document #
Airport Schedule 11022013(1).xlsx	Table of airport based locations for Advantage Rent A Car	217
Airport Schedule 11022013.xlsx	Duplicate of previous item	218
Capital Call Section of LPA Fund III.pdf	Excerpt from Second Amended and Restated Limited Partnership Agreement for Catalyst LPA Fund III	258
Catalyst Credit Analysis – Tuckamore	Letter from Gabriel de Alba to Brandon Moyses instructing him to prepare a credit analysis on Tuckamore Capital Management	N/A
Catalyst Final Offer.pdf	Letter from Catalyst to Homburg Investments proposing investment terms, marked “strictly confidential” (undated)	267
Catalyst Overview(1).ppt	Four-page description of Catalyst Capital Management	273
Catalyst Overview.ppt	Duplicate of previous item	275
CH-1692782-v6 CatalystAdvantage – Asset Purchase Agreement.docx	Draft purchase agreement for Advantage Rent A Car	293
Concessions Overview(1).pptx	Airport locations information concerning Advantage Rent A Car	305
Concessions Overview.pptx	Duplicate of previous item	307
Copy of Master Bond List Projected Bonds In-Force as of 11-5-2013(2).xlsx	List of bond obligations of Advantage Rent A Car	314
Copy of P11 Funding Sources and Uses.xlsx	Budgeting spreadsheet for Natural Medicines Food Group	315
dpny-23799263-v1 Blue Amended and Restated Purchase Agreement – Dec 10....pdf	Marked Confidential, purchase agreement between Hertz and Adreca Holdings Inc. dated December 10, 2012	340
FSNA Memo v1.docx	Catalyst research memorandum concerning Franchise Services of North America Inc.	388
FSNA Memo v2.docx	Updated version of previous item	389
FullInventory(2).xlsx	Complete inventory of vehicles owned by Advantage Rent A Car	390
Funding Memo Period 12 – v1(1).docx	Funding proposal from Natural Market Restaurants Corp.	396
Funding Memo Period 12 – v1.docx	Duplicate of previous item	397
HII Analysis v94 – for memo.pdf	Spreadsheet containing Homburg financial data	419
Homburg analysis	Spreadsheet containing analysis of Homburg	421

Filename	Description of item	Document #
v31.xlsx		
Homburg Analysis.pptx	PowerPoint presentation containing investment analysis of Homburg	422
Homburg Investment Overview.pdf	Spreadsheet containing investment analysis of Homburg	425
Impact of fleet mix change.xlsx	Spreadsheet containing analysis of Advantage rental fleet	435
Initial Memo BB v1.docx	Draft Catalyst memorandum concerning investment in BlackBerry	439
initial_financial_screening_BB_v1.xlsx	Spreadsheet containing financial modelling on BlackBerry	446
Location Review 0501nf.xlsx	Spreadsheet containing location-based revenue data for Advantage	465
Location Review 0603.xlsx	Different version of previous item	471
Location Review 0701nf.xlsx	Different version of previous item	473
Location Review 0730nf.xlsx	Different version of previous item	475
Location Review 0904nf.xlsx	Different version of previous item	477
Location Review 1001nf.xlsx	Different version of previous item	479
Location Review 1030nf.xlsx(1)	Different version of previous item	480
Location Review 1030nf.xlsx	Different version of previous item	482
Location Review 1127nf.xlsx	Different version of previous item	486
Master Schedule for Concession and CFC Payments(4).xlsx	Spreadsheet containing financial data for Advantage	503
Miscellaneous Info v2.xlsx	Spreadsheet containing financial and business information about Advantage	512
Miscellaneous Info v4.xlsx	Different version of previous item	513
Miscellaneous Info v7.xlsx	Different version of previous item	514
NMFG Team Assessment and HR Plan.pptx	Presentation on Natural Markets Foods Group personnel roles & capacities	566
NMRC Board Package.pdf	Natural Markets Restaurant Corp. Board agenda and material	570
NMRC Operating Model v42.xlsx	Financial model for Natural Markets Restaurant Corp.	581
October MAG & Rent	Payables spreadsheet for Advantage	596

Filename	Description of item	Document #
JILL.xlsx		
OP Model Reconciliation v5.pptx	Presentation reconciling 2 operating models for Natural Markets Food Group	601
Operating Summary v2.xlsx	Revenue model for Advantage	602
Operating Summary.xlsx	Different version of previous item	603
Organizational Chart 2013-11-19 v.1.3.pptx	Organizational charts for Natural Markets Food Group	631
Organizational Chart Brandon.pptx	Presentation on Natural Markets Foods Group personnel roles & capacities	632
P11 Cash Model v3.xlsx	Revenue model for Natural Markets Food Group	636
P11 Cash Model v4.xlsx	Different version of previous item	637
Real Estate Pipeline – P11 v3.xlsx	Table of lease information for Natural Markets locations	679
Strategic Initiatives Update.pptx	Presentation on various initiatives of Natural Markets Food Group	740
Top 10 Locations.xlsx	Table of rental and revenue data for Advantage	753
Travelport Market Demand.xlsx	Table of rental data for Advantage	757
Tuckamore Capital Management vF2.pdf	Catalyst investment memorandum re: Tuckamore prepared by Moyse	758
Tuckamore Capital Management vF.pdf	Different version of previous item	N/A

36. As is evident from the above, we found a further total of five (5) documents containing Catalyst confidential information which were not previously disclosed in Moyse's affidavits of documents within this pre-December 1, 2013 set of documents. Again, we did not identify specific evidence showing Moyse to have further disclosed these materials to West Face simply from the review of documents.

**Files Recovered through application of second set of search terms**

37. After considering the parties' respective positions, we decided to instruct DEI to employ the second set of search terms supplied by Catalyst counsel on January 8, 2015. A

total of five non-duplicative, unique files were identified and supplied to us as a result of the use of this second set of search terms. We reviewed all of these items, and none of them bear any relevance to Moyse's employment with Catalyst, nor do they contain any confidential information.

### Moyse's Email Accounts

38. We were provided with email messages responsive to the search terms provided from the following personal accounts maintained on Moyse's computer: [bmy1987@gmail.com](mailto:bmy1987@gmail.com) and [brandonmoyse@hotmail.com](mailto:brandonmoyse@hotmail.com). We reviewed all messages provided from November, 2012 onward (although a large volume of pre-2012 messages were included in the search results dating back as far as 2008). We also reviewed, in the same exercise, those additional emails that were provided after the application of the second set of search terms provided by Catalyst's counsel.

39. The large majority of messages were personal in nature. However, we identified a number of instances of Catalyst confidential information contained within emails, as follows:

Date	Description of item	Document #
April 18, 2013	Email from Moyse's Catalyst email account to his Gmail account forwarding diligence summaries and deal summaries concerning the Homburg transaction, from Stephen Eddy of McMillan LLP	820
April 19, 2013	Email from Moyse's Catalyst account to his Gmail account forwarding a draft Plan of Arrangement document with comments from McMillan LLP, together with draft Order and Motion documents with further comments from McMillan LLP, sent originally by Marc-André Morin of	821

Date	Description of item	Document #
	that firm. This material again relates to the Homburg transaction.	
April 19, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding McMillan's comments on the "Homco 61 Plan", again related to the Homburg transaction.	N/A
April 19, 2013	Email from Moyses's Catalyst account to his Gmail account attaching document markups from Sandra Abitan of Osler, Hoskin & Harcourt LLP on the draft HII/Shareco Plan related to the Homburg investment.	N/A
April 20, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding comments from Greg McIlwain of McMillan LLP on the Information Circular for the Homburg matter.	822
April 21, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding the revised HII/Shareco plan provided by Sandra Abitan of Osler, Hoskin & Harcourt LLP.	N/A
April 21, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding further revisions to the Amended and Restated HII Plan from McMillan LLP.	823
April 25, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding a draft letter from Marc-André Morin of McMillan LLP, to be sent to Osler, Hoskin & Harcourt in the event that negotiations are not successful.	824
April 27, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding comments from Zach Michaud on the Information Circular.	825
April 28, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding a Media Script proposed by public relations advisor Jessie Bullens relating to the Homburg transaction.	826
May 7, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding the documents "Homburg Investment Overview.pdf" and "HII Analysis v94 - for memo.pdf"	828
September 2, 2013	Email from Moyses's Catalyst account to his Gmail account attaching a marked-up copy of a Business Plan for a new entity (Geneba Properties) incorporated in connection with the Homburg transaction.	830
September 24, 2013	Email from Moyses's Catalyst account to the address <a href="mailto:wabdullah@nmfg.com">wabdullah@nmfg.com</a> containing only an attachment, NMRC Operating Model v8.xlsx, appearing to be information pertaining to Natural Markets Food Group	N/A
November 21, 2013	Email from Moyses's Catalyst account to his Gmail account containing a 165-page Organizational Chart for Natural Markets Food Group	831
February 3, 2014	Email from Zach Michaud to Moyses's Gmail account forwarding an exchange with Andrew Tully of the firm Kurt Salmon, enclosing a document entitled "NMFG	N/A

Date	Description of item	Document #
	Proposal 140130.pdf, appearing to be an investment proposal concerning Natural Markets Food Group	

40. As is evident from the above, we identified a total of five (5) email items containing Catalyst confidential information which were not disclosed in Moyse's affidavits of documents. Further, we note that the search process did not result in copies being returned for documents 829, 832 or 833 listed in Moyse's affidavit of documents and we have not reviewed these items.

41. There are several further areas warranting comment arising from our review of the email messages that were generated in the search. First, we identified one email dated October 30, 2013, in which Moyse emails an individual named Ian Quint ([iquint@quintcap.com](mailto:iquint@quintcap.com)) seeking information on the Dutch commercial real estate market such as cap rates and market values, and indicating that he is seeking to generate a rough estimate of what certain properties in the Netherlands might be worth. It appears this inquiry is related to the Homburg matter. There is no identifiable confidential information contained in the exchange, but since it is possible that such information might be inferred from the subject-matter of the inquiry, we have included reference to it.

42. Second, we did not find evidence contained within the email messages delivered to us of Moyse transmitting Catalyst investment documents or information to West Face. The only Catalyst document we found transmitted to West Face is contained in an email from Moyse (via his Hotmail account) to Alex Singh, West Face's General Counsel, on May 28, 2014, in which Moyse supplied Singh with a copy of his Employment Agreement. That document as

sent to West Face was redacted to prevent disclosure of information "related to the equity/carry structure of the firm".

43. I am aware from paragraph 62 and 63 of Moyse's July 7, 2014 Affidavit that he acknowledges having sent four Catalyst "research pieces" to West Face to serve as "writing samples" in the course of seeking employment at that firm, and that he acknowledges having deleted these email messages. We did not, however, find the original copy of this email message in our own review of the material provided through the search process, other than a forwarded version contained within a solicitor-client privileged communication.

44. Third, we located two email messages sent to Moyse's Hotmail account dated Saturday, July 12 and Wednesday, July 16, 2014, which require comment. These emails constitute payment receipts and license keys for a software product. The software product purchased on July 12, 2014 was "RegClean Pro" and it is indicated to include "Special Disk Cleaning Tools". The product purchased on July 16, 2014 was "Advanced System Optimizer 3 [Special Edition]" which is said to include "Free PhotoStudio" and "Special Disk Cleaning Tools". According to the promotional website for these products (<http://www.systweak.com/aso/>), Advanced System Optimizer 3 is software which includes a feature named "Secure Delete", that is said to permit a user to delete, and over-write to military-grade security specifications, data so that it cannot be recovered through forensic analysis.

45. Given the nature and timing of the software installed, I requested that DEI take steps to determine whether the product was installed and whether it could be determined if the product had been used to over-write data or files prior to the computer being imaged. DEI



advised me that, based on the creation date of the associated folders, RegClean and Advanced System Optimizer 3 were installed on July 16, 2014 at 8:50 and 8:53 a.m. respectively. The executable files for the Secure Delete feature are contained within the Advanced System Optimizer 3 folder. On July 20, 2014 at 8:09 p.m., a folder entitled "Secure Delete" was created, which suggests that a user of Moyse's computer took steps to make the use of that function available at that point in time.

46. DEI reported to me that the Secure Delete feature of the software provides several options for over-writing (i.e., "securely deleting") files. By default, the setting is "Fast secure delete" which causes a single pass overwriting process in which data is over-written with random characters. The second option is to use three passes using random characters and the third option is the so-called "military-grade" option which uses seven passes overwriting with random characters.

47. In terms of what may be deleted using this feature, DEI reports that the user may select from any of the following options within the software:

- (a) To wipe specific, individual files or folders;
- (b) To wipe an entire drive;
- (c) To wipe only "free space", *i.e.* currently unused or unallocated space which may contain fragmentary data from deleted files which have not yet been over-written either through ordinary usage of the computer or through deliberate over-writing.<sup>4</sup>

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<sup>4</sup> By way of a more detailed explanation, this technique could be used to destroy evidence that might otherwise be recoverable of "deleted files", *i.e.*, files which the user has instructed the operating system to delete. The ordinary "delete" function of common operating systems does not, when employed, actually result in the destruction of the underlying data, but

48. I asked DEI to advise me whether there was evidence that the product had been used in any of these ways. DEI reported that the content of the Moyse computer was not consistent with any use of the Secure Delete function to delete all free space and thereby prevent forensic analysis of the drive as a whole, on the assumption that the product indeed writes with random characters as is claimed in the product literature. Further, it is clear that the function was not used to wipe the entire drive, since there were substantial volumes of data produced to us. DEI cannot determine whether or not the Secure Delete function may or may not have been used to delete an individual file or files and this report accordingly cannot express any conclusion on that possibility other than to note that it exists.

#### **Samsung Android Smartphone**

49. The Android phone contained reviewable, potentially relevant information of the following types: (a) the user's Contacts; (b) records of documents downloaded to the device; (c) records of documents accessed or accessible through the Dropbox cloud-storage application installed on the device; (d) SMS and MMS text messages; and (e) data recovered from the Twitter application installed on the device.

50. DEI produced spreadsheets with the content of each such category of information recovered from the device, which we reviewed. We found no relevant content (and therefore no record of Catalyst confidential information being communicated) from reviewing Moyse's

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simply records the file as "deleted" and makes it inaccessible without forensic recovery techniques. The underlying data will generally remain present in the "unallocated space" of the hard drive. Unallocated space is space that the operating system treats as available to use for the storage/writing of new data or files. Thus, after a period of ordinary use, unallocated space will gradually be populated or filled in with new data, over-writing the old. Until the unallocated space where a "deleted file" is resident is over-written with new data, forensic recovery software can recover the file. The purpose of over-writing software such as Secure Delete, when applied to wipe all "free space" (aka "unallocated space") is to force the over-writing, with random data, of the latent content. Multiple, repetitive over-writing then simply increases the likelihood that forensic recovery tools cannot be used to recover the "deleted" content.

Contacts, his SMS and MMS text messages, or the recovered content of the Twitter application.

51. With respect to the record of downloaded documents, the data on the device recorded only those downloads occurring from and after May 27, 2014 (and continuing to July 21, 2014). While there are several entries appearing to be West Face-related documents (potentially employment-related documentation), there are no documents recorded which provide any basis to conclude that they might contain Catalyst confidential information.

52. With respect to the Dropbox account, all but a small number of file records were contained in folders marked “/Education”, “/Camera Uploads” and “/Personal”. Although we are not able to actually access the files themselves (since they are stored not on the device, but on the cloud-based Dropbox storage facility), it can at least be said that the file names of the documents appear to be consistent with those categorizations, and they do not appear to be Catalyst-related. Of the other files contained in the Dropbox, none appear to contain Catalyst confidential information.

#### Apple iPad

53. The Apple iPad contained limited reviewable, potentially relevant information of two types: (a) records of documents accessible through the “Dropbox” cloud storage application, and (b) information derived from the user’s Twitter account.

54. DEI was able to generate a list of documents accessible from this device from the “Dropbox” iOS application. The iPad contained records for some 1,327 total documents which were recorded by the operating system as accessible to the user at some point in time.

Of these documents, a total of 1,017 documents were contained in a folder entitled "Catalyst". I have attached as **Appendix "N"** a copy of the list of all files contained within the "Catalyst" folder, from the data supplied by DEI. The data generated also include a record of the last time that each file was recorded to have been accessed by the user, which is contained within that spreadsheet. I note that there are no records of the documents in the Dropbox being reviewed on any date subsequent to April 16, 2014, and therefore no evidence that the Dropbox files were viewed subsequent to Moyses's departure from Catalyst on the iPad device.

55. In addition, DEI recovered the Twitter direct messages and "tweets" associated with the account deployed on this device. I reviewed those items and identified nothing of relevance nor any confidential information contained therein belonging to any party to this action.

#### **PART IV - OBJECTIONS TO THE DRAFT REPORT PURSUANT TO THE PROTOCOL**

56. On February 1, 2015 we provided a draft report pursuant to paragraph 10 of protocol to counsel for Catalyst and Moyses.

57. On February 13, 2015 we received an email response from counsel for Moyses. The email contained a letter to me setting out a number of objections to documents that had been identified and included in the draft report. I have attached a copy of this email as "**Appendix O**".

58. Pursuant to the Protocol, we have reviewed the objections raised by Moyses's counsel, and made alterations to our report to exclude those objections we were able to conclude were

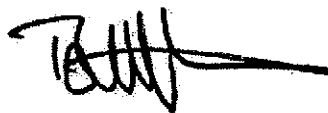
valid. Accordingly, the documents to which Moyses's counsel has objected, and which objections we have determined to be justified, have been excluded from the Report. The documents pertaining to objections that we determined were not justified remain included in this Report.

#### **PART V - CONCLUSIONS AS TO THE PROVISION OF CONFIDENTIAL INFORMATION TO WEST FACE**

59. We found no further concrete evidence from our review of the files, their surrounding metadata, or Moyses's email material or mobile devices, that confidential information belonging to Catalyst was provided to West Face. That of course does not exclude the possibility that such information was transmitted to West Face in other ways, or that records of other confidential information could have been destroyed through deletion and overwriting, as noted above.

#### **PART VI - CONCLUSION**

60. The above represents the conclusions we have been able to draw with respect to the content of the Devices. If the parties require further information about our analysis to date, or the provision of copies of some or all of the documents, we await their direction or further direction from the Court as may be appropriate.



March 13, 2015

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Plaintiff and Defendants

Court File No: CV-14-507120

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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