

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

**AFFIDAVIT OF BRANDON MOYSE
(Sworn July 4, 2014)**

I, BRANDON MOYSE, of the City of Toronto, MAKE OATH AND SAY:

1. I am a Defendant in this action and a respondent in this motion, 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 swear this affidavit in response to the Affidavits of James A. Riley ("Mr. Riley") sworn on June 26, 2014 and Martin Musters ("Mr. Musters") sworn on June 26, 2014 and in opposition to the motion by The Catalyst Capital Group Inc. ("Catalyst"). Where I do not respond to every allegation set out in the Affidavits of Mr. Riley or Mr. Musters, my failure to respond to a specific allegation should not be construed as an agreement with the statement made. I have, instead, tried to cover the most salient points in their affidavits, as I see them.
3. I am twenty-six (26) years of age. I was born and raised in Montreal, Quebec, and earned a Bachelor of Arts in Mathematics from the University of Pennsylvania. 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.

MY JUNIOR ROLE AT CATALYST

4. I commenced employment at Catalyst as an Analyst on or around November 1, 2012, pursuant to a written employment agreement (the "Employment Agreement"), dated October 1, 2012. The Employment Agreement is attached as **Exhibit "A"**.

5. While employed at Catalyst, my role as an Analyst was to perform financial and qualitative research both on potential investment opportunities and companies already owned by Catalyst. A job description for my Analyst position is attached as **Exhibit "B"**. As part of my research of potential investment opportunities, I would normally review publicly available information, such as financial statements and provide analysis regarding the company's potential value to Catalyst. From time to time, I would also meet with management groups of various companies as part of my due diligence activities.

6. Contrary to paragraph 15 of Mr. Riley's Affidavit, I did not have "substantial autonomy and responsibility" in my role. As an Analyst, I held the lowest level position at Catalyst. The hierarchy at Catalyst is as follows: Partner, Vice President, Associate, and Analyst. While I was employed at Catalyst, all potential and actual investments were sourced at the Partner level. 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 investment decisions or strategy, but was instead assigned specific research projects by the Partners.

7. While at the beginning of my employment with Catalyst I was more involved with researching potential investments; during the last six months of my employment, I was focused almost entirely on performing operating reviews of Catalyst-owned companies. As such, I have very little knowledge of Catalyst's current prospective investments.

8. Given the junior nature of my position, even while I was employed at Catalyst, I had very little knowledge of Catalyst's potential investments and its strategy for those investments. While I regularly attended Catalyst's Monday meetings, these meetings did not contain the in-depth confidential strategy discussions that Mr. Riley implies, but normally a very low level update on

Catalyst projects. Instead, it is my understanding that these strategy discussions primarily took place at Partners only meetings, which I did not attend.

9. In response to the allegations at paragraphs 39-40 of Mr. Riley's Affidavit, while my counsel Jeff Hopkins informed Catalyst's counsel that I am aware of up to five prospective investments at Catalyst, this was a rough estimate and, in fact, I am aware of three potential investments and had very limited involvement and no strategic involvement in any of these files.

10. The first potential investment is WIND Mobile. I believe this is the "opportunity in the telecommunications industry" that Mr. Riley refers to at paragraph 30 of his Affidavit. Contrary to Mr. Riley's assertion that this opportunity is so highly confidential that the company cannot even be named in his Affidavit, it is widely known in the industry that Catalyst is interested in purchasing WIND Mobile. Attached at **Exhibit "C"** are two newspaper articles which document Catalyst's interest in the acquisition.

11. In response to the allegations at paragraph 30 of Mr. Riley's Affidavit, while I had been working on the WIND Mobile file prior to giving my notice of resignation, I was privy to very little, if any confidential information about the transaction and played a minor role, essentially limited to contributing to a memo. I was only assigned to work on WIND Mobile the week before I left on vacation (two weeks before my resignation), and as such, did not have extensive knowledge of the transaction. I performed my analysis using documents provided by WIND Mobile, which WIND Mobile would have provided to any potential purchaser. As a low-level employee, I was not privy to any internal discussions about the strategy behind Catalyst's potential acquisition or how Catalyst planned to structure a potential deal.

12. The second potential investment is Mobilicity. Like with WIND Mobile, Catalyst's interest in Mobilicity is public knowledge. Attached at **Exhibit "D"** are newspaper articles documenting Catalyst's interest in Mobilicity. On the Mobilicity file, I fulfilled a purely clerical or administrative role typing Mr. Riley, Mr. de Alba, and Mr. Michaud's handwritten notes into a PowerPoint presentation on two occasions and updating 3-4 charts in the presentation using publically available information.

13. The third potential investment involves a nutrition company and is not public knowledge, but again, my involvement in the file was limited. For that file I drafted an investment memo in

December 2012. This memo contained no confidential information and, in fact, no financial information about the company. I had no other involvement on that file until on or about May 14, 2014, when I was provided with a "teaser deck" from that company's financial advisor. As part of my duties at Catalyst, I transposed the financial information from the teaser deck into an Excel file and saved it to Catalyst's system. I did not perform any analysis of the financial information and have no knowledge of Catalyst's strategy for the company.

14. While at paragraph 40 of Mr. Riley's Affidavit he states that five potential investments represents a significant portion of the investments that Catalyst would make in the life of any of its funds, this is comparing apples to oranges. While Catalyst may make around 20-25 investments during the life of its funds, it analyzes many more potential investments during that time, with very few going beyond the initial research stage.

15. Contrary to the allegations at paragraphs 8 and 67 of Mr. Riley's Affidavit, there was nothing confidential or proprietary in the methodology that I used to value certain investment opportunities while I worked at Catalyst. Rather, I used commonly used and well-known valuation methods.

16. I learned how to analyze companies as part of my education at the University of Pennsylvania and my previous employment at Credit Suisse and RBC Capital Markets, and in fact, this process can be learned by anyone with a generalist background in finance or mathematics.

MY COMPENSATION AT CATALYST

17. At Catalyst, I earned a base salary of \$90,000 and had the opportunity to earn a bonus of \$80,000.00. Contrary to the statement at paragraph 16 of Mr. Riley's Affidavit, my equity compensation did not exceed my base salary and bonus. In fact, the equity compensation I received was negligible. In 2013, I earned \$165,127.00, of which \$90,000 was my salary and \$72,000 was my annual bonus. My 2013 T4 and Notice of Assessment are attached as **Exhibit "E"**.

18. While Mr. Riley touts Catalyst's "60/40 Scheme" in his affidavit, I note that he did not attach a copy of the plan to his affidavit. During my employment at Catalyst, I was never

provided with a copy of the plan, nor any statements indicating the "points" I had allegedly accrued.

19. I disagree that the 60/40 Scheme gave me a "partner-like interest" in Catalyst. It is my understanding that the compensation earned under the 60/40 Scheme is only paid out after the fund returns all capital to investors, plus the 8% preferred return. Typically, this takes many years. As such, it is extremely rare for any Catalyst Analyst or Associate to receive any money from the 60/40 Scheme. For example, the Catalyst Fund II was raised in 2006 and has yet to trigger payments under the 60/40 Scheme.

20. Furthermore, while Catalyst allows employees the opportunity to earn options in the company, these options can only be exercised by purchasing shares at their fair market value. As such, it is not correct to consider Catalyst's options as a form of compensation.

21. Rather than treating employees as "Partners", it was my observation that the true Partners at Catalyst enjoyed superior economics at the expense of junior employees and investors. As part of Catalyst's equity plan, Analysts were allocated 0.15% of equity in Catalyst, meaning they had to fund capital calls for new investments as if they had a 0.15% interest in the fund. However, it was my understanding that the dividends paid to Analysts were calculated based on the portion of the allocated equity which had accrued, with the full amount of that allocation being spread out over the life of the investments funds. After two years at Catalyst, the dividends I received were based on an approximate 0.03% ownership interest, while my capital calls to the fund were based on a 0.15% ownership interest.

22. Additionally, Catalyst made extravagant purchases, including both a private jet and a helicopter, which to my understanding were used to transport the Partners on personal vacations or to their cottages on weekends.

POISONED WORK ENVIRONMENT AT CATALYST

23. Beyond the compensation scheme at Catalyst, which I considered unfair, the working environment was uncomfortable to the point of being hostile or toxic. The Co-Founder and Managing Partner of Catalyst, Newton Glassman ("Mr. Glassman") would often have outbursts in the office: yelling and screaming, cursing profusely, and even openly threatening to fire

employees. In late 2012, Mr. Glassman was unhappy with the explanation of a contract given by a Vice President of Catalyst, Zach Michaud ("Mr. Michaud"). As a result, during a meeting, Mr. Glassman stated that if Mr. Michaud wasn't more specific in his explanation, he would "*fucking bitch slap*" him. Unfortunately, this was not the only threat of violence that employees at Catalyst were forced to endure. In 2013, another Partner, Gabriel de Alba ("Mr. de Alba") threw a chair at Mark Horrox.

24. Mr. Glassman's aggressive and hostile nature was not directed solely to employees of Catalyst, and as a result, both he and Catalyst have obtained a negative reputation among many sources of potential investments and leads. It is common knowledge in the industry that many investment banks, law firms, accounting firms, and other investors will not work with Catalyst because of its reputation for being difficult, unreasonable, insincere, and disingenuous in its dealings. I've personally heard Mr. Glassman make statements to Catalyst advisors including: "*Stop fucking blowing smoke up my ass*", "*do your fucking job*", and "*if you're going to have a fucking argument with me you better be fucking prepared.*" Consequently, Catalyst had limited investment opportunities and "deal flow", which meant that I spent most of my time analyzing companies already owned by Catalyst, rather than researching new opportunities. Attached at **Exhibit "F"** is a newspaper article in which Mr. Glassman admits Catalyst's negative reputation and the effect it has had on the firm's "deal flow".

25. Moreover, these statements were frequently made in full earshot of employees, perpetuating the hostile and toxic work environment at Catalyst.

26. Beyond the uncomfortable and oppressive financial and work environments at Catalyst, I was also unhappy with the future prospects of Catalyst as over approximately the prior six months, operations at several portfolio companies deteriorated and / or missed their forecasts, causing me to lose faith in the firm and my opportunities there.

27. As a result of the above factors, I began looking for alternative employment in or around December 2013. Despite searching for new employment, I continued, at all times, to perform my duties and responsibilities toward Catalyst in a loyal and dedicated manner, and to the best of my abilities.

28. On or about May 19, 2014, I was offered a position with West Face Capital Inc. ("West Face") as an Associate. As such, on May 24, 2014, I submitted my resignation to Catalyst and gave the thirty (30) days' notice of my resignation as required by the Employment Agreement (and as acknowledged by Mr. Riley in his Affidavit). Attached at Exhibit "G" is a copy of my notice of resignation.

29. On May 26, 2014, I was instructed by Mr. Riley to remain at home for the balance of my notice period.

THE NON-COMPETITION COVENANT IN THE EMPLOYMENT AGREEMENT IS NOT ENFORCEABLE

30. While Catalyst relies upon the non-competition covenant in my Employment Agreement, it is an attempt to prevent me from working at West Face, and is an unreasonable restraint of trade that would prevent me from earning a living and is therefore against the public interest.

31. Furthermore, while Mr. Riley attempts to minimize the scope of the restriction at paragraph 33 of his Affidavit by stating that the covenant is "*narrowly restricted to firms that engage in the same undertaking as Catalyst, namely investing in special situations for control or influence*", this is incorrect. The restrictions are much broader.

32. The non-competition covenant in the Employment Agreement states:

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

- (i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by CCGI or the Fund or any direct Associate of CCGI within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under CCGI's employ; and
- (ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to CCGI;

33. This covenant is both vague and overbroad and thus unenforceable as it attempts to prohibit me from engaging in any business or undertaking of the type conducted by Catalyst or the "Fund" (which is not defined anywhere in the Employment Agreement) or "any direct Associate" of Catalyst.

34. The Ontario *Business Corporations Act* defines "Associate" as:

"associate", where used to indicate a relationship with any person, means,

- (a) any body corporate of which the person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,
- (b) any partner of that person,
- (c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,
- (d) any relative of the person, including the person's spouse, where the relative has the same home as the person, or
- (e) any relative of the spouse of the person where the relative has the same home as the person; ("personne qui a un lien")

Attached at **Exhibit "H"** is the relevant portion of the Ontario *Business Corporations Act*.

35. Given the nature of Catalyst's investments, such a restriction would effectively prohibit me from working in a wide variety of industries and sectors that are completely unrelated to my duties with Catalyst. For example, Catalyst has voting control over companies in the rental car, film and television production, biologics / pharmaceuticals and casino gaming industries, among others.

CATALYST'S ACCUSATIONS OF BREACH OF CONFIDENTIALITY ARE WITHOUT MERIT

36. It is noteworthy that neither Mr. Riley nor Mr. Musters provide any actual evidence that I transferred any information, confidential or otherwise, from Catalyst's servers to my Dropbox or Box accounts or other personal devices. Instead, Mr. Riley and Mr. Musters rely solely on unsupported speculation and innuendo.

37. In response to Mr. Riley's statements at paragraph 51 of his Affidavit, while Catalyst does have a remote access system, it is notoriously slow and unreliable. As such, it is common practice among Catalyst Associates and Analysts to forward information to their cloud accounts and personal devices in order to work more efficiently from home. Moreover, Partners would request Associates and Analysts to forward certain company information to their personal email addresses when they were unable to access the Catalyst network.

38. Contrary to the allegations at paragraphs 50-53 of Mr. Riley's Affidavit and the assertion of Jonathan Moore, the team lead at Catalyst's external IT services supplier that I would have "no reason to use Dropbox or Box for work purposes", Mr. Riley has provided no evidence that I have used my personal Dropbox account to store Catalyst files and is misconstruing the Box account as a personal Box account, which it was not. My Box account was established under my Catalyst email address, with Catalyst's knowledge, to host or have access to information hosted by Catalyst's portfolio companies or advisors.

39. While Mr. Riley objects to the "Catalyst Capital" folder in my Box account and heavily relies on the fact of its existence to support Catalyst's position that I have retained Catalyst's confidential information, the "Catalyst Capital" folder in my Box account was not created by me, but by Capstone Advisory Group ("Capstone"). Capstone was the financial advisor to Advantage Rent-A-Car, a Catalyst portfolio company, and it created the folder to share diligence materials with Catalyst. I did not have control over this folder. Furthermore, Mr. Riley's statement that Catalyst had no knowledge of this folder is surprising to me, as other Catalyst employees and Partners including Mr. de Alba had access to it.

40. Moreover, while Mr. Riley raises strong objections to the fact that there was a "Catalyst Capital" folder in my Box account, the fact is that **all** of the folders in my Box account were related to Catalyst. The "Cash Position", "NMFG", "NMFG_Model" and "Waj_Abdullah_Documents" folders were all related to Natural Markets Food Group ("NMFG"), a company owned by Catalyst. For example, the "Cash Position" folder contained the daily postings of the cash balances at NMFG. These folders were in some instances created by me, in other instances created by others, but at all times created with the full knowledge of Catalyst, with access shared amongst various Catalyst employees and Partners.

41. Since my resignation from Catalyst, I have not accessed or attempted to access the information located in this Box account, and I have not disclosed such information to West Face or any other parties.

42. Despite performing a forensic search on my Catalyst hard drive, Mr. Musters discovered only four categories of documents that I accessed from March 27, 2014 to the end of my employment (a period of nearly three months), which Catalyst alleges arouse suspicion and justify the extraordinary and intrusive step of searching both my personal computer equipment and that of my new employer. Each of Catalyst's accusations can be easily explained.

INVESTMENT LETTERS

43. On March 28, 2014, I accessed various quarterly investment letters as set out in Mr. Riley and Mr. Muster's affidavits. Contrary to Mr. Riley's statements at paragraph 57 of his Affidavit, 6:28 pm to 6:39 pm is not outside of regular office hours at Catalyst. I, along with most other investment professionals routinely stayed at the office well beyond 7:00 pm and routinely until 9:00 pm or 10:00 pm.

44. It is important to note that the investment letters I accessed covered the time period of June 2008 to April 2011 and as such did not contain any current investment information.

45. I admit that I did not access these letters as part of my duties and responsibilities at Catalyst. Having helped work on the quarterly letters in the past, I was aware that Mr. Glassman included personnel updates in those letters. As I had been considering leaving Catalyst, I was looking for statements made by Mr. Glassman about employees who had left the firm or were terminated in order to gauge what statements he might make about me if I left. For example, in March 2014, Mr. Glassman denigrated a former employee in front of substantially all of Catalyst's investors, causing me to believe he may make negative statements about me.

46. The reason it only took me approximately 11 minutes to read the letters is because I skimmed the letters looking for comments Mr. Glassman made about former Catalyst employees. I did not read all of the information in each letter. I did not transfer any of the letters to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

STELCO

47. I admit reviewing the Stelco documents listed in Mr. Riley and Mr. Musters' Affidavits and that I did not access the letters as part of my duties and responsibilities.

48. I reviewed the Stelco documents simply out of personal curiosity and to learn more about the transaction. These files were accessible to anyone with access to Catalyst's system. As Mr. Riley admits at paragraph 56 of his Affidavit, by the time I viewed the documents, the transaction was no longer active. In fact, the files I accessed were at least six years old and Stelco itself no longer exists. While I do admit transferring one Stelco file to Dropbox to read at home, I deleted the file after reading it and did not provide the information to West Face or any other parties.

MASONITE FILES

49. Contrary to the allegations at paragraph 60 of Mr. Riley's Affidavit, I did not transfer any Catalyst files related to Masonite International ("Masonite") to my Dropbox account. In fact, not only are none of the documents listed confidential, none of the documents belonged to Catalyst.

50. If Catalyst had been studying an opportunity related to Masonite, I was not aware of it and would in fact be surprised as Masonite is a \$2+ billion, BB+ rated company that does not fit the profile of a company whose securities Catalyst would be interested in acquiring. This is contrary to Mr. Riley's Affidavit, which asserts that I was aware of all of Catalyst's potential investments, which given his statements regarding Masonite, clearly I was not.

51. As part of my job search, I interviewed with a number of companies, including Mackenzie Investments. The reason that I had documents in my Dropbox related to Masonite is because, as part of the interview process, I was asked to use the company as a case study and to draft a 2-4 page model of the company. Attached at **Exhibit "I"** is an email (with attachments) from Sharon Beers at Mackenzie Investments assigning me the project.

52. I will note that Exhibits T and E of Mr. Riley's and Mr. Musters' Affidavits show that the documents I accessed were located in my personal Dropbox (which was linked to my Catalyst computer) and have not provided any evidence that I accessed any Masonite documents on

Catalyst's system. This is because no such evidence exists. The documents I used for the case study were public documents, published by Masonite and provided to me by Mackenzie Investments or obtained from Masonite's website.

TELECOM FILES

53. With respect to the allegations at paragraph 61 of Mr. Riley's Affidavit, and the fact that I recognize the filenames in Exhibit U, I believe the "very sensitive and confidential opportunity in the telecommunications industry" is WIND Mobile.

54. Contrary to the allegations at paragraphs 24 and 25 of Mr. Riley's Affidavit, I was not referring to WIND Mobile in my email, but another investment.

55. I admit that I accessed the files in question. Contrary to Mr. Riley's bald assertion that I did so for a nefarious purpose, I accessed the files as part of my duties at Catalyst. In fact, I was specifically assigned to work on WIND Mobile by Mr. de Alba. I accessed the files in question because I was working on a chart to include in an investment memo. As there are hundreds of files related to WIND Mobile in Catalyst's system, I had to open a number of files and quickly scan them to determine if they contained the information I was looking for. I did not have to read the entirety of all of the documents I accessed. While I accessed the files between 8:39 pm and 9:03 pm, email records show that I was still at work. Attached at **Exhibit "J"** is an email exchange between myself and my girlfriend dated May 13, 2014 in which I tell her that I will not be home until 10:15 pm. I was also working amongst other employees and not trying to surreptitiously read or transfer files. One of those employees still in the office was Lorne Creighton (who was also working on WIND Mobile). I did not transfer any of the files to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

56. As mentioned above, as a low-level employee, I was not privy to any internal discussions about the strategy behind Catalyst's potential acquisition of WIND Mobile or how Catalyst planned to structure a potential deal. Nevertheless, prior to the commencement of my employment at West Face, West Face took specific efforts to erect a "Confidentiality Wall" to ensure that the limited confidential information I have is not shared with anyone at West Face. Furthermore, I have absolutely no involvement with West Face's potential investment with

WIND Mobile. To that end, employees at West Face have been instructed not to discuss WIND Mobile with me and it is my understanding that the IT Group at West Face has restricted my access to West Face's network for files regarding WIND Mobile. Attached at **Exhibit "K"** is a memorandum from Supriya Kapoor, Chief Compliance Officer at West Face outlining the Confidentiality Wall.

57. I have at all times respected my obligations to Catalyst with regard to WIND Mobile, which I take seriously and will continue to do so.

MONDAY MEETING NOTES

58. Contrary to the allegations at paragraph 64 of Mr. Riley's Affidavit, the Monday meetings did not take place in the morning, and in fact to the best of my recollection, never before 12:30 p.m. As such, when I accessed the file, the meeting would not have ended, but was likely just beginning.

59. In any event, I did not attend the meeting on May 26, 2014. Earlier that morning, I verbally confirmed my previous written notice of resignation and, as a result, was not invited to the meeting. Following my resignation, I did not attend any further Monday meetings, as I was asked to remain at home.

60. The "Monday Meeting Notes" were not my notes from the meeting (which would be impossible because I didn't attend it), but were my notes **for** the meeting, consisting of world news and economic events, which might be discussed at the meeting. This was my usual practice prior to most Monday meetings. I do not believe the notes were Catalyst's property and in any event they did not contain any confidential information. Nevertheless, I did not transfer the notes to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

61. As explained above, Catalyst's allegations of my removal and misuse of confidential information are baseless.

62. I do admit that early in my interview process with West Face, via one email, I provided West Face with four company research pieces I created at Catalyst between November 2012

and January 2014. I provided these to West Face not so it could gain any sort of competitive advantage or trade secret, but merely as an example of my writing and research ability.

63. I am unable to produce this email in my affidavit, as it is no longer in my possession. I deleted the email shortly after sending it to West Face.

64. Three of these research pieces did not contain any confidential information or information proprietary to Catalyst; it was also my understanding that Catalyst was not actively pursuing an investment in any of these companies.

65. In the fourth case, Catalyst had already successfully completed its investment in the company and therefore I did not believe the information would be of any use to West Face or detrimental to Catalyst. Moreover, this company was a European company and West Face does not focus on European investments.

66. I have not provided or disclosed any confidential information to West Face beyond these four research pieces. In fact, I have been under specific instruction by West Face to not provide or disclose such information.

67. I have been reminded of my obligations in this regard by West Face on multiple occasions both prior to and following the commencement of my employment at West Face. For instance, on or about May 30, 2014, I was contacted by Alex Singh ("Mr. Singh"), West Face's General Counsel and Secretary. During that conversation, Mr. Singh instructed me not to use or disclose any confidential or proprietary information belonging to Catalyst. I indicated to Mr. Singh that I understood and agreed, and as stated above, have taken this obligation very seriously and will continue to do so.

THIS COURT SHOULD REJECT CATALYST'S REQUEST FOR AN INJUNCTION/FORENSIC REVIEW

68. As the non-competition covenant is not enforceable, I believe that Catalyst has no basis to request an injunction to prevent me from working at West Face.

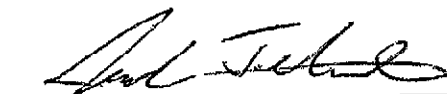
69. Even if the non-competition agreement may be enforceable, which is not admitted, but expressly denied, such relief is not justified, as monetary damages are calculable and will be sufficient to address any damage to Catalyst.

70. On the other hand, an interlocutory injunction would be devastating to my career and livelihood, as it would prevent me from holding gainful employment and would deprive me of the experience I am developing in my still young career.

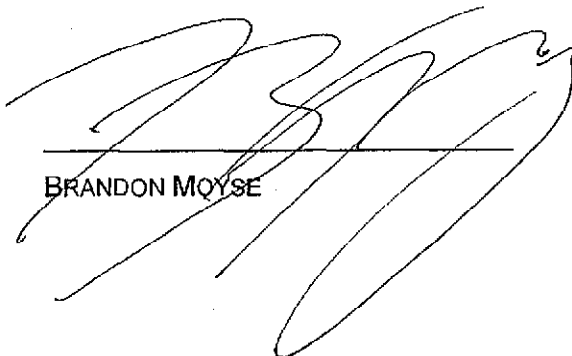
71. Furthermore, there is no basis to order a forensic review of my personal computer equipment and accounts, which is requested only as a fishing expedition. Despite retaining an expert to forensically examine my Catalyst computer, Catalyst was unable to provide any actual evidence that I transferred any confidential information to my personal equipment or accounts.

72. I swear this affidavit in opposition to Catalyst's motion for an injunction and for no other purpose.

SWORN before me at the City of Toronto)
on the 4th day of July, 2014)



A Commissioner for Taking Affidavits etc.
Justin Tetraault



BRANDON MOYSE

Court File No. CV-14-507120

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**AFFIDAVIT OF BRANDON MOYSE
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Catalyst projects. Instead, it is my understanding that these strategy discussions primarily took place at Partners only meetings, which I did not attend.

9. In response to the allegations at paragraphs 39-40 of Mr. Riley's Affidavit, while my counsel Jeff Hopkins informed Catalyst's counsel that I am aware of up to five prospective investments at Catalyst, this was a rough estimate and, in fact, I am aware of three potential investments and had very limited involvement and no strategic involvement in any of these files.

10. The first potential investment is WIND Mobile. I believe this is the "opportunity in the telecommunications industry" that Mr. Riley refers to at paragraph 30 of his Affidavit. Contrary to Mr. Riley's assertion that this opportunity is so highly confidential that the company cannot even be named in his Affidavit, it is widely known in the industry that Catalyst is interested in purchasing WIND Mobile. Attached at **Exhibit "C"** are two newspaper articles which document Catalyst's interest in the acquisition.

11. In response to the allegations at paragraph 30 of Mr. Riley's Affidavit, while I had been working on the WIND Mobile file prior to giving my notice of resignation, I was privy to very little, if any confidential information about the transaction and played a minor role, essentially limited to contributing to a memo. I was only assigned to work on WIND Mobile the week before I left on vacation (two weeks before my resignation), and as such, did not have extensive knowledge of the transaction. I performed my analysis using documents provided by WIND Mobile, which WIND Mobile would have provided to any potential purchaser. As a low-level employee, I was not privy to any internal discussions about the strategy behind Catalyst's potential acquisition or how Catalyst planned to structure a potential deal.

12. The second potential investment is Mobilicity. Like with WIND Mobile, Catalyst's interest in Mobilicity is public knowledge. Attached at **Exhibit "D"** are newspaper articles documenting Catalyst's interest in Mobilicity. On the Mobilicity file, I fulfilled a purely clerical or administrative role typing Mr. Riley, Mr. de Alba, and Mr. Michaud's handwritten notes into a PowerPoint presentation on two occasions and updating 3-4 charts in the presentation using publically available information.

13. The third potential investment involves a nutrition company and is not public knowledge, but again, my involvement in the file was limited. For that file I drafted an investment memo in

December 2012. This memo contained no confidential information and, in fact, no financial information about the company. I had no other involvement on that file until on or about May 14, 2014, when I was provided with a "teaser deck" from that company's financial advisor. As part of my duties at Catalyst, I transposed the financial information from the teaser deck into an Excel file and saved it to Catalyst's system. I did not perform any analysis of the financial information and have no knowledge of Catalyst's strategy for the company.

14. While at paragraph 40 of Mr. Riley's Affidavit he states that five potential investments represents a significant portion of the investments that Catalyst would make in the life of any of its funds, this is comparing apples to oranges. While Catalyst may make around 20-25 investments during the life of its funds, it analyzes many more potential investments during that time, with very few going beyond the initial research stage.

15. Contrary to the allegations at paragraphs 8 and 67 of Mr. Riley's Affidavit, there was nothing confidential or proprietary in the methodology that I used to value certain investment opportunities while I worked at Catalyst. Rather, I used commonly used and well-known valuation methods.

16. I learned how to analyze companies as part of my education at the University of Pennsylvania and my previous employment at Credit Suisse and RBC Capital Markets, and in fact, this process can be learned by anyone with a generalist background in finance or mathematics.

MY COMPENSATION AT CATALYST

17. At Catalyst, I earned a base salary of \$90,000 and had the opportunity to earn a bonus of \$80,000.00. Contrary to the statement at paragraph 16 of Mr. Riley's Affidavit, my equity compensation did not exceed my base salary and bonus. In fact, the equity compensation I received was negligible. In 2013, I earned \$165,127.00, of which \$90,000 was my salary and \$72,000 was my annual bonus. My 2013 T4 and Notice of Assessment are attached as Exhibit "E".

18. While Mr. Riley touts Catalyst's "60/40 Scheme" in his affidavit, I note that he did not attach a copy of the plan to his affidavit. During my employment at Catalyst, I was never

provided with a copy of the plan, nor any statements indicating the "points" I had allegedly accrued.

19. I disagree that the 60/40 Scheme gave me a "partner-like interest" in Catalyst. It is my understanding that the compensation earned under the 60/40 Scheme is only paid out after the fund returns all capital to investors, plus the 8% preferred return. Typically, this takes many years. As such, it is extremely rare for any Catalyst Analyst or Associate to receive any money from the 60/40 Scheme. For example, the Catalyst Fund II was raised in 2006 and has yet to trigger payments under the 60/40 Scheme.

20. Furthermore, while Catalyst allows employees the opportunity to earn options in the company, these options can only be exercised by purchasing shares at their fair market value. As such, it is not correct to consider Catalyst's options as a form of compensation.

21. Rather than treating employees as "Partners", it was my observation that the true Partners at Catalyst enjoyed superior economics at the expense of junior employees and investors. As part of Catalyst's equity plan, Analysts were allocated 0.15% of equity in Catalyst, meaning they had to fund capital calls for new investments as if they had a 0.15% interest in the fund. However, it was my understanding that the dividends paid to Analysts were calculated based on the portion of the allocated equity which had accrued, with the full amount of that allocation being spread out over the life of the investments funds. After two years at Catalyst, the dividends I received were based on an approximate 0.03% ownership interest, while my capital calls to the fund were based on a 0.15% ownership interest.

22. Additionally, Catalyst made extravagant purchases, including both a private jet and a helicopter, which to my understanding were used to transport the Partners on personal vacations or to their cottages on weekends.

POISONED WORK ENVIRONMENT AT CATALYST

23. Beyond the compensation scheme at Catalyst, which I considered unfair, the working environment was uncomfortable to the point of being hostile or toxic. The Co-Founder and Managing Partner of Catalyst, Newton Glassman ("Mr. Glassman") would often have outbursts in the office: yelling and screaming, cursing profusely, and even openly threatening to fire

employees. In late 2012, Mr. Glassman was unhappy with the explanation of a contract given by a Vice President of Catalyst, Zach Michaud ("Mr. Michaud"). As a result, during a meeting, Mr. Glassman stated that if Mr. Michaud wasn't more specific in his explanation, he would "*fucking bitch slap*" him. Unfortunately, this was not the only threat of violence that employees at Catalyst were forced to endure. In 2013, another Partner, Gabriel de Alba ("Mr. de Alba") threw a chair at Mark Horrox.

24. Mr. Glassman's aggressive and hostile nature was not directed solely to employees of Catalyst, and as a result, both he and Catalyst have obtained a negative reputation among many sources of potential investments and leads. It is common knowledge in the industry that many investment banks, law firms, accounting firms, and other investors will not work with Catalyst because of its reputation for being difficult, unreasonable, insincere, and disingenuous in its dealings. I've personally heard Mr. Glassman make statements to Catalyst advisors including: "*Stop fucking blowing smoke up my ass*", "*do your fucking job*", and "*if you're going to have a fucking argument with me you better be fucking prepared.*" Consequently, Catalyst had limited investment opportunities and "deal flow", which meant that I spent most of my time analyzing companies already owned by Catalyst, rather than researching new opportunities. Attached at **Exhibit "F"** is a newspaper article in which Mr. Glassman admits Catalyst's negative reputation and the effect it has had on the firm's "deal flow".

25. Moreover, these statements were frequently made in full earshot of employees, perpetuating the hostile and toxic work environment at Catalyst.

26. Beyond the uncomfortable and oppressive financial and work environments at Catalyst, I was also unhappy with the future prospects of Catalyst as over approximately the prior six months, operations at several portfolio companies deteriorated and / or missed their forecasts, causing me to lose faith in the firm and my opportunities there.

27. As a result of the above factors, I began looking for alternative employment in or around December 2013. Despite searching for new employment, I continued, at all times, to perform my duties and responsibilities toward Catalyst in a loyal and dedicated manner, and to the best of my abilities.

28. On or about May 19, 2014, I was offered a position with West Face Capital Inc. ("West Face") as an Associate. As such, on May 24, 2014, I submitted my resignation to Catalyst and gave the thirty (30) days' notice of my resignation as required by the Employment Agreement (and as acknowledged by Mr. Riley in his Affidavit). Attached at Exhibit "G" is a copy of my notice of resignation.

29. On May 26, 2014, I was instructed by Mr. Riley to remain at home for the balance of my notice period.

THE NON-COMPETITION COVENANT IN THE EMPLOYMENT AGREEMENT IS NOT ENFORCEABLE

30. While Catalyst relies upon the non-competition covenant in my Employment Agreement, it is an attempt to prevent me from working at West Face, and is an unreasonable restraint of trade that would prevent me from earning a living and is therefore against the public interest.

31. Furthermore, while Mr. Riley attempts to minimize the scope of the restriction at paragraph 33 of his Affidavit by stating that the covenant is "*narrowly restricted to firms that engage in the same undertaking as Catalyst, namely investing in special situations for control or influence*", this is incorrect. The restrictions are much broader.

32. The non-competition covenant in the Employment Agreement states:

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

- (i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by CCGI or the Fund or any direct Associate of CCGI within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under CCGI's employ; and
- (ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to CCGI;

33. This covenant is both vague and overbroad and thus unenforceable as it attempts to prohibit me from engaging in any business or undertaking of the type conducted by Catalyst or the "Fund" (which is not defined anywhere in the Employment Agreement) or "any direct Associate" of Catalyst.

34. The Ontario *Business Corporations Act* defines "Associate" as:

"associate", where used to indicate a relationship with any person, means,

- (a) any body corporate of which the person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,
- (b) any partner of that person,
- (c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,
- (d) any relative of the person, including the person's spouse, where the relative has the same home as the person, or
- (e) any relative of the spouse of the person where the relative has the same home as the person; ("personne qui a un lien")

Attached at **Exhibit "H"** is the relevant portion of the Ontario *Business Corporations Act*.

35. Given the nature of Catalyst's investments, such a restriction would effectively prohibit me from working in a wide variety of industries and sectors that are completely unrelated to my duties with Catalyst. For example, Catalyst has voting control over companies in the rental car, film and television production, biologics / pharmaceuticals and casino gaming industries, among others.

CATALYST'S ACCUSATIONS OF BREACH OF CONFIDENTIALITY ARE WITHOUT MERIT

36. It is noteworthy that neither Mr. Riley nor Mr. Musters provide any actual evidence that I transferred any information, confidential or otherwise, from Catalyst's servers to my Dropbox or Box accounts or other personal devices. Instead, Mr. Riley and Mr. Musters rely solely on unsupported speculation and innuendo.

37. In response to Mr. Riley's statements at paragraph 51 of his Affidavit, while Catalyst does have a remote access system, it is notoriously slow and unreliable. As such, it is common practice among Catalyst Associates and Analysts to forward information to their cloud accounts and personal devices in order to work more efficiently from home. Moreover, Partners would request Associates and Analysts to forward certain company information to their personal email addresses when they were unable to access the Catalyst network.

38. Contrary to the allegations at paragraphs 50-53 of Mr. Riley's Affidavit and the assertion of Jonathan Moore, the team lead at Catalyst's external IT services supplier that I would have "no reason to use Dropbox or Box for work purposes", Mr. Riley has provided no evidence that I have used my personal Dropbox account to store Catalyst files and is misconstruing the Box account as a personal Box account, which it was not. My Box account was established under my Catalyst email address, with Catalyst's knowledge, to host or have access to information hosted by Catalyst's portfolio companies or advisors.

39. While Mr. Riley objects to the "Catalyst Capital" folder in my Box account and heavily relies on the fact of its existence to support Catalyst's position that I have retained Catalyst's confidential information, the "Catalyst Capital" folder in my Box account was not created by me, but by Capstone Advisory Group ("Capstone"). Capstone was the financial advisor to Advantage Rent-A-Car, a Catalyst portfolio company, and it created the folder to share diligence materials with Catalyst. I did not have control over this folder. Furthermore, Mr. Riley's statement that Catalyst had no knowledge of this folder is surprising to me, as other Catalyst employees and Partners including Mr. de Alba had access to it.

40. Moreover, while Mr. Riley raises strong objections to the fact that there was a "Catalyst Capital" folder in my Box account, the fact is that all of the folders in my Box account were related to Catalyst. The "Cash Position", "NMFG", "NMFG_Model" and "Waj_Abdullah_Documents" folders were all related to Natural Markets Food Group ("NMFG"), a company owned by Catalyst. For example, the "Cash Position" folder contained the daily postings of the cash balances at NMFG. These folders were in some instances created by me, in other instances created by others, but at all times created with the full knowledge of Catalyst, with access shared amongst various Catalyst employees and Partners.

41. Since my resignation from Catalyst, I have not accessed or attempted to access the information located in this Box account, and I have not disclosed such information to West Face or any other parties.

42. Despite performing a forensic search on my Catalyst hard drive, Mr. Musters discovered only four categories of documents that I accessed from March 27, 2014 to the end of my employment (a period of nearly three months), which Catalyst alleges arouse suspicion and justify the extraordinary and intrusive step of searching both my personal computer equipment and that of my new employer. Each of Catalyst's accusations can be easily explained.

INVESTMENT LETTERS

43. On March 28, 2014, I accessed various quarterly investment letters as set out in Mr. Riley and Mr. Muster's affidavits. Contrary to Mr. Riley's statements at paragraph 57 of his Affidavit, 6:28 pm to 6:39 pm is not outside of regular office hours at Catalyst. I, along with most other investment professionals routinely stayed at the office well beyond 7:00 pm and routinely until 9:00 pm or 10:00 pm.

44. It is important to note that the investment letters I accessed covered the time period of June 2008 to April 2011 and as such did not contain any current investment information.

45. I admit that I did not access these letters as part of my duties and responsibilities at Catalyst. Having helped work on the quarterly letters in the past, I was aware that Mr. Glassman included personnel updates in those letters. As I had been considering leaving Catalyst, I was looking for statements made by Mr. Glassman about employees who had left the firm or were terminated in order to gauge what statements he might make about me if I left. For example, in March 2014, Mr. Glassman denigrated a former employee in front of substantially all of Catalyst's investors, causing me to believe he may make negative statements about me.

46. The reason it only took me approximately 11 minutes to read the letters is because I skimmed the letters looking for comments Mr. Glassman made about former Catalyst employees. I did not read all of the information in each letter. I did not transfer any of the letters to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

STELCO

47. I admit reviewing the Stelco documents listed in Mr. Riley and Mr. Musters' Affidavits and that I did not access the letters as part of my duties and responsibilities.

48. I reviewed the Stelco documents simply out of personal curiosity and to learn more about the transaction. These files were accessible to anyone with access to Catalyst's system. As Mr. Riley admits at paragraph 56 of his Affidavit, by the time I viewed the documents, the transaction was no longer active. In fact, the files I accessed were at least six years old and Stelco itself no longer exists. While I do admit transferring one Stelco file to Dropbox to read at home, I deleted the file after reading it and did not provide the information to West Face or any other parties.

MASONITE FILES

49. Contrary to the allegations at paragraph 60 of Mr. Riley's Affidavit, I did not transfer any Catalyst files related to Masonite International ("Masonite") to my Dropbox account. In fact, not only are none of the documents listed confidential, none of the documents belonged to Catalyst.

50. If Catalyst had been studying an opportunity related to Masonite, I was not aware of it and would in fact be surprised as Masonite is a \$2+ billion, BB+ rated company that does not fit the profile of a company whose securities Catalyst would be interested in acquiring. This is contrary to Mr. Riley's Affidavit, which asserts that I was aware of all of Catalyst's potential investments, which given his statements regarding Masonite, clearly I was not.

51. As part of my job search, I interviewed with a number of companies, including Mackenzie Investments. The reason that I had documents in my Dropbox related to Masonite is because, as part of the interview process, I was asked to use the company as a case study and to draft a 2-4 page model of the company. Attached at **Exhibit "I"** is an email (with attachments) from Sharon Beers at Mackenzie Investments assigning me the project.

52. I will note that Exhibits T and E of Mr. Riley's and Mr. Musters' Affidavits show that the documents I accessed were located in my personal Dropbox (which was linked to my Catalyst computer) and have not provided any evidence that I accessed any Masonite documents on

Catalyst's system. This is because no such evidence exists. The documents I used for the case study were public documents, published by Masonite and provided to me by Mackenzie Investments or obtained from Masonite's website.

TELECOM FILES

53. With respect to the allegations at paragraph 61 of Mr. Riley's Affidavit, and the fact that I recognize the filenames in Exhibit U, I believe the "very sensitive and confidential opportunity in the telecommunications industry" is WIND Mobile.

54. Contrary to the allegations at paragraphs 24 and 25 of Mr. Riley's Affidavit, I was not referring to WIND Mobile in my email, but another investment.

55. I admit that I accessed the files in question. Contrary to Mr. Riley's bald assertion that I did so for a nefarious purpose, I accessed the files as part of my duties at Catalyst. In fact, I was specifically assigned to work on WIND Mobile by Mr. de Alba. I accessed the files in question because I was working on a chart to include in an investment memo. As there are hundreds of files related to WIND Mobile in Catalyst's system, I had to open a number of files and quickly scan them to determine if they contained the information I was looking for. I did not have to read the entirety of all of the documents I accessed. While I accessed the files between 8:39 pm and 9:03 pm, email records show that I was still at work. Attached at **Exhibit "J"** is an email exchange between myself and my girlfriend dated May 13, 2014 in which I tell her that I will not be home until 10:15 pm. I was also working amongst other employees and not trying to surreptitiously read or transfer files. One of those employees still in the office was Lorne Creighton (who was also working on WIND Mobile). I did not transfer any of the files to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

56. As mentioned above, as a low-level employee, I was not privy to any internal discussions about the strategy behind Catalyst's potential acquisition of WIND Mobile or how Catalyst planned to structure a potential deal. Nevertheless, prior to the commencement of my employment at West Face, West Face took specific efforts to erect a "Confidentiality Wall" to ensure that the limited confidential information I have is not shared with anyone at West Face. Furthermore, I have absolutely no involvement with West Face's potential investment with

WIND Mobile. To that end, employees at West Face have been instructed not to discuss WIND Mobile with me and it is my understanding that the IT Group at West Face has restricted my access to West Face's network for files regarding WIND Mobile. Attached at Exhibit "K" is a memorandum from Supriya Kapoor, Chief Compliance Officer at West Face outlining the Confidentiality Wall.

57. I have at all times respected my obligations to Catalyst with regard to WIND Mobile, which I take seriously and will continue to do so.

MONDAY MEETING NOTES

58. Contrary to the allegations at paragraph 64 of Mr. Riley's Affidavit, the Monday meetings did not take place in the morning, and in fact to the best of my recollection, never before 12:30 p.m. As such, when I accessed the file, the meeting would not have ended, but was likely just beginning.

59. In any event, I did not attend the meeting on May 26, 2014. Earlier that morning, I verbally confirmed my previous written notice of resignation and, as a result, was not invited to the meeting. Following my resignation, I did not attend any further Monday meetings, as I was asked to remain at home.

60. The "Monday Meeting Notes" were not my notes from the meeting (which would be impossible because I didn't attend it), but were my notes for the meeting, consisting of world news and economic events, which might be discussed at the meeting. This was my usual practice prior to most Monday meetings. I do not believe the notes were Catalyst's property and in any event they did not contain any confidential information. Nevertheless, I did not transfer the notes to my Box, Dropbox, or any other personal account, nor have I provided any of the information to West Face.

61. As explained above, Catalyst's allegations of my removal and misuse of confidential information are baseless.

62. I do admit that early in my interview process with West Face, via one email, I provided West Face with four company research pieces I created at Catalyst between November 2012

and January 2014. I provided these to West Face not so it could gain any sort of competitive advantage or trade secret, but merely as an example of my writing and research ability.

63. I am unable to produce this email in my affidavit, as it is no longer in my possession. I deleted the email shortly after sending it to West Face.

64. Three of these research pieces did not contain any confidential information or information proprietary to Catalyst; it was also my understanding that Catalyst was not actively pursuing an investment in any of these companies.

65. In the fourth case, Catalyst had already successfully completed its investment in the company and therefore I did not believe the information would be of any use to West Face or detrimental to Catalyst. Moreover, this company was a European company and West Face does not focus on European investments.

66. I have not provided or disclosed any confidential information to West Face beyond these four research pieces. In fact, I have been under specific instruction by West Face to not provide or disclose such information.

67. I have been reminded of my obligations in this regard by West Face on several occasions both prior to and following the commencement of my employment at West Face. For instance, on or about May 22, 2014, I was contacted by Alex Singh ("Mr. Singh"), West Face's General Counsel and Secretary. During that conversation, Mr. Singh instructed me not to use or disclose any confidential or proprietary information belonging to Catalyst. I indicated to Mr. Singh that I understood and agreed, and as stated above, have taken this obligation very seriously and will continue to do so.

THIS COURT SHOULD REJECT CATALYST'S REQUEST FOR AN INJUNCTION/FORENSIC REVIEW

68. As the non-competition covenant is not enforceable, I believe that Catalyst has no basis to request an injunction to prevent me from working at West Face.

69. Even if the non-competition agreement may be enforceable, which is not admitted, but expressly denied, such relief is not justified, as monetary damages are calculable and will be sufficient to address any damage to Catalyst.

70. On the other hand, an interlocutory injunction would be devastating to my career and livelihood, as it would prevent me from holding gainful employment and would deprive me of the experience I am developing in my still young career.

71. Furthermore, there is no basis to order a forensic review of my personal computer equipment and accounts, which is requested only as a fishing expedition. Despite retaining an expert to forensically examine my Catalyst computer, Catalyst was unable to provide any actual evidence that I transferred any confidential information to my personal equipment or accounts.

72. I swear this affidavit in opposition to Catalyst's motion for an injunction and for no other purpose.

SWORN before me at the City of Toronto)
on the 7th day of July, 2014)

)
)
)
)

BRANDON MOYSE

Justin Tetreault
A Commissioner for Taking Affidavits etc.
Justin Tetreault

This is Exhibit 17 referred to in the
 affidavit of Anthony Griffin
 sworn before me, this 8th
 day of January, 2016.

38 357


 A COMMISSIONER FOR TAKING AFFIDAVITS
 ANDREW CARLISLE

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

AFFIDAVIT OF BRANDON MOYSE
 (Sworn July 16, 2014)

I, BRANDON MOYSE, of the City of Toronto, MAKE OATH AND SAY:

1. I am a Defendant in this action and a respondent in this motion, 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 swear this affidavit in response to the Affidavit of James A. Riley ("Mr. Riley") sworn on July 14, 2014 and in opposition to the motion by The Catalyst Capital Group Inc. ("Catalyst"). Where I do not respond to every allegation set out in the Affidavit of Mr. Riley, my failure to respond to a specific allegation should not be construed as an agreement with the statement made. I have, instead, tried to cover the most salient points in his affidavit, as I see them.

MY CATALYST BLACKBERRY

3. As an employee of Catalyst, I was issued a BlackBerry device. In response to paragraphs 14 and 15 of Mr. Riley's Affidavit, while I used my BlackBerry to send work emails using my Catalyst email account, I also used it to take personal photographs and send personal text messages. I did not connect my personal email accounts to the device.

4. I "wiped" the data from the BlackBerry prior to returning it to Catalyst, not to "destroy evidence", but to remove my personal information from the device. While I deleted all of the contents from my BlackBerry device, it was my understanding that all information belonging to Catalyst (such as emails) would still exist on Catalyst's server. The fact that Catalyst has produced numerous emails from my Catalyst email account as part of this motion shows my emails have not been destroyed and are still available to Catalyst. In any event, I did not use my BlackBerry device or my Catalyst email account to communicate with West Face so this information was not deleted when I wiped the device prior to returning it to Catalyst.

CATALYST INVESTMENT LETTERS

5. Contrary to paragraph 19 of Mr. Riley's Affidavit, it is my recollection that there were negative statements made about a former partner, Mike Weinczok, in one of the investment letters. However, even if there were no denigrating statements towards former Catalyst employees in the investment letters, which I deny, it does not change the fact that I was suspicious that there may have been such statements (since I had previously witnessed Mr. Glassman make negative statements about former Catalyst employees to investors as outlined at paragraph 45 of my original Affidavit) and that was the reason that I reviewed them.

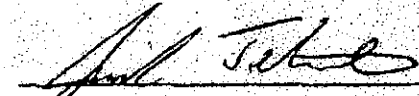
EMAILS SENT TO MY PERSONAL ACCOUNTS

6. In his Affidavit, Mr. Riley has attached four emails that I sent to my personal email accounts over the course of my employment. These emails span from November 2013 to March 2014, which, I note, is before I began speaking with West Face about potential employment.

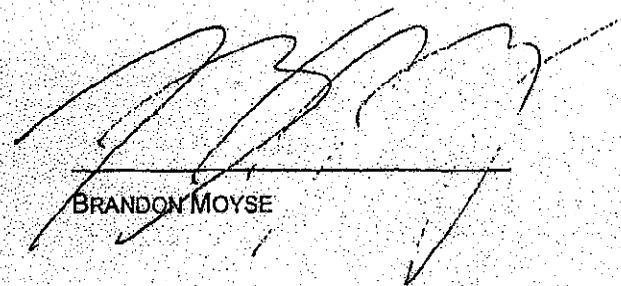
7. All of these emails were sent for work related purposes. I sent the information to my personal email account in order to work on the documents at home. A review of the times the emails were sent supports this explanation (4:58 PM, 5:36 PM, 8:23 PM, and 5:31 PM). As I explained in my original Affidavit, Catalyst's remote access system was notoriously slow and unreliable and it was common practice amongst Catalyst partners and employees to send Catalyst documents to their various personal accounts to work more efficiently from home. It is unsurprising that Catalyst found evidence that I forwarded documents that I was working on to my personal email account, as I am sure they would find similar evidence from many other Catalyst employees.

8. I swear this affidavit in opposition to Catalyst's motion for an injunction and for no other purpose.

SWORN before me at the City of Toronto)
on the 16th day of July, 2014)



A Commissioner for Taking Affidavits etc.



BRANDON MOYSE

THE CATALYST CAPITAL GROUP INC.

- and -

MOYSE ET AL.

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

AFFIDAVIT OF BRANDON MOYSE
(SWORN JULY 16, 2014)

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Brandon Moyse

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

AFFIDAVIT OF BRANDON MOYSE

(Sworn July 16, 2014)

Oct 10/14. BM

I, BRANDON MOYSE, of the City of Toronto, MAKE OATH AND SAY:

1. I am a Defendant in this action and a respondent in this motion, 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 swear this affidavit in response to the Affidavit of James A. Riley ("Mr. Riley") sworn on July 14, 2014 and in opposition to the motion by The Catalyst Capital Group Inc. ("Catalyst"). Where I do not respond to every allegation set out in the Affidavit of Mr. Riley, my failure to respond to a specific allegation should not be construed as an agreement with the statement made. I have, instead, tried to cover the most salient points in his affidavit, as I see them.

MY CATALYST BLACKBERRY

3. As an employee of Catalyst, I was issued a BlackBerry device. In response to paragraphs 14 and 15 of Mr. Riley's Affidavit, while I used my BlackBerry to send work emails using my Catalyst email account, I also used it to take personal photographs and send personal text messages. I did not connect my personal email accounts to the device.

4. I "wiped" the data from the BlackBerry prior to returning it to Catalyst, not to "destroy evidence", but to remove my personal information from the device. While I deleted all of the contents from my BlackBerry device, it was my understanding that all information belonging to Catalyst (such as emails) would still exist on Catalyst's server. The fact that Catalyst has produced numerous emails from my Catalyst email account as part of this motion shows my emails have not been destroyed and are still available to Catalyst. In any event, I did not use my BlackBerry device or my Catalyst email account to communicate with West Face so this information was not deleted when I wiped the device prior to returning it to Catalyst.

CATALYST INVESTMENT LETTERS

5. Contrary to paragraph 19 of Mr. Riley's Affidavit, it is my recollection that there were negative statements made about a former partner, Mike Weinczok, in one of the investment letters. However, even if there were no denigrating statements towards former Catalyst employees in the investment letters, which I deny, it does not change the fact that I was suspicious that there may have been such statements (since I had previously witnessed Mr. Glassman make negative statements about former Catalyst employees to investors as outlined at paragraph 45 of my original Affidavit) and that was the reason that I reviewed them.

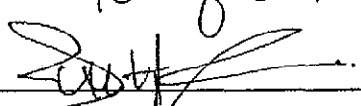
EMAILS SENT TO MY PERSONAL ACCOUNTS

6. In his Affidavit, Mr. Riley has attached four emails that I sent to my personal email accounts over the course of my employment. These emails span from November 2013 to March 2014, which, I note, is before I began speaking with West Face about potential employment.

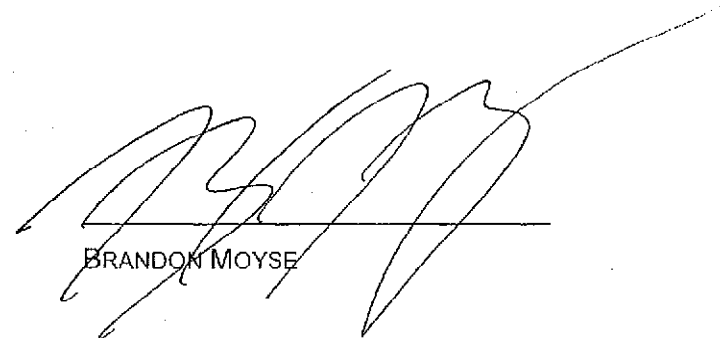
7. All of these emails were sent for work related purposes. I sent the information to my personal email account in order to work on the documents at home. A review of the times the emails were sent supports this explanation (4:58 PM, 5:36 PM, 8:23 PM, and 5:31 PM). As I explained in my original Affidavit, Catalyst's remote access system was notoriously slow and unreliable and it was common practice amongst Catalyst partners and employees to send Catalyst documents to their various personal accounts to work more efficiently from home. It is unsurprising that Catalyst found evidence that I forwarded documents that I was working on to my personal email account, as I am sure they would find similar evidence from many other Catalyst employees.

8. I swear this affidavit in opposition to Catalyst's motion for an injunction and for no other purpose.

SWORN before me at the City of Toronto)
on the 16th day of July, 2014)

10th of Oct. BSM


A Commissioner for Taking Affidavits etc.



BRANDON MOYSE

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

AFFIDAVIT OF BRANDON MOYSE
AFFIRMED APRIL 2, 2015

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

1. I am a defendant in this action and a respondent in this motion, 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 am 27 years of age. I was born and raised in Montreal, Quebec, and earned a Bachelor of Arts in Mathematics from the University of Pennsylvania. 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.
3. I previously affirmed affidavits in this proceeding dated July 4, 2014, July 16, 2014 and October 10, 2014. A copy of each of those affidavits is attached as **Exhibits "A", "B"**

and "C" to this affidavit. In this affidavit, I will repeat some of the evidence from those affidavits to provide context and for completeness.

4. I have reviewed the final report of the Independent Supervising Solicitor dated February 17, 2015, amended March 13, 2015 (the "ISS Report") as well as an earlier draft of that report, a supplementary report of the Independent Supervising Solicitor dated March 30, 2015, and Catalyst's motion materials including the affidavit of Martin Musters, sworn February 15, 2015 (the "Musters Affidavit"), and the affidavit of James Riley, sworn February 18, 2015 (the "Riley Affidavit"), along with the exhibits to those affidavits. The ISS Report was amended on March 13, 2015. I attach a copy of the amended ISS Report as Exhibit "D".

5. I incorporate all my evidence contained in Exhibits A, B, and C to this affidavit by reference, except for the following. In my affidavit sworn July 4, 2014, I suggested at paragraph 71 that my personal computer equipment did not contain any information confidential to Catalyst. Mr. Riley alleges, at paragraph 30 of the Riley Affidavit, that I made that statement in order to deceive the court. I never intended to deceive the court. I believed that statement to be true at the time I swore the affidavit, but I later learned that it was inaccurate. I have since disclosed that information in my affidavit of documents sworn July 22, 2014, and supplementary affidavit of documents sworn July 29, 2014.

A. Background – my junior role at Catalyst

6. I commenced employment at Catalyst as an analyst on or around November 1, 2012, pursuant to a written employment agreement (the "Employment Agreement"),

dated October 1, 2012. The Employment Agreement is attached as **Exhibit "E"** to this affidavit.

7. Analysts are the lowest level professionals at Catalyst. The hierarchy at Catalyst for the majority of time that I was employed there was as follows: three Partners, two Vice Presidents and a total of three Associates and Analysts. While I was employed at Catalyst, all potential and actual investments were sourced at the Partner level. 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 investment decisions or strategy, but was instead assigned specific research projects by the Partners.

8. 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 my position is attached as **Exhibit "F"** 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 Catalyst. From time to time, I would also meet with management groups of various companies as part of my due diligence activities.

9. While at the beginning of my employment with Catalyst I was more involved with researching potential investments, during the last six months of my employment I was focused almost entirely on performing operating reviews of Catalyst-owned companies. As such, I had very little knowledge of Catalyst's then-current prospective investments.

10. Given the junior nature of my position, I had very little knowledge of Catalyst's potential investments and its strategy for those investments. While I regularly attended Catalyst's "Monday meetings", those meetings did not contain the in-depth confidential strategy discussions that Mr. Riley implies in his affidavit. Instead, they were normally a very low level update on primarily existing Catalyst projects. I understand that to the extent strategy discussions took place, they primarily took place at Partners-only meetings, which I did not attend. It was clear to me that higher-level discussions were taking place which I was not privy to as an analyst: Catalyst's partners would frequently discuss conversations or correspondence which had occurred without providing others at the meeting with any context. They would also frequently break off after the meetings to discuss matters behind closed doors.

11. The Riley Affidavit significantly overstates my knowledge and the importance of my role at Catalyst. As I will explain in more detail below, it particularly overstates the significance of my involvement in Catalyst's work on the potential acquisition of Wind Mobile ("Wind").

B. *My minimal involvement with the Wind file*

12. I have carefully reviewed the allegations in the Riley Affidavit with respect to my involvement in Catalyst's work on the potential purchase of Wind. I do not believe that Mr. Riley has fairly or accurately depicted my involvement on that file.

13. The statement at paragraph 16 of the Riley Affidavit that I worked "extensively" on the Wind file is not accurate.

14. My involvement on the Wind file was limited to a period of approximately three weeks, which led up to the date of my resignation on May 24, 2014. For the first few days, I attended an introductory due diligence meeting and helped work on the initial draft of the investment memorandum, which was still not complete at the time of my resignation. For the last ten days of that three week period, 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 believe I continued to be copied on emails, and on one occasion looked at a preliminary model, which was not complete in terms of scenario analysis and business drivers, and gave cursory comments on it to Zach Michaud, a Vice President at Catalyst.

15. I gave Catalyst official notice of my resignation from Catalyst while I was abroad, on the second-to-last day of my vacation. When I returned to Toronto, Catalyst 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 even attempt to log on to the Catalyst system during that period, though I understand from material filed in court in this proceeding that Catalyst did not remove my access to its system.

16. During the period before my vacation (less than two weeks), my work on the Wind file consisted largely of initial due diligence. My work did not involve any deal structuring analysis, scenario analysis, or late-stage negotiations. 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, regulatory risk mitigation, and given the status of Catalyst's diligence at the time, they could not have ascertained or resolved those issues.

17. Contrary to the evidence at paragraph 17 of the Riley Affidavit, I do not recall analyzing regulatory risk during my brief period of time working on the Wind file. The team consisted of myself, Zach Michaud (Vice President) and Lorne Creighton (Analyst). Catalyst had also hired external advisors to assist with the work and diligence, including building the financial model for Wind. Catalyst's team focused on filing the investment memorandum, and reviewing the external advisors' work.

18. The junior employees, including me, spent those early days learning about Wind, primarily by reviewing information made available by the company through a dataroom. The only regulatory risk related to Wind of which I was aware, was 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 did not do any analysis on that subject or any other regulatory issues facing Wind, and if anyone at Catalyst did such an analysis before I left, I was not informed of and was not aware of it.

19. Approximately one to two months before I briefly worked on the Wind file, I had limited involvement in another project which touched on the Canadian telecom landscape. In preparation for two meetings which Catalyst had with Industry Canada in early 2014, I transposed handwritten notes given to me by Catalyst partners into a PowerPoint presentation which was later presented to Industry Canada. I immediately destroyed all copies of my notes and the files, as instructed by Catalyst partners. I did not attend the meetings and do not know the outcome or tone of those discussions. I had no further involvement in that matter.

20. At paragraph 19 of the Riley Affidavit, he suggests that by hiring me, West Face might have learned of Catalyst's interest in purchasing Wind and would then "scoop the opportunity." The opportunity to purchase Wind was not unique or exclusive to Catalyst, but was being made available to a wide range of potential buyers by Wind's investment bankers. I did not alert anybody at West Face to the fact that Catalyst had been considering a purchase of Wind. In fact, following my resignation from Catalyst and before I started at West Face, Gabriel de Alba, a Partner at Catalyst, 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. Mr. de Alba also included Wind in this characterization. This was how I first learned that West Face could be interested in Wind, though I have no way of verifying the accuracy of Mr. de Alba's statements in this respect.

21. At paragraph 25(c), the Riley Affidavit quotes the June 26, 2014, affidavit of Martin Musters to note that on the evening of May 13, 2014, I accessed several files relating to Project Turbine between 8:39 p.m. and 9:03 p.m., and that "this was an insufficient amount of time for Moyse to read the documents." Mr. Musters' apparent insinuation is that I was copying Catalyst files for delivery to West Face. This insinuation is false.

22. At the time, I was one of three Catalyst employees working on the Wind transaction under Mr. de Alba's direction. I was helping to create a chart for an investment memorandum and quickly opened files to see whether or not they contained basic information that I needed for the chart. Given that Catalyst had only been invited into the Wind data room several days earlier, and that there were hundreds of documents in the data room, I did not know what each document contained and needed to do a very quick and cursory review of many documents to determine which documents, if any, contained

useful information for my purposes. All of the documents I reviewed were derived from the data room, and the charts I was working on were also derived from documents available in the data room.

23. At paragraphs 44 to 47 Mr. Riley describes the negotiations between Catalyst and Vimpelcom Ltd. for the purchase of Wind in July and August 2014. He states that "the only point over which the parties could not agree was regulatory risk". He goes on to note that the consortium led by West Face ultimately purchased Wind on the same terms as Catalyst had proposed, "with the one exception that the Consortium waived the regulatory conditions Catalyst had been seeking." He concludes from this that I may have "communicated Catalyst's Confidential Information concerning its negotiation plans and concerns to West Face." This is not true. I made no such communication, nor could I have done so.

24. In fact, the negotiations described by Mr. Riley occurred in July and August 2014, a full 2-3 months after my departure from Catalyst. I was not, and could not have been, privy to any information about those negotiations or about any points on which Catalyst and Vimpelcom did not agree. Moreover, as described above, any information that I had access to prior to my departure from Catalyst was extremely preliminary. If anyone at Catalyst had begun to develop negotiation plans by the time of my departure, which would surprise me given the preliminary stage of our work, I was not included in any discussions, nor did I ever see any documents concerning such plans, including drafts.

25. 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 "G"** to my affidavit. I complied with the instructions in the memorandum.

26. In addition, Alex Singh, West Face's General Counsel and Secretary, advised me that West Face was concerned about the Catalyst memos I had provided to Mr. Dea.

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

C. *My compliance with the undertaking and the Firestone Order*

28. 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.

29. In the course of my recruitment by West Face, I sent an email to West Face, which attached four company research pieces that I created at Catalyst, some of which were marked as confidential. 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.

30. Upon further reflection, I came to the realization that I should not have sent the email to West Face within days of doing so, and I made the decision to delete it from my

email account. I recognize now that deleting the sent item was not the appropriate way of addressing my mistake.

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

32. 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 "H"**. 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)

33. 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.

34. 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 "I"**. 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.

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

4. THIS COURT FURTHER ORDERS that Moyse 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 Moyse 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, Moyse 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"). Moyse 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.)

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

36. 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.

37. 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.

38. 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 this affidavit, and in any event intended to disclose all such documents in my affidavit of documents, as required under the Firestone Order.

39. 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.

40. 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.

41. I therefore decided that, prior to delivering my computer to my 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.

42. 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.

43. 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) is attached as **Exhibit "J"** 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."

44. 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.

45. 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).

46. 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 ended up running the "RegCleanPro" software to clean up the computer registry after I deleted my Internet browser history.

47. 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 do not have an explanation for the ISS's finding that a folder

called "Secure Delete" existed on my hard drive. 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 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.

48. 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.

49. 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.

D. "Callidus" Documents

50. The Riley Affidavit makes much of the fact that there were 132 hits on my personal computer for the term "Callidus".

51. Although I cannot say with certainty what the 132 hits reflect, I note that they likely comprise a much smaller number of documents, given that a single document could include multiple hits of a particular word. My computer included numerous documents that referenced Callidus, including LinkedIn update emails, news stories about the Callidus IPO and subsequent public earnings releases, and Catalyst investor letters which mentioned Callidus. I understand Catalyst's primary concern is that I provided West Face with specifics of Callidus's loan book; however, the investor letters did not contain

specifics of Callidus's loan book, and Mr. Riley's evidence on cross-examination on previous affidavits in this proceeding is that the investor letters were not provided to investors under a non-disclosure agreement. I do not believe I ever had any confidential documents concerning Callidus in my possession.

52. Mr. Riley is almost entirely correct in stating, at paragraph 56 of the Riley Affidavit, that I "had no involvement with the operations of Callidus". A few months prior to my departure from Catalyst, I emailed Lorne Morein, a Callidus employee, for information on a company named Discovery Air, that had received loan funds from Callidus at some point in the past, but whose relationship with Callidus was terminated in 2012, to my understanding. Mr. Morein sent me Callidus's credit memo on Discovery Air, which was no more recent than 2012. The credit memo was, at most, a few pages long. I did not retain a copy of the memo.

53. As this example demonstrates, I did not have any access to the Callidus file system. I shared no information about Callidus with West Face because I had no such information. The ISS reported, at paragraph 37 of its report, that application of Catalyst's requested second set of search terms, which were specifically targeted at locating any Callidus-related documents on my computer, resulted in the identification of a total of "five non-duplicative, unique files", "none of [which] bear any relevance to Moyse's employment with Catalyst, nor do they contain any confidential information."

54. Mr. Riley stated, at paragraph 62 of the Riley Affidavit, that "any document in Moyse's possession that was responsive to the additional search terms by its nature very likely contained Catalyst's confidential information." Mr. Riley has not disclosed "the

additional search terms” to the court, and the search terms were redacted from the correspondence in which Catalyst made its request to the ISS. Having seen the unredacted ISS Report, and having reviewed the fourteen search terms, I believe it would be obvious to anybody that a number of those terms could readily appear in benign fashion in documents completely unrelated to Catalyst. In particular, without specifically revealing any of the search terms, I will note that one of the terms is a man’s common first name, and several of the terms are common words that are frequently used in a non-Catalyst/Callidus (or even business) context.

55. Catalyst subsequently requested that the ISS do further analysis and provide a supplementary report addressing a number of issues, including the question of the application of Catalyst’s “additional search terms”. I consented to the ISS doing so.

56. On March 30, 2015, the ISS delivered its supplementary report, a copy of which is attached as **Exhibit “K”** to this affidavit. At Catalyst’s request, we have redacted the search terms in paragraph 8 of the report.

E. Additional Responses to the Riley Affidavit

57. At paragraph 25 of the Riley Affidavit, Mr. Riley summarizes certain of Mr. Musters’ findings in connection with his analysis of my workplace computer. Although I addressed these issues in my earlier affidavit, I think my responses bear repeating here.

58. 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 Mr. 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. Mr. Riley also notes many of the letters that I reviewed concerned Catalyst's Stelco investment. I believe that investment was consummated and exited 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 have dealt with the allegation that I accessed several files relating to Project Turbine (i.e., the potential purchase of Wind) above, at paragraph 22. I downloaded those documents while doing the work described above, and all of the documents were derived from the Wind data room.
- (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.

Although I used the Dropbox account while employed by Catalyst, as noted above, the ISS Report confirmed that my Dropbox account contained no Catalyst confidential information following my departure from Catalyst.

- (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 Mr. 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 determined to resign my employment with Catalyst.

59. 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.

60. Mr. 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.

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.

61. At paragraph 43 of the Riley Affidavit, Mr. Riley notes my "admission" on cross-examination that I did not do any work for my first two weeks at West Face, and concludes from that that "West Face did not require Moyse's services in June/July 2014."

62. In my experience, it is not at all uncommon for new employees to have little or no work in their first couple of weeks at a new employer. In my experience, that time is frequently spent getting up to speed, getting accounts set up, reading background materials, and so on. I specifically recall that when I interviewed with Catalyst in 2012, Mr. de Alba suggested that although I had technically spent 8 months at RBC in my previous job, I could not really claim to have done 8 months' worth of work since, in his words, "you don't do anything your first month anyways."

63. Mr. Riley also failed to note my evidence that, by my third week with West Face, I began to be assigned work, including performing an analysis of "one potential public equity investment" as well as "two potential pre-IPO private investments in private companies." The relevant excerpt of my cross-examination transcript is attached as

Exhibit "L" to this affidavit. Mr. Riley's statement that West Face did not require my services in June and July is an unfair extrapolation from a two-week period, given that I began working with West Face a week before the Canada Day holiday, and that I was largely up and running by my third week.

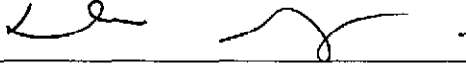
F. My Activities Since the Firestone Order

64. I ceased working at West Face as of July 16, 2014, the date of the Firestone Order. Catalyst was obliged to pay my salary until December 22, 2014, further to the Firestone Order and the order of Justice Lederer on November 10, 2014. In fact, throughout that period I was paid directly by West Face, and I understand that Catalyst reimbursed West Face for those amounts. However, I do not know the specifics of how those reimbursements were effected. West Face has been paying my salary since December 23, 2014, though I have not been working.

65. I will continue to abide by the orders which have been made against me in the course of this litigation, and will comply with any future orders made against me.

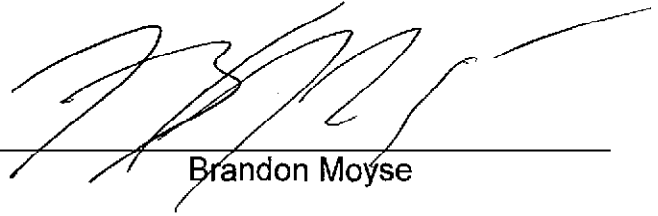
66. I make this affidavit in opposition to Catalyst's motion for an order finding me in contempt of court, and requiring me to cover the costs of the ISS Report, and for no other purpose.

AFFIRMED BEFORE ME at the City of
Toronto, in the Province of Ontario on
April 2, 2015



Commissioner for Taking Affidavits
(or as may be)

Denise Cooney
LSUC # 64358R



Brandon Moyse