

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

and

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST
MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY
PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE
LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, AND JOHN
DOES #1-10**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date November 7, 2017

Issued by

Local Registrar

Address of
court office:

TO: WEST FACE CAPITAL INC.
2 Bloor Street E.
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Toronto, Ontario
M4W 1A8

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COUR SUPÉRIEURE
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AND TO: GREGORY BOLAND
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AND TO: BRUCE LANGSTAFF
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AND TO: ROB COPELAND
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AND TO: CLARITYSPRING INC.
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AND TO: NATHAN ANDERSON
c/o ClaritySpring Inc.
545 5th Avenue
8th Floor
New York, New York, U.S.
10017

AND TO: KEVIN BAUMANN

AND TO: JEFFREY MCFARLANE

AND TO: DARRYL LEVITT

AND TO: RICHARD MOLYNEUX

AND TO: AND JOHN DOES #1-10

CLAIM

1. The Plaintiffs claim against the Defendants, on a joint and several basis, for the following:
 - (a) General and aggravated damages in the amount of \$450,000,000 for defamation, injurious falsehood, the tort of causing loss by unlawful means (intentional interference with economic relations), civil conspiracy and unjust enrichment;
 - (b) In the alternative, an accounting of any and all gains from transactions in Callidus Shares (defined *infra*) and the derivative securities thereof on or after August 9, 2017, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
 - (c) A Declaration that the Defendants defamed the Plaintiffs;
 - (d) A Declaration that the Defendants breached s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5 (the “*Securities Act*”);
 - (e) A Declaration that the Individuals Defendants (defined *infra*) are personally liable for the unlawful actions carried out by or through the corporations and/or other entities that are named as Defendants;
 - (f) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
 - (g) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
 - (h) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (i) The costs of this action, plus the applicable taxes; and
 - (j) Such further and other relief as to this Honourable Court may seem just.

(A) THE PLAINTIFFS

2. The Plaintiff, The Catalyst Capital Group Inc. (“Catalyst”), is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.

3. The Plaintiff, Callidus Capital Corporation (“Callidus”), is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.

4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.

5. In April 2014, Callidus made an initial public offering (“IPO”) of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 2/3rds of the issued and outstanding shares of Callidus.

6. The shares of Callidus trade on the Toronto Stock Exchange under trade symbol CBL.TO (the “Callidus Shares”).

(B) THE DEFENDANTS

7. The Defendant West Face Capital Inc. (“West Face”) is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. West Face competes

with Catalyst in the special situations for control investment industry. One of the principals of West Face is the Defendant Gregory Boland ("Boland").

8. West Face and Boland are vicariously liable for the acts or omissions of one another. In the alternative, West Face and Boland acted as agent for each other.

9. The Defendant M5V Advisors Inc. carrying on business as Anson Group Canada ("Anson Canada"), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.

10. The Defendant Admiralty Advisors LLC ("Admiralty") is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales.

11. The Defendant Frigate Ventures LP ("Frigate") is a limited partnership organized pursuant to the laws of Texas. At all relevant time, Frigate was a registered investment fund manager with the Ontario Securities Commission that engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate.

12. The Defendant Anson Investments LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

13. The Defendant Anson Capital LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

14. The Defendant Anson Investment Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

15. The Defendant AIMF GP is the general partner to Anson Investment Master Fund LP. At all relevant times, AIMF GP has engaged in securities transactions, including short sales.

16. The Defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

17. The Defendant ACF GP is the general partner to Anson Catalyst Master Fund LP. At all relevant times, it has engaged in securities transactions, including short shares.

18. The parties described in paragraphs 9-17 above are a family of hedge funds that carry on business as the Anson Group ("Anson"). Those funds claim to be focussed on long-short, market-neutral and opportunistic investment strategies.

19. The Defendants Moez Kassam ("Kassam") and Adam Spears ("Spears") are principals of Anson. The Defendant Sunny Puri ("Puri") is an analyst at Anson (together, the Individual Anson Defendants").

20. The Individual Anson Defendants and the entities that comprise Anson at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and Anson are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and Anson acted as agent for the others.

21. The Defendant ClaritySpring Inc. (“Clarity”) is a Delaware incorporated company that is based in New York. Clarity’s principal is the Defendant Nathan Anderson (“Anderson”).

22. Clarity and Anderson are vicariously liable for the acts or omissions of one another. In the alternative, Clarity and Anderson acted as agent for each other.

23. West Face, Boland, Anson, Kassam, Spears, Puri, Clarity and Anderson are hereinafter referred to collectively as the “Wolfpack Conspirators”.

24. The Defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity.

25. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ”) and resides in New York, New York.

26. The Defendants Boland, Kassam, Spears, Puri, Anderson, Langstaff and Copeland are hereinafter referred to collectively as the “Individual Defendants”.

27. The Defendant Kevin Baumann (“Baumann”) is an individual residing in Red Deer, Alberta.

28. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America.

29. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario.

30. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario.

31. Baumann, McFarlane, Levitt and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.

32. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Copeland are hereinafter referred to collectively as the “Conspirators”.

33. John Doe 1-10 are parties that participated in the Conspiracy (defined *infra*) and whose identities are presently unknown to the Plaintiffs. The Plaintiffs will substitute the actual names of these parties after they are discovered.

(C) WOLFPACK CONSPIRATORS TARGET CALLIDUS FOR A SHORT-SELLING STRATEGY

34. Short-selling is an investment strategy whereby an investor borrows shares in a publicly traded corporation and then sells the borrowed shares to third parties. A short sale strategy anticipates that the shares will decline in value, at which point the investor will buy back shares at the lower price and return them to the party from which it originally borrowed shares. Selling borrowed shares in this fashion is known as “selling short”. This activity may also be undertaken on what is known as a “naked short” basis, in which a party bets that the stock will go down in price without actually borrowing the stock or finding out if there is available stock to borrow in order to short it. Without an inventory of stocks to borrow, naked shorting can leave a stock open to market manipulation.

35. If the shares ultimately decline in value as anticipated, the difference between the higher price at which the investor sold the shares and the lower price at which the investor bought them back represents a profit to the short-selling investor.

36. If, instead of declining in value as anticipated by the investor, the shares appreciate in value, then the short-selling investor loses money on the investment. At some point, in order to cap its losses, the investor will buy back the shares at a higher price and return them to the lender. Because, in theory, the potential price of any stock is unlimited, the potential loss on a short-selling strategy is infinite.

37. The acts of the Defendants described herein amount to an unlawful conspiracy in that, at some point prior to the publication of the Article (defined *infra*) on August 9, 2017, the Defendants, with or without the John Doe Defendants: i) maliciously and intentionally or otherwise, entered into an agreement to injure the Plaintiffs or, alternatively, the predominant purpose of their acts as a whole was to cause injury to the Plaintiffs; ii) the Defendants used unlawful means – specifically, acts or a combination of acts that amount in law to actionable defamation, injurious falsehood, breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations, including, but not limited to National Instrument 81-102 and unjust enrichment (each set out more specifically below) – with the knowledge that their actions were directly aimed at the Plaintiffs for the purpose of causing injury to the Plaintiffs; iii) caused the stock price of Callidus to drop; and (iv) in fact caused the Plaintiffs to suffer damages as a result of their conduct.

(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST

38. Several of the parties that received loans from Callidus were required to have their principals execute personal guarantees as a term and condition of the loan. When several of the borrowers subsequently defaulted on their loans, Callidus took steps to enforce the personal guarantees.

39. In particular, Callidus commenced actions to enforce personal guarantees against the following persons (together, the “Guarantors”):

- (a) Baumann in respect of a loan to Alken Basin Drilling Ltd.;
- (b) Andrew Levy (“Levy”) and Richard Jaross (“Jaross”) in respect of a loan to Esco Marine;
- (c) Levitt in respect of a loan to Fortress Resources;
- (d) Gary Smith (“Smith”) in respect of a loan to Fortress Resources;
- (e) Molyneux in respect of a loan to Fortress Resources; and
- (f) McFarlane in respect of a loan to Exchange Technology Group LLC.

(the “Guarantee Actions”)

40. In or around mid-2015, the Guarantors, and especially Baumann and Levy, started contacting each other to discuss and coordinate their responses to the Guarantee Actions.

41. Baumann also offered some of the Guarantors, including Levy and Jaross, substantial funding to fight the Guarantee Actions. The funding offered by Baumann was not, in fact, coming from Baumann himself, but from the Wolfpack Conspirators.

42. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and to do so in substantially the same fashion and with defences worded in substantially the same way.

43. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus. The Guarantors decided instead to defend the Guarantee Actions on the spurious basis of “fraudulent inducement” (or its equivalent) and to file specious counterclaims against Callidus.

44. The Guarantors thought that by defending each of the Guarantee Actions in a coordinated manner, they would have an opportunity to make it difficult for Callidus and Catalyst to succeed or embarrass Callidus and Catalyst with allegations of “fraudulent inducement” or its equivalent. The Guarantors also believed their coordinated attacks would force Callidus and Catalyst into discussing some alternative resolution.

45. The plea of fraudulent inducement is a defence typically seen in the United States pursuant to which a borrower will claim that it was induced to change its economic position in return for a promise by the lender that it will do something that the lender has no actual intention to do.

46. Such a plea was made by Smith, Levy and Jaross in connection with the Guarantee Actions against them in the United States courts. Smith was unsuccessful and his subsequent appeal was withdrawn in settlement of his case by payment of US\$10,000 to Callidus. Levy and Jaross were unsuccessful in all of the defences they asserted in the proceeding against them with the exception that the judge hearing the summary proceeding ordered a factual hearing into the fraudulent inducement issue. Before this happened, Levy and Jaross settled with Callidus and they acknowledged in the settlement that they would likely not have succeeded in their remaining plea of fraudulent inducement.

47. Similarly, Levitt and Molyneux made an exaggerated claim for \$150,000,000 against Callidus, essentially on the basis of purported fraud. When confronted with the fact that they had no such claim, they reduced the damages being sought from \$150,000,000 to \$1,000,000.

48. Baumann has made similar claims implying fraud against Callidus.

49. The actions of the Guarantors demonstrate a significant degree of coordination of their activities with a view to causing economic harm to Callidus and Catalyst.

50. The Guarantors that were primarily responsible for the coordination efforts were Levitt and to a lesser, but still important, degree, Baumann and McFarlane. While Levitt served as the overall “puppet master” of the Guarantors, Baumann also reached out to the other Guarantors and, as noted above, made the offer to fund the Levy and Jaross litigation in the amount of at least US\$250,000.

51. Catalyst and Callidus allege that funding did occur to support the Guarantors in the Guarantee Actions through several undisclosed “angels”, including the Wolfpack Conspirators. In many cases, the funders sought to keep their involvement secret through the use of non-disclosure agreements.

52. In addition to these coordinated activities, Levitt created an alter ego on Twitter known as “William Struth @Glasgow Skeptic”. William Struth was a former manager of the Glasgow Rangers football club who passed away in 1956. His image appears on the Twitter feed created by Levitt in order to mask his identity.

53. Through this alter ego, Levitt published false and defamatory statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public.

54. The use of an alias to publish false and defamatory statements about a target company is a frequent tool used by short sellers and other miscreants seeking to spread false news and manipulate market participants or other events.

55. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST

56. In or about late 2015, West Face retained Bruce Livesey (“Livesey”), an investigative journalist, to write an article regarding Catalyst’s principal, Newton Glassman, and Callidus/Catalyst. West Face intended to use the article to cause damage to Catalyst and Callidus and to launch a short attack.

57. During the course of Livesey’s “investigation”, he spoke to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

58. In or about late 2016, after learning of the Guarantor’s coordination from Livesey, West Face contacted the Guarantors to induce their participation in a wave of short attacks against Callidus.

59. Around the same time, West Face also encouraged another fund, Anson, to support its planned short attack. West Face disclosed to Anson the identity of the Guarantors and its knowledge of coordination between the Guarantors.

60. West Face also contacted Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged it to participate in the upcoming wave of short attacks against Callidus.

61. In or about December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into a conspiracy with the intention to cause economic harm to Callidus and Catalyst (the “Conspiracy”).

62. For the Wolfpack Conspirators, the Conspiracy presented an opportunity to continue their short attacks against Callidus, which would allow them to make risk-free profits and, in the process, damage Catalyst and Callidus.

63. For the Guarantor Conspirators, the Conspiracy presented an opportunity to cause serious economic harm to Callidus and Catalyst through trying to frustrate the enforcement of substantial personal guarantees against each of them. Additionally, the Wolfpack Conspirators and others, the identity of whom the Plaintiffs are currently unaware, offered to (and did) fund the Guarantors’ defences in the Guarantee Actions.

64. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators filed false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) to “confirm” the rumours. Third, once the false whistleblower complaints were filed, the Conspirators worked together to leak the allegations contained in the complaints to the media in order to generate media interest. Fourth, the Conspirators, either directly or indirectly, took short positions in Callidus Shares. Fifth, the Conspirators timed a media report about the complaints to be released near the end of a trading day, which caused the price of Callidus Shares to rapidly decline. Finally, the Conspirators closed out their naked or other short positions at a substantial profit, all at the expense of Callidus’ market value and its shareholders.

65. The Conspiracy required very sophisticated coordination and perfect timing under the hand of the Wolfpack Conspirators. This pattern has been honed through repetition in other situations.

66. The Conspirators took steps to hide details of the Conspiracy in order to avoid detection and make it difficult to learn about the Conspiracy after the harm was done to the Plaintiffs. In particular, some of the Conspirators compelled at least some of the Guarantors to sign non-disclosure agreements to prevent them from disclosing information relating to the Conspiracy.

(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAM

67. The first step of this very sophisticated attack required use of the OSC's "whistleblower" program. The "whistleblower" program, started in July 2016, permits persons with information about an alleged securities-related violation to report it to the OSC. The program offers anonymity to complainants and a financial reward in the event the complaint results in a penalty. The intent of the program is to encourage persons with information of alleged unfair, improper or fraudulent practices to come forward without fear of reprisal.

68. In furtherance of the Conspiracy, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson), agreed to file false and defamatory whistleblower complaints (the "Complaints") with the OSC relating to Callidus and Catalyst. These four "complainants" coordinated their complaints in order to portray different alleged issues with Callidus' continuous disclosure and matters relating to Catalyst to the OSC.

69. The "complainants" disclosed the Complaints, or the substance of the Complaints, to WSJ reporters in New York and Toronto. They did so knowing and intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud by Callidus and Catalyst would immediately be published and given widespread publicity; (iii) the publication of the existence and

substance of the Complaints (falsely) alleging fraud would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares; and (v) these steps, events and consequences would give them or their co-Conspirators an opportunity to engage in profitable short selling of Callidus Shares, all which was in furtherance of the Conspiracy.

70. Catalyst pleads and the fact is that the Complaints, which were filed in or around late 2016 and early 2017, also falsely alleged that Callidus and Catalyst were in the same line of business, which created a conflict of interest. In addition, the Complaints falsely alleged that Callidus and Catalyst had engaged in illegal accounting practices with respect to loans that related to the Guarantors.

71. The Complaints were defamatory. They falsely and maliciously state or imply that:

- (i) Callidus misled its shareholders;
- (ii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (iii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

72. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.

73. The intention of the Complaints was to enable the Conspirators to spread rumours within the financial industry that Callidus and Catalyst were the subject of *bona fide* OSC whistleblower complaints and subject to “investigations” by the OSC and the Toronto Police in order to undermine the public confidence in both firms. They were designed to feed the Bay Street rumour mill.

74. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were defamatory and part of the Conspiracy to harm Callidus and Catalyst and to enable the Conspirators to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

(G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST

75. The Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

76. Initially, the Wolfpack Conspirators and the Guarantor Conspirators engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. The Wolfpack Conspirators agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

77. Livesey drafted a story based on information fed to him by one or more of the Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

78. In furtherance of the Conspiracy, the Wolfpack Conspirators worked with Livesey to contact two different news outlets -- Canadian Business Magazine and the Globe and Mail newspaper -- with the goal of convincing these organizations to print Livesey’s freelance negative story about Callidus, Catalyst and their principals. However, these outlets chose not to publish the Livesey freelance story.

79. Having been frustrated by the failure of their first attempt, the Conspirators then sought to create another “story” that Callidus was under “investigation” by the authorities based on the submission of the false Complaints. In order to interest news outlets with this “story”, they disclosed the substance of the Complaints. The Conspirators intended to create the appearance of a credible news story about alleged nefarious practices at Callidus and Catalyst.

80. Callidus and Catalyst have positively denied any such “investigation”.

81. The Conspirators approached Reuters in 2017 with the existence of the Complaints and encouraged it to publish a negative story about Callidus and Catalyst. Reuters decided not to publish the story.

82. Prior to approaching Reuters, the Conspirators also sought to approach other reputable news organizations, whose identities are known only to them, in 2017, with the existence of the Complaints and encouraged those organizations to publish a negative story about Callidus and Catalyst. Those organizations also decided not to publish the story.

83. After being rejected by these credible media outlets, the Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.

84. As a result, the Conspirators contacted a different reporter, Copeland of the WSJ, with the intention of having Copeland write a story that would insinuate that Callidus and Catalyst were under “investigation” by both the OSC and the Toronto Police for fraud.

85. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Conspirators to further the Conspiracy.

86. Copeland was directed by the Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint. Specifically, McFarlane detailed to Copeland that Callidus and Catalyst engaged in allegedly nefarious accounting practices concerning a loan that Callidus extended to XTG. McFarlane had filed a Complaint regarding these accounting practices but, in doing so, made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. Similar conversations occurred with Baumann, Molyneux, Levitt and Anderson.

87. During the course of writing the article requested by the Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

88. Despite Copeland’s refusal to disclose the subject of the article, Callidus and Catalyst agreed to meet with Copeland and his colleague, Jacquie McNish (“McNish”), to clarify the information and facts that Copeland indicated he would be relying on for the article.

89. The meeting between Copeland, McNish and representatives of Callidus and Catalyst took place on August 8, 2017. During that meeting, Callidus and Catalyst provided detailed information of the accounting surrounding XTG and confirmed that all of this information was available on the public record. This information flatly contradicted information that had been provided to Copeland and McNish by the Conspirators. Copeland disclosed that there had been four different whistleblower complaints to the OSC concerning Callidus and Catalyst, three of which had been filed by Guarantors.

90. During the meeting with Callidus and Catalyst, Copeland did not take any notes about any of the responses provided by Callidus and Catalyst including detailed explanations provided regarding the accounting practices surrounding XTG.

91. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.

92. Despite receiving information that refuted the basis for their story, and without making any further inquiries or conducting appropriate diligence, Copeland and McNish decided to publish it anyway. Copeland and McNish drafted the story in a manner that strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behavior concerning XTG, and that they were under "investigation" by the authorities for that and other matters. They also falsely reported that company representatives had declined to offer a comment.

93. On August 9, 2017, in furtherance of the Conspiracy, Copeland contacted the Conspirators before submitting the article for publication by the WSJ. The Conspirators encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised the Conspirators that he would do so and he did.

(H) WEST FACE, ANSON AND JOHN DOES EXECUTE WAVE OF SHORT ATTACKS

94. On or about August 9, 2017, in furtherance of the Conspiracy, the Wolfpack Conspirators and one or more of the John Doe Defendants took short positions in Callidus Shares, either directly or indirectly.

95. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions through Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs.

96. Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. Langstaff, in furtherance of the Conspiracy, assisted the Wolfpack Conspirators and the John Doe Defendants to take short positions in Callidus Shares, either directly or indirectly.

97. In a typical “short”, the investor borrows a company’s stock from another investor, on the theory that the company’s share value will decline over a period of time as described in paragraphs above.

98. On or about August 9, the Wolfpack Conspirators took “naked short” positions. This means that the Wolfpack Conspirators took a short position, betting that Callidus’ stock price would decline, without actually borrowing the stock from another investor. In other words, in addition to betting that Callidus’ stock price would decline, the Wolfpack Conspirators bet that they could purchase Callidus Shares to cover their short positions from the market directly without having to first borrow them.

99. This type of short is extremely risky because it requires the short selling investor to purchase the stock to cover his or her short position. The investor bets that he or she can purchase the stock for a lower price at the end of the day than it could have at the open of the market. This bet is very risky when shorting a stock that has a low trading volume, like Callidus, because the investor may not be able to purchase the stock to cover its short position, which leaves it exposed to serious losses if the share price increases. In the case of Callidus, the strategy is even more risky

because Catalyst and its related funds own more than 2/3rds of Callidus Shares and they are not made available for borrowing.

100. In addition to naked shorts, the Wolfpack Conspirators and the John Doe Defendants took other positions, the particulars of which are only known to them, to simulate a short position and profit from the damaging effects of the Article.

101. As at August 8, 2017, the average daily trading volume of Callidus's stock was (a) for the preceding 60 day period, 64,737 shares, (b) for the preceding 30 day period, 63,999 shares, and (c) for the preceding 10 day period, 48,224 shares.

102. The Wolfpack Conspirators, however, knew as a result of their activities that, at the end of the day on August 9, there would be sufficient trading volume to cover their short position.

103. At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on thewallstreetjournal.com (the "Article"). The headline of the Article was "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*". The Article was hidden behind a "pay wall", meaning that only those people who subscribe to the WSJ could see the full text of the Article. Those who were not subscribers only saw the headline and first paragraph of the Article, which read as follows:

TORONTO -- At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

104. The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Conspirators intended – it impressed upon

the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

105. In addition to publication on thewallstreetjournal.com, the Article was published on the Dow Jones Newswire and other means that caused immediate dissemination of the Article in its entirety, including the references to Catalyst and Callidus, to other market participants.

106. Just prior to the publication of the Article and the close of market at 4:00 pm EDT, the Article had the exact effect intended by the Wolfpack Conspirators. A significant number of those persons holding Callidus Shares divested them after 3:30 pm EDT which, in turn, led to a sharp decline in Callidus’ stock price. Due to stock market rules that prohibit Callidus from being in the market after 3:30pm through its Normal Course Issuer Bid, the broker administering that bid could not provide support for the stock price. These rules were known to the Conspirators.

107. Simultaneous with the publication of the Article at 3:29 p.m. and within the span of a single minute (3:29:00 – 3:29:59), the volume spiked with 13,000 shares traded, dropping the price from \$14.92 to \$14.73 on multiple individual trades. Significantly, in the preceding 30 minutes prior to 3:29 p.m., only 3,100 shares had traded in total.

108. Over the next 30 minutes (3:30 p.m. – 4:00 p.m., the close of the trading day), over 157,400 shares traded, dropping the price by the end of the trading day to \$13.41.

109. The timing of the sell-side trading activity reflected at 3:29 p.m. was designed to cause the share price to begin to decline to exaggerate the negative pressure anticipated to be caused by the Article. The timing was part of the scheme of the Wolfpack Conspirators and the John Doe

Defendants to ensure that the share price was dramatically reduced in the last 30 minutes of the trading day and to ensure a disorderly sell-off by panicked investors.

110. During the chaotic sell-off, the Wolfpack Conspirators and the John Doe Defendants were able to purchase Callidus Shares to cover their naked (and other) short positions. Because of the decline in Callidus' share price, they were able to significantly profit. The short paid out because the share price was lower when they eventually purchased the Callidus shares than it was when they secured the naked short (and other simulated short positions) at the beginning of the trading day.

111. The Conspirators' short and distort attack was successful – beginning on August 9, 2017 through August 14, 2017, Callidus' share price declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

(I) ARTICLE AND COMPLAINTS ARE FALSE

112. The Article, read as a whole, and the Complaints make false and defamatory statements (the "Defamatory Words") about Callidus and Catalyst to the effect that:

- (i) Callidus and Catalyst improperly "seize" companies to whom loans have been made;
- (ii) Callidus is engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal or fraudulent activities in relation to Callidus's loan portfolios;
- (iv) Callidus and Catalyst are under "investigation" for fraud or other illegal activity by the OSC and/or the Toronto Police Service;

- (v) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (vi) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers
- (vii) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
- (viii) Callidus and Catalyst caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (ix) Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
- (x) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
- (xi) Callidus misled its shareholders or investors;
- (xii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (xiii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

113. The Article as a whole, and the Defamatory Words, take on additional and further defamatory meanings and implications simply from inclusion in the same Article with each other. The plain meaning of the statements taken together is that the Plaintiffs act fraudulently with misstated financial statements and nefarious business practices. This is spurious, false and damaging to the Plaintiffs’ reputation and good will. The Plaintiffs intend to rely on the entirety of the Defamatory Words in support of this Action.

(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS

Breaches of the *Securities Act*

114. The Defendants' unlawful short attack was intended to, and did, drive down the price of Callidus Shares to artificially low levels. Although the full details of the Defendants' conduct in this regard are known only to them, such conduct includes, without limitation:

- (a) Providing tip-offs and previews to selected investors of the Defendants' intention to disseminate false negative information into the market concerning Callidus, and of the planned timing of such dissemination;
- (b) The concerted accumulation of open short positions in advance of the publication of the Article so as to take advantage of market price declines when the Article was published;
- (c) Encouraging selected investors to do the same;
- (d) The Defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
- (e) The Defendants' efforts to ensure publication of the Article; and
- (f) The Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.

115. By participating in the short attack, each Defendant, directly or indirectly, engaged or participated in a course of conduct relating to the Callidus Shares that they knew and intended, or reasonably ought to have known, would result in or contribute to an artificially low price for the Callidus Shares, in violation of section 126.1 of the *Securities Act*.

116. Additionally, each Defendant, directly or indirectly, made a statement or statements that they knew or reasonably ought to have known was misleading or untrue, or that failed to state a fact that was necessary to make the statement not misleading, and that would reasonably be

expected to have a significant effect on the market price or value of the Callidus Shares, in violation of section 126.2 of the *Securities Act*.

117. The Defendants' breaches of the *Securities Act* are "unlawful acts" that, in part, form the basis of the civil conspiracy claim, as pleaded above.

Causing loss by unlawful means/ intentional interference

118. By participating in the publication of the Defamatory Words, the Defendants deceived third-party market participants into believing that Callidus and Catalyst were engaged in fraudulent activity and were subject to "investigation" by the OSC and the Toronto Police. The Defamatory Words were published to induce these market participants to sell their Callidus Shares, thereby lowering the Callidus share price for a prolonged period of time.

119. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares.

120. In the alternative to damages to compensate Callidus and Catalyst for having caused them loss by unlawful means, the Defendants are liable to pay restitution, disgorgement or to otherwise account for any and all ill-gotten gains obtained as a result of their conduct.

Personal Liability of the Individual Defendants

121. The Individual Defendants completely dominated and controlled the corporate entities among the Defendants and caused them to engage in the tortious and unlawful conduct described above. In addition, the conduct alleged involved malice and dishonesty in which the Individual Defendants sought to use the corporate entities among the Defendants to obtain significant

personal financial benefits. As the Individual Defendants caused the corporate entities within the Defendants to direct wrongful things to be done, this is an appropriate case to pierce the corporate veil and impose personal liability on the Individual Defendants. In the alternative, the corporate entities among the Defendants acted as agents for the Individual Defendants, who ultimately profited from the unlawful conduct.

122. In addition, or in the further alternative, the defamatory and otherwise unlawful conduct that was carried out by the Individual Defendants constituted independent wrongful acts that were contrary to the best interests of the corporate entities among the Defendants. In these circumstances, they are personally liable for the damages they caused, separate and apart from the liability of the corporate entities.

Liability of the John Doe Defendants

123. John Doe Defendants 1-10 are persons or entities whose names are not known to the Plaintiffs, but who:

- (i) participated in the Conspiracy;
- (ii) were aware of the contents of the Article prior to its publication and broadcast;
- (iii) knew or ought to have known that the Article contained false and defamatory assertions about Callidus and Catalyst that would cause the market price of Callidus Shares to decline and otherwise cause damage to Callidus and Catalyst;
- (iv) decided thereby to take short positions in Callidus's Shares, and did so; and,

- (v) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Callidus's Shares had declined.

124. John Doe Defendants 1-10 are jointly and severally liable for the wrongs committed by the Defendants.

Unjust Enrichment

125. The Defendants, including the John Doe Defendants 1-10, have been unjustly enriched or otherwise benefited through their participation in the unlawful short selling attack. Specifically: i) the Defendants received a benefit in the form of profit they made as a result of the short selling scheme; ii) the benefit was at Callidus's expense, as it corresponded to a decline in Callidus's market capitalization, which constitutes an injury to Callidus; and iii) there was no juristic reason for the enrichment.

126. The Defendants are liable to the Plaintiffs as a result of their unjust enrichment and should be required to disgorge their unjust gains, including their profits from selling the shares of Callidus, and to pay over such gains to the Plaintiffs. All such unjust gains should similarly be imposed with a constructive trust, effective as of August 9, 2017, pending further order of this Court.

127. In addition to the damages claimed above, as a result of the Defendants' conduct, the Plaintiffs have suffered, and continue to suffer, injury to their character and good reputation, which has further resulted in great embarrassment, loss of profits and loss of opportunity. The Plaintiffs are entitled to damages for reputational harm, disruption of their business, services and affairs, its loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, and/ or any other matter initiated resulting from the false and defamatory information, and other consequential damages resulting from the Defendants' scheme and market manipulation.

Punitive Damages

128. The Plaintiffs claim that an award of punitive damages is appropriate, having regard to the high-handed, wilful, wanton, reckless, contemptuous and contumelious conduct of the Defendants. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiffs for punitive damages.

129. The Plaintiffs are entitled to damages equal to the cost of the “investigation” of the Defendants’ misconduct undertaken by Callidus and Catalyst which resulted in sworn statements, discovery of emails and other facts and evidence which form the basis on which this Action is based.

(K) SERVICE EX JURIS

130. The Defendants’ actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

131. The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

132. The Plaintiffs propose that this action be tried at Toronto.

November 7, 2017

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Plaintiffs

-and-

WEST FACE CAPITAL INC. et al.
Defendants

Court File No.

QCM-5760916

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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