

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

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

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**MOTION RECORD OF THE MOVING PARTIES**  
**(Plaintiffs' Motion to Amend the Amended Amended Statement of Claim)**

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July 5, 2019

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TO: **SERVICE LIST**

# INDEX

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Defendants

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**TAB 1**

Court File No. CV-17-587463-00CL

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Defendants

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**NOTICE OF MOTION**

**(Plaintiffs' Motion to Amend the Amended Amended Statement of Claim)**

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**THE PLAINTIFFS**, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), will make a motion to be heard before the Honourable Justice Hainey of the Ontario Superior Court of Justice [Commercial List] on July 18, 2019, at the court house at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order granting the Plaintiffs leave to amend the Amended Amended Statement of Claim, in whole or in part, in the form attached hereto as Schedule "A";
2. Costs against any responding party that opposes the motion; and
3. Such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:*****The Claim***

1. On November 7, 2017, the Plaintiffs commenced this action claiming, *inter alia*, damages for defamation, intentional interference with economic relations and civil conspiracy.
2. The Plaintiffs allege that the Defendants engaged in conduct intended to harm the Plaintiffs by:
  - (a) spreading false information through the Bay Street rumour mill;
  - (b) filing false "whistleblower" complaints against Callidus with the Ontario Securities Commission and the United States Securities and Exchange Commission;
  - (c) leaking the existence and substance of the allegations contained in the complaints to the media and to the police;
  - (d) taking short positions, directly or indirectly, in the shares in Callidus ("**Callidus Shares**");

- (e) causing a false and defamatory report to be published in the Wall Street Journal, timed to be released near the end of the trading day, in order to cause a rapid decline in the price of the Callidus Shares; and
- (f) closing out of their short positions to their profit and at the expense of the market value of Callidus.

***Motion to Strike the Statement of Claim***

3. The Anson Defendants,<sup>1</sup> Richard Molyneux (“**Molyneux**”), Darryl Levitt (“**Levitt**”), Clarityspring Inc. (“**Clarity**”) and Nathan Anderson (“**Anderson**”), Rob Copeland, and Kevin Baumann brought motions to strike the Statement of Claim and, in the alternative for particulars.
4. Following the delivery of response to particulars by the Plaintiffs, the Anson Defendants, Molyneux, Levitt, Clarity and Anderson (the “**Moving Defendants**”) proceeded with their motions to strike the Statement of Claim.
5. On October 29, 2018, Justice Wilton-Siegel heard the motions of the Moving Defendants to strike the Statement of Claim.
6. On January 9, 2019, Justice Wilton-Siegel struck the following parts of the Plaintiffs’ claim:
  - (a) defamation, intentional interference with economic relations, and unjust enrichment as against the Moving Defendants; and

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<sup>1</sup> Paragraph 20 of the Amended Amended Statement of Claim identifies the “Anson Defendants” as 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, and Sunny Puri.

(b) civil conspiracy against Kassam.

7. A dispute arose between the Plaintiffs and the Moving Defendants about whether Justice Wilton-Siegel struck those parts of the Plaintiffs' claim without leave to amend.

### ***Levitt Documents***

8. On January 18, 2016, Callidus commenced an action to enforce a personal guarantee against Levitt and Molyneux in respect of a loan to Fortress Resources LLC with Court File No. CV-17-11712-00CL (the "**Guarantor Action**").
9. Callidus brought a motion for summary judgment on the Guarantor Action.
10. On June 21, 2018, Levitt was cross-examined on his affidavit sworn May 11, 2017 submitted in respect of the summary judgment motion.
11. On October 19, 2018, Callidus brought a motion for an Order directing, *inter alia*, Levitt to respond to certain of the undertakings given, questions taken under advisement, and questions refused on his cross-examination held on June 21, 2018.
12. On January 7, 2019, Justice Chiappetta ordered Levitt to respond to certain undertakings given and questions refused on his cross-examination, including by producing all communications between him, Jeffrey McFarlane, Kevin Baumann, and Gerald Duhamel (the "**January Order**").

13. Levitt failed to comply with the January Order. On February 12, 2019, Justice Chiappetta made a second order compelling Levitt to deliver answers to his outstanding undertakings, questions taken under advisement and refusals (the “**February Order**”). The February Order provides:

THE COURT ORDERS that Levitt shall, by no later than 4 p.m. on February 28, 2019, answer the following undertakings, questions taken under advisement and refusals arising from his cross-examination held June 21, 2018: Question numbers 285... regardless of any claim for privilege or confidentiality...

[...]

... For greater certainty, “evidence” includes emails sent or received by all email addresses used or previously used by Darryl Levitt... which;

(a) are between Levitt and/or Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann; or

(b) relate to discussions between Levitt and the other guarantors regarding funding each other’s defences.

14. On February 22, 2019, Levitt brought a motion for a stay the operation of the February Order while he brought a motion to the Divisional Court for leave to appeal the February Order. Justice Myers dismissed the motion, stating:

[16] What Mr. Levitt seek (*sic*) leave to appeal from then is the order of February 12, 2019 made by Chiappetta J. in which she interprets her own prior order. That is, she told Mr. Levitt the time to assert privilege was January 7<sup>th</sup>. She made clear in the wording of para. 1 of the February 12 order ... that she viewed the January 7, 2019 order as already resolving the issue of privilege.

15. Beginning on or about March 8, 2019, pursuant to the January and February Orders of Justice Chiappetta, Levitt produced approximately 2,600 pages of documents (the “**Levitt Documents**”).

***Amendments to the Statement of Claim***

16. On April 18, 2019, the Plaintiffs amended the Statement of Claim herein to plead further facts particularizing the civil conspiracy claim based in part on the Levitt Documents.
17. The Plaintiffs did not amend their claim for defamation or any other parts of the claim that had been struck by Justice Wilton-Siegel, until the dispute over whether his Honour granted leave to amend was resolved.
18. On May 15, 2019, the Plaintiffs and the Moving Defendants appeared before Justice Wilton-Siegel, who confirmed that the claims that he struck were struck with leave to amend. He directed the Plaintiffs to amend the claims within 30 days.
19. On June 14, 2019, in accordance with Justice Wilton-Siegel's direction, the Plaintiffs delivered an Amended Amended Statement of Claim to plead further facts particularizing the defamation claim and other claims that had been struck by Justice Wilton-Siegel.

***Langstaff Documents***

20. On October 25, 2018, Justice Hailey ordered that the Plaintiffs and the defendant Bruce Langstaff ("**Langstaff**") deliver Affidavits of Documents restricted to documents specific to the claim against Langstaff within 60 days of the close of the pleadings related to Mr. Langstaff.

21. Pursuant to this order, the Plaintiffs delivered a list of their documents and productions relevant to Langstaff on January 30, 2019.
22. Langstaff delivered his Affidavit of Documents and Schedule “A” productions on May 14, 2019 (the “**Langstaff Documents**”).

### ***The Proposed Amendments***

23. The Plaintiffs’ proposed amended pleading is based in part on the disclosure of facts in the Langstaff Documents and the Levitt Documents, and pleads particulars of the participation of Gerald Duhamel (“**Duhamel**”), Andrew Levy (“**Levy**”), George Wesley Voorheis (“**Voorheis**”), Bruce Livesey (“**Livesey**”) and Canaccord Genuity Corp. (“**Canaccord**”), in the transactions and occurrences complained of in the within Action.
24. The Amended Amended Statement of Claim requires amendment to substitute Levy, Voorheis, Duhamel, Livesey and Canaccord for John Does #1-5.
25. The proposed amendments disclose reasonable causes of action against Levy, Voorheis, Duhamel, Livesey and Canaccord, as set out in the draft Fresh as Amended Statement of Claim attached as Schedule “A” to this Notice of Motion.
26. The substitution of Levy, Voorheis, Duhamel, Livesey and Canaccord for John Does #1-5 is appropriate, necessary and for a proper purpose.
27. The Defendants who have not delivered a defence in this action have not yet been noted in default; accordingly, pleadings are not closed.

27. The Defendants who have not delivered a defence in this action have not yet been noted in default; accordingly, pleadings are not closed.
28. Neither documentary discovery nor examinations for discovery have taken place.
29. The proposed amendments to the Amended Amended Statement of Claim would not result in any prejudice to the Defendants or proposed Defendants that could not be compensated for by an adjournment or costs.
30. Rules 5.02(2), 5.03(1), 5.03(4), 5.04(2), 26.01, and 26.02 of the *Rules of Civil Procedure*.
31. Such further and other grounds as the lawyers may advise and this Honourable Court may accept.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) the affidavit of Gretel Best affirmed on July 4, 2019;
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 5, 2019

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Lawyers for the plaintiffs

TO: **Service List**

# TAB A

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MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, GERALD DUHAMEL,  
ANDREW LEVY, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY,  
CANACCORD GENUITY CORP. AND JOHN DOES #6-10

Defendants

**FRESH AS AMENDED 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.  
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AND TO: GREGORY BOLAND  
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AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA  
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AND TO: ADMIRALTY ADVISORS LLC  
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75225

AND TO: FRIGATE VENTURES LP  
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Dallas, Texas, U.S.  
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AND TO: ANSON INVESTMENTS LP  
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AND TO: ANSON CAPITAL LP  
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AND TO: ANSON INVESTMENTS MASTER FUND LP  
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AND TO: AIMF GP,  
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AND TO: ANSON CATALYST MASTER FUND LP  
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AND TO: ADAM SPEARS  
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AND TO: SUNNY PURI  
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AND TO: ROB COPELAND  
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10017

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: ANDREW LEVY

AND TO: GERALD DUHAMEL

AND TO: GEORGE WESLEY VOORHEIS

AND TO: BRUCE LIVESEY

AND TO: CANACCORD GENUITY CORP.

AND TO: AND JOHN DOES #6-10

## 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), and civil conspiracy; and, in addition, for breach of the duty of loyalty, duty of honesty and fair dealing, and fiduciary duty as against the defendant, Bruce Langstaff, and breach of the duty of loyalty, duty of honesty and fair dealing, fiduciary duty, and negligence as against Canaccord Genuity Corp.;
  - (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) An order requiring the Defendants to:
    - (i) disclose in writing the means by which they obtained and/or the persons who provided them with any confidential documents of the Plaintiffs, including the documents referred to in paragraph 87 herein;

- (ii) deliver to counsel for the Plaintiffs any and all such confidential documents, and any and all copies thereof, in their possession, power or control and to permanently destroy any electronic copies thereof; and
- (iii) deliver a written declaration setting out the details of any and all circulation by them to any third parties of any of the confidential documents of the Plaintiffs, including any information derived therefrom, and warranting that they have delivered up any and all such confidential documents, in accordance with sub-paragraph 1(d)(ii) above;
- (e) 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*”);
- (f) 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;
- (g) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
- (h) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
- (i) 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;
- (j) The costs of this action, plus the applicable taxes; and

(k) 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 (“the “Corporate Anson Defendants”). 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 the Corporate Anson Defendants. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (Kassam, Spears and Puri are together, the “Individual Anson Defendants”). At all material times, under Kassam’s active direction and control, the Corporate Anson Defendants’ principal investment strategy has been to engage in short selling activities of

publicly listed stocks. The resulting trading activity includes the illicit short selling of the publicly traded stock of Callidus pleaded in this Action.

20. The Individual Anson Defendants and the entities that comprise the Corporate Anson Defendants (collectively, the “Anson Defendants”) at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and the Corporate Anson Defendants are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and the Corporate Anson Defendants 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. The Defendant George Wesley Voorheis (“Voorheis”) is an individual residing in Toronto, Ontario. He is a lawyer and activist investor, and was the person named as John Doe #1.
24. The Defendant Bruce Livesey (“Livesey”) is an individual residing in Toronto, Ontario. He is a freelance journalist and was the person named as John Doe #2.
25. West Face, Boland, Voorheis, Livesey, the Anson Defendants, Clarity and Anderson are hereinafter referred to collectively as the “Wolfpack Conspirators”.
26. The Defendant Canaccord Genuity Corp. (“Canaccord Genuity”) is an investment banking and financial services company that provides mergers and acquisitions, corporate finance,

restructuring, debt advisory and strategic advice and services for institutional and corporate clients. The Plaintiffs were clients of Canaccord Genuity to which it owed duties of loyalty, honesty and fair dealing, fiduciary duty and other common law duties to, among other things, act honestly, in good faith and in the best interests of the Plaintiffs and to not engage in any conduct that prefers the interests of Canaccord Genuity or its other clients over the interests and to the harm of the Plaintiffs. Canaccord Genuity was the entity named as John Doe #3.

27. The Defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity. Langstaff was a Managing Director, Canadian Equity Sales, from November 18, 2013 until he was terminated by Canaccord Genuity effective September 26, 2017. While employed Canaccord Genuity, the Plaintiffs were clients of Langstaff. Canaccord Genuity owed ongoing fiduciary, statutory and contractual duties to act honestly, in good faith and in the best interests of the Plaintiffs and not to engage in any activity harmful to the Plaintiffs. While employed by Canaccord Genuity, Langstaff owed the same duties to the Plaintiffs.
28. Canaccord Genuity is vicariously liable for the acts or omissions of Langstaff while he was an employee of Canaccord Genuity. In the alternative, Langstaff and Canaccord Genuity acted as agent for each other.
29. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ”) and resides in New York, New York. Copeland is a Defendant to a separate proceeding, *The Catalyst Capital Group Inc. v. Dow Jones and Co. et. al.* Court File No. CV-17-586094 (the “Dow Jones Action”) in which damages for defamation are claimed in relation to, among other things, the publication of the Article (defined *infra*).

30. The Defendants Boland, Kassam, Spears, Puri, and Anderson, are hereinafter referred to collectively as the “Individual Defendants”.
31. The Defendant Kevin Baumann (“Baumann”) is an individual residing in Red Deer, Alberta. Baumann was the President of Alken Basin Drilling Ltd. (“Alken Basin”), a borrower of Callidus.
32. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America. McFarlane was the CEO of Exchange Technology Group LLC (“XTG”), a borrower of Callidus.
33. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario. Levitt was an officer of Fortress Resources LLC (“Fortress”), a borrower of Callidus.
34. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.
35. Defendant Gerald Duhamel (“Duhamel”) is an individual residing in Drummondville, Quebec. Duhamel was the President of Bluberi Gaming Technologies Inc. (“Bluberi”), a borrower of Callidus, and was the person named as John Doe #4.
36. The Defendant Andrew Levy (“Levy”) is an individual residing in the State of New York. Levy was the Chairman of Esco Marine Inc. (“Esco Marine”), a borrower of Callidus, and was the person named as John Doe #5.
37. Baumann, McFarlane, Levitt, Duhamel, Levy and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.

38. John Doe 6-10 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**

39. 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.

40. 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.

41. 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.

42. 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 and destroying their business; iii) caused the stock price of Callidus to drop; and (iv) in fact has caused significant damages to the Plaintiffs’ business and caused the Plaintiffs to suffer damages as a result of their conduct.
43. The amendments now being made to the Plaintiffs’ claim herein set out the additional material facts regarding the Conspiracy that the Plaintiffs have become aware of as of the date of the amendments. The Plaintiffs expressly reserve their right to make or seek to make additional amendments with respect to other material facts and information ascertained by them, when appropriate to do so. These amendments respond to the decision of the Honourable Justice Wilton-Siegel dated January 9, 2019, with respect to certain motions brought by some of the Defendants, as the scope of such amendments remains in dispute between the Plaintiffs and the Moving Parties on those motions.

**(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST**

44. 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.

45. 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;
- (b) Levy and Richard Jaross (“Jaross”) in respect of a loan to Esco Marine;
- (c) Levitt in respect of a loan to Fortress;
- (d) Gary Smith (“Smith”) in respect of a loan to Fortress;
- (e) Molyneux in respect of a loan to Fortress; and
- (f) McFarlane in respect of a loan to XTG.

(the “Guarantee Actions”)

46. 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.

47. 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.
48. In addition, in or about November 2015, another borrower of Callidus, Bluberi Gaming Technologies Inc. (“Bluberi”) filed for protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “CCAA Proceeding”). At or around this time, Bluberi’s President, Gerald Duhamel, became connected with the other Guarantors and agreed to join the Conspiracy and otherwise provide his support, information, and advice to them in their concerted action against the Plaintiffs.
49. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and the CCAA Proceeding and to do so in substantially the same fashion and/or with defences worded in substantially the same way.
50. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus.
51. The Guarantors had difficulty retaining counsel to represent them in a RICO action against Callidus. Boland and West Face, through their external legal counsel, attempted to assist the Guarantor Conspirators by referring them to legal counsel in the United States to enable them to commence a RICO action against Callidus which would attract significant adverse publicity.
52. Due to difficulties they faced retaining counsel to commence a RICO action, 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.

53. 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.
54. 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.
55. 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.
56. 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.

57. Baumann has made similar claims implying fraud against Callidus.
58. 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.
59. 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.
60. 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.
61. In addition to these coordinated activities, Levitt, Langstaff or McFarlane 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, Langstaff or McFarlane in order to mask his identity.
62. Through this alter ego, Levitt, Langstaff or McFarlane published false statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases

by Levitt, Langstaff or McFarlane are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public. These tweets were re-tweeted by the other Defendants through other aliases including “@stopthescandal”; “@LRenard3”; @AlderLaneeggs”; “@ReganFCU”; “@DKellyFCU”; “@LexLexlucifer2”; “@KevinBa15422460”; “@DumpsterFire69”; and @ClarityToast”.

The false statements spread through these tweets included:

- (a) Catalyst investors are “going to lose a lot of their money ... Chatter already in the industry (February 3, 2017);
- (b) Callidus’ financial statements are “sublime works of fiction” (February 8, 2017);
- (c) Catalyst is “another likely fraud that Canadians should watch out for” (March 4, 2017);
- (d) Glassman is “Canada’s Madoff” (March 4, 2017);
- (e) Catalyst is the “Mozart of misleading disclosure” (April 20, 2017);
- (f) “Fallout” from Callidus “will be painful” for Callidus’ auditors, valuers and other service providers (May 1, 2017);
- (g) Callidus is a “dying business” (May 4, 2017);
- (h) “If you work for Catalyst Capital, you’re not going to see a penny of carry for all your heartache. Don’t wait for the endgame” (May 7, 2017);
- (i) “If you work at [Callidus], you still need to plan an exit. If you’re an officer or director, you really need a lawyer” (May 9, 2017);

- (j) “... one wonders if Hilco Appraisal Services and [Callidus] operate at arm’s length” (May 15, 2017);
  - (k) “The word is out – take [Callidus’] money and your business is gone” (May 15, 2017)”
  - (l) “Do you still work at Catalyst? Do you still think your carry is worth one thin dime? You still need to leave. You still need a lawyer” (June 15, 2017);
  - (m) “It would be easier for a camel to pass through the eye of a needle than for [Callidus] to attract a third party buyer” (June 20, 2017);
  - (n) “There’s life after Callidus. First get out. Then, blow the whistle” (July, 26, 2017);
  - (o) “McNish again proving her chops with [Callidus] fraud story in WSJ” (August 9, 2017);
  - (p) “Temperature rising at [Callidus] ... - do you know who your whistleblowers are?” (August 14, 2017); and
  - (q) A photograph of a pack of wolves with the caption “The scariest beasts are the ones that roam your mind” (September 28, 2017).
63. The use of an alias to publish false 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, including those third parties identified in paragraph 203 below, or other events.

64. 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**

65. By September 2016, Boland and West Face had a strong animus against Catalyst and Callidus, and against Newton Glassman (“Glassman”), Catalyst’s principal, because of prior and ongoing litigation between Catalyst and Callidus against West Face and Boland. Specifically, Boland and West Face took great exception to the fact that Catalyst and Callidus had instituted and was continuing to prosecute claims against them to assert the rights and protect the interests of Catalyst and Callidus. Specifically, Boland and West Face were aggravated by the fact that Catalyst instituted and was continuing a lawsuit against West Face and Brandon Moyse (former Catalyst employee that joined West Face), for the misuse of Catalyst’s confidential information to acquire “Wind Mobile”. They were also very upset and aggravated by the fact that Catalyst had instituted and was continuing a lawsuit against VimpelCom, West Face, and several other defendants alleging (among other things) breaches of Catalyst’s contractual rights in relation to VimpelCom’s sale of WIND Mobile in July-September 2014. Boland and West Face knew that if this lawsuit proceeded to full productions, discovery, and a trial on the merits of Catalyst’s allegations, serious improprieties by them and the other defendants in connection with the sale of WIND would be exposed. Boland and West Face were also strongly hostile to Catalyst and Callidus for having commenced a lawsuit against West Face and Veritas Investment Research Corporation for damages for defamation, conspiracy and intentional interference of economic relations associated with a prior wrongful short selling attack on Callidus

Shares from fall 2014 to mid-2015 (the “Veritas Action”). As a result of these ongoing lawsuits, Boland and West Face had come to despise Catalyst, Callidus and Glassman and resulted in a very intense personal animus against them that has continued ever since.

66. Initially, in or about late 2015, West Face and/or Boland retained Livesey, an investigative journalist, to write a false and disparaging 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.
67. As pleaded below, Livesey's efforts failed. However, during the course of Livesey's “investigation”, he was directed by Boland and West Face to speak to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.
68. As described below, in or about mid to 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. By this time, West Face and Boland had decided to do whatever they could to harm Catalyst, Callidus and Glassman. They devised and implemented a plan to harm them, after their efforts to engage Livesey to publish a disparaging article about Catalyst, Callidus and Glassman had not succeeded at that time in attracting any mainstream media publication interest.
69. As a result, Boland and West Face contacted:
  - (a) The Guarantor Conspirators, namely Baumann, McFarlane, Levitt and Molyneux, who were facing personal guarantee collection actions by Callidus in Canada;

- (b) Levy and Jaross, who were facing collection proceedings by Callidus in Texas based on a guarantee Levy and Jaross had signed to support a loan from Callidus to a U.S. company operating in Brownsville Texas, known as Esco Marine; and
  - (c) Duhamel, the President of Bluberi, a borrower of Callidus that had filed for CCAA protection in November 2015, and who subsequently began communicating with the other Guarantors and agreed to conspire to harm the Plaintiffs and otherwise provide his support, information, and advice to the Guarantors in their concerted action against them.
70. In or about mid to late 2016, Boland and West Face also identified and contacted the following additional persons who also had an animus against Catalyst, Callidus and Glassman to induce them to conspire to injure them:
- (a) Anderson and Anderson's company Clarity;
  - (b) Kassam and the other Anson Defendants (as defined herein); and
  - (c) Voorheis, a lawyer and activist investor.
71. Boland and West Face engaged in a series of meetings, telephone conversations and written communications with the above persons for the purpose of inducing and securing their agreement to conspire to harm the Plaintiffs and to implement the Conspiracy.
72. For example, in September 2016, Boland contacted Levy to describe his and West Face's plan and to induce Levy and the Guarantor Conspirators to conspire to injure the Plaintiffs. On or about September 26, 2016, Boland had a lengthy conversation with Levy, during

which Boland related his animosity towards Catalyst, Callidus and Glassman, impugned their integrity and their business practices, and accused them of fraud. Boland also advised Levy that the largest investors in the Catalyst managed funds included two significant institutions based in the United States, and that Callidus had marketed and sold part of its Initial Public Offering in the United States. Boland communicated these specific facts to Levy to make sure that Levy and the Guarantor Conspirators believed that Catalyst and Callidus were subject to the oversight of the U.S. Securities and Exchange Commission (“SEC”). Boland did so because part of the plan he had devised included making complaints about Catalyst and Callidus to the SEC as further described below.

73. Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would undermine the credibility of any complaints authored by them, and would confirm their plan to harm Catalyst, Callidus and Glassman in any way possible.
74. In fact, as Boland and West Face had anticipated and intended, Levy immediately spread the information he had received on September 26, 2016 from Boland to, among others, Levitt, Molyneux, Baumann, McFarlane, Jaross, Duhamel and his partner/associate, Marie-Claude Lapierre.
75. As a result of the above-noted conversation with Levy, and additional communications shortly thereafter, Boland and West Face were able to confirm that Baumann, McFarlane, Levitt and Molyneux, Jaross and Levy were still working together against Callidus. Boland and West Face also became aware that the above named individuals were personally very antagonistic to Catalyst, Callidus and Glassman, that they were desperate to avoid and

deflect the guarantee claims against them, that they had coordinated their defences to the Guarantee Actions, and that they were willing to conspire with Boland and West Face to injure the Plaintiffs and implement the Conspiracy.

76. Boland also knew that Voorheis held a very strong personal animus towards Catalyst, Callidus and Glassman because of a bitter dispute which had arisen between Glassman and Voorheis in the Hollinger – Conrad Black legal proceedings over 10 years previously.
77. Boland contacted Voorheis to induce him to conspire to harm Glassman, Catalyst and Callidus. Voorheis readily agreed. Boland then introduced Voorheis to Levitt, McFarlane, Molyneux, Baumann, Jaross, Levy and/or Duhamel. From that time onwards, Voorheis remained in close contact with these individuals to assist and be part of the plans to harm Catalyst, Callidus and Glassman.
78. Indeed, following his discussion with Boland, Levy reported to the Guarantor Conspirators that he intended to call Voorheis, who he was told was apparently “closer to striking”.
79. The following day, on or about September 27, 2016, Levy did contact Voorheis and advised Voorheis of the allegations and information from Boland about the potential jurisdiction of the SEC over Catalyst and Callidus. Voorheis advised Levy that he had decided that he too intended to strike out at Glassman, Catalyst and Callidus.
80. During October-November 2016, with encouragement and additional assistance from Boland and West Face, the Defendants Levitt, McFarlane, Molyneux and Baumann, as well as Levy, Jaross, Duhamel and Voorheis, remained in close communications with each other regarding the Conspiracy. As a result, they agreed and decided to make allegations

and file false complaints with the OSC and SEC alleging fraud and similar criminal and quasi-criminal misconduct against Catalyst, Callidus and Glassman, and to harm them by disparaging them in whatever way they could. This included making false allegations, including that under Catalyst's direction, Callidus had and was continuing to operate a criminal "loan to own" business, that Callidus' business practices were to trick and mislead its borrowers and prospective borrowers, that Callidus frequently made fraudulent misrepresentations to its borrowers, that Callidus often failed or refused to live up to its legal obligations, and that Catalyst, Callidus and Glassman were dishonest and untrustworthy. These false allegations were repeatedly made in furtherance of the Conspiracy to whoever would listen, and enabled the Defendants to achieve their intended purpose of causing economic harm to the Plaintiffs and illicit unlawful gains through the short attack of Callidus Shares. The Defendants knew or ought to have known that these allegations were false as many of the very same allegations had already been advanced by some of the Guarantor Conspirators in litigation with Callidus and rejected by the Courts.

81. Around the same time, West Face, Boland and/or Voorheis also encouraged the Anson Defendants to support its planned short attack. Amongst other things, West Face, Boland and/or Voorheis disclosed to Kassam, Puri and Spears the identity of the Guarantors and their knowledge of coordination between the Guarantors.
82. Kassam held an animus against Glassman because of a business dispute between Catalyst and the Corporate Anson Defendants regarding the Corporate Anson Defendants' use of the name "Catalyst". In addition, Kassam was and is a business colleague and personal friend of Boland and from time to time the Corporate Anson Defendants and the West Face

have collaborated in making joint investments in businesses and corporate entities, including engaging in coordinated short selling and other investments in such enterprises.

83. At the inducement of Boland and West Face and Voorheis, Kassam caused and directed the Corporate Anson Defendants, Puri, and Spears to participate in the conspiracy to harm Catalyst and Callidus, and subsequently directed, controlled and participated in the decisions by the Corporate Anson Defendants, Spears, Puri, and himself to be part of the Conspiracy, to approve, assist and participate in the acts in furtherance of the Conspiracy, and ultimately engage in the illicit and wrongful short selling in Callidus Shares pleaded herein.
84. In late 2016, West Face, Boland and Voorheis also made contact with Anderson and Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged Anderson and Clarity to participate in the Conspiracy and in the upcoming wave of short attacks against Callidus.
85. As a result, Anderson and his company Clarity were induced to and agreed to conspire with the others to harm Catalyst and Callidus. In or about November 2016, Anderson was introduced to Levitt, Molyneux, McFarlane, Baumann, Levy and Duhamel.
86. To facilitate the preparation, sharing and dissemination of false information and allegations accusing Catalyst, Callidus and Glassman of serious misconduct, fraud and other criminal or quasi-criminal wrongdoing, the Wolfpack Conspirators and the Guarantor Conspirators, among other things:

- (a) Established a data room where such false information were shared and allegations were repeated; and
  - (b) Provided Anderson and Clarity with access to a Dropbox facility containing the false information and allegations to facilitate their continuing participation in the Conspiracy.
87. In addition, to further discredit and cause harm to the Plaintiff, in the latter part of 2016, Baumann wrongfully procured a highly confidential list of all of Callidus' borrowers and loan accounts and other private and confidential Callidus documents. This information constitutes material non-public information concerning Callidus, a public issuer. These confidential documents containing material non-public information were then openly shared on or about December 2, 2016 amongst the Defendants, either directly or through the use of the Dropbox facility referred to above, and/or other means known to the Defendants but not to the Plaintiffs.
88. Instead of immediately returning this material non-public information to Callidus when they knew or ought to have known that it was wrongfully obtained by Baumann, the Defendants used the material non-public information contained therein in furtherance of the Conspiracy, including the short attack which occurred in August 2017, in violation of applicable securities laws.
89. Throughout this period, Boland kept Livesey informed of the plan and progress of the Conspiracy to harm the Plaintiffs. At the direction of and with financial incentives from West Face and/or Boland, Livesey frequently communicated with the Guarantor Conspirators and the other Wolfpack Conspirators to provide his support, assistance,

encouragement and advice to them in their concerted actions against the Plaintiffs, spread false and disparaging statements about the Plaintiffs, and continued his efforts to have disparaging articles about Catalyst, Callidus and Glassman published in the media.

90. Thus, by 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”).
91. 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.
92. 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.
93. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they would spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators and Anderson/Clarity would file false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) and/or the SEC to “confirm” the rumours (the “Complaints”). Third, once the false whistleblower Complaints were filed, the Wolfpack Conspirators and the Guarantor Conspirators would work together to leak the existence and the substance of the allegations contained in the Complaints to the

media and to the police in order to generate media interest. Fourth, the Wolfpack Conspirators, either directly or indirectly, would take short positions in Callidus Shares, through the co-conspirator, Langstaff at Canaccord and others. Fifth, the Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Anderson would cause a false and defamatory media report about the Complaints to be released near the end of a trading day, which would cause the price of Callidus Shares to rapidly decline. Finally, the Wolfpack Conspirators would close out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders. This plan was in fact executed.

94. In furtherance of the Conspiracy, the Defendants frequently communicated with each other and met in person to discuss and implement the Conspiracy. These communications included discussions about and agreements to make allegations about Catalyst and Callidus that included the following:

- (a) Callidus had falsely overstated the credit worthiness of its loan portfolio and had issued false statements about its loans to the public at large;
- (b) Catalyst had entered into numerous fraudulent related party transactions;
- (c) Catalyst and Callidus had engaged in money-laundering schemes; and
- (d) Catalyst and Callidus were guilty of fraudulent lending practices

The full particular of the places, dates, times, content of these communications and meetings to implement and carryout the Conspiracy are not known to the Plaintiffs. The Defendants were keenly conscious of the need for secrecy around their activities. For

example, on December 31, 2016, Levitt cautioned Levy that “we have to be discrete about what we are doing”.

95. 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.
96. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff, and Copeland 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 Wolfpack Conspirators and Guarantor Conspirators compelled at least some of the Guarantors to sign nondisclosure agreements to prevent them from disclosing information relating to the Conspiracy.
97. Some or all of the Defendants also used encrypted and self-destructing messaging applications, such as “Confide”, to communicate in an effort to avoid leaving any trace of their activities. “Confide” is reputed to be an application, available online, which serves as a “confidential messenger” to enable users to communicate with each other “with the same level of privacy and security as the spoken word” and gives its users the “comfort” of sending “encrypted, self-destructing and screenshot-proof messages” with the knowledge that their “private communications will now truly stay that way.”
98. The full particulars of the details of the Defendants’ use of “Confide” to communicate with each other are currently unknown to the Plaintiffs. The Plaintiffs have knowledge however that on April 12, 2017, Levitt suggested to Langstaff that they should continue their communications about the Plaintiffs using “Confide” so that they could “chat [about the

Plaintiffs] confidentially with encrypted and disappearing messages”. While employed by Canaccord Genuity, Langstaff agreed to do so and he and Levitt communicated about the Plaintiffs using Confide on dates and times known to them, and not currently known to the Plaintiffs.

99. As a registrant with the OSC and the SEC and as an employee of Canaccord Genuity (a registrant with the OSC and the SEC), Langstaff’s use of “Confide” to conceal his communications with Levitt was in violation of (i) the applicable rules, regulations, and policies of the securities regulators; (ii) the standards and practices of the investment dealer and brokerage industry; and (iii) Canaccord Genuity’s own rules, policies and code of conduct.

**(F) CONSPIRATORS ABUSE WHISTLEBLOWER PROGRAMS**

100. The next 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 other abusive practices in relation to Ontario securities laws to come forward and make anonymous complaints about such matters without fear of reprisal.
101. In furtherance of the Conspiracy, and with information from and at the direction of the Wolfpack Conspirators, the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) as well as Anderson, with the assistance of the Wolfpack Conspirators agreed

to file false whistleblower Complaints with the OSC and/or the SEC 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 and the SEC.

102. Prior to making false “whistleblower” complaints with the OSC and the SEC, in the third week of November 2016, Levitt (with the knowledge, approval and direct involvement of West Face, Boland, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors) contacted Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC.
103. Levitt told Watson that Catalyst, Callidus and Glassman had been guilty of serious offences, including but not limited to fraudulent business and lending practices, penal offences in respect of Callidus’s financial affairs, and other criminal or quasi-criminal misconduct. These allegations were wholly false.
104. These communications were made with the intention that the false allegations would be conveyed by Watson to other counsel within the OSC’s Enforcement Branch and with the law enforcement authority known as the Joint Serious Offences Team (“JSOT”), and that the OSC and JSOT would immediately institute an investigation and commence proceedings against the Plaintiffs.
105. Plaintiffs plead that the above communications and allegations made to Watson and JSOT are separate and outside the scope of the OSC whistleblower program. Indeed, Watson declined to attend the December 7, 2016 meeting with OSC personnel regarding the

whistleblower complaint, referred to below, as he knew that his participation in that process would taint the entire “whistleblower” process.

106. In furtherance of the Conspiracy, in late 2016, Boland had further discussions with the Guarantor Conspirators in which he supplied them with false information that they could use in fabricating their allegations to the OSC and the SEC. For example, Boland and West Face provided Levy with copies of their Statement of Defence in the Veritas Action. They did so with the intention that Levy would pass on the allegations of misconduct and impropriety made in their Statement of Defence to Levitt, Molyneux, McFarlane, Baumann, Anderson and Duhamel, and that they would use those allegations to disparage Callidus, including in the intended communications to the OSC and JSOT which formed part of the Conspiracy. In fact, Levy did so, and the false allegations were used for the very purposes as planned by Boland and West Face, and agreed to by Levitt, Molyneux, McFarlane, Baumann and Anderson.
107. Boland and West Face provided additional assistance the Guarantor Conspirators, Duhamel and Levy in the plan to harm Catalyst. This included:
  - (a) On or about November 30, 2016, Boland and West Face authorized and directed their external counsel, Matthew Milne-Smith of Davies (“Milne-Smith”), to introduce Levitt to a class action litigator in the United States for the purpose of filing a RICO action against Catalyst and Callidus. Milne-Smith had discussions and exchanged correspondence with Levitt on this subjection. In so doing, Boland and West Face knew there was no basis for any such action. However, they hoped and intended that the corrupt practices which would be alleged in such an action

would become public knowledge and that this would advance their plan to harm Catalyst, Callidus and Glassman by whatever means possible;

- (b) On or about December 3, 2016, Boland and West Face authorized and directed West Face's internal counsel, Philip Panet ("Panet"), to advise Levitt of a specific section of Callidus's 2015 MD&A referring to a loan with McFarlane's company, XTG. This was done to set the stage for false allegations conveyed by Boland to Levy, referred to below, about this loan. Panet had discussions and exchanged correspondence with the Guarantor Conspirators as instructed;
- (c) On or about December 3, 2016, Boland personally contacted Levy and falsely told Levy that Catalyst had improperly and fraudulently moved the XTG loan onto unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst;
- (d) On a date unknown to the Plaintiffs, Boland also authorized and directed Milne-Smith to assist the Guarantor Conspirators by providing them with, amongst others, a West Face "research report" which West Face used in the illicit short selling attack on Callidus Shares in 2015-2016 which is the subject of the Veritas Action. Milne-Smith, in turn, was in contact with the Guarantor Conspirators to provide this and other information to them; and
- (e) On January 20, 2017, Panet provided Levitt with a copy of a document which contained details about one of Callidus' borrowers which was then promptly provided (to Panet's knowledge) to the other Guarantor Conspirators and Anderson/Clarity.

108. The above steps and communications were undertaken by Boland and West Face in furtherance of the Conspiracy and with the knowledge and intention that the false allegations and the assistance provided would be:
- (a) Shared among Livesey, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors; and
  - (b) Used by the Guarantor Conspirators and Anderson in their communications with the SEC, OSC Enforcement Staff, JSOT, and in the planned meeting with the OSC Staff to file their whistleblower complaint.
109. In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.
110. To the knowledge of and with the agreement, assistance and support of the Wolfpack Conspirators and the Guarantor Conspirators, on or about December 7, 2016, Levitt met with OSC personnel. Among other things, he followed a carefully scripted “playbook” and showed them a powerpoint presentation which falsely alleged that Catalyst, Callidus, and Glassman had been guilty of serious misconduct, fraud and other criminal and quasi-criminal wrongdoing.
111. The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.
112. All of the above steps were taken with the knowledge, participation and consent of the Wolfpack Conspirators and the Guarantor Conspirators for the purpose of (i) persuading the OSC (and JSOT) to commence criminal or quasi-criminal proceedings against Catalyst,

Callidus and Glassman, and (ii) to enable them to leak the contents of their false complaints to the media and to the police in furtherance of their purpose to harm the Plaintiffs and to enable the illicit short selling gains to be realized as part of the Conspiracy.

113. In addition, as described below, the Guarantor Conspirators, acting in concert with and at the direction of each of the Wolfpack Conspirators, supplied information relating to the existence and the substance of the Complaints, to WSJ reporters in New York and Toronto to encourage and induce them to publish false media articles, as described below.
114. The Wolfpack Conspirators and the Guarantor Conspirators 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 cause third parties, including those identified in paragraph 203 below, to believe that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were the subject of to “investigation” by the securities regulators and the police; 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.
115. 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 allegedly 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.

116. The Complaints 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.
117. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.
118. The intention and purpose of the Complaints was to enable the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff 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.
119. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were part of the Conspiracy to harm Callidus and Catalyst and to enable the Wolfpack Conspirators, the John Does, and Langstaff to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

120. In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them.
121. Between December 2016 and February 2017, Anderson continued to receive and exchange information with the Wolfpack Conspirators and the Guarantor Conspirators about the Plaintiffs. Anderson also communicated with them about their allegations and the “next steps” in the Conspiracy. The purpose was to enable the Wolfpack Conspirators and the Guarantor Conspirators to coordinate their continuing implementation of the Conspiracy and to facilitate the filing of false complaints with the SEC, which was something that Anderson, Voorheis and Boland had been tasked with accomplishing. Particulars of some of these communications include the following:
- (a) On December 20, 2016, Voorheis, McFarlane, Levitt and Anderson had a conference call to discuss their shared interest in “seeing [Newton Glassman] face justice”;
  - (b) On January 20, 2017, the Guarantor Conspirators and Levy/Molyneux had a conference call with Anderson to receive an update from him, and to receive his instructions on “next steps”;
  - (c) On February 15, 2017, Levitt and Duhamel arranged for a conference call with Anderson so that Anderson could answer “some questions”;
  - (d) On February 16, 2017, McFarlane reached out to Anderson and Levitt and provided website links to two media reporters. This was done further to Anderson’s instructions to the Guarantor Conspirators to come up with names of reporters who

would be interested in publishing a story based on the submission of the false complaints to the authorities and regulators that the Conspirators had prepared or were preparing;

- (e) On February 24, 2017, McFarlane again reached out to Anderson and Levitt and identified another Catalyst portfolio company as one that “would be very vulnerable to some of the concerns that may form an SEC complaint”; and
  - (f) On February 28, 2017, McFarlane provided Anderson with contact information for management of two of Callidus’ borrowers so that Anderson could reach out to them directly.
122. In addition, on February 13, 2017, Levitt was directed by one or more of the Wolfpack Conspirators and the Guarantor Conspirators to contact Marc Cohodes (“Cohodes”), a known short seller based in the United States. This contact was made to obtain assistance in formulating false allegations against Callidus, and to facilitate the implementation of the Conspiracy. The Wolfpack Conspirators and the Guarantor Conspirators remained in contact with Cohodes throughout 2017 and up to and including 2019 for the purposes of causing economic harm to the Plaintiffs. Cohodes was and is closely associated with the Anson Defendants and invests money with them, and therefore stood to benefit financially from the participation of the Anson Defendants in the Conspiracy.
123. On February 27, 2017, Boland and Levy had another telephone call, this time to discuss Callidus’ claim against its former employee, Craig Boyer (“Boyer”). Levy reported on this call to the Guarantor Conspirators and Duhamel.

124. By early March 2017, Voorheis was also still actively assisting the Wolfpack Conspirators and the Guarantor Conspirators, including by (a) making attempts to elicit information helpful to their false allegations from and related to Boyer, and (b) assisting in the coordination of the Conspiracy and the filing of the complaint to the SEC. Particulars of some of these steps include the following:

- (a) On March 2, 2017, McFarlane spoke with Voorheis and reported on the conversation to Levy. McFarlane reported that Voorheis said that he “made contact with Boyer’s lawyer”. Voorheis provided Boyer’s lawyer with false information about the XTG loan. In that same report, McFarlane advised Levy that Anderson had “been in Toronto for the last 2 days” and that McFarlane had asked Anderson to call him with an update. While in Toronto, Anderson met with Boland and Voorheis, amongst others;
- (b) On March 3, 2017, in response to a request for any news or development from Levitt, McFarlane responded that he would “stay in close contact with Wes so all our efforts are coordinated. Their stock is down about a dollar for the week-high of \$19.12 and around \$18.20 right now.” The need for close co-ordination expressed by McFarlane was because the planned public disclosure to the media of the false whistleblower complaints had to coincide with the short selling being implemented by Anderson, Boland, West Face, Voorheis, Langstaff, the Anson Defendants, and others. McFarlane had previously warned the Guarantor Conspirators against personally taking a short position in Callidus in order to keep the activities of the group as covert as possible; and

- (c) On March 22, 2017, McFarlane travelled to Toronto to meet in person with Voorheis to discuss the precise implementation of the Conspiracy. McFarlane's trip to Toronto also included meetings with Langstaff, who through his employment as a broker-dealer at Canaccord was assisting the Defendants with their short-selling attack, and with John Tilak, a Toronto based reporter with Thomson Reuters.
125. Throughout this period, the Anson Defendants were also involved in numerous discussions with Cohodes, Langstaff and other third parties known to the Defendants regarding the Conspiracy against the Plaintiffs. These communications and meetings were attended by senior executives of the Corporate Anson Defendants, including Kassam, Spears and Puri, during which discussions were held and meetings were conducted with Cohodes and other persons known to the Anson Defendants, including the following:
- (a) An exchange of messages in May 2016 between Kassam and Langstaff whereby Langstaff, while employed by Canaccord Genuity, asked Kassam to provide him with the email address of Cohodes; declared that "[Callidus] must be stopped"; and instructed Kassam to "short" Callidus;
- (b) In the same message exchange, Kassam provided Langstaff with Cohodes' email address told Langstaff to "Call ADAM [Spears] tmrw" as it would be "Best he [Spears] make the intro" to Cohodes. Langstaff in reply said "No problem. Hat tip to [S]pears on this one – wouldn't have happened without him";
- (c) A meeting in December 2016, between the Anson Defendants and others in which plans were discussed to file a number of whistleblower complaints against several

Canadian companies in order to legitimize short-selling activities that were to be undertaken by the Anson Defendants in conjunction with the Wolfpack Conspirators and the other John Does;

- (d) A meeting by Kassam and Cohodes on or shortly before January 9, 2017, which Cohodes referred to as being “a perfect meal after a great day with members of the conspiracy”;
- (e) A meeting at the Corporate Anson Defendants’ offices at 155 University Avenue in Toronto, in or about February 2017 during which Spears stated that “Glassman had made himself a target”, that Anson had received disparaging allegations about Catalyst and Callidus from Langstaff at Canaccord, and discussed “working up a fraud complaint” against the Plaintiffs. Langstaff and Canaccord were described by Spears to be friends of Boland;
- (f) A meeting on or about March 5, 2017, at an unknown place, when Spears alleged that according to Langstaff, Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices. Spears also alleged that Langstaff and possibly one other person was a source for this “intel”;
- (g) An exchange of messages on March 23, 2017 whereby Kassam asked Langstaff, a day after Langstaff had met with McFarlane who had spoken to Anderson and was advised that Anderson was 2-3 weeks away from filing an SEC complaint, whether “[Langstaff]” had any draft for [Kassam]”;

- (h) In the same message exchange, Langstaff advised Kassam that “I don’t have [a draft] yet” but went on to state he did “have something new though”, namely Langstaff alleged that there was “an undisclosed related party transaction that hides a loss”. Langstaff was referring to certain previously disclosed transactions relating to XTG which were later the subject of widespread false allegations made by the conspirators;
  - (i) A follow up meeting between Kassam and Langstaff arranged in June 2017;
  - (j) A dinner meeting at Barbarians restaurant in Toronto on or about July 14, 2017, attended by Kassam, Spears, Puri , Cohodes and approximately 10 other people whose identities are known to the Anson Defendants, during which the allegations referred to above were discussed as well as the SEC complaint that had been recently filed against Catalyst and Callidus by Anderson and other members of the Conspiracy, the attempts to cause Reuters to publish false articles about the Plaintiffs, and the next steps that would be taken in furtherance of the Conspiracy.
126. While employed by Canaccord Genuity, Langstaff also engaged in numerous acts and communications with the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes in furtherance of the Conspiracy. Particulars of these acts and communications include the following:
- (a) On March 24, 2017 Langstaff told Levitt that a loan in Callidus’ portfolio known as the “Leader [Energy] loan” was a “dismembered corpse” and that Callidus was getting ready to “stuff” this loan into another borrower with whom Callidus had a business relationship, in order to “hide the loss”;

- (b) On March 28, 2017, Langstaff and Levitt discussed how best to make and substantiate fraud allegations against Catalyst and Callidus which they and their co-conspirators were and were intending to disseminate;
- (c) On March 29, 2017, Langstaff told Levitt that Callidus was probably about to take steps to “tap the guarantee on Bluberi” and of his conversation with the principal of Blueberi, “Gerrard” (Duhamel), about steps that Duhamel had taken or was about to take to disparage Catalyst and Callidus;
- (d) On March 30, 2017, Langstaff told Levitt that according to a “friend” of Langstaff (referring to Boland), an internal Callidus loan officer could be contacted to obtain allegations and or information thought to be harmful to the Plaintiff;
- (e) On April 12, 2017, Langstaff told Levitt that Callidus’ growth was “severely negative”;
- (f) On April 21, 2017, Langstaff was told by Levitt that a District Court Judge in Texas had “found instances of fraud” by Callidus in relation to Esco Marine and the guarantor actions against Levy and Jaross;
- (g) On April 25, 2017, Langstaff contacted Levy of Esco Marine and advised that “Greg Boland is a friend of mine”; he was “helping West Face” and was looking for “details”;
- (h) On April 30, 2017, Langstaff was told by Levitt that he was “Dropping off evidence binders tonight to police HQ. We can supplement with other new info” and that Nathan [Anderson] is coming tomorrow and Tuesday”;

- (i) On May 2, 2017, Langstaff and Levitt shared copies of questions which they and their co-conspirators had provided to the media and to analysts including a supposedly independent analyst at Canaccord Genuity covering Callidus, for the purpose of eliciting answers from Callidus which they hoped would be used to generate disparaging reports harmful to the Plaintiffs;
  - (j) On May 3, 2017, Langstaff told Levitt that Callidus' numbers were "horrific" and that "now is the time to go after Glassman";
  - (k) On May 3, 2017, Langstaff represented to Levitt that "Glassman had violated TSX rules"; that with "one good SWAT at [Glassman]" the conspirators "might get [Glassman] to lose control and that he was "trying" to make this happen;
  - (l) On May 12, 2017, Langstaff received from Levitt numerous documents including materials which the Guarantor Conspirators delivered to JSOT, to be used and distributed by Langstaff to "get some media traction" in furtherance of the Conspiracy;
  - (m) On May 15, 2017, Langstaff told Levitt that he suspects that Hilco, a well-known and independent appraiser retained by Callidus to value Esco Marine and Bluberi, was "on the take from Callidus" to enable Callidus to "call in the loan[s]"; and
  - (n) On June 3, 2017, Langstaff was told by Levitt that he supposedly had "evidence of ... money laundering" by Callidus and that "Reuters [was] working hard now".
127. The communications between Langstaff and the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes also included material information which was not publicly

known at the time of their communications, but which was being shared to assist in the circulation of disparaging allegations about the Plaintiffs, in furtherance of the Conspiracy. The sharing and circulation of such non-public material information for the above purposes occurred through and as a result of numerous communications among Levitt, Langstaff, and the other Defendants. Particulars of these communications include the following:

- (a) On March 28, 2017, communications by Levitt to Langstaff regarding (i) a PwC valuation of Bluberi obtained by Callidus, and (ii) future legal proceedings which had been described by Gerry Duhamel to Levitt, in which the PwC valuation was going to be disclosed by him; and
  - (b) On May 3, 2017, communications by Levitt to Langstaff regarding evidence that was sealed and subject to a protective order, which had supposedly been considered by a District Court Judge in Texas, and who Levitt falsely alleged had found that Callidus had been guilty of fraud in its dealings with one of its borrowers, Esco Marine.
128. During the course of the numerous acts and communications by Langstaff with the Wolfpack Conspirators and the Guarantor Conspirators, Langstaff:
- (a) Shared information with Boland, who he referred to as his “friend” with the other participants in the Conspiracy;
  - (b) Received documents and communications from and made by, or prepared at the direction of, his fellow participants in the Conspiracy, which disparaged the Plaintiffs;

- (c) Circulated materials which he believed would further help the Conspiracy to succeed; and
  - (d) Encouraged the other participants in the Conspiracy by praising them for their efforts and by inciting their continued participation in the Conspiracy.
129. In furtherance of the Conspiracy, Langstaff breached his duties of loyalty, honesty and fair dealing, fiduciary and other duties owed to the Plaintiffs as particularized in paragraph 196 below, and also engaged in improper activity with the predominate purpose of harming the Plaintiffs. Langstaff was reprimanded by Canaccord Genuity on August 9, 2017 for divulging information to a short seller of a stock of another client in breach of Canaccord Genuity's Confidentiality & Non-Disclosure Policy. Langstaff was terminated by Canaccord Genuity the following month on September 26, 2017.
130. Canaccord Genuity is vicariously liable for the actions of Langstaff.
131. In addition, Canaccord Genuity is liable for breach of its duty of loyalty, duty of honesty and fair dealing, and fiduciary duties to act in the best interests of the Plaintiffs and other duties as particularized in paragraph 196 below. Canaccord Genuity was also negligent in failing to monitor and properly supervise Langstaff and implement effective safeguards to ensure that Langstaff did not engage in any activity harmful to the Plaintiffs.
132. In addition, as a result of these meetings and other communications among them, by the third week in April 2017, the Wolfpack Conspirators and the Guarantor Conspirators had prepared and distributed further written materials falsely accusing Catalyst, Callidus and Glassman of criminal wrongdoing, which the Conspirators intended to provide to the SEC,

JSOT, and the Toronto Police Service. Like the allegations contained in the other materials which had previously been prepared, circulated and utilized by the Complainants when they met with the OSC in December 2016, the allegations in this documentation were false.

133. In or about mid-April 2017, some or all of the Wolfpack Conspirators and Guarantor Conspirators had also contacted the Toronto Police Service for the purpose of making false allegations of criminal offences against Catalyst, Callidus and Glassman. These contacts were made by the Wolfpack Conspirators and Guarantor Conspirators to Gail Regan and Dianne Kelly of the Toronto Police Service. The purpose was to harm Catalyst, Callidus and Glassman and to make it possible to allege to the media that an active criminal investigation into frauds allegedly committed by Catalyst, Callidus and Glassman was underway by the responsible authorities. In furtherance of this element of the Conspiracy, the Wolfpack Conspirators and Guarantor Conspirators remained in contact with Regan and Kelly throughout April – May 2017, including but not limited to direct contacts on or about June 5, May 30, June 14-15 and July 6, 2017. These contacts and communications included the preparation and delivery to the Toronto Police Service of a document entitled “Callidus Fraud” and a request in early July 2017 that a formal fraud investigation be commenced.
134. The Toronto Police Service cautioned the Defendants about making any public reference to any “investigation” by the Toronto Police Service and ultimately, the Toronto Police Service confirmed to them that no investigation of Callidus or Catalyst would be commenced. However, none of this stopped the Wolfpack Conspirators and Guarantor Conspirators from relaying that false information to the media, as described below.

135. By this time, the Wolfpack Conspirators and Guarantor Conspirators had also filed, with the direct assistance and participation of Anderson, a false complaint with the SEC and OSC alleging that Catalyst, Callidus and Glassman were guilty of serious criminal misconduct.
136. The above acts were all in furtherance of the Conspiracy, including the plan by the Conspirators to persuade the financial media to publish false stories alleging that Catalyst, Catalyst and Glassman were the subject of active fraud investigation by the Toronto Police Service and by JSOT.
- (G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST**
137. In or about spring 2017, the Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting newly identified journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.
138. As pleaded above, initially, Boland and West Face had engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. West Face and Boland agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.
139. As a result, Livesey drafted a story based on information fed to him by one or more of the Wolfpack Conspirators and the Guarantor Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

140. West Face and Boland worked with Livesey to contact different news outlets including, Bloomberg, Buzzfeed, 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.
141. Having been frustrated by the failure of the above failed attempts, the Wolfpack Conspirators and the Guarantor 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 Wolfpack Conspirators and the Guarantor Conspirators intended to create the appearance of a credible news story about alleged nefarious practices and fraudulent practices at Callidus and Catalyst.
142. Callidus and Catalyst have positively denied any such “investigation”, and no such investigation was ever commenced.
143. The Wolfpack Conspirators and the Guarantor Conspirators approached Reuters in June 2017 and advised, with the existence of the Complaints, and encouraged Tilak and a New York based Reuters reporter, Lawrence Delevigne, to publish a negative story about Callidus and Catalyst, including falsehoods that active criminal investigations about the Plaintiffs and their businesses were actively underway by regulatory authorities, JSOT and the Toronto Police Services.
144. In this regard, Livesey offered to be a source for the story and provided false information for the negative story that the Wolfpack Conspirators and the Guarantor Conspirators had

encouraged Tilak and Delevigne to write. Livesey also provided Tilak and Delevigne questions to be asked of Catalyst, Callidus and Glassman that were based on patently false information from the Wolfpack Conspirators and Guarantor Conspirators designed to push a disparaging story about Catalyst, Callidus and Glassman.

145. Reuters decided not to publish this false story. Reuters did not publish the story despite the Wolfpack Conspirators' and the Guarantor Conspirators' best efforts to entice it to do so by alleging, among other things, that:

- (a) Catalyst had misled its investors about the valuation of assets held in Catalyst's investment portfolios;
- (b) Callidus had misled its borrowers about loans extended to them by Callidus;
- (c) Callidus' misconduct included criminal fraud in relation to its borrowing practices;
- (d) Both Catalyst and Callidus had engaged in false and deceptive accounting practices in relation to a loan which had been extended to XTG;
- (e) Catalyst was under active investigation for fraud and other criminal misconduct in connection with the above matters by the OSC, JSOT and by the Toronto Police Service; and
- (f) Callidus was also under active investigation for fraud and other criminal misconduct in connection with the above matters by JSOT and the Toronto Police Service.

146. In addition, in or about late June or early July, 2017, one or more of the Wolfpack Conspirators and the Guarantor Conspirators also alleged that:
- (a) At least three separate “whistleblower” complaints had been filed with the OSC;
  - (b) One of the whistleblower complaints had been filed by the defendant Baumann and stated that Catalyst and Callidus had engaged in false and deceptive accounting practices with respect to XTG;
  - (c) Another whistleblower complainant stated that Callidus had misled its borrowers about their loans and had misled its shareholders about the value of Callidus’ assets, and,
  - (d) Another whistleblower complainant stated that Catalyst had misled its investors about the value of the investments in its portfolios.
147. At times known to the Defendants but not to the Plaintiffs, one or more of the Wolfpack Conspirators and the Guarantor Conspirators continued to communicate with Reuters and to make allegations about Catalyst and Callidus, including the following:
- (a) Catalyst’s valuation procedures were flawed and improper and had been used to create an appearance of high but inaccurate returns in the Funds managed by Catalyst;
  - (b) Catalyst’s practices of using aggressive, inflated valuations had the effect of generating elevated fees for the benefit of Catalyst and Newton Glassman;
  - (c) Glassman had been unfairly and improperly enriched by such practices and fees;

- (d) Catalyst's loan guarantees to Callidus had not been properly disclosed and created improper conflicts of interest; and
  - (e) Catalyst and Callidus continued to be under active criminal investigation by JSOT and the Toronto Police Service.
148. Prior to approaching Reuters, the Wolfpack Conspirators and the Guarantor Conspirators had 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 negative stories about Callidus and Catalyst. Those organizations also decided not to publish their stories.
149. After being rejected by these credible media outlets, the Wolfpack Conspirators and the Guarantor Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.
150. As a result of these continuing failures, in late July or early August 2017, the Wolfpack Conspirators and the Guarantor Conspirators contacted a different reporter, the Defendant 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.
151. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Wolfpack Conspirators and the Guarantor Conspirators to further the Conspiracy.

152. The Wolfpack Conspirators and Guarantor Conspirators agreed that the Guarantor Conspirators and Anderson would disclose information relating to the fact and substance of the Complaints to Copeland, knowing and/or intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud and other improprieties by Catalyst and Callidus would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints 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 some number of them an opportunity to engage in profitable short selling of Callidus Shares, all of which was in furtherance of the Conspiracy.
153. Copeland was directed by the Wolfpack Conspirators and the Guarantor Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint fully expecting that Copeland would publish those statements in the WSJ. 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, maliciously made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. The words uttered by McFarlane meant and were understood to mean that Callidus and Catalyst conducted business in an unethical manner, engaged in improper accounting practices, were dishonest, lacked integrity, and ought not to be trusted.
154. Similar conversations occurred with Baumann, Molyneux, Levitt, Duhamel, Levy and Anderson during which, or as a result of which the following false and defamatory

statements were made to Copeland on the direction, encouragement, inducement of and in consultation with the Wolfpack Conspirators and the other Guarantor Conspirators:

- (a) Catalyst and Callidus are under active investigation by the Toronto police department and various regulators, including the OSC and the Alberta Securities Commission, regarding accounting irregularities, securities fraud and other criminal misconduct.

These words meant and were understood to mean that the Plaintiffs,

- (i) operate their businesses in a manner that is contrary to applicable law and regulation;
  - (ii) are involved in fraudulent activity of the type public authorities ought to be concerned with; and
  - (iii) conduct business in a dishonest and unethical manner.
- (b) Callidus and Catalyst failed to decrease the valuations of their loan collateral when companies in the Callidus portfolio ceased making interest payments or only made partial payments.

The words meant and were understood to mean that Callidus and Catalyst engaged in unethical accounting and other business practices so as to apply economic pressure on borrowers, for the unfair advantage of Callidus and Catalyst.

- (c) Callidus and Catalyst engaged in fraud by misleading borrowers about deal terms in order to withhold funds from borrowers at critical times and to allow the debt to balloon in order to assume control and ultimately ownership of borrowers.

These words meant and were understood to mean that Callidus and Catalyst illegitimately exercised their control over the cash flow of borrowers to artificially create a situation of economic distress enabling them to wipe out equity holders.

- (d) Catalyst misled its investors about the valuation of assets held in Catalyst's investment portfolios to collect fees and other payments to which it was not entitled and that Callidus had misled its borrowers about loans extended to them by Callidus.

These words meant and were understood to mean that,

- (i) Catalyst misled investors in the funds it managed in order to collect management and other fees to which it was not lawfully entitled; and
  - (ii) Callidus misled its borrowers about the terms of the loan agreements they were entering into and how Callidus' rights under those loans would be exercised.
- (e) Callidus and Catalyst falsely certified that their financial statements were prepared in accordance with IFRS and, in particular, that they failed to conduct an appropriate impairment analysis on the assets of the Callidus borrowers and Catalyst funds despite disclosures in their financial statements that such analysis had been done.

These words meant and were understood to mean that Catalyst and Callidus made material misrepresentations in their financial statements and that their financial disclosure ought not to be trusted.

155. During the course of writing the article requested by the Wolfpack Conspirators and the Guarantor Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.
156. 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.
157. 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 Wolfpack Conspirators and the Guarantor 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.
158. 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.

159. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.
160. 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. Copeland and McNish acted maliciously.
161. On August 9, 2017, in furtherance of the Conspiracy, Copeland, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff were in communication about the timing of the story. They encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised them that he would do so and he did. Copeland did so with the knowledge, intention and purpose of harming the Plaintiffs and benefitting himself, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff.

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

162. 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.

163. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions through Langstaff at Canaccord Genuity and others, who are known to the Defendants but unknown to the Plaintiffs.
164. Langstaff and others, who are known to the Defendants but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. While employed by Canaccord Genuity, 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 through Canaccord Genuity.
165. 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.
166. 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.
167. 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.

168. 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.
169. 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.
170. 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.
171. 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.

172. The headline and first paragraph of the Article contained the word “fraud” two separate times. The thrust of the Article was exactly what the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff intended — it impressed upon the general public, including the third parties identified in paragraph 203 below, that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.
173. In addition to publication online on thewallstreetjournal.com, a revised version of the Article was published in the August 10, 2017 print edition of the Wall Street Journal under the headline “Top Buyout Firm Scrutinized on Loans”.
174. The Article was also 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.
175. Just prior to the publication of the Article on August 9, 2017 and the close of market at 4:00 pm EDT the same day, the trading in Callidus stock revealed that 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 Defendants.
176. 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.
177. 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.
  178. 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.
  179. 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 earlier secured the naked short (and other simulated short positions). Both Langstaff and Canaccord Genuity profited from the short selling trading that were executed directly or indirectly through them, or in the alternative, assisted other members of the Conspiracy to profit as pleaded.
  180. The Defendants' short and distort attack was successful — beginning on August 9, 2017 through August 14, 2017, Callidus' share priced declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

181. Shortly after the above short-attack, the Anson Defendants including Kassam retweeted on September 27, 2017, Cohodes' tweet that included the following: "This is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".
182. In addition, following the short-attack, Livesey continued his efforts to have false and disparaging articles about Catalyst, Callidus and Glassman published in the media. These include an article entitled "A private equity star's picks shine... until cash-out time" by Tilak and Delevigne on March 23, 2018 that contained a distorted photograph of Glassman taken by one of the Guarantor Conspirators at a Callidus shareholders meeting and shared with Tilak and Delevigne; a follow-up article entitled "Callidus shares tumble after Reuters report on Catalyst valuations" on March 26, 2018. Livesey himself wrote disparaging articles published by Southern Investigative Reporting Foundation on April 11, 2018 and November 27, 2018 entitled "Newton Glassman's Legacy of Ashes" and "Newton Glassman and Other People's Money". Livesey has continued his efforts to have disparaging articles published about Catalyst, Callidus and Glassman, including with Institutional Investors and Bloomberg.

**(I) ARTICLE IS FALSE AND DEFAMATORY**

183. The Article contains the following false and defamatory statements of and concerning the Plaintiffs:
- (a) The Article's headline and first and second paragraphs state:

### **“Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers**

Authorities looking into complaints that Catalyst inflated value of assets, deceived borrowers

...

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.”

...

Catalyst Capital Group Inc., one of Canada’s largest private-equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities Commission, the country’s leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.”

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
- (ii) Callidus and Catalyst are engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal wrongdoing
- (iv) Callidus and Catalyst are engaged in fraudulent activities in relation to Callidus's loan portfolios;
- (v) Callidus and Catalyst have violated Ontario Securities law; and

- (vi) Callidus and Catalyst have made false and misleading representations to investors;
- (b) A photograph of a Toronto Police car is published immediately after the headline of the Article along with a photo caption that states: “A unit of the Toronto Police Service has begun its own inquiries into Catalyst”. The third paragraph of the Article states: “A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a departmental spokeswoman said”.

These words meant and were understood to mean that:

- (i) Catalyst and Callidus are engaged in criminal conduct;
- (ii) Catalyst and Callidus defrauded investors; and
- (iii) Callidus and Catalyst are under “investigation” for fraud or other illegal activity by the OSC and/or the Toronto Police Service;
- (c) The six, ninth, twelfth, and twenty-sixth to twenty-seventh paragraphs of the Article state:

“...Catalyst mostly invests in high-interest loans to financially distressed firms such as casino game makers of biopharmaceutical companies, and sometimes takes control of the businesses if the loans aren’t paid

...

Some but not all of the filers of Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman’s firms, and later had their businesses seized, said people familiar with the matter.

...

...Callidus’s lending practices are also a subject of the whistleblower complaints, according to the people and documents.

....

One of those borrowers is Jeff McFarlane.

Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report.

Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, “an amount equal to the total outstanding principal plus accrued and unpaid interest,” filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and Catalyst delayed and underreported potential losses. ‘I have serious concerns about the integrity of Callidus’s accounting around XTG,’ Mr. McFarlane said.”

These words meant and were understood to mean that:

- (i) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (ii) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers;
- (iii) Callidus and Catalyst improperly “seize” companies to whom loans have been made;

- (iv) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
  - (v) Callidus and Catalyst improperly caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
  - (vi) Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
  - (vii) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
  - (viii) Callidus and Catalyst overvalued XTG, to the detriment of the funds managed by Catalyst;
  - (ix) Callidus and Catalyst caused Callidus to mislead its shareholders or investors;
  - (x) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
  - (xi) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.
- (d) The nineteenth and twenty-eight paragraphs of the Article state that the Plaintiffs:
- “...sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

...

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange's debts that was far less than Callidus was seeking in a civil suit.

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly file "multiple lawsuits" against borrowers;  
and
- (ii) Callidus and Catalyst dealt with McFarlane unfairly or unjustly by pursuing him in a Guarantee Action.

184. The impact of the Article was exactly what the Defendants intended — it impressed upon the general public that Callidus and Catalyst were under "investigation" by the authorities and that the "investigation" concerned fraudulent activities by Callidus and Catalyst.
185. The statement made in the Article particularized in paragraph 183 above, and the statements made to Copeland by the Guarantor Conspirators and Anderson particularized in paragraphs 153-154 above are, collectively, the "Defamatory Words". The plain meaning of the Defamatory Words taken together is that the Plaintiffs act fraudulently with misstated financial statements, carry on nefarious business practices, and lack integrity in their business dealings. This is spurious, false, malicious, and damaging to the Plaintiffs' reputation and good will.
186. The Wolfpack Conspirators acted in concert with the Guarantor Conspirators and Copeland to publish the Defamatory Words.
187. Each of the Wolfpack Conspirators, Guarantor Conspirators, and Copeland participated in a common design to publish the Defamatory Words including but not limited to:

- (a) Agreeing to the Conspiracy as particularized in paragraph 93 above,
  - (b) Discussing and agreeing to the words to be used in the Complaints and ultimately the Article as particularized in paragraphs 94, 103-106, and 110-112 above;
  - (c) Sharing of information, advice, and strategies for the purpose of and in furtherance of the conspiracy as particularized in paragraphs 89, 101-104, and 106-112 above;
  - (d) Approving of and directing the disclosure of the existence and substance of the Complaints to Copeland for the purposes of republication in the Article as particularized in paragraph 148-152 above; and
  - (e) Making false and defamatory statements to Copeland, either directly in the case of the Guarantor Conspirators or indirectly in the case of the other Conspirators, as outlined in paragraphs 153-154 above.
188. The full extent of the Defendants' individual knowledge and participation in the Conspiracy and in the publication of the Defamatory Words is known to them and not known to the Plaintiffs.
189. The Wolfpack Conspirators, Guarantor Conspirators, and Copeland published the Defamatory Words complained in pursuit of their vendetta and vengeance against the Plaintiffs and to profit from short selling stocks in Callidus. Participating in the publication of defamatory statements about the Plaintiffs with the internationally renowned WSJ was clearly designed to embarrass the Plaintiffs and seriously injure their reputations.

190. The Defendants' publication of the Defamatory Words have and will continue to cause serious damage, loss and injury to the Plaintiffs, who relies on their good reputation to carry on business.

**(I) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS**

**Breaches of the *Securities Act***

191. 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.

192. 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*.
193. 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*.
194. The Defendants' breaches of the *Securities Act* are “unlawful acts” that, in part, form the basis of the civil conspiracy claim, as pleaded above.

#### **Breaches of Duties by Langstaff and Canaccord Genuity**

195. The Plaintiffs were clients of Langstaff and Canaccord Genuity since late 2013. Langstaff and/or Canaccord Genuity provided the Plaintiffs with continuing and interrelated professional and advisory services, in several different contexts and capacities, including the following:
- (a) As advisors and consultants to Catalyst and Callidus with respect to its business plans, financing options and strategic alternatives;
  - (b) As lead underwriter with respect to the preparation, marketing, distribution and implementation of Callidus' April 2014 IPO;

- (c) As the “market maker” for the trading in Callidus publicly traded shares, to ensure support, liquidity and orderly trading activities of Callidus;
196. In the course of delivering advice and providing services to the Plaintiffs, Langstaff and Canaccord Genuity gained intimate knowledge of and was entrusted with the Plaintiffs’ business and financial information and affairs. Langstaff and Canaccord Genuity owed a duty of loyalty, duty of honesty and fair dealing, and fiduciary duties and obligations to the Plaintiffs, including the following duties to:
- (a) Act honestly, in good faith and in the best interests of the Plaintiffs;
  - (b) Avoid any conflict of interest between the Plaintiffs and Canaccord Genuity or between the Plaintiffs and other clients of Canaccord Genuity;
  - (c) Comply with its policies including its Code of Business Conduct and Ethics, Conflicts Policy, Group and Operating Policies and Confidentiality & Non-Disclosure Policy, and to comply with regulatory and accepted standards of practice recognized by the securities and investment community in Canada;
  - (d) Refrain from preferring or acting in the interests of Canaccord Genuity or its other clients over the interests of and to the harm of the Plaintiffs;
  - (e) Refrain from engaging in or agreeing, assisting or encouraging others to engage in activities that were intended to harm the Plaintiffs;
  - (f) Refrain from disparaging the business and affairs of the Plaintiffs;

- (g) Refrain from falsely accusing or expressing opinions that the Plaintiffs or their personnel were guilty of dishonest conduct;
- (h) Not to falsely allege that Callidus business was a fraud and to advise that short-selling of Callidus shares should be undertaken on the strength of this allegation;
- (i) Not to engage in the conspiracy against Catalyst and Callidus pleaded in this Action;
- (j) Ensure that its senior officers, executives and employees were aware of and that they strictly adhered to the above obligations;
- (k) Ensure that appropriate and effective systems and safeguards are in place to detect and deter any breaches of the above obligations by its senior officers, executives and employees; and
- (l) If and when apprised of potential breaches of any of the above obligations, to conduct a full and thorough investigation into any potential breaches and to fully apprise Catalyst and Callidus of the results of such investigation.

197. Langstaff repeatedly breached these duties by engaging in a course of conduct as pleaded herein, in concert with the other Defendants, with the specific purpose of causing harm to the Plaintiffs for his and the other Defendants' benefit. As pleaded above, Langstaff, among other things:

- (a) Gave advice to Kassam, another client of Canaccord Genuity, to "short" Callidus;
- (b) Disparaged Callidus by describing it as a "fraud" to Kassam;

- (c) Falsely alleged to the conspirators that Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices;
  - (d) Falsely alleged that Callidus engaged in an undisclosed related party transaction to hide losses;
  - (e) Discussed with Levitt how best to make and substantiate fraud allegations against Catalyst and Callidus which they and the other conspirators were intending to disseminate;
  - (f) Falsely alleged that independent appraisers of Callidus were “on the take”;
  - (g) Met with members of the conspiracy including West Face and Boland, a friend and clients of Langstaff, to “help” and further advance the conspiracy to harm the Plaintiffs;
  - (h) Received material non-public information about steps to be taken by the conspirators against Callidus and Catalyst including future lawsuits to be commenced against them and the planned short-attack;
  - (i) Facilitated and executed the short selling trading to the harm of the Plaintiffs; and
  - (j) Concealed his activities by using encrypted self-destructing messaging apps to communicate with the conspirators.
198. Canaccord Genuity similarly breached its duties owed to the Plaintiffs. Canaccord Genuity is vicariously liable for the acts and omissions of Langstaff.

199. In addition, Canaccord Genuity is liable for failing to appropriately supervise and monitor Langstaff and implement effective measures and safeguards to ensure that he complied with Canaccord Genuity's policies and did not engage in any communication or activity harmful to the Plaintiffs. The failure to supervise Langstaff and implement proper and effective safeguards to protect its clients was particularly egregious as against the Plaintiffs, as Canaccord Genuity knew that Langstaff had a history of breaching its policies to the detriment of their clients. The Plaintiffs relied on Canaccord Genuity to supervise its employees and have effective policies and safeguards to avoid a breach of duty of loyalty, honesty and fair dealing, and a breach of conflict of interest. These policies and safeguards were repeatedly breached by Langstaff, not only as against Callidus but also against other publically traded companies targeted by Langstaff and the other Wolfpack Conspirators including Cannibis Wheaton Income Corp. and Exchange Income Corporation.
200. Moreover, Canaccord Genuity breached its regulatory requirements by permitting Langstaff to use "Confide" to communicate with clients and/or failed to properly supervise and prevent his use of an app like "Confide".
201. The Plaintiffs advised Canaccord Genuity about their concerns that Langstaff was engaged in wrongful conduct, which included participation in the Conspiracy as alleged. Canaccord Genuity either became aware of Langstaff's wrongful conduct, or failed to conduct a thorough investigation, and misled the Plaintiffs by asserting that they had fully investigated the matter and concluded that no wrongful activity occurred against the Plaintiffs. Such a misrepresentation was a further breach of Canaccord Genuity's duties to the Plaintiffs.

202. Rather than implementing any preventative steps to ensure that Langstaff's pattern of misconduct was not repeated, or taking any disciplinary action against Langstaff to deter such conduct, Canaccord Genuity did nothing. Instead, following the Plaintiffs' express concerns, after the improper August 7, 2017 short-selling attacks on Callidus' stock, pleaded herein, Canaccord Genuity issued a warning letter to Langstaff which reaffirmed Langstaff's obligations to existing clients of the firm and made it clear that Langstaff had been aware of Canaccord Genuity's rules, policies, and Codes of Conduct.

**Causing loss by unlawful means/ intentional interference**

203. By participating in the Conspiracy and the publication of the Defamatory Words, the Defendants deceived third parties into believing that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were subject to "investigation" by the OSC and the Toronto Police. These third parties had actionable claims against the Defendants by reason of their conduct pleaded herein, and include but are not limited to the following persons: (i) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the Defendants' conduct; (ii) investors that sold shares in Callidus as a result of reading the Defamatory Words or in response to the resulting sell-off of Callidus shares due to the Defendants' implementation of the Conspiracy; (iii) service providers such as appraisers engaged to appraise and alleged to have falsely valued borrowers' assets for the benefit of Callidus and Catalyst; and (iv) auditors, audit committee members and the independent directors of Callidus and Catalyst that are responsible for and allegedly failed to detect the supposed fraudulent activities carried out by the Plaintiffs.

204. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors, directors and auditors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares, lost revenues, loss of goodwill, as well as impairment of their ability to conduct and grow their business, implement strategic plans, and secure capital. In addition, the market manipulation of the Defendants caused significant harm to Callidus in the form of a loss in market capitalization.
205. The conduct of the Defendants in implementing the Conspiracy as described above, was directed at and intended to harm, punish and discredit the Plaintiffs. As described above, the purpose and effect of the Defendants' activities were to damage the reputations, and undermine and destroy the business of, and otherwise cause harm to the Plaintiffs. The Defendants knew that harm would come to the Plaintiffs as a result of their conduct. By deceiving market participants and investors into believing that the Plaintiffs are dishonest, fraudulent and untrustworthy, and by engaging in an improper short attack, the Defendants deliberately tarnished and harmed their reputations in the financial, investing and business communities.
206. As a result of the Defendants' implementation of the Conspiracy as described above, the Plaintiffs have suffered significant damages. Among other things, the Defendants have impaired Callidus' ability to raise and retain invested capital, attract and keep employees, attract and grow its loan portfolio and make investments in other companies. This has led directly to the significant erosion of the equity value of Callidus from 2017. This is because the Defendants' conduct has:

- (i) deterred potential borrowers from doing any business with Callidus in light of the false allegations that Callidus engaged in fraudulent transactions, unethical accounting and unfair business practices with a view to wiping out equity ownership and taking control of borrowers;
- (ii) scared away potential employees who could have helped grow and develop the Callidus' business; and
- (iii) made it extremely difficult for Callidus to access third party capital necessary for the growth of its business.

207. 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**

208. 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. The role of the Individual Defendants in this regard extended beyond the nature and scope of their roles as officers and directors of the corporate Defendants and include direct personal involvement, improper intentions, and wrongful acts. 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.

209. 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**

210. John Doe Defendants 6-10 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.

211. John Doe Defendants 6-10 are jointly and severally liable for the wrongs committed by the Defendants.

**Punitive Damages**

212. 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.

213. 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.

**(J) SERVICE EX JURIS**

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

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

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

DATE: July 4, 2019

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Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al  
Plaintiffs

and

WEST FACE CAPITAL INC. et al.  
Defendants

Court File No. CV-587463-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FRESH AS AMENDED STATEMENT OF CLAIM**

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and

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**  
(Plaintiffs' Motion to Amend the  
Amended Statement of Claim)

**GOWLING WLG (CANADA) LLP**

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# TAB 2

Court File No. CV-17-587463-00CL

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

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, ANSOfinrN 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

---

**AFFIDAVIT OF GRETEL BEST**  
(Affirmed July 4, 2019)

---

I, GRETEL BEST, of the Town of Ajax, in the Province of Ontario, AFFIRM:

1. I am a law clerk with Gowling WLG (Canada) LLP, the lawyers for the Plaintiffs, and, as such, I have knowledge of the matters contained in this affidavit. Where my knowledge is based on information and belief, I state the source of the information and believe the information to be true.

2. I am affirming this affidavit in support of the Plaintiffs' motion for leave to amend the Amended Amended Statement of Claim, in the form attached as Schedule "A" to the Notice of Motion herein. I do not intend to waive any applicable legal or litigation privilege.

***The Claim***

3. On November 7, 2017, the Plaintiffs The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), commenced this claim against Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, ACF GP, Moez Kassam ("**Kassam**"), Adam Spears ("**Spears**"), Sunny Puri ("**Puri**") (collectively the "**Anson Defendants**"), ClaritySpring Inc. ("**Clarity**"), Nathan Anderson ("**Anderson**"), Darryl Levitt ("**Levitt**"), Richard Molyneux ("**Molyneux**"), Jeffrey McFarlane ("**McFarlane**"), Rob Copeland ("**Copeland**"), and John Does #1-10, among others, claiming damages in the amount of \$450 million and punitive damages of \$5 million for defamation, injurious falsehood, the tort of unlawful means, civil conspiracy and unjust enrichment. A copy of the Amended Amended Statement of Claim is attached as **Exhibit A**.

4. As summarized at paragraph 85 of the Amended Amended Statement of Claim, Catalyst and Callidus allege, *inter alia*, that the Wolfpack Conspirators,<sup>1</sup> the Guarantor

---

<sup>1</sup> Paragraph 23 of the Amended Amended Statement of Claim identifies the "Wolfpack Conspirators" as West Face, Gregory Boland, the Anson Defendants, Clarity and Anderson.

Conspirators,<sup>2</sup> Langstaff and Copeland entered into a conspiracy to harm Catalyst and Callidus by:

- (a) spreading false information by rumours through the Bay Street rumour mill;
- (b) filing false “whistleblower” complaints against Callidus with the Ontario Securities Commission and the United States Securities and Exchange Commission by certain of the Guarantor Conspirators to “confirm” the rumours;
- (c) leaking the existence and substance of the allegations contained in the complaints to the media and to the police to generate media interest;
- (d) taking short positions, directly or indirectly, in the common shares of Callidus (the “**Callidus Shares**”);
- (e) publishing a false and defamatory article in the Wall Street Journal on August 9, 2017, timed to be released near the end of the trading day, in order to cause a rapid decline in the price of the Callidus Shares; and
- (f) closing out of their naked short positions at the expense of the market value of Callidus.

---

<sup>2</sup> Paragraph 31 of the Amended Amended Statement of Claim identifies the “Guarantor Conspirators” as Kevin Baumann, McFarlane, Levitt and Molyneux.

***Motion to Strike***

5. The Anson Defendants, Molyneux, Levitt, Clarity, Anderson, Copeland, and Kevin Baumann brought motions to strike the Statement of Claim and, in the alternative for particulars.

6. Following the delivery of response to particulars by the Plaintiffs, the Anson Defendants, Molyneux, Levitt, Clarity and Anderson (the “**Moving Defendants**”) proceeded with their motions to strike the Statement of Claim as against them.

7. The motion was heard on October 29, 2018 by Justice Wilton-Siegel.

8. On January 9, 2019, Justice Wilton-Siegel dismissed the Moving Defendants’ motion in part. Justice Wilton-Siegel did not strike the Plaintiffs’ civil conspiracy claim, but struck the following parts of the Plaintiffs’ claim:

- (a) defamation, intentional interference with economic relations, and unjust enrichment as against the Moving Defendants; and
- (b) civil conspiracy against Kassam.

A copy of the reasons for decision of Justice Wilton-Siegel’s dated January 9, 2019 is attached as **Exhibit B**.

9. I am advised by Benjamin Na, one of the lawyers for the Plaintiffs, that a dispute arose with the Moving Defendants as to whether the Plaintiffs were entitled to amend their Statement of Claim in respect of those claims that were struck by Justice Wilton-Siegel. The Moving Defendants took the position that Justice Wilton-Siegel struck those parts of the Plaintiffs’ claim without leave to amend.

**Levitt Documents**

10. On January 18, 2016, Callidus commenced an action to enforce a personal guarantee against Levitt and Molyneux in respect of a loan to Fortress Resources LLC (the “**Guarantor Action**”).

11. In the Guarantor Action, Callidus brought a motion for summary judgment. On June 21, 2018, Callidus cross-examined Levitt on his affidavit sworn May 11, 2017, delivered in response to the summary judgment motion. A copy of the cover page of the transcript of that cross-examination is attached as **Exhibit C**.

12. On October 19, 2018, Callidus brought a motion for an Order directing, *inter alia*, Levitt to respond to certain of the undertakings given, questions taken under advisement, and questions refused on his cross-examination held on June 21, 2018.

13. On January 7, 2019, Justice Chiappetta ordered Levitt to, among other things, respond to certain undertakings given and questions refused on his cross-examination, including producing all correspondence between himself, Jeffrey McFarlane, Kevin Baumann, and Gerald Duhamel. A copy of Justice Chiappetta’s order dated January 7, 2019 (the “**January Order**”) is attached as **Exhibit D**.

14. On February 12, 2019, Callidus moved for a contempt order against Levitt because he had yet to answer the questions as ordered. Justice Chiappetta made a second order compelling Levitt to deliver answers to his outstanding undertakings, questions taken under advisement and refusals. The Order provides:

THE COURT ORDERS that Levitt shall, by no later than 4 p.m. on February 28, 2019, answer the following undertakings, questions taken under advisement and refusals arising from his cross-examination held June 21, 2018: Question numbers 285... regardless of any claim for privilege or confidentiality...

[...]

... For greater certainty, “evidence” includes emails sent or received by all email addresses used or previously used by Darryl Levitt... which;

(a) are between Levitt and/or Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann; or

(b) relate to discussions between Levitt and the other guarantors regarding funding each other’s defences.

A copy of Justice Chiappetta’s order dated February 12, 2019 (the “**February Order**”) is attached as **Exhibit E**.

15. On February 22, 2019, Levitt brought a motion for an urgent stay of the operation of the February Order while he brought a motion for leave to appeal to the Divisional Court from the February Order. Justice Myers dismissed the motion, stating:

[16] What Mr. Levitt seek (*sic*) leave to appeal from then is the order of February 12, 2019 made by Chiappetta J. in which she interprets her own prior order. That is, she told Mr. Levitt the time to assert privilege was January 7<sup>th</sup>. She made clear in the wording of para. 1 of the February 12 order ... that she viewed the January 7, 2019 order as already resolving the issue of privilege.

A copy of the reasons for decision of Justice Myers dated February 22, 2019 is attached as **Exhibit F**.

16. I am informed by Benjamin Na that Levitt began producing documents on or about March 8, 2019, in purported compliance with the January Order and February Order of

Justice Chiappetta. Levitt produced approximately 2,600 pages of documents (the “**Levitt Documents**”).

### ***Amendments to the Claim***

17. On April 18, 2019, the Plaintiffs amended their Statement of Claim herein to plead further facts particularizing the conspiracy claim based in part on the facts revealed in the Levitt Documents. The Plaintiffs did not amend their claims for defamation or any other parts of the claim that had been struck by Justice Wilton-Siegel, until the dispute over whether his Honour granted leave to amend was resolved. A copy of the Amended Statement of Claim is attached as **Exhibit G**.

18. I am informed by Benjamin Na that on May 15, 2019, the Plaintiffs and the Moving Defendants appeared at a 9:30 Chambers Appointment before Justice Wilton-Siegel, who confirmed that leave to amend the claims that had been struck was granted and directed the Plaintiffs to deliver their amended claim within 30 days.

19. On June 14, 2019, in accordance with Justice Wilton-Siegel’s direction, the Plaintiffs delivered an Amended Amended Statement of Claim to plead further facts particularizing the defamation claim and other claims that had been struck by Justice Wilton-Siegel.

### ***Langstaff Documents***

20. On October 25, 2018, Justice Hailey ordered that the Plaintiffs and Defendant Bruce Langstaff (“**Langstaff**”) deliver Affidavits of Documents restricted to documents specific to Langstaff, within 60 days of the close of the pleadings in the Langstaff aspect

of the case. A copy of Justice Hainey's endorsement dated October 25, 2018 (the "**October 2018 Endorsement**") is attached as **Exhibit H**.

21. In accordance with Justice Hainey's October 2018 Endorsement, the Plaintiffs delivered their list of documents and productions relevant to Langstaff on January 30, 2019.

22. I am advised by Benjamin Na that prior to the delivery of the Amended Amended Statement of Claim, Langstaff delivered his Affidavit of Documents and Schedule "A" productions.

23. On May 14, 2019, Langstaff delivered his Affidavit of Documents, sworn April 1, 2019, and Schedule "A" productions, which consist of approximately 330 pages of documents (the "**Langstaff Documents**").

### ***The Proposed Amendments***

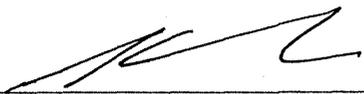
24. The Plaintiffs' proposed amended pleading is based in part by the disclosure of the facts in the Langstaff Documents and Levitt Documents, and pleads particulars of the participation of Gerald Duhamel, Andrew Levy, George Wesley Voorheis, Bruce Livesey and Canaccord Genuity Corp. in the transactions and occurrences complained of in this Action. I am advised by Benjamin Na that the document attached as **Exhibit I** shows the substantive amendments the Plaintiffs propose to make to the Amended Amended Statement of Claim.

25. The Defendants who have not delivered a defence in the main Action have not yet been noted in default.

26. Documentary discovery and examinations for discovery have not taken place.

27. I am advised by Benjamin Na and believe that any prejudice to the Defendants or proposed Defendants could be compensated for by an adjournment or costs if the proposed amendments to the Amended Amended Statement of Claim are granted.

**AFFIRMED BEFORE ME** at the City of Toronto, in the Province of Ontario, this 4<sup>th</sup> day of July, 2019.



\_\_\_\_\_  
Commissioner for Taking Affidavits (or as may be)

  
\_\_\_\_\_  
**GRETEL BEST**

# TAB A

THIS IS **EXHIBIT A**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019

A handwritten signature in black ink, consisting of several fluid, connected strokes, positioned above a horizontal line.

A commissioner for taking affidavits

AMENDED THIS 14 June 19 PURSUANT TO  
 MODIFIÉ CE CONFORMÉMENT À  
 RULE/LA RÈGLE 26 02 ( A )  
 THE ORDER OF \_\_\_\_\_  
 L'ORDONNANCE DU \_\_\_\_\_  
 DATED / FAIT LE \_\_\_\_\_  
 REGISTRAR / GREFFIER  
 SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-17-586096  
587463-00 CL

ONTARIO  
 SUPERIOR COURT OF JUSTICE

VEZ MEMOR

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

**AMENDED AMENDED 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

" S. Slawwhite "  
 330 UNIVERSITY AVENUE  
 7th FLOOR  
 TORONTO, ONTARIO  
 M5G 1R7

Address of  
 Court office:

TO: WEST FACE CAPITAL INC.  
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 Suite 3000  
 Toronto, Ontario  
 M4W 1A8

AND TO: GREGORY BOLAND  
 c/o West Face Capital Inc.  
 2 Bloor Street E.  
 Suite 3000  
 Toronto, Ontario  
 M4W 1A8

AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA  
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AND TO: ACF GP  
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AND TO: ADAM SPEARS  
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AND TO: SUNNY PURI  
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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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10017

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), and civil conspiracy; and, in addition, for breach of fiduciary duty as against the defendant, Bruce Langstaff 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) An order requiring the Defendants to:
    - (i) disclose in writing the means by which they obtained and/or the persons who provided them with any confidential documents of the Plaintiffs, including the documents referred to in paragraph 80 herein;
    - (ii) deliver to counsel for the Plaintiffs any and all such confidential documents, and any and all copies thereof, in their possession, power or control and to permanently destroy any electronic copies thereof; and
    - (iii) deliver a written declaration setting out the details of any and all circulation by them to any third parties of any of the confidential documents of the Plaintiffs,

including any information derived therefrom, and warranting that they have delivered up any and all such confidential documents, in accordance with sub-paragraph 1(ed)(ii) above;

- (e) 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*”);
- (f) 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;
- (g) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
- (h) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
- (i) 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;
- (j) The costs of this action, plus the applicable taxes; and
- (k) 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 (“the “Corporate Anson Defendants””). 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 the Corporate Anson Defendants. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (Kassam, Spears and Puri are together, the “Individual Anson Defendants”). At all material times, under Kassam’s active direction and control, the Corporate Anson Defendants’ principal investment strategy has been to engage in short selling activities of publicly listed stocks. The resulting trading activity includes the illicit short selling of the publicly traded stock of Callidus pleaded in this Action.
20. The Individual Anson Defendants and the entities that comprise the Corporate Anson Defendants (collectively, the “Anson Defendants”) at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and the Corporate Anson Defendants are vicariously liable for the acts or omissions of one another. In the

- alternative, each of the Individual Anson Defendants and the Corporate Anson Defendants 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, the Anson Defendants, ~~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. Langstaff was a Managing Director, Canadian Equity Sales, from November 18, 2013 until he was terminated by Canaccord Genuity effective September 26, 2017. While employed Canaccord Genuity, the Plaintiffs were clients of Canaccord Genuity. Canaccord Genuity owed ongoing fiduciary, statutory and contractual duties to act honestly, in good faith and in the bests interests of the Plaintiffs and not to engage in any activity harmful to the Plaintiffs. While employed by Canaccord Genuity, Langstaff owed the same duties to the Plaintiffs.
  25. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ) and resides in New York, New York. Copeland is a Defendant to a separate proceeding, *The Catalyst Capital Group Inc. v. Dow Jones and Co. et. al.* Court File No. CV-17-586094 (the “Dow Jones Action”) in which damages for defamation are claimed in relation to, among other things, the publication of the Article (defined *infra*).
  26. The Defendants Boland, Kassam, Spears, Puri, ~~and 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. Baumann was the President of Alken Basin Drilling Ltd. (“Alken Basin”), a borrower of Callidus.
28. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America. McFarlane was the CEO of Exchange Technology Group LLC (“XTG”), a borrower of Callidus.
29. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario. Levitt was an officer of Fortress Resources LLC (“Fortress”), a borrower of Callidus.
30. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.
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”.~~
- ~~32.~~ ~~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**
- ~~32.~~ ~~33.~~ 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.

34. ~~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.

35. ~~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.

36. ~~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.

37. The amendments now being made to the Plaintiffs' claim herein set out the additional material facts regarding the Conspiracy that the Plaintiffs have become aware of as of the date of the amendments. The Plaintiffs expressly reserve their right to make or seek to make additional amendments with respect to other material facts and information ascertained by them, when appropriate to do so. These amendments do not implement or respond to the decision of the Honourable Justice Wilton-Siegel dated January 9, 2019, with respect to certain motions brought by some of the Defendants, as the scope of such amendments remains in dispute between the Plaintiffs and the Moving Parties on those motions.

**(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 XTG 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.
- 44. The Guarantors had difficulty retaining counsel to represent them in a RICO action against Callidus. Boland and West Face, through their external legal counsel, attempted to assist the Guarantor Conspirators by referring them to legal counsel in the United States to enable them to commence a RICO action against Callidus which would attract significant adverse publicity.

45. Due to difficulties they faced retaining counsel to commence a RICO action, 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.
46. 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.
47. 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.
48. 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.
49. 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.

50. ~~48.~~ Baumann has made similar claims implying fraud against Callidus.
51. ~~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.
52. ~~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.
53. ~~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.
54. ~~52.~~ In addition to these coordinated activities, Levitt, Langstaff or McFarlane 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, Langstaff or McFarlane in order to mask his identity.
55. ~~53.~~ Through this alter ego, Levitt, Langstaff or McFarlane published false ~~and defamatory~~ statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt, Langstaff or McFarlane are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public. These tweets were re-tweeted by the other Defendants through other aliases including “@stopthescandal”; “@LRenard3”; @AlderLaneeggs”; “@ReganFCU”; “@DKellyFCU”;

“@LexLexlucifer2”; “@KevinBa15422460”; “@DumpsterFire69”; and @ClarityToast”.

The false statements spread through these tweets included:

- (a) Catalyst investors are “going to lose a lot of their money ... Chatter already in the industry (February 3, 2017):
- (b) Callidus’ financial statements are “sublime works of fiction” (February 8, 2017):
- (c) Catalyst is “another likely fraud that Canadians should watch out for” (March 4, 2017):
- (d) Glassman is “Canada’s Madoff” (March 4, 2017):
- (e) Catalyst is the “Mozart of misleading disclosure” (April 20, 2017):
- (f) “Fallout” from Callidus “will be painful” for Callidus’ auditors, valuers and other service providers (May 1, 2017):
- (g) Callidus is a “dying business” (May 4, 2017):
- (h) “If you work for Catalyst Capital, you’re not going to see a penny of carry for all your heartache. Don’t wait for the endgame” (May 7, 2017):
- (i) “If you work at [Callidus], you still need to plan an exit. If you’re an officer or director, you really need a lawyer” (May 9, 2017):
- (j) “... one wonders if Hilco Appraisal Services and [Callidus] operate at arm’s length” (May 15, 2017):
- (k) “The word is out – take [Callidus’] money and your business is gone” (May 15, 2017)”

- (l) “Do you still work at Catalyst? Do you still think your carry is worth one thin dime? You still need to leave. You still need a lawyer” (June 15, 2017);
- (m) “It would be easier for a camel to pass through the eye of a needle than for [Callidus] to attract a third party buyer” (June 20, 2017);
- (n) “There’s life after Callidus. First get out. Then, blow the whistle” (July, 26, 2017);
- (o) “McNish again proving her chops with [Callidus] fraud story in WSJ” (August 9, 2017);
- (p) “Temperature rising at [Callidus] ... - do you know who your whistleblowers are?” (August 14, 2017); and
- (q) a photograph of a pack of wolves with the caption “The scariest beasts are the ones that roam your mind” (September 28, 2017).
56. ~~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, including those third parties identified in paragraph 182 below or other events.
57. ~~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**
58. By September 2016, Boland and West Face had a strong animus against Catalyst and Callidus, and against Newton Glassman (“Glassman”), Catalyst’s principal, because of prior

and ongoing litigation between Catalyst and Callidus against West Face and Boland. Specifically, Boland and West Face took great exception to the fact that Catalyst and Callidus had instituted and was continuing to prosecute claims against them to assert the rights and protect the interests of Catalyst and Callidus. Specifically, Boland and West Face were aggravated by the fact that Catalyst instituted and was continuing a lawsuit against West Face and Brandon Moyse (former Catalyst employee that joined West Face), for the misuse of Catalyst's confidential information to acquire "Wind Mobile". They were also very upset and aggravated by the fact that Catalyst had instituted and was continuing a lawsuit against VimpelCom, West Face, and several other defendants alleging (among other things) breaches of Catalyst's contractual rights in relation to VimpelCom's sale of WIND Mobile in July-September 2014. Boland and West Face knew that if this lawsuit proceeded to full productions, discovery, and a trial on the merits of Catalyst's allegations, serious improprieties by them and the other defendants in connection with the sale of WIND would be exposed. Boland and West Face were also strongly hostile to Catalyst and Callidus for having commenced a lawsuit against West Face and Veritas Investment Research Corporation for damages for defamation, conspiracy and intentional interference of economic relations associated with a prior wrongful short selling attack on Callidus Shares from fall 2014 to mid-2015 (the "Veritas Action"). As a result of these ongoing lawsuits, Boland and West Face had come to despise Catalyst, Callidus and Glassman and resulted in a very intense personal animus against them that has continued ever since.

59. ~~56.~~ Initially, in or about late 2015, West Face retained Bruce Livesey ("Livesey"), an investigative journalist, to write a false and disparaging 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.

60. 57. As pleaded below, Livesey's efforts failed. However, during the course of Livesey's "investigation", he was directed by Boland and West Face to speak ~~spoke~~ to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

61. 58. As described below, in or about mid to 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. By this time, West Face and Boland had decided to do whatever they could to harm Catalyst, Callidus and Glassman. They devised and implemented a plan to harm them, after their efforts to engage Livesey to publish a disparaging article about Catalyst, Callidus and Glassman had not succeeded in attracting any mainstream media publication interest.

62. As a result, Boland and West Face contacted:

- (a) The Guarantor Conspirators, namely Baumann, McFarlane, Levitt and Molyneux, who were facing personal guarantee collection actions by Callidus in Canada;
- (b) Levy and Jaross, who were facing collection proceedings by Callidus in Texas based on a guarantee Levy and Jaross had signed to support a loan from Callidus to a U.S. company operating in Brownsville Texas, known as Esco Marine; and
- (c) Gerald Duhamel ("Duhamel"), the President of Bluberi Gaming Technologies Inc. ("Bluberi"), a borrower of Callidus that had filed for CCAA protection in November 2015, and who subsequently began communicating with the other Guarantors and agreed to conspire to harm the Plaintiffs and otherwise provide his support, information, and advice to the Guarantors in their concerted action against them.

63. In or about mid to late 2016, Boland and West Face also identified and contacted the following additional persons who also had an animus against Catalyst, Callidus and Glassman to induce them to conspire to injure them:
- (a) Anderson and Anderson's company Clarity;
  - (b) Kassam and the other Anson Defendants (as defined herein); and
  - (c) Wes Voorheis ("Voorheis"), a lawyer and activist investor.
64. Boland and West Face engaged in a series of meetings, telephone conversations and written communications with the above persons for the purpose of inducing and securing their agreement to conspire to harm the Plaintiffs and to implement the Conspiracy.
65. For example, in September 2016, Boland contacted Levy to describe his and West Face's plan and to induce Levy and the Guarantor Conspirators to conspire to injure the Plaintiffs. On or about September 26, 2016, Boland had a lengthy conversation with Levy, during which Boland related his animosity towards Catalyst, Callidus and Glassman, impugned their integrity and their business practices, and accused them of fraud. Boland also advised Levy that the largest investors in the Catalyst managed funds included two significant institutions based in the United States, and that Callidus had marketed and sold part of its Initial Public Offering in the United States. Boland communicated these specific facts to Levy to make sure that Levy and the Guarantor Conspirators believed that Catalyst and Callidus were subject to the oversight of the U.S. Securities and Exchange Commission ("SEC"). Boland did so because part of the plan he had devised included making complaints about Catalyst and Callidus to the SEC as further described below.

66. Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would undermine the credibility of any complaints authored by them, and would confirm their plan to harm Catalyst, Callidus and Glassman in any way possible.
67. In fact, as Boland and West Face had anticipated and intended, Levy immediately spread the information he had received on September 26, 2016 from Boland to, among others, Levitt, Molyneux, Baumann, McFarlane, Jaross, Duhamel and his partner/associate, Marie-Claude Lapierre.
68. As a result of the above-noted conversation with Levy, and additional communications shortly thereafter, Boland and West Face were able to confirm that Baumann, McFarlane, Levitt and Molyneux, Jaross and Levy were still working together against Callidus. Boland and West Face also became aware that the above named individuals were personally very antagonistic to Catalyst, Callidus and Glassman, that they were desperate to avoid and deflect the guarantee claims against them, that they had coordinated their defences to the Guarantee Actions, and that they were willing to conspire with Boland and West Face to injure the Plaintiffs and implement the Conspiracy.
69. Boland also knew that Voorheis held a very strong personal animus towards Catalyst, Callidus and Glassman because of a bitter dispute which had arisen between Glassman and Voorheis in the Hollinger – Conrad Black legal proceedings over 10 years previously.
70. Boland contacted Voorheis to induce him to conspire to harm Glassman, Catalyst and Callidus. Voorheis readily agreed. Boland then introduced Voorheis to Levitt, McFarlane, Molyneux, Baumann, Jaross, Levy and/or Duhamel. From that time onwards, Voorheis

remained in close contact with these individuals to assist and be part of the plans to harm Catalyst, Callidus and Glassman.

71. Indeed, following his discussion with Boland, Levy reported to the Guarantor Conspirators that he intended to call Voorheis, who he was told was apparently “closer to striking”.
72. The following day, on or about September 27, 2016, Levy did contact Voorheis and advised Voorheis of the allegations and information from Boland about the potential jurisdiction of the SEC over Catalyst and Callidus. Voorheis advised Levy that he had decided that he too intended to strike out at Glassman, Catalyst and Callidus.
73. During October-November 2016, with encouragement and additional assistance from Boland and West Face, the Defendants Levitt, McFarlane, Molyneux and Baumann, as well as Levy, Jaross, Duhamel and Voorheis, remained in close communications with each other regarding the Conspiracy. As a result, they agreed and decided to make allegations and file false complaints with the OSC and SEC alleging fraud and similar criminal and quasi-criminal misconduct against Catalyst, Callidus and Glassman, and to harm them by disparaging them in whatever way they could. This included making false allegations, including that under Catalyst’s direction, Callidus had and was continuing to operate a criminal “loan to own” business, that Callidus’ business practices were to trick and mislead its borrowers and prospective borrowers, that Callidus frequently made fraudulent misrepresentations to its borrowers, that Callidus often failed or refused to live up to its legal obligations, and that Catalyst, Callidus and Glassman were dishonest and untrustworthy. These false allegations were repeatedly made in furtherance of the Conspiracy to whoever would listen, and enabled the Defendants to achieve their intended purpose of causing economic harm to the Plaintiffs and illicit unlawful gains through the short attack of Callidus Shares. The Defendants knew

or ought to have known that these allegations were false as many of the very same allegations had already been advanced by some of the Guarantor Conspirators in litigation with Callidus and rejected by the Courts.

74. ~~59.~~ Around the same time, West Face, Boland and/or Voorheis also encouraged another fund, the Anson Defendants to support its planned short attack. Amongst other things, West Face, Boland and/or Voorheis disclosed to Kassam, Puri and Spears Anson the identity of the Guarantors and their knowledge of coordination between the Guarantors.

75. Kassam held an animus against Glassman because of a business dispute between Catalyst and the Corporate Anson Defendants regarding the Corporate Anson Defendants' use of the name "Catalyst". In addition, Kassam was and is a business colleague and personal friend of Boland and from time to time the Corporate Anson Defendants and the West Face have collaborated in making joint investments in businesses and corporate entities, including engaging in coordinated short selling and other investments in such enterprises.

76. At the inducement of Boland and West Face and Voorheis, Kassam caused and directed the Corporate Anson Defendants, Puri, and Spears to participate in the conspiracy to harm Catalyst and Callidus, and subsequently directed, controlled and participated in the decisions by the Corporate Anson Defendants, Spears, Puri, and himself to be part of the Conspiracy, to approve, assist and participate in the acts in furtherance of the Conspiracy, and ultimately engage in the illicit and wrongful short selling in Callidus Shares pleaded herein.

77. ~~60.~~ In late 2016, West Face, Boland and Voorheis also made contact with Anderson and Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged Anderson and Clarity to participate in the Conspiracy and in the upcoming wave of short attacks against Callidus.

78. As a result, Anderson and his company Clarity were induced to and agreed to conspire with the others to harm Catalyst and Callidus. In or about November 2016, Anderson was introduced to Levitt, Molyneux, McFarlane, Baumann, Levy and Duhamel.
79. To facilitate the preparation, sharing and dissemination of false information and allegations accusing Catalyst, Callidus and Glassman of serious misconduct, fraud and other criminal or quasi-criminal wrongdoing, the Wolfpack Conspirators and the Guarantor Conspirators, among other things:
- (a) Established a data room where such false information were shared and allegations were repeated; and
  - (b) Provided Anderson and Clarity with access to a Dropbox facility containing the false information and allegations to facilitate their continuing participation in the Conspiracy.
80. In addition, to further discredit and cause harm to the Plaintiff, in the latter part of 2016, Baumann wrongfully procured a highly confidential list of all of Callidus' borrowers and loan accounts and other private and confidential Callidus documents. This information constitutes material non-public information concerning Callidus, a public issuer. These confidential documents containing material non-public information were then openly shared on or about December 2, 2016 amongst the Defendants, either directly or through the use of the Dropbox facility referred to above, and/or other means known to the Defendants but not to the Plaintiffs.
81. Instead of immediately returning this material non-public information to Callidus when they knew or ought to have known that it was wrongfully obtained by Baumann, the Defendants

used the material non-public information contained therein in furtherance of the Conspiracy, including the short attack which occurred in August 2017, in violation of applicable securities laws.

82. ~~61. In or about~~ Thus, by 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”).

83. ~~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.

84. ~~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.

85. ~~64.~~ The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they would spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators and Anderson/Clarity would file false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) and/or the SEC to “confirm” the rumours (the “Complaints”). Third, once the false whistleblower Complaints were filed, the Wolfpack Conspirators and the Guarantor Conspirators would worked together to leak the existence and the substance of the allegations contained in the Complaints to the media and to the police in order to generate media interest. Fourth, the Wolfpack Conspirators,

either directly or indirectly, would take ~~took~~ short positions in Callidus Shares, through the co-conspirator, Langstaff at Canaccord and others. Fifth, the Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Anderson would cause a false and defamatory ~~time~~ a media report about the Complaints to be released near the end of a trading day, which would caused the price of Callidus Shares to rapidly decline. Finally, the Wolfpack Conspirators would closed out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders. This plan was in fact executed.

86. In furtherance of the Conspiracy, the Defendants frequently communicated with each other and met in person to discuss and implement the Conspiracy. These communications included discussions about and agreements to make allegations about Catalyst and Callidus that included the following:

- (a) Callidus had falsely overstated the credit worthiness of its loan portfolio and had issued false statements about its loans to the public at large;
- (b) Catalyst had entered into numerous fraudulent related party transactions;
- (c) Catalyst and Callidus had engaged in money-laundering schemes; and
- (d) Catalyst and Callidus were guilty of fraudulent lending practices

The full particular of the places, dates, times, content of these communications and meetings to implement and carryout the Conspiracy are not known to the Plaintiffs. The Defendants were keenly conscious of the need for secrecy around their activities. For example, on December 31, 2016, Levitt cautioned Levy that “we have to be discrete about what we are doing”.

87. ~~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.
88. ~~66.~~ The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff, and Copeland 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 Wolfpack Conspirators and Guarantor Conspirators compelled at least some of the Guarantors to sign nondisclosure agreements to prevent them from disclosing information relating to the Conspiracy.
89. Some or all of the Defendants also used encrypted and self-destructing messaging applications, such as “Confide”, to communicate in an effort to avoid leaving any trace of their activities. “Confide” is reputed to be an application, available online, which serves as a “confidential messenger” to enable users to communicate with each other “with the same level of privacy and security as the spoken word” and gives its users the “comfort” of sending “encrypted, self-destructing and screenshot-proof messages” with the knowledge that their “private communications will now truly stay that way.”
90. The full particulars of the details of the Defendants’ use of “Confide” to communicate with each other are currently unknown to the Plaintiffs. The Plaintiffs have knowledge however that on April 12, 2017, Levitt suggested to Langstaff that they should continue their communications about the Plaintiffs using “Confide” so that they could “chat [about the Plaintiffs] confidentially with encrypted and disappearing messages”. While employed by Canaccord Genuity, Langstaff agreed to do so and he and Levitt communicated about the

Plaintiffs using Confide on dates and times known to them, and not currently known to the Plaintiffs.

91. As a registrant with the OSC and the SEC and as an employee of Canaccord Genuity (a registrant with the OSC and the SEC), Langstaff's use of "Confide" to conceal his communications with Levitt was in violation of (i) the applicable rules, regulations, and policies of the securities regulators; (ii) the standards and practices of the investment dealer and brokerage industry; and (iii) Canaccord Genuity's own rules, policies and code of conduct.

**(F) CONSPIRATORS ABUSE ~~OSC'S~~ WHISTLEBLOWER PROGRAMS**

92. ~~89-67.~~ The first next 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~~ other abusive practices in relation to Ontario securities laws to come forward and make anonymous complaints about such matters without fear of reprisal.

93. ~~90-68.~~ In furtherance of the Conspiracy, and with information from and at the direction of the Wolfpack Conspirators, ~~four~~ of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity ~~(or~~ as well as Anderson), with the assistance of the Wolfpack Conspirators agreed to file false and defamatory whistleblower Complaints (the "Complaints") with the OSC and/or the SEC 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 and the SEC.

94. 91. Prior to making false “whistleblower” complaints with the OSC and the SEC, in the third week of November 2016, Levitt (with the knowledge, approval and direct involvement of West Face, Boland, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors) contacted Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC.

95. 92. Levitt told Watson that Catalyst, Callidus and Glassman had been guilty of serious offences, including but not limited to fraudulent business and lending practices, penal offences in respect of Callidus’s financial affairs, and other criminal or quasi-criminal misconduct. These allegations were wholly false.

96. 93. These communications were made with the intention that the false allegations would be conveyed by Watson to other counsel within the OSC’s Enforcement Branch and with the law enforcement authority known as the Joint Serious Offences Team (“JSOT”), and that the OSC and JSOT would immediately institute an investigation and commence proceedings against the Plaintiffs.

97. 94. Plaintiffs plead that the above communications and allegations made to Watson and JSOT are separate and outside the scope of the OSC whistleblower program. Indeed, Watson declined to attend the December 7, 2016 meeting with OSC personnel regarding the whistleblower complaint, referred to below, as he knew that his participation in that process would taint the entire “whistleblower” process.

98. 95. In furtherance of the Conspiracy, in late 2016, Boland had further discussions with the Guarantor Conspirators in which he supplied them with false information that they could use in fabricating their allegations to the OSC and the SEC. For example, Boland and West Face provided Levy with copies of their Statement of Defence in the Veritas Action. They did so with the intention that Levy would pass on the allegations of misconduct and impropriety made in their Statement of Defence to Levitt, Molyneux, McFarlane, Baumann, Anderson and Duhamel, and that they would use those allegations to disparage Callidus, including in the intended communications to the OSC and JSOT which formed part of the Conspiracy. In fact, Levy did so, and the false allegations were used for the very purposes as planned by Boland and West Face, and agreed to by Levitt, Molyneux, McFarlane, Baumann and Anderson.

99. 96. Boland and West Face provided additional assistance the Guarantor Conspirators, Duhamel and Levy in the plan to harm Catalyst. This included:

- (a) On or about November 30, 2016, Boland and West Face authorized and directed their external counsel, Matthew Milne-Smith of Davies (“Milne-Smith”), to introduce Levitt to a class action litigator in the United States for the purpose of filing a RICO action against Catalyst and Callidus. Milne-Smith had discussions and exchanged correspondence with Levitt on this subjection. In so doing, Boland and West Face knew there was no basis for any such action. However, they hoped and intended that the corrupt practices which would be alleged in such an action would become public knowledge and that this would advance their plan to harm Catalyst, Callidus and Glassman by whatever means possible;

- (b) On or about December 3, 2016, Boland and West Face authorized and directed West Face's internal counsel, Philip Panet ("Panet"), to advise Levitt of a specific section of Callidus's 2015 MD&A referring to a loan with McFarlane's company, XTG. This was done to set the stage for false allegations conveyed by Boland to Levy, referred to below, about this loan. Panet had discussions and exchanged correspondence with the Guarantor Conspirators as instructed;
- (c) On or about December 3, 2016, Boland personally contacted Levy and falsely told Levy that Catalyst had improperly and fraudulently moved the XTG loan onto unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst;
- (d) On a date unknown to the Plaintiffs, Boland also authorized and directed Milne-Smith to assist the Guarantor Conspirators by providing them with, amongst others, a West Face "research report" which West Face used in the illicit short selling attack on Callidus Shares in 2015-2016 which is the subject of the Veritas Action. Milne-Smith, in turn, was in contact with the Guarantor Conspirators to provide this and other information to them; and
- (e) On January 20, 2017, Panet provided Levitt with a copy of a document which contained details about one of Callidus' borrowers which was then promptly provided (to Panet's knowledge) to the other Guarantor Conspirators and Anderson/Clarity.

100. 97. The above steps and communications were undertaken by Boland and West Face in furtherance of the Conspiracy and with the knowledge and intention that the false allegations and the assistance provided would be:

- (a) Shared among Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors; and
- (b) Used by the Guarantor Conspirators and Anderson in their communications with the SEC, OSC Enforcement Staff, JSOT, and in the planned meeting with the OSC Staff to file their whistleblower complaint.
101. ~~98.~~ In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.
102. ~~99.~~ To the knowledge of and with the agreement, assistance and support of the Wolfpack Conspirators and the Guarantor Conspirators, on or about December 7, 2016, Levitt met with OSC personnel. Among other things, he followed a carefully scripted “playbook” and showed them a powerpoint presentation which falsely alleged that Catalyst, Callidus, and Glassman had been guilty of serious misconduct, fraud and other criminal and quasi-criminal wrongdoing.
103. ~~100.~~ The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.
104. ~~101.~~ All of the above steps were taken with the knowledge, participation and consent of the Wolfpack Conspirators and the Guarantor Conspirators for the purpose of (i) persuading the OSC (and JSOT) to commence criminal or quasi-criminal proceedings against Catalyst, Callidus and Glassman, and (ii) to enable them to leak the contents of their false complaints to the media and to the police in furtherance of their purpose to harm the Plaintiffs and to enable the illicit short selling gains to be realized as part of the Conspiracy.

105. ~~102. 69.~~ The “complainants” disclosed the Complaints, or In addition, as described below, the Guarantor Conspirators, acting in concert with and at the direction of each of the Wolfpack Conspirators, supplied information relating to the existence and the substance of the Complaints, to WSJ reporters in New York and Toronto to encourage and induce them to publish false media articles, as described below.

106. ~~103. They~~ The Wolfpack Conspirators and the Guarantor Conspirators 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 cause third parties, including those identified in paragraph 182 below, to believe that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were the subject of to “investigation” by the securities regulators and the police; 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.

107. ~~104. 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 allegedly 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.

108. ~~105. 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.
109. ~~106. 72.~~ The sole motivation for filing the Complaints was in furtherance of the Conspiracy.
110. ~~107. 73.~~ The intention and purpose of the Complaints was to enable the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff 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.
111. ~~108. 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 Wolfpack Conspirators, the John Does, and Langstaff to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.
112. ~~109.~~ In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them,
113. ~~110.~~ Between December 2016 and February 2017, Anderson continued to receive and exchange information with the Wolfpack Conspirators and the Guarantor Conspirators about

the Plaintiffs. Anderson also communicated with them about their allegations and the “next steps” in the Conspiracy. The purpose was to enable the Wolfpack Conspirators and the Guarantor Conspirators to coordinate their continuing implementation of the Conspiracy and to facilitate the filing of false complaints with the SEC, which was something that Anderson, Voorheis and Boland had been tasked with accomplishing. Particulars of some of these communications include the following:

- (a) On December 20, 2016, Voorheis, McFarlane, Levitt and Anderson had a conference call to discuss their shared interest in “seeing [Newton Glassman] face justice”;
- (b) On January 20, 2017, the Guarantor Conspirators and Levy/Molyneux had a conference call with Anderson to receive an update from him, and to receive his instructions on “next steps”;
- (c) On February 15, 2017, Levitt and Duhamel arranged for a conference call with Anderson so that Anderson could answer “some questions”;
- (d) On February 16, 2017, McFarlane reached out to Anderson and Levitt and provided website links to two media reporters. This was done further to Anderson’s instructions to the Guarantor Conspirators to come up with names of reporters who would be interested in publishing a story based on the submission of the false complaints to the authorities and regulators that the Conspirators had prepared or were preparing;
- (e) On February 24, 2017, McFarlane again reached out to Anderson and Levitt and identified another Catalyst portfolio company as one that “would be very vulnerable to some of the concerns that may form an SEC complaint”; and

- (f) On February 28, 2017, McFarlane provided Anderson with contact information for management of two of Callidus' borrowers so that Anderson could reach out to them directly.
114. 411. In addition, on February 13, 2017, Levitt was directed by one or more of the Wolfpack Conspirators and the Guarantor Conspirators to contact Marc Cohodes ("Cohodes"), a known short seller based in the United States. This contact was made to obtain assistance in formulating false allegations against Callidus, and to facilitate the implementation of the Conspiracy. The Wolfpack Conspirators and the Guarantor Conspirators remained in contact with Cohodes throughout 2017 and up to and including 2019 for the purposes of causing economic harm to the Plaintiffs. Cohodes was and is closely associated with the Anson Defendants and invests money with them, and therefore stood to benefit financially from the participation of the Anson Defendants in the Conspiracy.
115. 412. On February 27, 2017, Boland and Levy had another telephone call, this time to discuss Callidus' claim against its former employee, Craig Boyer ("Boyer"). Levy reported on this call to the Guarantor Conspirators and Duhamel.
116. 413. By early March 2017, Voorheis was also still actively assisting the Wolfpack Conspirators and the Guarantor Conspirators, including by (a) making attempts to elicit information helpful to their false allegations from and related to Boyer, and (b) assisting in the coordination of the Conspiracy and the filing of the complaint to the SEC. Particulars of some of these steps include the following:
- (a) On March 2, 2017, McFarlane spoke with Voorheis and reported on the conversation to Levy. McFarlane reported that Voorheis said that he "made contact with Boyer's lawyer". Voorheis provided Boyer's lawyer with false information about the XTG

loan. In that same report, McFarlane advised Levy that Anderson had “been in Toronto for the last 2 days” and that McFarlane had asked Anderson to call him with an update. While in Toronto, Anderson met with Boland and Voorheis, amongst others;

- (b) On March 3, 2017, in response to a request for any news or development from Levitt, McFarlane responded that he would “stay in close contact with Wes so all our efforts are coordinated. Their stock is down about a dollar for the week-high of \$19.12 and around \$18.20 right now.” The need for close co-ordination expressed by McFarlane was because the planned public disclosure to the media of the false whistleblower complaints had to coincide with the short selling being implemented by Anderson, Boland, West Face, Voorheis, Langstaff, the Anson Defendants, and others. McFarlane had previously warned the Guarantor Conspirators against personally taking a short position in Callidus in order to keep the activities of the group as covert as possible; and
- (c) On March 22, 2017, McFarlane travelled to Toronto to meet in person with Voorheis to discuss the precise implementation of the Conspiracy. McFarlane’s trip to Toronto also included meetings with Langstaff, who through his employment as a broker-dealer at Canaccord was assisting the Defendants with their short-selling attack, and with John Tilak, a Toronto based reporter with Thomson Reuters.

117. 114. Throughout this period, the Anson Defendants were also involved in numerous discussions with Cohodes, Langstaff and other third parties known to the Defendants regarding the Conspiracy against the Plaintiffs. These communications and meetings were attended by senior executives of the Corporate Anson Defendants, including Kassam, Spears

and Puri, during which discussions were held and meetings were conducted with Cohodes and other persons known to the Anson Defendants, including the following:

- (a) An exchange of messages in May 2016 between Kassam and Langstaff whereby Langstaff, while employed by Canaccord Genuity, asked Kassam to provide him with the email address of Cohodes; declared that “[Callidus] must be stopped”; and instructed Kassam to “short” Callidus;
- (b) In the same message exchange, Kassam provided Langstaff with Cohodes’ email address told Langstaff to “Call ADAM [Spears] tmrw” as it would be “Best he [Spears] make the intro” to Cohodes. Langstaff in reply said “No problem. Hat tip to [S]pears on this one – wouldn’t have happened without him”;
- (c) ~~(a)~~ A meeting in December 2016, between the Anson Defendants and others in which plans were discussed to file a number of whistleblower complaints against several Canadian companies in order to legitimize short-selling activities that were to be undertaken by the Anson Defendants in conjunction with the Wolfpack Conspirators and the other John Does;
- (d) ~~(b)~~ A meeting by Kassam and Cohodes on or shortly before January 9, 2017, which Cohodes referred to as being “a perfect meal after a great day with members of the conspiracy”;
- (e) ~~(e)~~ A meeting at the Corporate Anson Defendants’ offices at 155 University Avenue in Toronto, in or about February 2017 during which Spears stated that “Glassman had made himself a target”, that Anson had received disparaging allegations about Catalyst and Callidus from Langstaff at Canaccord, and discussed “working up a

fraud complaint” against the Plaintiffs. Langstaff and Canaccord were described by Spears to be friends of Boland;

(f) ~~(d)~~ A meeting on or about March 5, 2017, at an unknown place, when Spears alleged that according to Langstaff, Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices. Spears also alleged that Langstaff and possibly one other person was a source for this “intel”; and

(g) An exchange of messages on March 23, 2017 whereby Kassam asked Langstaff, a day after Langstaff had met with McFarlane who had spoken to Anderson and was advised that Anderson was 2-3 weeks away from filing an SEC complaint, whether “[Langstaff]” had any draft for [Kassam]”;

(h) In the same message exchange, Langstaff advised Kassam that “I don’t have [a draft] yet” but went on to state he did “have something new though”, namely Langstaff alleged that there was “an undisclosed related party transaction that hides a loss”. Langstaff was referring to certain previously disclosed transactions relating to XTG which were later the subject of widespread false allegations made by the conspirators;

(i) A follow up meeting between Kassam and Langstaff arranged in June 2017;

(j) ~~(e)~~ A dinner meeting at Barbarians restaurant in Toronto on or about July 14, 2017, attended by Kassam, Spears, Puri , Cohodes and approximately 10 other people whose identities are known to the Anson Defendants, during which the allegations referred to above were discussed as well as the SEC complaint that had been recently filed against Catalyst and Callidus by Anderson and other members of the

Conspiracy, the attempts to cause Reuters to publish false articles about the Plaintiffs, and the next steps that would be taken in furtherance of the Conspiracy.

118. While employed by Canaccord Genuity, Langstaff also engaged in numerous acts and communications with the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes in furtherance of the Conspiracy. Particulars of these acts and communications include the following:

- (a) on March 24, 2017 Langstaff told Levitt that a loan in Callidus' portfolio known as the "Leader [Energy] loan" was a "dismembered corpse" and that Callidus was getting ready to "stuff" this loan into another borrower with whom Callidus had a business relationship, in order to "hide the loss";
- (b) on March 28, 2017, Langstaff and Levitt discussed how best to make and substantiate fraud allegations against Catalyst and Callidus which they and their co-conspirators were and were intending to disseminate;
- (c) on March 29, 2017, Langstaff told Levitt that Callidus was probably about to take steps to "tap the guarantee on Bluberi" and of his conversation with the principal of Blueberi, "Gerrard" (Duhamel), about steps that Duhamel had taken or was about to take to disparage Catalyst and Callidus;
- (d) on March 30, 2017, Langstaff told Levitt that according to a "friend" of Langstaff (referring to Boland), an internal Callidus loan officer could be contacted to obtain allegations and or information thought to be harmful to the Plaintiff;
- (e) on April 12, 2017, Langstaff told Levitt that Callidus' growth was "severely negative";

- (f) on April 21, 2017, Langstaff was told by Levitt that a District Court Judge in Texas had “found instances of fraud” by Callidus in relation to Esco Marine and the guarantor actions against Levy and Jaross;
- (g) on April 25, 2017, Langstaff contacted Levy of Esco Marine and advised that “Greg Boland is a friend of mine”; he was “helping West Face” and was looking for “details”;
- (h) on April 30, 2017, Langstaff was told by Levitt that he was “Dropping off evidence binders tonight to police HQ. We can supplement with other new info” and that Nathan [Anderson] is coming tomorrow and Tuesday”;
- (i) on May 2, 2017, Langstaff and Levitt shared copies of questions which they and their co-conspirators had provided to the media and to analysts including a supposedly independent analyst at Canaccord Genuity covering Callidus, for the purpose of eliciting answers from Callidus which they hoped would be used to generate disparaging reports harmful to the Plaintiffs;
- (j) on May 3, 2017, Langstaff told Levitt that Callidus’ numbers were “horrific” and that “now is the time to go after Glassman”;
- (k) on May 3, 2017, Langstaff represented to Levitt that “Glassman had violated TSX rules”; that with “one good SWAT at [Glassman]” the conspirators “might get [Glassman] to lose control and that he was “trying” to make this happen;
- (l) on May 12, 2017, Langstaff received from Levitt numerous documents including materials which the Guarantor Conspirators delivered to JSOT, to be used and

distributed by Langstaff to “get some media traction” in furtherance of the Conspiracy;

- (m) on May 15, 2017, Langstaff told Levitt that he suspects that Hilco, a well-known and independent appraiser retained by Callidus to value Esco Marine and Bluberi, was “on the take from Callidus” to enable Callidus to “call in the loan[s]”; and
- (n) on June 3, 2017, Langstaff was told by Levitt that he supposedly had “evidence of ... money laundering” by Callidus and that “Reuters [was] working hard now”.

119. The communications between Langstaff and the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes also included material information which was not publicly known at the time of their communications, but which was being shared to assist in the circulation of disparaging allegations about the Plaintiffs, in furtherance of the Conspiracy. The sharing and circulation of such non-public material information for the above purposes occurred through and as a result of numerous communications among Levitt, Langstaff, and the other Defendants. Particulars of these communications include the following:

- (a) on March 28, 2017, communications by Levitt to Langstaff regarding (i) a PwC valuation of Bluberi obtained by Callidus, and (ii) future legal proceedings which had been described by Gerry Duhamel to Levitt, in which the PwC valuation was going to be disclosed by him; and
- (b) on May 3, 2017, communications by Levitt to Langstaff regarding evidence that was sealed and subject to a protective order, which had supposedly been considered by a District Court Judge in Texas, and who Levitt falsely alleged had found that Callidus had been guilty of fraud in its dealings with one of its borrowers, Esco Marine.

120. During the course of the numerous acts and communications by Langstaff with the Wolfpack Conspirators and the Guarantor Conspirators, Langstaff:

- (a) shared information with Boland, who he referred to as his “friend” with the other participants in the Conspiracy;
- (b) received documents and communications from and made by, or prepared at the direction of, his fellow participants in the Conspiracy, which disparaged the Plaintiffs;
- (c) circulated materials which he believed would further help the Conspiracy to succeed;  
and
- (d) encouraged the other participants in the Conspiracy by praising them for their efforts and by inciting their continued participation in the Conspiracy.

121. In furtherance of the Conspiracy, Langstaff breached his fiduciary duties owed to the Plaintiffs and also engaged in improper activity with the predominate purpose of harming the Plaintiffs. Langstaff was reprimanded by Canaccord Genuity on August 9, 2017 for divulging information to a short seller of a stock of another client in breach of Canaccord Genuity’s Confidentiality & Non-Disclosure Policy. Langstaff was terminated by Canaccord Genuity the following month on September 26, 2017.

122. 115. In addition, as a result of these meetings and other communications among them, by the third week in April 2017, the Wolfpack Conspirators and the Guarantor Conspirators had prepared and distributed further written materials falsely accusing Catalyst, Callidus and Glassman of criminal wrongdoing, which the Conspirators intended to provide to the SEC, JSOT, and the Toronto Police Service. Like the allegations contained in the other materials

which had previously been prepared, circulated and utilized by the Complainants when they met with the OSC in December 2016, the allegations in this documentation were false.

123. 116.-In or about mid-April 2017, some or all of the Wolfpack Conspirators and Guarantor Conspirators had also contacted the Toronto Police Service for the purpose of making false allegations of criminal offences against Catalyst, Callidus and Glassman. These contacts were made by the Wolfpack Conspirators and Guarantor Conspirators to Gail Regan and Dianne Kelly of the Toronto Police Service. The purpose was to harm Catalyst, Callidus and Glassman and to make it possible to allege to the media that an active criminal investigation into frauds allegedly committed by Catalyst, Callidus and Glassman was underway by the responsible authorities. In furtherance of this element of the Conspiracy, the Wolfpack Conspirators and Guarantor Conspirators remained in contact with Regan and Kelly throughout April – May 2017, including but not limited to direct contacts on or about June 5, May 30, June 14-15 and July 6, 2017. These contacts and communications included the preparation and delivery to the Toronto Police Service of a document entitled “Callidus Fraud” and a request in early July 2017 that a formal fraud investigation be commenced.

124. 117.-The Toronto Police Service cautioned the Defendants about making any public reference to any “investigation” by the Toronto Police Service and ultimately, the Toronto Police Service confirmed to them that no investigation of Callidus or Catalyst would be commenced. However, none of this stopped the Wolfpack Conspirators and Guarantor Conspirators from relaying that false information to the media, as described below.

125. 118.-By this time, the Wolfpack Conspirators and Guarantor Conspirators had also filed, with the direct assistance and participation of Anderson, a false complaint with the SEC and OSC alleging that Catalyst, Callidus and Glassman were guilty of serious criminal misconduct.

126. ~~119.~~ The above acts were all in furtherance of the Conspiracy, including the plan by the Conspirators to persuade the financial media to publish false stories alleging that Catalyst, Catalyst and Glassman were the subject of active fraud investigation by the Toronto Police Service and by JSOT.

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

127. ~~120.~~ ~~75.~~ In or about spring 2017, the Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting newly identified journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

128. ~~121.~~ ~~76.~~ ~~Initially, the Wolfpack Conspirators and the Guarantor Conspirators~~ As pleaded above, initially, Boland and West Face had engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. ~~The Wolfpack Conspirators~~ West Face and Boland agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

129. ~~122.~~ ~~77.~~ As a result, Livesey drafted a story based on information fed to him by one or more of the Wolfpack Conspirators and the Guarantor Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

130. ~~123.~~ ~~78.~~ ~~In furtherance of the Conspiracy, the Wolfpack Conspirators~~ West Face and Boland 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.

131. ~~124.~~ ~~79.~~ Having been frustrated by the failure of ~~their first attempt~~, the above failed attempts, the Wolfpack Conspirators and the Guarantor 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 Wolfpack Conspirators and the Guarantor Conspirators intended to create the appearance of a credible news story about alleged nefarious practices and fraudulent practices at Callidus and Catalyst.

132. ~~125.~~ ~~80.~~ Callidus and Catalyst have positively denied any such “investigation”, and no such investigation was ever commenced.

133. ~~126.~~ ~~81.~~ The Wolfpack Conspirators and the Guarantor Conspirators approached Reuters in June 2017 and advised, with the existence of the Complaints, and encouraged Tilak and a New York based Reuters reporter, Lawrence Delevigne, to publish a negative story about Callidus and Catalyst, including falsehoods that active criminal investigations about the Plaintiffs and their businesses were actively underway by regulatory authorities, JSOT and the Toronto Police Services. Reuters decided not to publish this false story. Reuters did not publish the story despite the Wolfpack Conspirators’ and the Guarantor Conspirators’ best efforts to entice it to do so by alleging, among other things, that:

- (a) Catalyst had misled its investors about the valuation of assets held in Catalyst’s investment portfolios;
- (b) Callidus had misled its borrowers about loans extended to them by Callidus;
- (c) Callidus’ misconduct included criminal fraud in relation to its borrowing practices;
- (d) both Catalyst and Callidus had engaged in false and deceptive accounting practices in relation to a loan which had been extended to XTG;

- (e) Catalyst was under active investigation for fraud and other criminal misconduct in connection with the above matters by the OSC, JSOT and by the Toronto Police Service; and
  - (f) Callidus was also under active investigation for fraud and other criminal misconduct in connection with the above matters by JSOT and the Toronto Police Service.
134. 127. In addition, in or about late June or early July, 2017, one or more of the Wolfpack Conspirators and the Guarantor Conspirators also alleged that:
- (a) At least three separate “whistleblower” complaints had been filed with the OSC;
  - (b) One of the whistleblower complaints had been filed by the defendant Baumann and stated that Catalyst and Callidus had engaged in false and deceptive accounting practices with respect to XTG;
  - (c) Another whistleblower complainant stated that Callidus had misled its borrowers about their loans and had misled its shareholders about the value of Callidus’ assets, and,
  - (d) Another whistleblower complainant stated that Catalyst had misled its investors about the value of the investments in its portfolios.
135. 128. At times known to the Defendants but not to the Plaintiffs, one or more of the Wolfpack Conspirators and the Guarantor Conspirators continued to communicate with Reuters and to make allegations about Catalyst and Callidus, including the following:
- (a) Catalyst’s valuation procedures were flawed and improper and had been used to create an appearance of high but inaccurate returns in the Funds managed by Catalyst;

- (b) Catalyst's practices of using aggressive, inflated valuations had the effect of generating elevated fees for the benefit of Catalyst and Newton Glassman;
  - (c) Glassman had been unfairly and improperly enriched by such practices and fees;
  - (d) Catalyst's loan guarantees to Callidus had not been properly disclosed and created improper conflicts of interest; and
  - (e) Catalyst and Callidus continued to be under active criminal investigation by JSOT and the Toronto Police Service.
136. ~~129.~~ ~~82.~~ Prior to approaching Reuters, the Wolfpack Conspirators and the Guarantor Conspirators had 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 stories about Callidus and Catalyst. Those organizations also decided not to publish their stories.
137. ~~130.~~ ~~83.~~ After being rejected by these credible media outlets, the Wolfpack Conspirators and the Guarantor Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.
138. ~~131.~~ ~~84.~~ As a result of these continuing failures, in late July or early August 2017, the Wolfpack Conspirators and the Guarantor Conspirators contacted a different reporter, the Defendant 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.

139. ~~132.~~ ~~85.~~ Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Wolfpack Conspirators and the Guarantor Conspirators to further the Conspiracy.
140. ~~133.~~ The Wolfpack Conspirators and Guarantor Conspirators agreed that the Guarantor Conspirators and Anderson would disclose information relating to the fact and substance of the Complaints to Copeland, knowing and/or intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud and other improprieties by Catalyst and Callidus would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints 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 some number of them an opportunity to engage in profitable short selling of Callidus Shares, all of which was in furtherance of the Conspiracy.
141. ~~134.~~ ~~86.~~ Copeland was directed by the Wolfpack Conspirators and the Guarantor Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint fully expecting that Copeland would publish those statements in the WSJ. 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, maliciously made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. The words uttered by McFarlane meant and were understood to mean that Callidus and Catalyst conducted business in an unethical manner, engaged in improper accounting practices, were dishonest, lacked integrity, and ought not to be trusted.

142. Similar conversations occurred with Baumann, Molyneux, Levitt and Anderson during which, or as a result of which the following false and defamatory statements were made to Copeland on the direction, encouragement, inducement of and in consultation with the Wolfpack Conspirators and the other Guarantor Conspirators:

(a) Catalyst and Callidus are under active investigation by the Toronto police department and various regulators, including the OSC and the Alberta Securities Commission, regarding accounting irregularities, securities fraud and other criminal misconduct.

These words meant and were understood to mean that the Plaintiffs,

(i) operate their businesses in a manner that is contrary to applicable law and regulation;

(ii) are involved in fraudulent activity of the type public authorities ought to be concerned with; and

(iii) conduct business in a dishonest and unethical manner.

(b) Callidus and Catalyst failed to decrease the valuations of their loan collateral when companies in the Callidus portfolio ceased making interest payments or only made partial payments.

The words meant and were understood to mean that Callidus and Catalyst engaged in unethical accounting and other business practices so as to apply economic pressure on borrowers, for the unfair advantage of Callidus and Catalyst.

(c) Callidus and Catalyst engaged in fraud by misleading borrowers about deal terms in order to withhold funds from borrowers at critical times and to allow the debt to balloon in order to assume control and ultimately ownership of borrowers.

These words meant and were understood to mean that Callidus and Catalyst illegitimately exercised their control over the cash flow of borrowers to artificially create a situation of economic distress enabling them to wipe out equity holders.

(d) Catalyst misled its investors about the valuation of assets held in Catalyst's investment portfolios to collect fees and other payments to which it was not entitled and that Callidus had misled its borrowers about loans extended to them by Callidus.

These words meant and were understood to mean that,

(i) Catalyst misled investors in the funds it managed in order to collect management and other fees to which it was not lawfully entitled; and

(ii) Callidus misled its borrowers about the terms of the loan agreements they were entering into and how Callidus' rights under those loans would be exercised.

(e) Callidus and Catalyst falsely certified that their financial statements were prepared in accordance with IFRS and, in particular, that they failed to conduct an appropriate impairment analysis on the assets of the Callidus borrowers and Catalyst funds despite disclosures in their financial statements that such analysis had been done.

These words meant and were understood to mean that Catalyst and Callidus made material misrepresentations in their financial statements and that their financial disclosure ought not to be trusted.

143. 135. 87. During the course of writing the article requested by the Wolfpack Conspirators and the Guarantor Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

144. ~~136. 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.
145. ~~137. 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 Wolfpack Conspirators and the Guarantor 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.
146. ~~138. 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.
147. ~~139. 91.~~ In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.
148. ~~140. 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. Copeland and McNish acted maliciously.

149. ~~141. 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, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff were in communication about the timing of the story. They encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised them Conspirators that he would do so and he did. Copeland did so with the knowledge, intention and purpose of harming the Plaintiffs and benefitting himself, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff.

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

150. ~~142. 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.

151. ~~143. 95.~~ The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions ~~through~~ through Langstaff at Canaccord Genuity and others, who are known to the Defendants Conspirators but unknown to the Plaintiffs.

152. ~~144. 96.~~ Langstaff and others, who are known to the Defendants Conspirators but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. While employed by Canaccord Genuity, 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.

153. ~~145. 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.
154. ~~146. 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.
155. ~~147. 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.
156. ~~148. 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.
157. ~~149. 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.

158. ~~150-102.~~ 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.

159. ~~151-103.~~ At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on [thewallstreetjournal.com](http://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.

160. ~~152-104.~~ The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff intended — it impressed upon the general public, including the third parties identified in paragraph 182 below, that Callidus and Catalyst were under "investigation" by the authorities and that the "investigation" concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

161. ~~153-105.~~ In addition to publication online on thewallstreetjournal.com, a revised version of the Article was published in the August 10, 2017 print edition of the Wall Street Journal under the headline "Top Buyout Firm Scrutinized on Loans".

162. ~~154.~~ The Article was also 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.

163. ~~155. 106.~~ Just prior to the publication of the Article on August 9, 2017 and the close of market at 4:00 pm EDT the same day, the trading in Callidus stock revealed that 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 Defendants ~~Conspirators~~.

164. ~~156. 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.

165. ~~157. 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.

166. ~~158. 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.

167. ~~159. 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 earlier secured the naked short (and other simulated short positions) ~~at the beginning of the trading day.~~

168. ~~160. 111.~~ The Defendants' ~~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).

169. ~~161.~~ Shortly after the above short-attack, the Anson Defendants including Kassam retweeted on September 27, 2017, Cohodes' tweet that included the following: "This is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".

(I) **ARTICLE IS FALSE AND DEFAMATORY AND COMPLAINTS ARE FALSE**

170. ~~162. 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 The Article contains the following false and defamatory statements of and concerning the Plaintiffs:~~

(a) The Article's headline and first and second paragraphs state:

**“Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers**

Authorities looking into complaints that Catalyst inflated value of assets, deceived borrowers

...

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.”

...

Catalyst Capital Group Inc., one of Canada's largest private-equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities Commission, the country's leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.”

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
- (ii) Callidus ~~is~~ and Catalyst are engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal ~~or~~ wrongdoing
- (iv) Callidus and Catalyst are engaged in fraudulent activities in relation to Callidus's loan portfolios;
- (v) Callidus and Catalyst have violated Ontario Securities law; and

(vi) Callidus and Catalyst have made false and misleading representations to investors;

(b) A photograph of a Toronto Police car is published immediately after the headline of the Article along with a photo caption that states: “A unit of the Toronto Police Service has begun its own inquiries into Catalyst”. The third paragraph of the Article states: “A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a departmental spokeswoman said”.

These words meant and were understood to mean that:

(i) Catalyst and Callidus are engaged in criminal conduct;

(ii) Catalyst and Callidus defrauded investors; and

(iii) ~~(iv)~~ Callidus and Catalyst are under “investigation” for fraud or other illegal activity by the OSC and/or the Toronto Police Service;

(c) The six, ninth, twelfth, and twenty-sixth to twenty-seventh paragraphs of the Article state:

“...Catalyst mostly invests in high-interest loans to financially distressed firms such as casino game makers of biopharmaceutical companies, and sometimes takes control of the businesses if the loans aren’t paid

...

Some but not all of the filers of Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman’s firms, and later had their businesses seized, said people familiar with the matter.

...  
...

...Callidus’s lending practices are also a subject of the whistleblower complaints, according to the people and documents.

....

One of those borrowers is Jeff McFarlane.

Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report.

Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, “an amount equal to the total outstanding principal plus accrued and unpaid interest,” filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and Catalyst delayed and underreported potential losses. ‘I have serious concerns about the integrity of Callidus’s accounting around XTG,’ Mr. McFarlane said.’

These words meant and were understood to mean that:

- (i)     (↖)–Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
  
- (ii)    (↖i)–Callidus and Catalyst improperly file “multiple lawsuits” against borrowers;
  
- (iii)   Callidus and Catalyst improperly “seize” companies to whom loans have been made;

- (iv) ~~(vii)~~ Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
- (v) ~~(viii)~~ Callidus and Catalyst improperly caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (vi) ~~(ix)~~ Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
- (vii) ~~(x)~~ Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
- (viii) ~~(xi)~~ Callidus misled and Catalyst overvalued XTG, to the detriment of the funds managed by Catalyst;
- (ix) Callidus and Catalyst caused Callidus to mislead its shareholders or investors;
- (x) ~~(xii)~~ Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (xi) ~~(xiii)~~ Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

(d) The nineteenth and twenty-eight paragraphs of the Article state that the Plaintiffs:

“...sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

...

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange’s debts that was far less than Callidus was seeking in a civil suit.

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers; and
- (ii) Callidus and Catalyst dealt with McFarlane unfairly or unjustly by pursuing him in a Guarantee Action.

171. 163. 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. The impact of the Article was exactly what the Defendants intended — it impressed upon the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent activities by Callidus and Catalyst.

172. The statement made in the Article particularized in paragraph 170 above, and the statements made to Copeland by the Guarantor Conspirators and Anderson particularized in paragraphs 141-142 above are, collectively, the “Defamatory Words”. The plain meaning of the Defamatory Words taken together is that the Plaintiffs act fraudulently with misstated financial statements, carry on nefarious business practices, and lack integrity in their business dealings. This is spurious, false, malicious, and damaging to the Plaintiffs' reputation and good will.

173. The Wolfpack Conspirators acted in concert with the Guarantor Conspirators and Copeland to publish the Defamatory Words.

174. Each of the Wolfpack Conspirators, Guarantor Conspirators, and Copeland participated in a common design to publish the Defamatory Words including but not limited to:
- (a) agreeing to the Conspiracy as particularized in paragraph 85 above,
  - (b) discussing and agreeing to the words to be used in the Complaints and ultimately the Article as particularized in paragraphs 86, 95-98, and 102-104 above;
  - (c) sharing of information, advice, and strategies for the purpose of and in furtherance of the conspiracy as particularized in paragraphs 93-96, and 98-104 above;
  - (d) approving of and directing the disclosure of the existence and substance of the Complaints to Copeland for the purposes of re-publication in the Article as particularized in paragraph 136-140 above; and
  - (e) making false and defamatory statements to Copeland, either directly in the case of the Guarantor Conspirators or indirectly in the case of the other Conspirators, as outlined in paragraphs 141-142 above.
175. The full extent of the Defendants' individual knowledge and participation in the Conspiracy and in the publication of the Defamatory Words is known to them and not known to the Plaintiffs.
176. The Wolfpack Conspirators, Guarantor Conspirators, and Copeland published the Defamatory Words complained in pursuit of their vendetta and vengeance against the Plaintiffs and to profit from short selling stocks in Callidus. Participating in the publication of defamatory statements about the Plaintiffs with the internationally renowned WSJ was clearly designed to embarrass the Plaintiffs and seriously injure their reputations.

177. The Defendants' publication of the Defamatory Words have and will continue to cause serious damage, loss and injury to the Plaintiffs, who relies on their good reputation to carry on business.

**(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS**

**Breaches of the *Securities Act***

178. ~~164-114.~~ 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.

179. ~~165-115.~~ 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*.

180. ~~166-116.~~ 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*.

181. ~~167-117.~~ 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**

182. ~~168-118.~~ By participating in the Conspiracy and the publication of the Defamatory Words, the Defendants deceived third parties ~~-party market participants-~~ into believing that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors 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.~~ These third parties had actionable claims against the Defendants by reason of their conduct pleaded herein, and include but are not limited to the following persons: (i) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the Defendants’ conduct; (ii) investors that sold shares in Callidus as a result of reading the Defamatory

Words or in response to the resulting sell-off of Callidus shares due to the Defendants' implementation of the Conspiracy; (iii) service providers such as appraisers engaged to appraise and alleged to have falsely valued borrowers' assets for the benefit of Callidus and Catalyst; and (iv) auditors, audit committee members and the independent directors of Callidus and Catalyst that are responsible for and allegedly failed to detect the supposed fraudulent activities carried out by the Plaintiffs.

183. ~~169-119.~~ In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors, directors and auditors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares, lost revenues, loss of goodwill, as well as impairment of their ability to conduct and grow their business, implement strategic plans, and secure capital. In addition, the market manipulation of the Defendants caused significant harm to Callidus in the form of a loss in market capitalization.

184. ~~170.~~ The conduct of the Defendants in implementing the Conspiracy as described above, was directed at and intended to harm, punish and discredit the Plaintiffs. As described above, the purpose and effect of the Defendants' activities were to damage the reputations, and undermine and destroy the business of, and otherwise cause harm to the Plaintiffs. The Defendants knew that harm would come to the Plaintiffs as a result of their conduct. By deceiving market participants and investors into believing that the Plaintiffs are dishonest, fraudulent and untrustworthy, and by engaging in an improper short attack, the Defendants deliberately tarnished and harmed their reputations in the financial, investing and business communities.

185. ~~171.~~ As a result of the Defendants' implementation of the Conspiracy as described above, the Plaintiffs have suffered significant damages. Among other things, the Defendants have

impaired Callidus' ability to raise and retain invested capital, attract and keep employees, attract and grow its loan portfolio and make investments in other companies. This has led directly to the significant erosion of the equity value of Callidus from 2017. This is because the Defendants' conduct has:

- (i) deterred potential borrowers from doing any business with Callidus in light of the false allegations that Callidus engaged in fraudulent transactions, unethical accounting and unfair business practices with a view to wiping out equity ownership and taking control of borrowers;
- (ii) scared away potential employees who could have helped grow and develop the Callidus' business; and
- (iii) made it extremely difficult for Callidus to access third party capital necessary for the growth of its business.

186. ~~172. 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**

187. ~~173. 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. The role of the Individual Defendants in this regard extended beyond the nature and scope of their roles as officers and directors of the corporate Defendants and include direct personal involvement, improper intentions, and wrongful acts.

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.

188. ~~174. 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**

189. ~~175. 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.

190. ~~176.~~ ~~124.~~ John Doe Defendants 1-10 are jointly and severally liable for the wrongs committed by the Defendants.

### **Unjust Enrichment**

~~177.~~ ~~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.

~~178.~~ ~~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.

~~179.~~ ~~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**

191. ~~180. 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.

192. ~~181. 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**

193. ~~182. 130.~~ The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

194. ~~183. 131.~~ The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

195. ~~184. 132.~~ The Plaintiffs propose that this action be tried at Toronto.

DATE: ~~November 7, 2017~~

April 8, 2019

June 14, 2019

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Plaintiffs

and

WEST FACE CAPITAL INC. et al.  
Defendants

Court File No. CV-17-586096  
~~587463-00~~  
CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED AMENDED STATEMENT OF CLAIM**

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**TAB B**

THIS IS **EXHIBIT B**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019



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A commissioner for taking affidavits

**CITATION:** The Catalyst Capital Group Inc. v. West Face Capital Inc., 2019 ONSC 128  
**COURT FILE NO.:** CV-17-587463-00CL  
**DATE:** 20190109

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** The Catalyst Capital Group Inc. and Callidus Capital Corporation

**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

**BEFORE:** Mr. Justice H.J. Wilton-Siegel

**COUNSEL:** *Linda Plumpton and Leora Jackson*, for the Applicants the Anson Defendants

*Brian Radnoff*, for the Applicants Nathan Anderson and ClaritySpring Inc.

*Nancy Tourgis and Melvyn Solmon*, for the Applicant Richard Molyneux

*Darryl Levitt*, Self-Represented, Applicant

*David Moore, Ken Jones and Matthew Karabus*, for the Respondents Catalyst Capital Group and Callidus Capital Corporation

**HEARD:** October 29, 2018

**ENDORSEMENT**

[1] On these motions, various defendants in this action (the “applicants”) seek an order striking the statement of claim dated November 7, 2017 (the “Statement of Claim”) and dismissing the action against them under Rules 21, 25.06(1) and 25.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

**The Parties**

[2] The following sets out the parties in the action and the defined terms in the Statement of Claim that are relevant for the present motions.

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### **The Plaintiffs**

[3] The plaintiff The Catalyst Capital Group Inc. (“Catalyst”) is a corporation with its head office located in Toronto, Ontario. Catalyst describes itself as a firm in the field of investments in distressed and undervalued Canadian situations.

[4] 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.

[5] The common shares of Callidus (the “Callidus Shares”) are listed on the Toronto Exchange. Catalyst owns approximately 40 percent of the outstanding shares of Callidus.

[6] Catalyst and Callidus are herein collectively referred to as the “plaintiffs”.

### **The Anson Defendants**

[7] The defendant M5V Advisors Inc. is a hedge fund incorporated in Ontario that carries on business as Anson Group Canada.

[8] The defendant Frigate Ventures LP (“Frigate”) is a limited partnership organized pursuant to the laws of Texas. At all relevant times, Frigate was a registered investment fund manager with the Ontario Securities Commission (the “OSC”). The defendant Admiralty Advisors LLC (“Admiralty”) is a limited liability company organized pursuant to the laws of Texas that is the general partner of Frigate.

[9] The defendants Anson Investments LP and Anson Capital LP are limited partnerships organized under the laws of Texas.

[10] The defendant Anson Investments Master Fund LP is a limited partnership organized under the laws of Texas. The defendant AIMF GP is the general partner of Anson Investments Master Fund LP.

[11] The defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. The defendant ACF GP is the general partner of Anson Catalyst Master Fund LP.

[12] The parties described in the preceding five paragraphs are a family of hedge funds that carry on business as the “Anson Group”. All of them engage in securities transactions on public markets. They are collectively referred to herein as the “Anson Corporate Defendants”.

[13] The defendants Moez Kassam (“Kassam”) and Adam Spears (“Spears”) are principals of the Anson Corporate Defendants. The defendant Sunny Puri (“Puri”) is an analyst employed by the Anson Corporate Defendants. Kassam, Spears and Puri are collectively referred to herein as the “Anson Individual Defendants”.

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[14] The Anson Corporate Defendants and the Anson Individual Defendants are herein collectively referred to as the “Anson Defendants”.

#### **The Wolfpack Conspirators**

[15] 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. One of the principals of West Face is the defendant Gregory Boland (“Boland”).

[16] The defendant ClaritySpring Inc. (“Clarity”) is a Delaware corporation that is based in New York. Clarity’s principal is the defendant Nathan Anderson (“Anderson”).

[17] In the Statement of Claim and herein, the Anson Defendants, West Face, Boland, Clarity and Anderson are collectively referred to as the “Wolfpack Conspirators”.

#### **The Guarantor Conspirators**

[18] The defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America.

[19] The defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario.

[20] The defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario.

[21] The defendant Kevin Baumann (“Baumann”) is an individual residing in Red Deer, Alberta.

[22] Baumann, McFarlane, Levitt and Molyneux are collectively referred to in the Statement of Claim and herein as the “Guarantor Conspirators”.

#### **The Remaining Defendants**

[23] The defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity.

[24] The defendant Rob Copeland (“Copeland”) is a reporter with The Wall Street Journal (the “WSJ”) who resides in New York, New York.

[25] The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Copeland are collectively referred to in the Statement of Claim and herein as the “Conspirators”.

[26] The Statement of Claim also uses the defined term “Defendants” to include both the Conspirators and John Doe defendants who are alleged to have participated in the Conspiracy (as defined below) and whose identities are presently unknown.

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**The Pleadings and the Plaintiffs' Responses to the Applicants' Demands for Particulars**

[27] In the Statement of Claim, the plaintiffs plead that, in response to actions commenced to enforce personal guarantees of the Guarantor Conspirators and certain other parties (the "Guarantors") in respect of loans made by Callidus to certain borrowers, the Guarantor Conspirators coordinated their actions. In particular, it is alleged that they decided to defend the actions against them by filing spurious counterclaims against Callidus and by alleging claims of "fraudulent inducement". It is also alleged that certain of the Wolfpack Conspirators funded the Guarantor Conspirators in these actions through one or more of the Guarantor Conspirators.

[28] It is further alleged in paragraph 61 of the Statement of Claim that the Wolfpack Conspirators and the Guarantor Conspirators then entered into a conspiracy to harm Callidus and Catalyst (herein the "Conspiracy"). The Conspiracy took the form of an agreement to a plan of action described in paragraph 64 of the Statement of Claim having the following elements (the "Plan"):

- (1) The spreading of false information by rumours;
- (2) The filing of false "whistleblower" complaints against Callidus with the OSC by certain of the Guarantor Conspirators to "confirm" the rumours;
- (3) The leaking of the allegations contained in the complaints to the media to generate interest;
- (4) The Conspirators taking short positions, directly or indirectly, in the Callidus Shares;
- (5) The publication of a report in the Wall Street Journal, timed to be released near the end of the trading day, in order to cause a rapid decline in the price of the Callidus Shares; and
- (6) The closing out of their naked short positions by the Conspirators to their profit and at the expense of the market value of Callidus.

[29] Each of these alleged steps in the Conspiracy is the subject of specific pleadings in paragraphs 67-111. Paragraphs 67-74 set out allegations regarding the filing of "false and defamatory whistleblower complaints" with the OSC relating to Callidus and Catalyst by Bauman, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson) (the latter being incorrectly referred to as one of the Guarantor Conspirators) (the "Complaints"). The plaintiffs allege that the Complaints were defamatory and that the sole motivation for filing the Complaints was the furtherance of the Conspiracy. Bauman, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson) are collectively referred to as the "Complainants" in the Statement of Claim.

[30] In paragraph 69, the plaintiffs allege that the Complainants disclosed the Complaints, or the substance of the Complaints, to WSJ reporters. I note that this paragraph appears to do no more than anticipate the allegations in paragraphs 84-93. However, insofar as the pleadings say

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that the Complainants disclosed the Complaints, rather than the existence and substance of the Complaints, the pleadings are in error given the definition of "Complaints". The plaintiffs say that the error will be corrected.

[31] In paragraphs 75-82, the pleadings allege that the Conspirators contacted journalists in an effort to leak the existence of the Complaints and other false allegations about them. The pleadings refer first to the engagement of a journalist, Bruce Livesey ("Livesey"), and then to an approach to Reuters, both of which are addressed further below.

[32] The pleadings allege in paragraphs 84-93 that the Conspirators then approached Copeland who authored an article that was published in the WSJ (the "Article") after meetings between Copeland and each of the Guarantor Conspirators, at the urging of Anderson, and a meeting between Copeland and representatives of Callidus and Catalyst.

[33] In paragraphs 94-100, the pleadings allege that the Wolfpack Conspirators and one or more of the John Doe Defendants took naked short positions, and other positions to simulate short positions, in Callidus Shares, either directly or indirectly, on or about August 9, 2017. The Article was released at 3:29 p.m. on August 9, 2017. The plaintiffs say the Conspirators encouraged Copeland to release the Article at that time in order that Callidus would not be able to make normal course issuers bid purchases of Callidus Shares in the last 30 minutes of trading on that day. They say the Wolfpack Conspirators thereby profited in the significant drop in the value of Callidus Shares between August 9 and August 14, 2017.

[34] The plaintiffs allege that the Article and the Complaints made false and defamatory statements about Callidus and Catalyst and caused them loss. They also say that the Defendants' actions constituted breaches of the *Securities Act*, R.S.O. 1990, c. S.5, in particular ss. 126.1 and 126.2.

[35] The principal claim of the plaintiffs against the Defendants is a claim for damages based on the tort of conspiracy, both predominant purpose conspiracy and unlawful means conspiracy. The plaintiffs also assert claims for damages based on defamation and the tort of intentional interference with contractual relations, in each case based on the alleged defamatory statements in the Article and the Complaints, as well as unjust enrichment. They seek disgorgement of the profits made by the Conspirators.

[36] The Anson Defendants delivered a Demand for Particulars dated January 12, 2018. Molyneux delivered a Demand for Particulars dated May 15, 2018. Levitt delivered a Demand for Particulars dated May 16, 2018. Clarity and Anderson delivered a Demand for Particulars dated August 7, 2018.

[37] The plaintiffs delivered a Response to Demand for Particulars on October 22, 2018 which responded to each of the foregoing Demands for Particulars. The plaintiffs further supplemented their Response to Demand for Particulars with an addendum dated October 23, 2018 (the "Addendum").

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**Applicable Legal Principles on a Motion to Strike**

[38] The following provisions of the *Rules of Civil Procedure* are applicable in respect of these motions:

21.01 (1) A party may move before a judge, ...

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

...

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. ...

(8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred. ...

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court.

[39] The principles pertaining to a motion to strike a claim under r. 21.01(1)(b) are well established. In *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980, the Supreme Court articulated the applicable test as follows:

[A]ssuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect ... should the relevant portions of a plaintiff's statement of claim

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be struck out under [the counterpart under the British Columbia rules of civil procedure to r. 21.01(1)(b)].

[40] More recently, in *Catalyst Capital Group Inc. et al v. Veritas Investment Research et al.*, 2017 ONCA 85, 136 O.R. (3d) 23, at para. 21, the Court of Appeal set out the following principles that apply on a motion under r. 21.01(1)(b):

No one contests that the bar for striking a pleading as disclosing no cause of action is very high – is it plain and obvious that the plaintiff cannot succeed? – or that the facts as alleged in the Statement of Claim are to be accepted as true for purposes of deciding the motion: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. No evidence is permissible on a rule 21.01(1)(b) motion: rule 21.01(2)(b). The statement of claim is to be read as generously as possible with a view to accommodating any inadequacies in the allegations due to drafting difficulties.

### **Preliminary Matter**

[41] Before addressing the applicants' motions in respect of the specific claims asserted against them, it is necessary to address certain issues pertaining to the pleadings in respect of the plaintiffs' defamation claims that also have implications for a number of the plaintiffs' other claims.

[42] As currently drafted, the allegations in the Statement of Claim give rise to considerable confusion regarding the extent to which the plaintiffs are grounding a separate defamation claim in the Complaints, in addition to their defamation claim based on the Article. In this regard, the following provisions of the pleadings are relevant.

[43] First, at paragraph 68, "Complaints" is defined as "false and defamatory whistleblower complaints" filed by the Complainants with the OSC relating to Callidus and Catalyst. The term "Complaints" therefore does not include any statements made to parties other than the OSC regarding the existence, or content, of the Complaints.

[44] Second, at paragraph 112, the plaintiffs allege that the "Article, read as a whole and the Complaints make false and defamatory statements (the "Defamatory Words") ... about Callidus and Catalyst". This definition of "Defamatory Words" is effectively confirmed in the statement at paragraph 11 of the Addendum that "[c]urrently, the only specific defamation claim pleaded in the [Statement of Claim] relates to the 'Defamatory Words' as stated in the [Statement of Claim]." This suggests that the plaintiffs base their defamation claim on "false and defamatory statements" in the Complaints as well as in the Article.

[45] Third, there are a number of vague allegations made in the Statement of Claim to disclosure of the existence of the Complaints, or the substance of the Complaints, to various parties other than the OSC. These allegations include the references in paragraphs 64 and 73 to spreading "false information through the Bay Street rumour mill" and spreading "rumours within

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the financial industry”. They also include the allegations in paragraphs 75-78 regarding the Conspirators’ contact with, and engagement of, Livesey to write a negative story targeting the plaintiffs, as well as the allegations in paragraphs 79 and 81-83 that the Conspirators approached Reuters and “other reputable news organizations” in 2017 and encouraged them to publish a negative story about the plaintiffs.

[46] As a result of these pleadings, a reasonable reader of the pleadings would be confused as to: (1) whether the plaintiffs are asserting defamation claims based on statements made regarding the existence of, or substance of, the Complaints in circumstances other than the preparation and publication of the Article; and (2) whether the plaintiffs are asserting defamation claims based on the content of the Complaints themselves as made to the OSC.

[47] The applicants proceeded on the basis that the answer to both these questions was in the affirmative and argued that such claims should be struck for various reasons, in particular that they fail to set out the necessary facts to establish a claim against them, individually. At the hearing, however, the plaintiffs confirmed that, in fact, with one qualification addressed below, they are not asserting either of the claims described in (1) and (2) above. I will address each in turn.

[48] First, the plaintiffs say that their defamation claims are based solely on the publication of the Article and, to the extent that it is relevant, the statements of the Complainants to Copeland regarding the existence, and the alleged content, of the Complaints. The plaintiffs do not allege defamation based on any of the other alleged communications to third parties regarding the existence or content of Complaints, including to Livesey or Reuters. Instead, they say they rely on these allegations as further improper means for the purposes of their conspiracy claims as well as their claims of intentional interference with economic relations and unjust enrichment.

[49] Second, the plaintiffs also do not assert that the statements allegedly made by the Complainants to the OSC pursuant to the OSC’s “whistleblower” programme are the subject of defamation claims, subject to the issue of the applicability of the tort of abuse of process discussed below. It is acknowledged that statements made to the OSC in such circumstances are entitled to absolute privilege: see *Fraleigh v. RBC Dominion Securities Inc.* (2009), 99 O.R. (3d) 290 (S.C.), at paras. 31-35; *Hung v. Gardiner*, 2003 BCCA 257, 13 B.C.L.R. (4th) 298, at paras. 30-37. This immunity applies not only to the making of statements to the OSC staff performing investigatory functions but also to all causes of action that may be based on those statements. In any event, in the present circumstances, the actual content of the Complaints remains unknown and is not pleaded.

[50] As mentioned, the plaintiffs have, however, suggested that the tort of abuse of process may apply to exclude the availability of absolute privilege in respect of the Complaints. The tort of abuse of process entails the following four elements as confirmed by the Court of Appeal in *Harris v. Glaxosmithkline Inc.*, 2010 ONCA 872, 106 O.R. (3d) 661, at para. 27:

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(1) the plaintiff is a party to a legal process initiated by the defendant; (2) the legal process was initiated for the predominant purpose of furthering some indirect, collateral and improper objective; (3) the defendant took or made a definite act or threat in furtherance of the improper purpose; and (4) some measure of special damage has resulted. [Citations omitted.]

[51] The plaintiffs suggest that a “whistleblower” complaint to the OSC is analogous to the commencement of legal proceedings, and, therefore, the tort of abuse of process should be applicable in respect of the communication of knowingly false complaints to the OSC for an ulterior and predominant purpose to further an improper objective. They do not, however, provide any case law to support this proposition.

[52] In my view, the plaintiffs have failed to establish a reasonable cause of action for abuse of process on the facts of this case for the reason that they have failed to plead facts that establish the first element of the tort. The making of a complaint to the OSC under its “whistleblower” programme does not constitute the commencement of legal proceedings for the purposes of the tort of abuse of process.

[53] There is a significant distinction between the communication of a “whistleblower” complaint in confidence to OSC staff and the commencement of legal proceedings. Among other things, the communication of a complaint does not involve any publication to third parties of the allegedly false complaint. The complaint remains a matter of confidential disclosure to the OSC staff, who then determine whether or not to investigate the complaint. Further, if a decision is taken to commence legal proceedings after any such investigation, it is the OSC, rather than the “whistleblower” that takes that decision. Moreover, any public documents released in connection with such action will reflect the view of the OSC staff of the relevant events, which may not necessarily be the same as the view of the “whistleblower”. Accordingly, the making of a complaint does not entail the publication of any documents by the “whistleblower” whose publication could cause special loss or damage to a defendant.

[54] There is, therefore, a causation problem in respect of complaints to the OSC, unlike the commencement of legal proceedings. In the latter case, the defendant’s action in commencing litigation proceedings is a direct cause of any loss suffered by a plaintiff. In the former case, as mentioned, the independent action of the OSC in deciding to commence legal proceedings after conducting its own investigation is the cause of any loss suffered by a plaintiff.

[55] Lastly, it is inherent in any “whistleblower” programme that a party making a “whistleblower” statement to a regulatory authority may have a questionable purpose in mind in doing so. However, the fact that a “whistleblower” may have the furthering of an improper object as his or her predominant purpose does not mean that the subject matter of his or her communication would not be of legitimate concern from a regulatory perspective. There are therefore compelling policy reasons why the tort of abuse of process should not apply in the case of “whistleblower” complaints to the OSC.

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[56] The plaintiffs' counsel advised the Court at the hearing of these motions that the plaintiffs would amend the pleadings to make the basis of their defamation claims clear if the Court found that, as currently drafted, the pleadings were confusing. Based on the foregoing, I find that the pleadings should be struck: (1) under r. 25.11, insofar as they suggest that the plaintiffs assert defamation claims in respect of statements made to third parties regarding the existence, or content of, the Complaints, other than statements made to WSJ reporters in respect of the Article; and (2) under r. 21.01(1)(b), insofar as they suggest that the plaintiffs assert a claim of defamation based on the assertion that the making of the Complaints was an abuse of process.

### **Analysis and Conclusions Regarding the Applicants' Motions to Strike**

[57] I propose to address the motions to strike of the various applicants by grouping them according to the plaintiffs' claims in the Statement of Claim.

#### **Defamation**

[58] The plaintiffs allege that the Article was defamatory in respect of each of them. They assert a defamation claim against each of the applicants in these motions for loss arising from the publication of the Article. Based on the discussion above, it is my understanding that the plaintiffs' defamation claims against the applicants are based on the allegations in paragraphs 84-93. These pleadings pertain to Copeland's publication of the Article and to alleged conversations between McFarlane, Bauman, Molyneux, Levitt and Anderson with Copeland that formed the information upon which he based the Article.

[59] The requirements for a pleading of defamation were addressed in *Lysko v. Braley* (2006), 79 O.R. (3d) 721 (C.A.), at para. 91:

Both courts and leading authors on the law of defamation repeatedly state that pleadings in defamation cases are more important than in any other class of actions. The statement of claim must contain a concise statement of the material facts. A summary of the necessary material facts to allege a complete cause of action for defamation is found in Patrick Milmo and W.V.H. Rogers, ed., *Gatley on Libel and Slander*, 10th ed. (London: Sweet & Maxwell, 2003) at p. 806:

These facts are the publication by the defendant, the words published, that they were published of the claimant, (where necessary) the facts relied on as causing them to be understood as defamatory or as referring to the claimant and knowledge of these facts by those to whom the words were published, and, where the words are slander not actionable per se, any additional facts making them actionable, such as that they were calculated to disparage the

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plaintiff in an office held by him or that they have caused special damage.

[60] In *Catalyst Capital Group Inc.* at para. 23, the Court of Appeal addressed the requirements for a pleading of libel as follows:

In libel actions (defamatory statements in writing, as in this case), the material facts to be pleaded are (i) particulars of the allegedly defamatory words; (ii) publication of the words by the defendant; (iii) to whom the words were published; and (iv) that the words were defamatory of the plaintiff in their plain and ordinary meaning or by innuendo. See, generally, Alastair Mullis and Richard Parkes, eds., *Gatley on Libel and Slander*, 12th ed. (London: Sweet & Maxwell, 2013), at paras. 26-1 to 26-26; *Lysko v. Braley* (2006), 79 O.R. (3d) 721, [2006] O.J. No. 1137 (C.A.), at para. 91; *Metz v. Tremblay-Hall*, [2006] O.J. No. 4134, 53 C.C.E.L. (3d) 107 (S.C.J.), at para. 13.

[61] Each of the applicants seeks an order striking the plaintiffs' defamation claims against them, but on different grounds. I will address the position of each of the applicants in turn.

### ***The Anson Defendants***

[62] The Anson Defendants move to strike the claim of defamation against them on the basis that the plaintiffs have failed to plead any facts regarding the involvement of the Anson Defendants in the publication of the Article, including any particulars of any instances of publication of the Defamatory Words by the Anson Defendants.

[63] The plaintiffs make three principal arguments. First, they argue that the defamation claim is part of the conspiracy claim. They say that, to the extent that the Anson Defendants participated in the Conspiracy, they also participated in the publication of the Article, even if they took no specific actions in furtherance of the publication of the Article. I do not think that this is correct.

[64] I accept that a party who participates in the publication of a defamatory expression in furtherance of a common design will be liable to the plaintiff: see *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at paras. 75-76. However, for such purposes, the common design must pertain to the publication of the defamatory statement.

[65] In *Botiuk*, the issue concerned the liability of certain parties who participated in the publication of one of three documents that were treated collectively as a single libel. The Supreme Court upheld the lower court decisions that found these parties liable for all damages flowing from the publication of the three documents as a single libel. At para. 75, the Supreme Court expressed its finding as follows:

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The appellants' actions bring them within the third category of joint tortfeasors so well described by Fleming. In the context in which the text writer has utilized the word conspiracy, it refers to the design or agreement of persons to participate in acts which are tortious, even though they did not realize they were committing a tort.

[66] In *Botiuk*, the Supreme Court therefore held that these parties were joint tortfeasors with the author and publisher of the two other articles. Not only are the facts in *Botiuk* significantly different from the present situation but there is also nothing in the decision of the Supreme Court that would attract liability to persons who did not participate in some manner in furtherance of the actual tortious act of libel or slander upon which a plaintiff bases its claim of defamation.

[67] In the present case, therefore, the plaintiff must plead facts that would support a finding that the Anson Defendants participated in the tortious act of publication of the Article in order to plead a viable cause of action in defamation against them. A pleading that the Anson Defendants participated in the Conspiracy, in furtherance of which certain of the other participants are alleged to have published the Article, is not sufficient to sustain a claim for defamation against the Anson Defendants.

[68] Second, the plaintiffs say that the pleading is sufficient to permit the Anson Defendants to plead a simple denial of any involvement in the preparation or publication of the Article. This argument proceeds on an inadequate view of the purpose of pleadings. Under r. 25.06(1), the plaintiff has the obligation to plead facts upon which it relies and which, if proven, would ground a viable cause of action. In addition, a plaintiff is not entitled to plead a bald allegation and rely on the possibility that new facts might turn up that would support the allegation: see *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 22. Further, as mentioned in *Catalyst Capital Group Inc.* at para. 22, pleadings in defamation cases have traditionally been held to a higher standard, in terms of the precision with which the material facts must be pleaded, than is the case with other types of actions. More generally, in the absence of such particulars, a party should not be forced to bear the cost of an action for defamation in respect of a publication in which it took no part.

[69] Third, the plaintiffs rely on the more flexible approach to pleadings of defamation in recent case law. In particular, they rely on the statements of Blair J.A. in *Catalyst Capital Group Inc.* at paras. 23 and 25. This principle has been applied in situations in which the plaintiff was unable to plead the exact wording of allegedly defamatory statements or the names of all of the parties to whom an allegedly defamatory statement was published.

[70] In this case, however, apart from bald statements regarding the Conspirators collectively, the plaintiffs plead no details whatsoever regarding any involvement of the Anson Defendants in the preparation or publication of the Article. Moreover, there is no logical basis on which one could infer that they might have had knowledge of, and therefore been in a position to, participate in the preparation or publication of the Article. The plaintiffs' pleadings are therefore more properly regarded as bald allegations against the Anson Defendants for the purpose of a

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fishing expedition to determine whether or not the Anson Defendants played any role in the preparation and publication of the Article.

[71] Accordingly, I agree with the Anson Defendants that the defamation claim against them does not disclose a reasonable cause of action for the purposes of r. 21.01(1)(b) in that it fails to plead that the Anson Defendants participated in the publication of the alleged defamatory expression. This claim should therefore be struck.

### *Clarity/Anderson*

[72] Clarity and Anderson also move to strike the claim of defamation against them on the basis that the plaintiffs have failed to plead any facts regarding the involvement of either of them in the publication of the Article including any particulars of any instances of publication by either of them. In opposition to the motion of Clarity and Anderson, the plaintiffs make the same three principal arguments discussed in respect of the Anson Defendants.

[73] In the present circumstances, there is no basis in the pleadings for the defamation claim asserted against Clarity in its own right. The plaintiffs do not plead any actions by Clarity, in its own right, in respect of the preparation or publication of the Article. Clarity's position in respect of the plaintiffs' defamation claim against it is therefore substantially the same as that of the Anson Corporate Defendants with one qualification.

[74] To the extent that there is a basis for asserting a claim against Anderson acting on behalf of Clarity, the plaintiffs' claim against Anderson would also constitute a claim against Clarity. Accordingly, any claim against Clarity requires the assertion of facts that would establish a viable claim based on actions of Anderson in his capacity as a representative of Clarity.

[75] In paragraph 86 of the Statement of Claim, as mentioned, the plaintiffs plead that McFarlane told Copeland that "Callidus and Catalyst were engaged in allegedly nefarious accounting practices concerning a loan that Callidus had extended to XTG." The pleadings allege that Copeland had "similar conversations" with Anderson.

[76] As literally drafted, the paragraph suggests that Anderson had a conversation or conversations with Copeland regarding the matters raised by McFarlane pertaining to XTG. It is understood, however, that the plaintiffs intended to plead that Anderson told Copeland the substance of his own Complaint to the OSC. I have therefore proceeded on this basis in analyzing the defamation claim against Anderson.

[77] Neither Clarity nor Anderson was in litigation with Callidus, as were the Guarantor Conspirators. It is therefore unclear what Anderson is alleged to have said to Copeland in respect of his own position, or that of Clarity, that was defamatory of the plaintiffs. Moreover, the pleadings do not allege that the Article refers to the substance of any Complaint of Clarity or Anderson. It is therefore not possible to infer any defamatory statements to Copeland based on the pleadings regarding the content of the Article. Accordingly, Anderson cannot know the case that he has to meet and cannot plead otherwise than by way of a blanket denial that he made any defamatory statement to Copeland.

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[78] In my view, in the absence of a pleading regarding the substance, even if not the details, of a defamatory statement made by Anderson to Copeland, the pleadings fail to disclose a reasonable cause of action against Anderson and Clarity for the purposes of r. 21.01(1)(b). In addition, the plaintiffs have failed to plead the material facts upon which they base their claim that Anderson's alleged conversation with Copeland was actionable in view of the text of the Article. Accordingly, the plaintiffs' defamation plea against both Clarity and Anderson is also struck under r. 25.06(1) as failing to plead the material facts upon which the plaintiffs rely for their claim based on the Article.

### ***Molyneux and Levitt***

[79] Molyneux and Levitt also move to strike the defamation claims against them.

[80] Both Molyneux and Levitt are in litigation with Callidus and are attempting to enforce their personal guarantees in respect of a loan made by Callidus to an entity referred to as "Fortress Resources" in the Statement of Claim. However, there is no pleading that the Article refers to Fortress Resources nor is there a pleading regarding what either Molyneux or Levitt is alleged to have said to Copeland. There is therefore no pleading as to what either Molyneux or Levitt communicated to Copeland that was defamatory of the plaintiffs.

[81] Further, Molyneux and Levitt could possibly be liable in defamation if they pursued a "common design" with McFarlane to publish a defamatory article concerning the plaintiffs. However, the plaintiffs' pleading does not plead facts that would establish such a common design, as opposed to an agreement for a larger conspiracy, which is discussed below.

[82] In my view, therefore, the positions of Anderson, Molyneux and Levitt on this issue are substantially similar. On this basis, the defamation claims against each of Molyneux and Levitt should be struck under r. 21.01(1)(b) as failing to disclose a reasonable cause of action and, in addition, should be struck under r. 25.06(1) as failing to plead the material facts upon which the plaintiffs rely for their claims based the Article.

### **Intentional Interference with Economic Relations**

[83] The plaintiffs assert claims of intentional interference with economic relations against all of the applicants.

[84] The elements of this tort were addressed by the Supreme Court in *A. I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 S.C.R. 177. In that decision, Cromwell J. concluded at para. 5 that the tort was available in three-party situations in which the defendant commits an unlawful act against a third party and that act intentionally causes economic harm to the plaintiff. He also concluded that, for the purposes of the tort, conduct is unlawful if it would be actionable by the third party or would have been actionable if the third party had suffered loss as a result of it. At para. 45, Cromwell J. went on to state that "[t]he two core components of the unlawful means tort are ... that the defendant must use unlawful means, in the narrow sense, and that the defendant must intend to harm the plaintiff through the use of the unlawful means." For

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this purpose, breaches of criminal or regulatory law do not satisfy the criteria for “unlawful means”.

[85] The plaintiffs’ claims for damages for intentional interference with economic relations against all of the applicants in these motions should be struck for two reasons.

[86] First, given the determinations above that the plaintiffs’ defamation claims against the applicants should be struck, the plaintiffs’ claims against the applicants for intentional interference with economic relations cannot survive. These claims are based on “unlawful means” in the form of actionable defamation of the plaintiffs. As the plaintiffs’ defamation claims have been struck, the plaintiffs’ claims for interference with economic relations fail to plead an essential element of the tort.

[87] Second, with respect to the element of third-party involvement, the pleadings state simply that 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 plaintiffs further plead that 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.

[88] The plaintiffs have therefore failed to identify the third party or third parties against whom the applicants are alleged to have committed an unlawful act. They have also failed to plead facts that establish the commission of an unlawful act that constitutes unlawful means, as understood for the purposes of this tort, directed against such third party or third parties. Specifically, they have failed to identify a claim of any third-party market participant against the applicants arising out of the publication of the Defamatory Words by the applicants.

[89] Counsel for the plaintiffs conceded that if a plaintiff asserting a claim of intentional interference with economic relations must plead facts that identify a third party against whom the defendant has committed an unlawful act, and the actionable claim of such third-party against the defendant that arose as a result of the applicants’ actions, the claim is deficient. As I find that such pleadings are required, the pleadings against the applicants fail to disclose a reasonable cause of action.

[90] Accordingly, this claim should be struck under r. 21.01(1)(b) as against all of the applicants.

### **Unjust Enrichment**

[91] The plaintiffs assert a claim for unjust enrichment against all of the applicants.

[92] In order to succeed in a claim for unjust enrichment, a plaintiff must prove three matters: (1) an enrichment of or benefit to the defendant; (2) a corresponding deprivation of the plaintiff; and (3) the absence of a juristic reason for the enrichment: see *Apotex Inc. v. Eli Lilly and Company*, 2015 ONCA 305, 125 O.R. (3d) 561, at para. 20, referring to *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at para. 32.

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[93] The plaintiffs plead that the applicants have been unjustly enriched through their participation in an unlawful short selling attack. Read generously, this is understood to proceed on the basis that the publication of the Defamatory Words rendered unlawful the Conspirators' short sales of Callidus Shares that would otherwise have been lawful. The pleading alleges that the applicants received a benefit in the form of their profit made on the short sales, that "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 that there was no juristic reason for the enrichment. The plaintiffs seek an order requiring the applicants to pay over their profits on the sale of Callidus Shares to the plaintiffs.

[94] There are two problems with this pleading.

[95] First, given the determination above that the defamation pleading must be struck, the pleading that there was no juristic reason for the applicants' profits from their short sales cannot stand. In the absence of a further act that vitiates the applicants' sales activity, there is nothing improper or illegal about the applicants' actions in taking short positions in the Callidus Shares that would support a claim for unjust enrichment.

[96] Second, as was observed in *Apotex Inc. v. Eli Lilly and Company* at para. 43, there must be a reciprocal relationship between the defendant's benefit and the plaintiff's deprivation for a claim of unjust enrichment to succeed, that is, the defendant's gain must correspond to the plaintiff's loss:

The Supreme Court of Canada recently discussed the elements of unjust enrichment in *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660, at paras. 148-158. With respect to the first and second elements, the enrichment and the corresponding deprivation, the court explained, at para. 151, that they are "the same thing from two different perspectives" or "two sides of the same coin." These elements are "properly understood to connote a transfer of wealth": at para. 152. Since "the purpose of the doctrine of unjust enrichment is to reverse unjust transfers of wealth", the first question the court asked in that case was whether the government was enriched at the plaintiffs' expense. The court affirmed that the government's gain had to correspond to the plaintiffs' loss for the unjust enrichment claim to succeed.

[97] This requirement for a claim of unjust enrichment was confirmed in the recent decision of the Supreme Court in *Moore v. Sweet*, 2018 SCC 52. In that decision, Côte J. for the majority noted at para. 43 that "the plaintiff must demonstrate that the loss he or she incurred *corresponds* to the defendant's gain, in the sense that there is some causal connection between the two."

[98] In this case, there is no reciprocal relationship between the applicants' alleged gain, being profits from their short selling activity, and the plaintiffs' alleged deprivation, being the decline

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in Callidus' market capitalization. While the triggering event may have been the same – the publication of the Article – the alleged gains of the Conspirators and the losses suffered by the plaintiffs do not exhibit a reciprocal relationship, and are not causally related, as understood for the purposes of a claim of unjust enrichment.

[99] The losses that corresponded to the applicants' gains from their short selling activity were transferred from the holders of Callidus Shares who sold their shares in the market to the Conspirators who acquired such shares for the purpose of covering their naked short positions. Neither Callidus nor Catalyst was a seller of Callidus Shares. The loss suffered by Callidus was a reduction in its ability to raise additional capital as a result of a lowered market capitalization. The loss suffered by Catalyst was a reduction in the market value of its investment in Callidus. However, the decline in Callidus's market capitalization was not a loss that was transferred from Callidus to the applicants nor was the decline in the market value of Catalyst's investment in Callidus.

[100] In this regard, the pleadings in this case raise a similar issue to that which was presented in *Apotex Inc. v. Eli Lilly and Company*, although in a very different context. The following reasoning of the Court of Appeal at para. 55 of that case is equally applicable in the present case:

This is not a bilateral context where Apotex is the only party that has been wronged by Lilly. Effectively, Apotex is asking the court to designate it as the de facto beneficiary of the wrongfully-obtained monopolistic profits despite recognizing in its pleadings that it was the public that suffered actual deprivation as a result of the monopolistic pricing. Unlike the plaintiffs in the “profiting from wrong” cases discussed above, Apotex is not positioned as the sole party with a legitimate right to “enforce” or “deter” the underlying wrong. The pecuniary interests of consumers, and potentially other generic companies, are also implicated. Lilly did not owe Apotex an equitable duty, nor is this case akin to the “exceptional” breach of contract cases where courts award restitution damages to a plaintiff in order to prevent a defendant from exploiting a bilateral agreement to its advantage.

[101] Accordingly, the plaintiffs' claims for unjust enrichment should be struck under r. 21.01(1)(b) as against all of the applicants.

### **Conspiracy**

[102] The plaintiffs' principal claim in the Statement of Claim is its claim of conspiracy against the Defendants. As discussed above, the pleadings allege that, in or about December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into the Conspiracy with the intention of causing economic harm to the plaintiffs. The elements of the plan to be implemented in furtherance of the Conspiracy are set out in paragraph 64 of the Statement of Claim.

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[103] In *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.), at paras. 21 and 22, the Court of Appeal approved the following statement of the pleading requirements for a civil conspiracy claim which is quoted from Bullen, Leake and Jacob's *Precedents of Pleadings*, 12th ed. (London: Sweet & Maxwell, 1975) at pp. 646-47:

The statement of claim should describe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.

[104] In this action, the essence of the conspiracy claim is that the Conspirators agreed to a plan whereby a defamatory article would be published and the Conspirators would profit from the decline in the value of the Callidus Shares by covering short positions put in place shortly prior to publication of the article. For clarity, while the plaintiffs also alleged that the Guarantors co-ordinated their responses to the litigation commenced by Callidus against them and, in that connection, asserted allegedly spurious defences and counterclaims, these allegations do not form part of the conspiracy claim. They are instead alleged to be events that prompted the Guarantor Conspirators to enter into the Conspiracy with the Wolfpack Conspirators. Similarly, as mentioned, while the Conspirators are alleged to have communicated with certain parties, in addition to Copeland, with a view to publication of an article negative to Callidus and Catalyst, these efforts were not successful and were not directly part of the implementation of the Conspiracy as described in paragraph 64.

[105] In the Addendum, the plaintiffs say that each of the Conspirators were aware of and agreed to participate in the Conspiracy and that each benefitted from and intended to unlawfully harm the plaintiffs through the Conspiracy. Significantly for present purposes, they also say that, because all of the Defendants were party to the common design shared by the Conspirators, each Defendant is liable for the damages caused, irrespective of whether such Defendants participated in each specific act constituting the Conspiracy.

### *Anson Defendants*

[106] I propose to consider the conspiracy pleadings relative to the Anson Defendants by first describing their alleged involvement in the Conspiracy and then addressing the claims against the Anson Corporate Defendants and the Anson Individual Defendants separately in turn.

### *The Conspiracy Pleadings and Particulars in Respect of the Anson Defendants*

[107] In the Statement of Claim, the plaintiffs plead that in late 2016 West Face encouraged Anson "to support its planned short attack" and disclosed to the Anson Defendants the identity of the Guarantors and its knowledge of co-ordination between the Guarantors. The pleadings

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further allege that in or about December 2016, the Wolfpack Conspirators, which includes the Anson Defendants, and the Guarantor Conspirators entered into the Conspiracy.

[108] In the Addendum, by way of particulars, the plaintiffs allege that in February 2017 Spears and Puri discussed and agreed to a plan with Langstaff to work up false fraud complaints against the plaintiffs. They also say that, at or after this time, all of the Anson Defendants were in contact, directly or indirectly, with the other Conspirators and agreed to become part of the Conspiracy described in paragraph 64 of the Statement of Claim. In addition, the plaintiffs say that, from and after this time, Spears, Puri and the other Anson Defendants communicated directly or indirectly with the other Conspirators in furtherance of the Conspiracy. These communications, which the plaintiffs say are generally unknown to them but known to the Anson Defendants, are alleged to have included meals in June 2017 at a particular restaurant.

*Disposition of the Motions of the Anson Corporate Defendants*

[109] The Anson Corporate Defendants argue that the pleadings fail to plead sufficient facts to disclose a claim of conspiracy against them in that there is no pleading of any specific action on the part of the Anson Defendants in respect of the Conspiracy. In particular, they say that the plaintiffs have failed to plead any particulars that enable the Anson Defendants to understand the steps comprising the plan described in paragraph 64 in which they are alleged to have participated. In this regard, it is not disputed that the plaintiffs do not allege that the Anson Defendants made any of the Complaints to the OSC or had any conversations with Copeland.

[110] The Anson Corporate Defendants also suggest that, insofar as the pleadings plead any facts, they are inconsistent with, if not actually contradicted by, the particulars set out in the Addendum. In particular, they say that the timing of the alleged entering into of the Conspiracy by the Anson Defendants in or about February 2017 is inconsistent with, and excludes the Anson Defendants' participation in, the entering into of the Conspiracy by the other Conspirators in December 2017.

[111] There are clearly difficulties with the pleadings in the Statement of Claim insofar as they address the involvement of the Anson Corporate Defendants in the Conspiracy. As noted, the particulars in the Addendum contradict the pleading that the Anson Defendants entered into the Conspiracy in December 2017. Further, Langstaff is not a Defendant and his only involvement, as pleaded in paragraphs 95 and 96 of the Statement of Claim, was to assist the Wolfpack Conspirators to put short positions in place. Therefore, the allegation in the Addendum that the Anson Defendants and Langstaff were involved in a plan to work up false complaints against the plaintiffs has no connection to the Conspiracy claim as currently pleaded. Moreover, there is no suggestion in the Addendum that Langstaff was the means of the alleged "indirect" communication between Spears, Puri and the Anson Corporate Defendants, on the one hand, and the other Conspirators, on the other hand.

[112] Taking the foregoing into consideration, the allegations pertaining to the Anson Corporate Defendants can be summarized as follows on a generous reading. The Anson Corporate Defendants, as represented by Spears and Puri, agreed with the other Conspirators to

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become part of the Conspiracy in or after February 2017 and communicated with the other Conspirators after this time, including at meals in June 2017 involving Spears and Puri. The purpose of the Conspiracy was to harm Catalyst and thereby to profit to the detriment of the plaintiffs. The Anson Corporate Defendants were therefore aware, among other things, of the intention of the other Conspirators to implement the Plan, and in particular to cause an article to be published that was defamatory to Callidus. In anticipation of the publication of this article, the Anson Defendants put short positions in the Callidus Shares in place and profited from the decline in the Callidus Shares after publication of the Article at the expense and to the detriment of Callidus and Catalyst.

[113] The issue for the Court is whether these spare pleadings, together with the pleadings regarding the involvement of the other Wolfpack Conspirators and the Guarantor Conspirators, are sufficient to satisfy the requirements of r. 21.01(1)(b). I conclude that these allegations are sufficient to establish a viable claim of conspiracy against the Anson Corporate Defendants in that they address each of the requisite elements of the civil conspiracy claim as set out above.

[114] Further, insofar as the Anson Defendants say that the pleadings do not allow them to know the case against them, I do not agree for the following reasons. The Anson Defendants are in a position to plead with respect to each of the matters referred to above as constituting the requisite elements of a civil conspiracy claim.

[115] In particular, the issues of whether Spears and Puri agreed to the Conspiracy and whether they had the alleged communications with the other Conspirators are factual matters within the knowledge of the Anson Defendants. Insofar as it is necessary to establish knowledge of the Conspiracy on the part of the Anson Corporate Defendants, the plaintiffs' pleadings, together with the particulars in the Addendum, allege that the Anson Corporate Defendants became aware of the Conspiracy and agreed to it through the involvement of Spears and Puri described above. Further, the Anson Corporate Defendants are alleged to have participated by putting short positions in place to benefit from the anticipated market consequences of the Article and to have profited therefrom. These are also purely factual matters to which the Anson Corporate Defendants are in a position to plead. Conversely, given the allegation of a conspiracy, it is not reasonable to expect that the plaintiffs would necessarily know the specific communications among Spears, Puri and the other Conspirators in respect of the Conspiracy or the extent of the short positions of the Anson Corporate Defendants, if any, in the Callidus Shares.

[116] Based on the foregoing, I conclude that the plaintiffs' pleadings of conspiracy against the Anson Corporate Defendants disclose a reasonable cause of action for the purposes of r. 21.01(1)(b).

#### *Enterprise Liability*

[117] As an alternative argument, the Anson Corporate Defendants say that paragraph 20 of the Statement of Claim should be struck in respect of the Anson Corporate Defendants because it alleges liability on an enterprise-wide basis, rather than against individual corporations. As I

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understand this argument, the Anson Defendants say that such a pleading fails to assert a viable cause of action against any of them individually for the purpose of r. 21.01(1)(b).

[118] Paragraph 20 of the Statement of Claim alleges, in effect, that the Anson Individual Defendants and the entities that comprise the Anson Corporate Defendants at all material times operated, acted, and marketed themselves as a single entity. Accordingly, this pleading in paragraph 20 would treat all of the Anson Corporate Defendants as a single entity for the purposes of the conspiracy claim. It is also alleged in paragraph 20 that the Anson Individual Defendants and the Anson Corporate Defendants are vicariously liable for the acts and omissions of one another or alternatively that they acted as agent for the other Anson Defendants. These latter pleadings of vicarious liability and agency are not at issue in this section.

[119] The Anson Corporate Defendants say that courts have struck pleadings that are drafted on the “enterprise liability” approach. They refer to and rely on *Hughes v. Sunbeam Corp. (Canada)* (2000), 11 B.L.R. (3d) 236 (Ont. S.C.) at paras. 48-49, varied on other grounds, 61 O.R. (3d) 433 (C.A.); and on *Martin v. Astrazeneca Pharmaceuticals PLC*, 2012 ONSC 2744, 27 C.P.C. (7th) 32, at para. 120, affirmed, 2013 ONSC 1169 (Div. Ct.). However, these cases exhibited compelling reasons on the facts as pleaded for excluding particular corporate entities from potential liability.

[120] In the present case, it is alleged that Spears and Puri are respectively a principal of, and an analyst at, all of the Anson Corporate Defendants. Their actions and their knowledge are, therefore, the actions and knowledge of all of the Anson Corporate Defendants. Further, each of the Anson Corporate Defendants is alleged to trade in securities. There are no facts before the Court that would narrow the class of Anson Corporate Defendants who could have participated in the Conspiracy by putting short positions in place to profit from the decline in the market price of the Callidus Shares. Nor is there any basis for excluding the possibility that a short position of one of the Anson Corporate Defendants was taken on behalf of one or more other Anson Corporate Defendants – that is, was allocated among the Anson Corporate Defendants.

[121] Accordingly, I do not accept the argument that paragraph 20 of the Statement of Claim should be struck by virtue of the pleading therein of liability on an “enterprise liability” basis.

*Disposition of the Motions of the Anson Individual Defendants*

[122] The Anson Individual Defendants also submit that the conspiracy claim against them should be struck on the basis that the plaintiffs have failed to plead any particulars of their involvement that satisfy the requirements of r. 25.06(1).

[123] Given the conclusion above that the conspiracy claim should not be struck in respect of the Anson Corporate Defendants because, in part, of the actions of Spears and Puri in agreeing to the Conspiracy on behalf of the Anson Corporate Defendants and the allegation that, as Defendants, Spears and Puri took short positions in the Callidus Shares or otherwise benefitted from such trading, there is no basis for striking out the claims against them. The pleadings in respect of these parties are essentially the same as the pleadings against the Anson Corporate

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Defendants. For the reasons discussed above, such pleadings satisfy the requirements for a civil conspiracy pleading.

[124] However, in my view the claim of conspiracy against Kassam must be struck for want of any pleading of any overt act on his part pertaining to his involvement in the Conspiracy. The pleadings in respect of Kassam therefore fail to plead an essential requirement for a claim of civil conspiracy. Based on the pleadings, and the Addendum, Kassam also cannot know the case against him that he has to meet. He is therefore not in a position to plead in any meaningful way based on the plaintiffs' pleadings in respect of him.

[125] Accordingly, the conspiracy claim against Kassam should be struck under r. 21.01(1)(b) as failing to disclose a reasonable cause of action against him.

### *Clarity/Anderson*

[126] I will deal in turn with the conspiracy claims against Clarity and Anderson after first setting out the pleadings and particulars of the plaintiffs in respect of these claims.

#### *The Conspiracy Pleadings and Particulars in Respect of Clarity/Anderson*

[127] In the Statement of Claim, the plaintiffs plead that West Face contacted Clarity and "encouraged it to participate in the upcoming wave of short attacks against Callidus". Clarity and Anderson are included in the Wolfpack Conspirators and, as such, are included in the pleading that alleges that, on or about August 9, 2017, the Wolfpack Conspirators took naked short positions in the Callidus Shares and covered those positions later to their profit.

[128] The pleadings further allege that Clarity and Anderson entered into the Conspiracy in or about December 2017. Thereafter, in paragraph 68 the plaintiffs allege that Clarity or Anderson agreed to file, and did file, false "whistleblower" complaints with the OSC in coordination with the other Complainants in order to portray different alleged issues with Callidus' continuous disclosure and with matters relating to Catalyst.

[129] In addition, the pleadings allege that Anderson, who had a prior relationship with Copeland, recruited Copeland to write the Article to further the Conspiracy. The Statement of Claim alleges that Copeland was directed by the Conspirators to "interview" McFarlane. It also alleges that Copeland had a conversation with Anderson that was "similar" to his conversation with McFarlane.

[130] In the Response, the plaintiffs provide, by way of particulars, that Anderson and Clarity communicated frequently with the other Conspirators from and after January 2017 and agreed to join and participate in the Conspiracy prior to June 2017.

- Page 23 -

*Disposition of the Motions of Clarity/Anderson*

[131] Clarity and Anderson say that the pleadings fail to identify their actual involvement in the Conspiracy. In particular, they rely upon the inconsistencies between the Statement of Claim and the particulars in the Response.

[132] There is a clear inconsistency between the timing of the alleged agreement of Clarity and Anderson to enter into the Conspiracy as pleaded in the pleadings and as provided in the particulars in the Response. Further, insofar as the plaintiffs allege that Clarity and Anderson did not agree to participate in the Conspiracy until sometime in 2017 prior to June, the allegation that Clarity and Anderson filed a false “whistleblower” complaint to the OSC in furtherance of the Conspiracy cannot stand. This timing is contradicted by the pleadings in the Statement of Claim that the Complaints were filed with the OSC in late 2016 or early 2017.

[133] In addition, I have dealt earlier with the issues of the substance of McFarlane’s alleged conversation with Copeland in the context of the defamation claims against Anderson and Clarity. For present purposes, the allegation in paragraph 86 regarding Anderson’s communication with Copeland is deficient in failing to set out the subject matter of such conversation. As mentioned earlier, Anderson was not the subject of a guarantor action by Callidus. There is also nothing in the Article that has been attributed to Anderson, whether pertaining to any alleged “whistleblower” complaint by him or otherwise.

[134] Taking the foregoing into consideration, the pleadings pertaining to Clarity and Anderson are substantially similar to the pleadings in respect of the Anson Defendants. The plaintiffs allege that Clarity and Anderson agreed to participate in the Conspiracy by June 2017 and that the purpose of the agreement was to harm Catalyst and thereby to profit to the detriment of the plaintiffs. As a result, Clarity and Anderson were aware, among other things, of the intention of the other Conspirators to implement the Plan, and in particular to cause an article to be published that was defamatory to Callidus. In anticipation of the publication of this article, Clarity and Anderson put short positions in the Callidus Shares in place and profited from the decline in the Callidus Shares after publication of the Article at the expense and to the detriment of Callidus and Catalyst.

[135] The issue for the Court is whether these pleadings, together with the pleadings regarding the other Wolfpack Conspirators and the Guarantor Conspirators, are sufficient to satisfy the requirements of r. 21.01(1)(b). I conclude that these allegations are sufficient to establish a viable claim of conspiracy against Clarity and Anderson in that they address each of the requisite elements of a civil conspiracy claim as set out above.

[136] Further, insofar as Clarity and Anderson say that the pleadings do not allow them to know the case against them, I do not agree. Clarity and Anderson are in a position to plead with respect to each of the matters referred to in the preceding paragraph as constituting the requisite elements of a civil conspiracy claim for the same reasons that I concluded that the Anson Defendants were in a position to plead with respect to the civil claim against them.

- Page 24 -

[137] Accordingly, I conclude that the plaintiffs' pleadings of conspiracy against Clarity and Anderson disclose a reasonable cause of action for the purposes of r. 21.01(1)(b).

*Molyneux/Levitt*

[138] I propose to treat the plaintiffs' pleadings of conspiracy against Molyneux and Levitt together as, for present purposes, the claims against each of them are virtually identical.

*The Conspiracy Pleadings in Respect of Molyneux and Levitt*

[139] In the Statement of Claim, Molyneux and Levitt are included as Guarantors and Guarantor Conspirators. Their involvement in the activities preceding the alleged agreement regarding the Conspiracy in December 2016, and its significance for the plaintiffs' conspiracy claim, has been described above. With respect to the Conspiracy, the pleadings allege that Molyneux and Levitt entered into the agreement to implement the Plan in December 2016. The pleadings further allege that Levitt or Molyneux filed a false "whistleblower" complaint with the OSC in late 2016 or early 2017 relating to Callidus and Catalyst in furtherance of the Conspiracy. In addition, in paragraph 86 of the Statement of Claim, it is alleged that both Molyneux and Levitt had conversations with Copeland "similar" to the conversation between Copeland and McFarlane. Lastly, Molyneux and Levitt are included in the Wolfpack Conspirators who are alleged to have taken short positions, directly or indirectly, in the Callidus Shares on or about August 9, 2017 and to have profited therefrom.

*Disposition of the Motions of Molyneux and Levitt*

[140] Molyneux and Levitt submit that, even with the particulars provided in the Response, they do not know the case they have to meet. There are two principal aspects to this position to be addressed.

[141] First, Molyneux and Levitt argue that, to the extent they are alleged to have participated in the Conspiracy by making false statements to Copeland regarding Callidus and Catalyst, there is no pleading that states what they are alleged to have said.

[142] I have dealt with this issue in the context of the defamation claims against Molyneux and Levitt. For this purpose, Molyneux and Levitt are in essentially the same position as Anderson, notwithstanding that, unlike Anderson, each is the subject of litigation by Callidus on their guarantees. Moreover, there is no pleading that the Article refers to any of Fortress Resources, Molyneux or Levitt, nor is there any pleading attributing any particular statements in the Article to Molyneux or Levitt or any pleading regarding any alleged defamatory statements made by Molyneux or Levitt to Copeland.

[143] However, setting aside the aforementioned pleadings, the pleading of conspiracy that remains alleges that Molyneux and Levitt entered into the Conspiracy, and were therefore aware of the elements of the Plan to be implemented, were aware that the purpose of the Conspiracy was to harm Catalyst and thereby to profit to the detriment of the plaintiffs, took short positions in the Callidus Shares, and profited therefrom by covering those positions after the market

- Page 25 -

decline that followed the release of the Article. While these assertions may well be factually incorrect, the Court is required to assume the truth of the pleadings for the purposes of these motions to strike. The proper means of addressing any factual inaccuracies is a summary judgment motion.

[144] For the reasons set out above in respect of the other applicants on these motions, I am of the opinion that the foregoing pleadings of conspiracy against Molyneux and Levitt, together with the pleadings regarding the Wolfpack Conspirators and the other Guarantor Conspirators, disclose a reasonable cause of action for the purposes of r. 21.01(1)(b) in that they address each of the requisite elements of a civil conspiracy claim against Molyneux and Levitt as set out above.

### **Conclusion**

[145] Based on the foregoing, the plaintiffs' claims of defamation, intentional interference with economic relations, and unjust enrichment are struck in respect of each of the Anson Defendants, Clarity, Anderson, Molyneux and Levitt. In addition, the plaintiffs' claim of civil conspiracy against Kassam is also struck.

### **Costs**

[146] The applicants were partially but not completely successful on these motions. While most of the plaintiffs' claims against them have been struck, the principal claims of conspiracy have not been. In these circumstances, I think that the applicants should be entitled to a portion of their costs respecting an appropriate allocation between the claims struck and the conspiracy claims. For this purpose, I find the appropriate allocation to be 2/3 : 1/3 based on a combination of the relevant portions of the parties' facts and the time required for submissions on the hearing of these motions. Further, I see no basis in the plaintiffs' conduct in respect of these motions to support costs on a substantial indemnity.

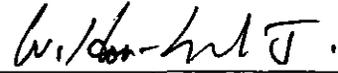
[147] The Anson Defendants seek total costs of \$37,467.86 on a partial indemnity basis. They took the primary responsibility for these motions. Given the importance of these motions to the Anson Defendants, and to the other applicants, the relative complexity of the motions, and the relative seniority of counsel, I find this aggregate amount to be reasonable. Accordingly, I fix fair and reasonable costs of the Anson Defendants at \$25,000 on an all-inclusive basis.

[148] Clarity/Anderson seek costs of \$7,8436.90 on a partial indemnity basis. This is reasonable, given the issues affecting them and the time spent on this motion by their counsel. Accordingly, I find fair and reasonable costs of these applicants to be \$5,230.

[149] Molyneux seeks costs of \$11,685.45. However, given the extent of his involvement in this motion, and the relative complexity of his arguments, neither of which exceeded that of Clarity/Anderson, I think that fair and reasonable costs would be the same amount as awarded to these other applicants. Accordingly, I find fair and reasonable costs to be \$5,230.

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[150] Levitt did not provide a costs submission as he had left the hearing for a medical appointment before this matter was addressed by the Court. If Levitt wishes to make a costs submission, he will have thirty days to make written submissions not exceeding five pages in length together with a costs outline in the form required by the *Rules of Civil Procedure*.



---

Wilton-Siegel J.

**Date:** January 9, 2019

**TAB C**

THIS IS **EXHIBIT C**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019



---

A commissioner for taking affidavits



Court File No. CV-16-544639

ONTARIO  
SUPERIOR COURT OF JUSTICE

NP/11

B E T W E E N:

CALLIDUS CAPITAL CORPORATION

Plaintiff/Defendant  
by Counterclaim

- and -

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
AND DARRYL LEVITT

Defendants/Plaintiffs  
by Counterclaim

-----

This is the Cross-Examination of DARRYL LEVITT, on his Affidavit sworn the 11th day of May, 2017, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 21st day of June, 2018.

-----

APPEARANCES:

JOHN D. LESLIE

-- for the Plaintiff/  
Defendant by  
Counterclaim

SYMON ZUCKER

-- for the Defendants/  
Plaintiffs by  
Counterclaim

# TAB D

THIS IS **EXHIBIT D**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019

A handwritten signature in black ink, consisting of several fluid, connected strokes, positioned above a horizontal line.

A commissioner for taking affidavits

Court File No. CV-17-11712-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM  
JUSTICE CHIAPPETTA

)  
)  
)

MONDAY, THE 7<sup>TH</sup>  
DAY OF, JANUARY 2019

CALLIDUS CAPITAL CORPORATION

Plaintiff/  
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
and DARRYL LEVITT

Defendants/  
Plaintiffs by Counterclaim



**ORDER**

**THIS MOTION**, made by the Plaintiff/Defendant to the Counterclaim, Callidus Capital Corporation (“**Callidus**”) for an Order directing the Defendants, Richard George Molyneux (“**Molyneux**”) and Darryl Levitt (“**Levitt**”) to answer certain of the undertakings, questions taken under advisement, and refusals set out in Schedules “1” through “3” of the Amended Notice of Motion of Callidus dated October 19, 2018, and the motion by Molyneux for an Order directing David Reese to answer certain of the undertakings, and questions refused on his examination for discovery held October 24, 2018, were heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion dated July 27, 2018, Amended Notice of Motion of Callidus dated October 19, 2018, Affidavit of Levitt sworn May 11, 2017 (without exhibits), Affidavit of Molyneux sworn March 27, 2018 (without exhibits), Statement of Claim issued January 18, 2016, Statement of Defence and Counterclaim dated July 13, 2016, Reply and Defence to Counterclaim dated August 2, 2016, Fresh as Amended Statement of Defence and Counterclaim of Molyneux amended March 28, 2018, Reply and Defence to Fresh as Amended

Statement of Defence and Counterclaim of Molyneux dated August 2, 2016 (amended May 3, 2018), Fresh as Amended Statement of Defence and Counterclaim of Levitt amended July 24, 2017, Notice of Motion for Summary Judgment dated October 2016, Notices of Motion to Stay Motion for Summary Judgment dated April 3, 2018 and May 8, 2018, Transcript of the Cross-Examination of Molyneux held May 24, 2018, and October 2, 2018, and Transcript of the Cross-Examination of Levitt held June 21, 2018; the Affidavit of Molyneux sworn October 26, 2018 and the exhibits thereto; Affidavit of Molyneux dated November 9, 2018 and the exhibits thereto; the Notice of Motion of Molyneux dated November 12, 2018 and the schedule thereto, and Transcripts from the Examination of David Reese on October 24, 2018; and on hearing the submissions of counsel for Callidus and Molyneux, Levitt appearing in person, and on being advised that all parties consent to the terms set out in paragraphs 1 through 4 of this Order, for written reasons given this day,

1. **THIS COURT ORDERS** that paragraph 24 of the Affidavit of Richard George Molyneux sworn March 27, 2018 be and is hereby expunged.
2. **THIS COURT ORDERS** that Molyneux shall answer Question number 787 refused on his cross-examination held October 2, 2018.
3. **THIS COURT ORDERS** that Levitt shall answer the following undertakings given and questions refused on his cross-examination held June 21, 2018: Question numbers 285, 291-293, 294-295, 387 and 428.
4. **THIS COURT ORDERS** that David Reese shall answer the following questions refused on his examination for discovery held October 24, 2018: Question numbers 355, 452-455, 457, 1,033-1,034, 1,074-1,075, 1,076, 1,077 – 1,078, 1,088, 1,106, 1,119, 1,120, and 1,126.

5. **THIS COURT ORDERS** that the motion by Molyneux to compel David Reese to answer Question numbers 1,127, 1,131-1,138, and 1,139 refused on his examination for discovery held October 24, 2018 be and is hereby dismissed.

6. **THIS COURT ORDERS** that the costs of this motion are reserved to the Judge hearing the motion for summary judgment.



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LE / DANS LE REGISTRE NO:

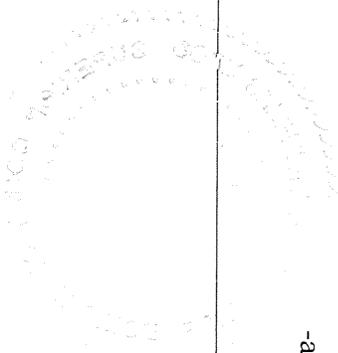
JAN 25 2019

PER / PAR:



-and- OPES RESOURCES INC., et al.  
Defendants/Plaintiffs by Counterclaim

Court File No. CV-17-11712-00CL



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
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Lawyers for the Plaintiff/Defendant to the Counterclaim

# TAB E

THIS IS **EXHIBIT E**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019

A handwritten signature in black ink, consisting of several fluid, connected strokes, positioned above a horizontal line.

A commissioner for taking affidavits

Court File No. CV-17-11712-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM  
JUSTICE CHIAPPETTA

)  
)  
)

TUESDAY, THE 12<sup>TH</sup>  
DAY OF, FEBRUARY 2019

CALLIDUS CAPITAL CORPORATION

Plaintiff/  
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
and DARRYL LEVITT

Defendants/  
Plaintiffs by Counterclaim

**ORDER**

**THIS MOTION**, made by the Plaintiff/Defendant to the Counterclaim, Callidus Capital Corporation (“**Callidus**”) for (i) an Order finding the Defendant, Darryl Levitt (“**Levitt**”) in contempt of court and an Order compelling Levitt to deliver answers to his outstanding undertakings, questions taken under advisement and refusals and (ii) for an interim Order to preserve evidence was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion dated January 31, 2018, the Affidavit of Levitt sworn February 7, 2019, the Affidavit of James Riley sworn February 8, 2019, the Affidavit of Joshua Suttner sworn February 8, 2019, the Factum of Callidus and the Book of Authorities of Callidus; and on hearing the submissions of counsel for Callidus and Levitt appearing in person:

1. ~~**THIS COURT ORDERS**~~ that Levitt is in contempt of the Order dated January 7, 2019 of Justice Chiappetta.

1. ~~1.~~ **THIS COURT ORDERS** that Levitt shall, by no later than 4 p.m. on February 28, 2019, answer the following undertakings, questions taken under advisement and refusals arising from his cross-examination held June 21, 2018: Question numbers 285, 291-293, 294-295, 387 and 428, regardless of any claim for privilege or confidentiality.

*failing which the plaintiff may move on 2 days notice to find Mr. Levitt in contempt.*

2. ~~2.~~ **THIS COURT ORDERS** that Levitt take immediate steps to preserve all evidence (as defined in paragraph 5 below) in his possession, power or control in any way related to, arising out of or referring to the within action, and in particular, all evidence that is responsive to the undertakings and questions which Levitt has been ordered to answer, as outlined in paragraph 2 hereof, including but not limited to:

- (a) Contacting in writing the law firm of Norton Rose Fulbright requesting that all of Levitt's emails related to the outstanding undertakings and refusals be released; and,
- (b) Making all reasonable efforts to access the Opes Resources Inc. server to secure all evidence as it relates to the outstanding undertakings and refusals.

3. ~~4.~~ **THIS COURT ORDERS** that Levitt shall provide to this Honourable Court by no later than 4 p.m. on February 28, 2019 confirmation of and the outcome as it relates to paragraphs 3(a) and 3(b) hereof.

4. ~~5.~~ **THIS COURT ORDERS** that for the purpose of this Order, "evidence" is construed as broadly as possible to include, without limitation, all physical and electronic documents, video or audio recordings, transcripts, physical evidence or other evidence of any nature. For greater certainty, "evidence" includes emails sent or received by all email addresses used or previously

used by Darryl Levitt, including but not limited to darryl.levitt@gmail.com, darryllevitt71@gmail.com, darryl.levitt@nortonrosefulbright.com and dlevitt@opesresources.ca, including electronic and physical copies, which;

- (a) are between Levitt and/or Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann; or
- (b) relate to discussions between Levitt and the other guarantors regarding funding each other's defences.

*that costs shall be reserved to*  
~~6.5. THIS COURT ORDERS that Levitt shall pay costs of this motion fixed in the amount~~  
*any contempt motion, if necessary.*  
~~of \$ \_\_\_\_\_, including disbursements and applicable taxes.~~

*for* \_\_\_\_\_

CALLIDUS CAPITAL CORPORATION  
Plaintiff/Defendant to the Counterclaim

-and- OPES RESOURCES INC., et al.  
Defendants/Plaintiffs by Counterclaim

Court File No. CV-17-11712-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**DICKINSON WRIGHT LLP**  
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199 Bay Street  
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Toronto, Ontario M5L 1G4

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Lawyers for the Plaintiff/Defendant to the Counterclaim

COUNSEL SLIP

Court File No. CV-17-11712-004

Date: FEB 12/19

CALLIDUS CAPITAL CORPORATION  
vs  
OPES RESOURCES INC.

No. On List 5

Title of Proceeding OPES RESOURCES INC.

Counsel for:

Plaintiff(s)  John D. Leslie  
Applicant(s)   
Petitioner(s)  for Callidus

Phone No. 416-646-3804

Fax No. \_\_\_\_\_

JLeslie@dictinsonwright.co

Counsel for:

Defendant(s)  DARRYL LEVITT  
Respondent(s)  SELF REPRESENTED

Phone No. 416 879 6965

Fax No. \_\_\_\_\_

darryl@dleivittassociates.co

Feb 12, 2019

Order to go un accordance with

draft revised and signed by me today.

*[Handwritten Signature]*

# TAB F

THIS IS **EXHIBIT F**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019



---

A commissioner for taking affidavits

**CITATION:** Callidus v. Opes Resources Inc., 2019 ONSC 1288  
**COURT FILE NO.:** DC-101/19 and CV-17-11712-00CL  
**DATE:** 20190222

**ONTARIO SUPERIOR COURT OF JUSTICE**

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

CALLIDUS CAPITAL CORPORATION

Plaintiff

- and -

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX AND DARRYL LEVITT,

Defendants

**BEFORE:** F.L. Myers J.

**COUNSEL:** *John D. Leslie*, lawyer for Callidus Capital Corporation  
Darryl Levitt, in person

**HEARD:** February 22, 2019

**ENDORSEMENT**

[1] Mr. Levitt moves for an urgent stay while he brings a motion for leave to appeal to the Divisional Court from the order of Chiappetta J. dated February 22, 2019.

[2] Mr. Levitt moved for a stay today before a single judge of the Divisional Court. Under Rule 63.02(1)(a) and (b), prior to the motion for leave to appeal being brought, the request for a stay ought to have been made to a judge sitting in the Superior Court and, in this case, on the Commercial List. As Mr. Levitt asserted that the matter was one of urgency, and Mr. Leslie was prepared to proceed today, I agreed to hear the matter in my capacity as a judge of the Superior Court.

[3] The plaintiff brought a motion for summary judgment more than one year ago. The motion was ordered to be heard in February of this year preemptory to the defendants. Those dates were lost due to an appeal to the Court of Appeal brought by another defendant from an order made by Chiappetta J. dated January 7, 2019 on an undertakings and refusals motion. The plaintiff asserts that the order is an interlocutory order that cannot be appealed to the Court of Appeal. It has brought a motion to quash that appeal. In the meantime, the motion for summary judgment has

been re-scheduled for two days in April. In granting the adjournment of the summary judgment motion, Chiappetta J. noted that the motion has been delayed for too long. She expressed the hope that the motion to quash will be heard expeditiously so that the April dates can be used as intended for the hearing of the summary judgment motion.

[4] In para. 3 of Justice Chiappetta's January 7, 2019 order, the court ordered Mr. Levitt to answer question 285 that he had taken under advisement on his cross-examination in relation to the same summary judgment motion. The order recites that it was made with the consent of Mr. Levitt.

[5] On February 12, 2019, the plaintiff moved for a contempt order against Mr. Levitt because he had yet to answer the questions that he had been ordered to answer - including question 285.

[6] Question 285 requires Mr. Levitt to produce "all" correspondence among himself and others who apparently also have litigation with the plaintiff. I do not know the substance of any of the claims or the relevancy of the communication that has been ordered produced. But in his Affidavit responding to the contempt motion, Mr. Levitt committed to his willingness to produce the correspondence except where it is privileged or confidential.

[7] Rather than proceeding with the contempt motion, Chiappetta J. determined to provide Mr. Levitt with a further opportunity to comply with the court's January 7, 2019 order. She apparently told Mr. Levitt that if he had wanted to assert privilege over any documents, the time to do so was at the January 7, 2019 hearing. As the January 7, 2019 order already requires him to produce "all" of the correspondence among the listed individuals and was made on consent, she told him that the privilege ship has sailed. Put more formally, she interpreted his consent to the January 7, 2019 order as either a waiver of privilege or a failure to assert and meet the burden of proof of establishing privilege in response to the production and disclosure motion that had been brought against him.

[8] Paragraph 1 of Justice Chiappetta's order dated February 12, 2019 provides:

THIS COURT ORDERS that Levitt shall, by no later than 4 p.m. on February 28, 2019, answer the following undertakings, questions taken under advisement and refusals arising from his cross-examination held June 21, 2018: Question numbers 285...*regardless of any claim for privilege or confidentiality*, failing which the plaintiff may move on 2 days notice to find Mr. Levitt in contempt. [Emphasis added]

[9] Mr. Levitt says that he needs to move urgently for leave to appeal from this order and he requests a stay because otherwise he will be in contempt of court in a very few days.

[10] Mr. Levitt's evidence is that he did not consent to the January 7, 2019 order "in the form in which it was issued." Orally in submissions, he says that he expressly reserved his right to assert privilege before Chiappetta J. that day and that she acknowledged his reservation. Nevertheless, he was present when the draft order that recites his consent was circulated and provided to Chiappetta J. for signing.

[11] Mr. Levitt asserts, in his submissions, that the correspondence include discussions about litigation strategy among a number of individuals who have claims against the plaintiff. He says that litigation privilege, common interest privilege, solicitor client privilege, and confidentiality will be lost if he has to disclose all of this material. He argues that he never waived privilege and that he had no ability or entitlement to waive bilateral privileges like common interest privilege for which agreement of all parties would be required for a valid waiver.

[12] The parties agree that the test applicable for an interim stay is the three-part interlocutory injunction test of: (a) serious issue to be tried; (b) irreparable harm; and (c) balance of convenience. *Wilson v. Servier Canada Inc.*, [2000] O.J. No. 3722 (Quicklaw) (S.C.J.), at para. 3.

[13] I have no doubt that the type of harm faced by Mr. Levitt, were he required to produce material that was later found to be privileged, qualifies as “irreparable harm.” Privilege is fundamentally important to the legal system. The Supreme Court of Canada has made it clear that the protection of solicitor client privilege is as close to absolute as possible. In *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at para. 34 of the majority decision, Côté J. wrote:

It is indisputable that solicitor-client privilege is fundamental to the proper functioning of our legal system and a cornerstone of access to justice (*Blood Tribe*, at para. 9). Lawyers have the unique role of providing advice to clients within a complex legal system (*McClure*, at para. 2). Without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive (see *Smith v. Jones*, 1999 CanLII 674 (SCC), [1999] 1 S.C.R. 455, at para. 46). It is therefore in the public interest to protect solicitor-client privilege. For this reason, “privilege is jealously guarded and should only and should only be set aside in the most unusual circumstances” (Pritchard, at para. 17).

[14] Were Mr. Levitt required to produce privileged and confidential documents prior a successful appeal from the order requiring him to produce the documents, the protection would be irretrievably lost. One cannot re-establish confidentiality. However, I am satisfied that there is virtually no chance of that happening in this case.

[15] First, the order requiring Mr. Levitt to produce “all” of the correspondence is the January 7, 2019 order. Mr. Levitt has not appealed that order. He made no suggestion in his motion materials or orally that he was planning to seek leave to appeal from the January 7, 2019 production order. In fact, the time for doing so has long since expired.

[16] What Mr. Levitt seek leave to appeal from then is the order of February 12, 2019 made by Chiappetta J. in which she interprets her own prior order. That is, she told Mr. Levitt that the time to assert privilege was January 7th. She made clear in the wording of para. 1 of the February 12 order set out above that she viewed the January 7, 2019 order as already resolving the issue of privilege.

[17] Under Rule 62.02 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, to obtain leave to appeal, Mr. Levitt is required to show either that:

- (a) there is a conflicting decision of another judge and it is otherwise desirable that leave to appeal be granted; or
- (b) there is good reason to doubt the correctness of the order and the proposed appeal involves matters of such importance that leave to appeal should be granted.

[18] There cannot be a conflicting decision as no other judge has ruled on the scope and meaning of Justice Chiappetta's January 7, 2019 order. While one might consider arguing more broadly about whether an order that requires disclosure of "all" communications includes privileged communications, Justice Chiappetta's February 12, 2019 order leaves no doubt that, in the factual circumstances before her, privilege was not preserved despite Mr. Levitt's protestations to the contrary.

[19] Moreover, Mr. Levitt has adduced no evidence before Chiappetta J. or today to establish there is any privileged or confidential information. Mr. Levitt bore the burden to prove that any relevant documents were immune from production disclosure at the time that the production and disclosure order was sought. He has not delivered an Affidavit of Documents with a particularized schedule "B" listing claims for privilege; he has not produced any confidentiality agreements; he did not bring a motion to seek determinations of any privilege that he claims or to have the court review any documents over which privilege is claimed as is often an option. In short, despite repeatedly committing to produce documents he has been ordered to produce, Mr. Levitt actually has failed to do so based on the baldest of assertions of privilege and confidentiality to justify his continuing non-compliance.

[20] Moreover, I agree with Mr. Leslie's submission that while privilege is important generally, a single decision of whether privilege exists on the particular facts of a case is routine. I agree with J.R. McCarthy J. in *Ernewein v. Honda Canada Inc.*, 2017 ONSC 3727, at para. 10:

Issues of lawyer-client and litigation privilege are routine and hardly out of the ordinary. Most decisions are made on the unique facts and circumstances surrounding the making of the document. I can see nothing novel, either in the manner in which or the basis upon which, the motion judge made his determination. Nor can I find that there is any reason to doubt the correctness of the decision of the motion judge. The motion judge correctly identified that the onus rested upon the Defendants to prove lawyer-client privilege.

[21] In this case, the issue is not whether privilege exists in certain documents. Mr. Levitt has never brought that motion. Rather, the issue involves a judge interpreting the intention and scope of her own prior consent order in a case among private parties. There is no public dimension at play.

[22] In my view therefore, there is no serious issue on which leave to appeal is at all likely. While the serious issue to be tried test is a light test, in all the circumstances set out above, the proposed motion for leave to appeal cannot overcome even that hurdle.

[23] Finally, and in any event, I would not find that the balance of convenience favours a stay in this case. Although Mr. Levitt asserts great urgency, he has allowed ten days to pass since the making of the order and he has no motion for leave to appeal prepared. While he is self-represented, he is also a practising lawyer. He is not a litigator. But he must be taken to have some ability to open the *Rules of Civil Procedure* and find the applicable rules. Showing up in the wrong court with minimal notice, minimal material for the proposed stay motion, no motion record for leave to appeal, and still no evidence to establish any of his underlying assertions does not strike me as a serious attempt to advance a claim for relief. Mr. Levitt advised me today that he has a lawyer on stand-by to prepare a motion for leave to appeal *if* a stay is granted today. That strikes me as a rather strategic approach and not one that bespeaks true urgency. If one needed to show a good case for a motion for leave to appeal, why hold the lawyer back for ten days while contemplating a sudden, urgent stay motion? Wouldn't serving and filing a leave to appeal motion record be the best way to show a serious intention to appeal and to demonstrate the existence of a serious issue on which to obtain leave?

[24] I also note that the process for perfecting and hearing motions for leave to appeal takes approximately 60 days under the relevant rules.<sup>1</sup> That would put the April dates for summary judgment at risk, yet again. I am weighing the lack of likelihood of any real harm to Mr. Levitt (because he has no realistic chance to assert privilege successfully on appeal) against the exacerbation of delays that have already been decried by Justice Chiappetta. In my view the balance tips away from a stay. A stay will cause more harm than good.

[25] The motion for a stay is therefore dismissed.

[26] Mr. Leslie seeks costs of \$5,000. I am not yet prepared to find that Mr. Levitt engaged in reprehensible conduct in bringing this motion. Seeking an urgent stay after waiting ten days, moving in the wrong court, against the wrong order, and with no motion for leave to appeal in hand, could be a basis to infer ill-motive or other wrongdoing. But Mr. Levitt argues that he is self-represented and asks for allowances. It seems to me that the judge who hears the summary judgment motion will be best able to assess whether this motion process has been subject to a broader wrongful design. Accordingly, I order Mr. Levitt to pay costs on a partial indemnity basis to the plaintiff fixed in the amount of \$2,000 all-in and forthwith. I reserve to the judge hearing the motion whether there ought to be a top-up to substantial or full indemnity costs in the circumstances.



F.L. Myers J.

**Date:** February 22, 2019

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<sup>1</sup> The timeline is fully explained in *Loiselle v. Violette*, 2018 ONSC 6688 (CanLII),

**TAB G**

THIS IS **EXHIBIT G**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019



---

A commissioner for taking affidavits

AMENDED THIS April 8/19 PURSUANT TO  
MODIFIÉ CE A FORMÉMENT À

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF \_\_\_\_\_

L'ORDONNANCE DU \_\_\_\_\_

DATED / FAIT LE \_\_\_\_\_

Court File No. CV-17-~~586096~~

587463-00CL

ONTARIO

REGISTRAR  
SUPERIOR COURT OF JUSTICE

GREFFIER  
COUR SUPÉRIEURE DE JUSTICE

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

**AMENDED 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

"S. Slawwhite"

Local Registrar

Address of  
Court office:

SUPERIOR COURT OF JUSTICE  
COUR SUPÉRIEURE DE JUSTICE  
BANKRUPTCY / COMMERCIAL  
COURTS  
330 UNIVERSITY AVENUE  
7TH FLOOR  
TORONTO, ONTARIO M5G 1R7

TO: WEST FACE CAPITAL INC.  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8

AND TO: GREGORY BOLAND  
c/o West Face Capital Inc.  
2 Bloor Street E.  
Suite 3000  
Toronto, Ontario  
M4W 1A8

AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: ADMIRALTY ADVISORS LLC  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: FRIGATE VENTURES LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON INVESTMENTS LP  
5950 Berkshire Lane Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CAPITAL LP  
420 Lyndon B. Johnson Freeway  
Suite 550  
Dallas, Texas, U.S.  
75240

AND TO: ANSON INVESTMENTS MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: AIMF GP,  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CATALYST MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ACF GP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: MOEZ KASSAM  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: ADAM SPEARS  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: SUNNY PURI  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: BRUCE LANGSTAFF  
158 St. Leonard's Ave  
North York, Ontario  
M4N 1K7

AND TO: ROB COPELAND  
63 N. 3<sup>rd</sup> St.  
Apt. 207  
Brooklyn, New York  
11249

AND TO: CLARITYSPRING INC.  
545 5th Avenue  
8th Floor  
New York, New York, U.S.  
10017

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) An order requiring the Defendants to:
    - (i) disclose in writing the means by which they obtained and/or the persons who provided them with any confidential documents of the Plaintiffs, including the documents referred to in paragraph 80 herein;
    - (ii) deliver to counsel for the Plaintiffs any and all such confidential documents, and any and all copies thereof, in their possession, power or control and to permanently destroy any electronic copies thereof; and
    - (iii) deliver a written declaration setting out the details of any and all circulation by them to any third parties of any of the confidential documents of the Plaintiffs, including any information derived therefrom, and warranting that they have delivered up any and all such confidential documents, in accordance with sub-paragraph 1(c)(ii) above;

- (e) 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*”);
- (f) 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;
- (g) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
- (h) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
- (i) 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;
- (j) The costs of this action, plus the applicable taxes; and
- (k) 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 (“the “Corporate Anson Defendants””). 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 the Corporate Anson Defendants. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (Kassam, Spears and Puri are together, the “Individual Anson Defendants”).
20. The Individual Anson Defendants and the entities that comprise the Corporate Anson Defendants (collectively, the “Anson Defendants”) at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and the Corporate Anson Defendants are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and the Corporate Anson Defendants 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, the Anson Defendants, ~~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. Copeland is a Defendant to a separate proceeding, *The Catalyst Capital Group Inc. v. Dow Jones and Co. et. al.* Court File No. CV-17-586094 (the “Dow Jones Action”) in which damages for defamation are claimed in relation to, among other things, the publication of the Article (defined *infra*).
26. The Defendants Boland, Kassam, Spears, Puri, and 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. Baumann was the President of Alken Basin Drilling Ltd. (“Alken Basin”), a borrower of Callidus.
28. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America. McFarlane was the CEO of Exchange Technology Group LLC (“XTG”), a borrower of Callidus.
29. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario. Levitt was an officer of Fortress Resources LLC (“Fortress”), a borrower of Callidus.
30. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.

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”.~~

32. ~~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**

33. ~~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.

34. ~~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.

35. 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.
36. 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.
37. The amendments now being made to the Plaintiffs' claim herein set out the additional material facts regarding the Conspiracy that the Plaintiffs have become aware of as of the date of the amendments. The Plaintiffs expressly reserve their right to make or seek to make additional amendments with respect to other material facts and information ascertained by them, when appropriate to do so. These amendments do not implement or respond to the decision of the Honourable Justice Wilton-Siegel dated January 9, 2019, with respect to

certain motions brought by some of the Defendants, as the scope of such amendments remains in dispute between the Plaintiffs and the Moving Parties on those motions.

**(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST**

38. ~~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. ~~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 XTG ~~Exchange Technology Group LLC~~.

(the “Guarantee Actions”)

40. ~~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. 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. 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. 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.
44. The Guarantors had difficulty retaining counsel to represent them in a RICO action against Callidus. Boland and West Face, through their external legal counsel, attempted to assist the Guarantor Conspirators by referring them to legal counsel in the United States to enable them to commence a RICO action against Callidus which would attract significant adverse publicity.
45. Due to difficulties they faced retaining counsel to commence a RICO action, 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.
46. 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.

47. 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.
48. 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.
49. 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.
50. 48. Baumann has made similar claims implying fraud against Callidus.
51. 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.
52. 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.

53. ~~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.
54. ~~52.~~ In addition to these coordinated activities, Levitt or McFarlane 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 or McFarlane in order to mask his identity.
55. ~~53.~~ Through this alter ego, Levitt or McFarlane 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.
56. ~~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.
57. ~~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**

58. By September 2016, Boland and West Face had a strong animus against Catalyst and Callidus, and against Newton Glassman (“Glassman”), Catalyst’s principal, because of prior and ongoing litigation between Catalyst and Callidus against West Face and Boland. Specifically, Boland and West Face took great exception to the fact that Catalyst and Callidus had instituted and was continuing to prosecute claims against them to assert the rights and protect the interests of Catalyst and Callidus. Specifically, Boland and West Face were aggravated by the fact that Catalyst instituted and was continuing a lawsuit against West Face and Brandon Moyse (former Catalyst employee that joined West Face), for the misuse of Catalyst’s confidential information to acquire “Wind Mobile”. They were also very upset and aggravated by the fact that Catalyst had instituted and was continuing a lawsuit against VimpelCom, West Face, and several other defendants alleging (among other things) breaches of Catalyst’s contractual rights in relation to VimpelCom’s sale of WIND Mobile in July-September 2014. Boland and West Face knew that if this lawsuit proceeded to full productions, discovery, and a trial on the merits of Catalyst’s allegations, serious improprieties by them and the other defendants in connection with the sale of WIND would be exposed. Boland and West Face were also strongly hostile to Catalyst and Callidus for having commenced a lawsuit against West Face and Veritas Investment Research Corporation for damages for defamation, conspiracy and intentional interference of economic relations associated with a prior wrongful short selling attack on Callidus Shares from fall 2014 to mid-2015 (the “Veritas Action”). As a result of these ongoing lawsuits, Boland and West Face had come to despise Catalyst, Callidus and Glassman and resulted in a very intense personal animus against them that has continued ever since.

59. 56. Initially, in or about late 2015, West Face retained Bruce Livesey (“Livesey”), an investigative journalist, to write a false and disparaging 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.
60. 57. As pleaded below, Livesey’s efforts failed. However, during the course of Livesey's “investigation”, he was directed by Boland and West Face to speak ~~spoke~~ to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.
61. 58. As described below, in or about mid to 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. By this time, West Face and Boland had decided to do whatever they could to harm Catalyst, Callidus and Glassman. They devised and implemented a plan to harm them, after their efforts to engage Livesey to publish a disparaging article about Catalyst, Callidus and Glassman had not succeeded in attracting any mainstream media publication interest.
62. As a result, Boland and West Face contacted:
- (a) The Guarantor Conspirators, namely Baumann, McFarlane, Levitt and Molyneux, who were facing personal guarantee collection actions by Callidus in Canada;
  - (b) Levy and Jaross, who were facing collection proceedings by Callidus in Texas based on a guarantee Levy and Jaross had signed to support a loan from Callidus to a U.S. company operating in Brownsville Texas, known as Esco Marine; and

- (c) Gerald Duhamel (“Duhamel”), the President of Bluberi Gaming Technologies Inc. (“Bluberi”), a borrower of Callidus that had filed for CCAA protection in November 2015, and who subsequently began communicating with the other Guarantors and agreed to conspire to harm the Plaintiffs and otherwise provide his support, information, and advice to the Guarantors in their concerted action against them.
63. In or about mid to late 2016, Boland and West Face also identified and contacted the following additional persons who also had an animus against Catalyst, Callidus and Glassman to induce them to conspire to injure them:
- (a) Anderson and Anderson’s company Clarity;
- (b) Kassam and the other Anson Defendants (as defined herein); and
- (c) Wes Voorheis (“Voorheis”), a lawyer and activist investor.
64. Boland and West Face engaged in a series of meetings, telephone conversations and written communications with the above persons for the purpose of inducing and securing their agreement to conspire to harm the Plaintiffs and to implement the Conspiracy.
65. For example, in September 2016, Boland contacted Levy to describe his and West Face’s plan and to induce Levy and the Guarantor Conspirators to conspire to injure the Plaintiffs. On or about September 26, 2016, Boland had a lengthy conversation with Levy, during which Boland related his animosity towards Catalyst, Callidus and Glassman, impugned their integrity and their business practices, and accused them of fraud. Boland also advised Levy that the largest investors in the Catalyst managed funds included two significant institutions based in the United States, and that Callidus had marketed and sold part of its Initial Public Offering in the United States. Boland communicated these specific facts to

Levy to make sure that Levy and the Guarantor Conspirators believed that Catalyst and Callidus were subject to the oversight of the U.S. Securities and Exchange Commission (“SEC”). Boland did so because part of the plan he had devised included making complaints about Catalyst and Callidus to the SEC as further described below.

66. Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would undermine the credibility of any complaints authored by them, and would confirm their plan to harm Catalyst, Callidus and Glassman in any way possible.

67. In fact, as Boland and West Face had anticipated and intended, Levy immediately spread the information he had received on September 26, 2016 from Boland to, among others, Levitt, Molyneux, Baumann, McFarlane, Jaross, Duhamel and his partner/associate, Marie-Claude Lapierre.

68. As a result of the above-noted conversation with Levy, and additional communications shortly thereafter, Boland and West Face were able to confirm that Baumann, McFarlane, Levitt and Molyneux, Jaross and Levy were still working together against Callidus. Boland and West Face also became aware that the above named individuals were personally very antagonistic to Catalyst, Callidus and Glassman, that they were desperate to avoid and deflect the guarantee claims against them, that they had coordinated their defences to the Guarantee Actions, and that they were willing to conspire with Boland and West Face to injure the Plaintiffs and implement the Conspiracy.

69. Boland also knew that Voorheis held a very strong personal animus towards Catalyst, Callidus and Glassman because of a bitter dispute which had arisen between Glassman and Voorheis in the Hollinger – Conrad Black legal proceedings over 10 years previously.

70. Boland contacted Voorheis to induce him to conspire to harm Glassman, Catalyst and Callidus. Voorheis readily agreed. Boland then introduced Voorheis to Levitt, McFarlane, Molyneux, Baumann, Jaross, Levy and/or Duhamel. From that time onwards, Voorheis remained in close contact with these individuals to assist and be part of the plans to harm Catalyst, Callidus and Glassman.
71. Indeed, following his discussion with Boland, Levy reported to the Guarantor Conspirators that he intended to call Voorheis, who he was told was apparently “closer to striking”.
72. The following day, on or about September 27, 2016, Levy did contact Voorheis and advised Voorheis of the allegations and information from Boland about the potential jurisdiction of the SEC over Catalyst and Callidus. Voorheis advised Levy that he had decided that he too intended to strike out at Glassman, Catalyst and Callidus.
73. During October-November 2016, with encouragement and additional assistance from Boland and West Face, the Defendants Levitt, McFarlane, Molyneux and Baumann, as well as Levy, Jaross, Duhamel and Voorheis, remained in close communications with each other regarding the Conspiracy. As a result, they agreed and decided to make allegations and file false complaints with the OSC and SEC alleging fraud and similar criminal and quasi-criminal misconduct against Catalyst, Callidus and Glassman, and to harm them by disparaging them in whatever way they could. This included making false allegations, including that under Catalyst’s direction, Callidus had and was continuing to operate a criminal “loan to own” business, that Callidus’ business practices were to trick and mislead its borrowers and prospective borrowers, that Callidus frequently made fraudulent misrepresentations to its borrowers, that Callidus often failed or refused to live up to its legal obligations, and that Catalyst, Callidus and Glassman were dishonest and untrustworthy. These false allegations

were repeatedly made in furtherance of the Conspiracy to whoever would listen, and enabled the Defendants to achieve their intended purpose of causing economic harm to the Plaintiffs and illicit unlawful gains through the short attack of Callidus Shares. The Defendants knew or ought to have known that these allegations were false as many of the very same allegations had already been advanced by some of the Guarantor Conspirators in litigation with Callidus and rejected by the Courts.

74. 59. Around the same time, West Face, Boland and/or Voorheis also encouraged another fund, the Anson Defendants to support its planned short attack. Amongst other things, West Face, Boland and/or Voorheis disclosed to Kassam, Puri and Spears Anson the identity of the Guarantors and their knowledge of coordination between the Guarantors.

75. Kassam held an animus against Glassman because of a business dispute between Catalyst and the Corporate Anson Defendants regarding the Corporate Anson Defendants' use of the name "Catalyst". In addition, Kassam was and is a business colleague and personal friend of Boland and from time to time the Corporate Anson Defendants and the West Face have collaborated in making joint investments in businesses and corporate entities, including engaging in coordinated short selling and other investments in such enterprises.

76. At the inducement of Boland and West Face and Voorheis, Kassam caused and directed the Corporate Anson Defendants, Puri, and Spears to participate in the conspiracy to harm Catalyst and Callidus, and subsequently directed, controlled and participated in the decisions by the Corporate Anson Defendants, Spears, Puri, and himself to be part of the Conspiracy, to approve, assist and participate in the acts in furtherance of the Conspiracy, and ultimately engage in the illicit and wrongful short selling in Callidus Shares pleaded herein.

77. 60. In late 2016, West Face, Boland and Voorheis also made contacted with Anderson and Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged Anderson and Clarity to participate in the Conspiracy and in the upcoming wave of short attacks against Callidus.
78. As a result, Anderson and his company Clarity were induced to and agreed to conspire with the others to harm Catalyst and Callidus. In or about November 2016, Anderson was introduced to Levitt, Molyneux, McFarlane, Baumann, Levy and Duhamel.
79. To facilitate the preparation, sharing and dissemination of false information and allegations accusing Catalyst, Callidus and Glassman of serious misconduct, fraud and other criminal or quasi-criminal wrongdoing, the Wolfpack Conspirators and the Guarantor Conspirators, among other things:
- (a) Established a data room where such false information were shared and allegations were repeated; and
  - (b) Provided Anderson and Clarity with access to a Dropbox facility containing the false information and allegations to facilitate their continuing participation in the Conspiracy.
80. In addition, to further discredit and cause harm to the Plaintiff, in the latter part of 2016, Baumann wrongfully procured a highly confidential list of all of Callidus' borrowers and loan accounts and other private and confidential Callidus documents. This information constitutes material non-public information concerning Callidus, a public issuer. These confidential documents containing material non-public information were then openly shared on or about December 2, 2016 amongst the Defendants, either directly or through the use of

the Dropbox facility referred to above, and/or other means known to the Defendants but not to the Plaintiffs.

81. Instead of immediately returning this material non-public information to Callidus when they knew or ought to have known that it was wrongfully obtained by Baumann, the Defendants used the material non-public information contained therein in furtherance of the Conspiracy, including the short attack which occurred in August 2017, in violation of applicable securities laws.

82. ~~61. In or about~~ Thus, by 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”).

83. ~~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.

84. ~~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.

85. ~~64.~~ The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they would spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators and Anderson/Clarity would filed false “whistleblower” complaints against

Callidus through the Ontario Securities Commission (“OSC”) and/or the SEC to “confirm” the rumours (the “Complaints”). Third, once the false whistleblower Complaints were filed, the Wolfpack Conspirators and the Guarantor Conspirators would worked together to leak the existence and the substance of the allegations contained in the Complaints to the media in order to generate media interest. Fourth, the Wolfpack Conspirators, either directly or indirectly, would take ~~took~~ short positions in Callidus Shares, through the co-conspirator, Langstaff at Canaccord and others. Fifth, the Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Anderson would cause a false and defamatory ~~timed~~ a media report about the Complaints to be released near the end of a trading day, which would caused the price of Callidus Shares to rapidly decline. Finally, the Wolfpack Conspirators would closed out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders. This plan was in fact executed.

86. In furtherance of the Conspiracy, the Defendants frequently communicated with each other and met in person to discuss and implement the Conspiracy. These communications included discussions about and agreements to make allegations about Catalyst and Callidus that included the following:

- (a) Callidus had falsely overstated the credit worthiness of its loan portfolio and had issued false statements about its loans to the public at large;
- (b) Catalyst had entered into numerous fraudulent related party transactions;
- (c) Catalyst and Callidus had engaged in money-laundering schemes; and
- (d) Catalyst and Callidus were guilty of fraudulent lending practices

The full particular of the places, dates, times, content of these communications and meetings to implement and carryout the Conspiracy are not known to the Plaintiffs. The Defendants were keenly conscious of the need for secrecy around their activities. For example, on December 31, 2016, Levitt cautioned Levy that “we have to be discrete about what we are doing”.

87. 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.

88. 66. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff, and Copeland 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 Wolfpack Conspirators and Guarantor Conspirators compelled at least some of the Guarantors to sign nondisclosure agreements to prevent them from disclosing information relating to the Conspiracy.

**(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAMS**

89. 67. The ~~first~~ next 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~~ other abusive practices in relation to Ontario securities laws to come forward and make anonymous complaints about such matters without fear of reprisal.

90. 68. In furtherance of the Conspiracy, and with information from and at the direction of the Wolfpack Conspirators, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or as well as Anderson), with the assistance of the Wolfpack Conspirators agreed to file false and defamatory whistleblower Complaints (the “Complaints”) with the OSC and/or the SEC 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 and the SEC.
91. Prior to making false “whistleblower” complaints with the OSC and the SEC, in the third week of November 2016, Levitt (with the knowledge, approval and direct involvement of West Face, Boland, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors) contacted Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC.
92. Levitt told Watson that Catalyst, Callidus and Glassman had been guilty of serious offences, including but not limited to fraudulent business and lending practices, penal offences in respect of Callidus’s financial affairs, and other criminal or quasi-criminal misconduct. These allegations were wholly false.
93. These communications were made with the intention that the false allegations would be conveyed by Watson to other counsel within the OSC’s Enforcement Branch and with the law enforcement authority known as the Joint Serious Offences Team (“JSOT”), and that the OSC and JSOT would immediately institute an investigation and commence proceedings against the Plaintiffs.
94. Plaintiffs plead that the above communications and allegations made to Watson and JSOT are separate and outside the scope of the OSC whistleblower program. Indeed, Watson

declined to attend the December 7, 2016 meeting with OSC personnel regarding the whistleblower complaint, referred to below, as he knew that his participation in that process would taint the entire “whistleblower” process.

95. In furtherance of the Conspiracy, in late 2016, Boland had further discussions with the Guarantor Conspirators in which he supplied them with false information that they could use in fabricating their allegations to the OSC and the SEC. For example, Boland and West Face provided Levy with copies of their Statement of Defence in the Veritas Action. They did so with the intention that Levy would pass on the allegations of misconduct and impropriety made in their Statement of Defence to Levitt, Molyneux, McFarlane, Baumann, Anderson and Duhamel, and that they would use those allegations to disparage Callidus, including in the intended communications to the OSC and JSOT which formed part of the Conspiracy. In fact, Levy did so, and the false allegations were used for the very purposes as planned by Boland and West Face, and agreed to by Levitt, Molyneux, McFarlane, Baumann and Anderson.

96. Boland and West Face provided additional assistance the Guarantor Conspirators, Duhamel and Levy in the plan to harm Catalyst. This included:

(a) On or about November 30, 2016, Boland and West Face authorized and directed their external counsel, Matthew Milne-Smith of Davies (“Milne-Smith”), to introduce Levitt to a class action litigator in the United States for the purpose of filing a RICO action against Catalyst and Callidus. Milne-Smith had discussions and exchanged correspondence with Levitt on this subjection. In so doing, Boland and West Face knew there was no basis for any such action. However, they hoped and intended that the corrupt practices which would be alleged in such an action would become public

knowledge and that this would advance their plan to harm Catalyst, Callidus and Glassman by whatever means possible;

- (b) On or about December 3, 2016, Boland and West Face authorized and directed West Face's internal counsel, Philip Panet ("Panet"), to advise Levitt of a specific section of Callidus's 2015 MD&A referring to a loan with McFarlane's company, XTG. This was done to set the stage for false allegations conveyed by Boland to Levy, referred to below, about this loan. Panet had discussions and exchanged correspondence with the Guarantor Conspirators as instructed;
- (c) On or about December 3, 2016, Boland personally contacted Levy and falsely told Levy that Catalyst had improperly and fraudulently moved the XTG loan onto unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst;
- (d) On a date unknown to the Plaintiffs, Boland also authorized and directed Milne-Smith to assist the Guarantor Conspirators by providing them with, amongst others, a West Face "research report" which West Face used in the illicit short selling attack on Callidus Shares in 2015-2016 which is the subject of the Veritas Action. Milne-Smith, in turn, was in contact with the Guarantor Conspirators to provide this and other information to them; and
- (e) On January 20, 2017, Panet provided Levitt with a copy of a document which contained details about one of Callidus' borrowers which was then promptly provided (to Panet's knowledge) to the other Guarantor Conspirators and Anderson/Clarity.

97. The above steps and communications were undertaken by Boland and West Face in furtherance of the Conspiracy and with the knowledge and intention that the false allegations and the assistance provided would be:
- (a) Shared among Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors; and
  - (b) Used by the Guarantor Conspirators and Anderson in their communications with the SEC, OSC Enforcement Staff, JSOT, and in the planned meeting with the OSC Staff to file their whistleblower complaint.
98. In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.
99. To the knowledge of and with the agreement, assistance and support of the Wolfpack Conspirators and the Guarantor Conspirators, on or about December 7, 2016, Levitt met with OSC personnel. Among other things, he followed a carefully scripted “playbook” and showed them a powerpoint presentation which falsely alleged that Catalyst, Callidus, and Glassman had been guilty of serious misconduct, fraud and other criminal and quasi-criminal wrongdoing.
100. The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.
101. All of the above steps were taken with the knowledge, participation and consent of the Wolfpack Conspirators and the Guarantor Conspirators for the purpose of (i) persuading the OSC (and JSOT) to commence criminal or quasi-criminal proceedings against Catalyst, Callidus and Glassman, and (ii) to enable them to leak the contents of their false complaints

to the media in furtherance of their purpose to harm the Plaintiffs and to enable the illicit short selling gains to be realized as part of the Conspiracy.

102. ~~69. The “complainants” disclosed the Complaints, or~~ In addition, as described below, the Guarantor Conspirators, acting in concert with and at the direction of each of the Wolfpack Conspirators, supplied information relating to the existence and the substance of the Complaints, to WSJ reporters in New York and Toronto to encourage and induce them to publish false media articles, as described below.

103. ~~They~~ The Wolfpack Conspirators and the Guarantor Conspirators 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.

104. ~~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 allegedly 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.

105. ~~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.

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

107. ~~73.~~ The intention and purpose of the Complaints was to enable the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff 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.

108. ~~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 Wolfpack Conspirators, the John Does, and Langstaff to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

109. In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them,

110. Between December 2016 and February 2017, Anderson continued to receive and exchange information with the Wolfpack Conspirators and the Guarantor Conspirators about the Plaintiffs. Anderson also communicated with them about their allegations and the “next steps” in the Conspiracy. The purpose was to enable the Wolfpack Conspirators and the

Guarantor Conspirators to coordinate their continuing implementation of the Conspiracy and to facilitate the filing of false complaints with the SEC, which was something that Anderson, Voorheis and Boland had been tasked with accomplishing. Particulars of some of these communications include the following:

- (a) On December 20, 2016, Voorheis, McFarlane, Levitt and Anderson had a conference call to discuss their shared interest in “seeing [Newton Glassman] face justice”;
- (b) On January 20, 2017, the Guarantor Conspirators and Levy/Molyneux had a conference call with Anderson to receive an update from him, and to receive his instructions on “next steps”;
- (c) On February 15, 2017, Levitt and Duhamel arranged for a conference call with Anderson so that Anderson could answer “some questions”;
- (d) On February 16, 2017, McFarlane reached out to Anderson and Levitt and provided website links to two media reporters. This was done further to Anderson’s instructions to the Guarantor Conspirators to come up with names of reporters who would be interested in publishing a story based on the submission of the false complaints to the authorities and regulators that the Conspirators had prepared or were preparing;
- (e) On February 24, 2017, McFarlane again reached out to Anderson and Levitt and identified another Catalyst portfolio company as one that “would be very vulnerable to some of the concerns that may form an SEC complaint”; and

(f) On February 28, 2017, McFarlane provided Anderson with contact information for management of two of Callidus' borrowers so that Anderson could reach out to them directly.

111. In addition, on February 13, 2017, Levitt was directed by one or more of the Wolfpack Conspirators and the Guarantor Conspirators to contact Marc Cohodes ("Cohodes"), a known short seller based in the United States. This contact was made to obtain assistance in formulating false allegations against Callidus, and to facilitate the implementation of the Conspiracy. The Wolfpack Conspirators and the Guarantor Conspirators remained in contact with Cohodes throughout 2017 and up to and including 2019 for the purposes of causing economic harm to the Plaintiffs. Cohodes was and is closely associated with the Anson Defendants and invests money with them, and therefore stood to benefit financially from the participation of the Anson Defendants in the Conspiracy.

112. On February 27, 2017, Boland and Levy had another telephone call, this time to discuss Callidus' claim against its former employee, Craig Boyer ("Boyer"). Levy reported on this call to the Guarantor Conspirators and Duhamel.

113. By early March 2017, Voorheis was also still actively assisting the Wolfpack Conspirators and the Guarantor Conspirators, including by (a) making attempts to elicit information helpful to their false allegations from and related to Boyer, and (b) assisting in the coordination of the Conspiracy and the filing of the complaint to the SEC. Particulars of some of these steps include the following:

(a) On March 2, 2017, McFarlane spoke with Voorheis and reported on the conversation to Levy. McFarlane reported that Voorheis said that he "made contact with Boyer's lawyer". Voorheis provided Boyer's lawyer with false information about the XTG

loan. In that same report, McFarlane advised Levy that Anderson had “been in Toronto for the last 2 days” and that McFarlane had asked Anderson to call him with an update. While in Toronto, Anderson met with Boland and Voorheis, amongst others;

(b) On March 3, 2017, in response to a request for any news or development from Levitt, McFarlane responded that he would “stay in close contact with Wes so all our efforts are coordinated. Their stock is down about a dollar for the week-high of \$19.12 and around \$18.20 right now.” The need for close co-ordination expressed by McFarlane was because the planned public disclosure to the media of the false whistleblower complaints had to coincide with the short selling being implemented by Anderson, Boland, West Face, Voorheis, Langstaff, the Anson Defendants, and others. McFarlane had previously warned the Guarantor Conspirators against personally taking a short position in Callidus in order to keep the activities of the group as covert as possible; and

(c) On March 22, 2017, McFarlane travelled to Toronto to meet in person with Voorheis to discuss the precise implementation of the Conspiracy. McFarlane’s trip to Toronto also included meetings with Langstaff, who through his employment as a broker-dealer at Canaccord was assisting the Defendants with their short-selling attack, and with John Tilak, a Toronto based reporter with Thomson Reuters.

114. Throughout this period, the Anson Defendants were also involved in numerous discussions with Cohodes, Langstaff and other third parties known to the Defendants regarding the Conspiracy against the Plaintiffs. These communications and meetings were attended by senior executives of the Corporate Anson Defendants, including Kassam, Spears and Puri,

during which discussions were held and meetings were conducted with Cohodes and other persons known to the Anson Defendants, including the following:

- (a) A meeting in December 2016, between the Anson Defendants and others in which plans were discussed to file a number of whistleblower complaints against several Canadian companies in order to legitimize short-selling activities that were to be undertaken by the Anson Defendants in conjunction with the Wolfpack Conspirators and the other John Does;
- (b) A meeting by Kassam and Cohodes on or shortly before January 9, 2017, which Cohodes referred to as being “a perfect meal after a great day with members of the conspiracy”;
- (c) A meeting at the Corporate Anson Defendants’ offices at 155 University Avenue in Toronto, in or about February 2017 during which Spears stated that “Glassman had made himself a target”, that Anson had received disparaging allegations about Catalyst and Callidus from Langstaff at Canaccord, and discussed “working up a fraud complaint” against the Plaintiffs. Langstaff and Canaccord were described by Spears to be friends of Boland;
- (d) A meeting on or about March 5, 2017, at an unknown place, when Spears alleged that according to Langstaff, Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices. Spears also alleged that Langstaff and possibly one other person was a source for this “intel”; and
- (e) A dinner meeting at Barbarians restaurant in Toronto on or about July 14, 2017, attended by Kassam, Spears, Puri , Cohodes and approximately 10 other people

whose identities are known to the Anson Defendants, during which the allegations referred to above were discussed as well as the SEC complaint that had been recently filed against Catalyst and Callidus by Anderson and other members of the Conspiracy, the attempts to cause Reuters to publish false articles about the Plaintiffs, and the next steps that would be taken in furtherance of the Conspiracy.

115. As a result of these meetings and other communications among them, by the third week in April 2017, the Wolfpack Conspirators and the Guarantor Conspirators had prepared and distributed further written materials falsely accusing Catalyst, Callidus and Glassman of criminal wrongdoing, which the Conspirators intended to provide to the SEC, JSOT, and the Toronto Police Service. Like the allegations contained in the other materials which had previously been prepared, circulated and utilized by the Complainants when they met with the OSC in December 2016, the allegations in this documentation were false.

116. In or about mid-April 2017, some or all of the Wolfpack Conspirators and Guarantor Conspirators had also contacted the Toronto Police Service for the purpose of making false allegations of criminal offences against Catalyst, Callidus and Glassman. These contacts were made by the Wolfpack Conspirators and Guarantor Conspirators to Gail Regan and Dianne Kelly of the Toronto Police Service. The purpose was to harm Catalyst, Callidus and Glassman and to make it possible to allege to the media that an active criminal investigation into frauds allegedly committed by Catalyst, Callidus and Glassman was underway by the responsible authorities. In furtherance of this element of the Conspiracy, the Wolfpack Conspirators and Guarantor Conspirators remained in contact with Regan and Kelly throughout April – May 2017, including but not limited to direct contacts on or about June 5, May 30, June 14-15 and July 6, 2017. These contacts and communications included the

preparation and delivery to the Toronto Police Service of a document entitled “Callidus Fraud” and a request in early July 2017 that a formal fraud investigation be commenced.

117. The Toronto Police Service cautioned the Defendants about making any public reference to any “investigation” by the Toronto Police Service and ultimately, the Toronto Police Service confirmed to them that no investigation of Callidus or Catalyst would be commenced. However, none of this stopped the Wolfpack Conspirators and Guarantor Conspirators from relaying that false information to the media, as described below.

118. By this time, the Wolfpack Conspirators and Guarantor Conspirators had also filed, with the direct assistance and participation of Anderson, a false complaint with the SEC and OSC alleging that Catalyst, Callidus and Glassman were guilty of serious criminal misconduct.

119. The above acts were all in furtherance of the Conspiracy, including the plan by the Conspirators to persuade the financial media to publish false stories alleging that Catalyst, Catalyst and Glassman were the subject of active fraud investigation by the Toronto Police Service and by JSOT.

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

120. 75. In or about spring 2017, the Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting newly identified journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

121. 76. ~~Initially, the Wolfpack Conspirators and the Guarantor Conspirators~~ As pleaded above, initially, Boland and West Face had engaged Livesey, who had a prior relationship with West

Face, to write a negative story targeting Callidus, Catalyst and their principals. ~~The Wolfpack Conspirators~~ West Face and Boland agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

122. ~~77.~~ As a result, Livesey drafted a story based on information fed to him by one or more of the Wolfpack Conspirators and the Guarantor Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

123. ~~78. In furtherance of the Conspiracy, the Wolfpack Conspirators~~ West Face and Boland 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.

124. ~~79. Having been frustrated by the failure of their first attempt,~~ the above failed attempts, the Wolfpack Conspirators and the Guarantor 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 Wolfpack Conspirators and the Guarantor Conspirators intended to create the appearance of a credible news story about alleged nefarious practices and fraudulent practices at Callidus and Catalyst.

125. ~~80.~~ Callidus and Catalyst have positively denied any such "investigation", and no such investigation was ever commenced.

126. ~~81.~~ The Wolfpack Conspirators and the Guarantor Conspirators approached Reuters in June 2017 and advised, with the existence of the Complaints, and encouraged Tilak and a New

York based Reuters reporter, Lawrence Delevigne, to publish a negative story about Callidus and Catalyst, including falsehoods that active criminal investigations about the Plaintiffs and their businesses were actively underway by regulatory authorities, JSOT and the Toronto Police Services. Reuters decided not to publish this false story. Reuters did not publish the story despite the Wolfpack Conspirators' and the Guarantor Conspirators' best efforts to entice it to do so by alleging, among other things, that:

(a) Catalyst had misled its investors about the valuation of assets held in Catalyst's investment portfolios;

(b) Callidus had misled its borrowers about loans extended to them by Callidus;

(c) Callidus' misconduct included criminal fraud in relation to its borrowing practices;

(d) both Catalyst and Callidus had engaged in false and deceptive accounting practices in relation to a loan which had been extended to XTG;

(e) Catalyst was under active investigation for fraud and other criminal misconduct in connection with the above matters by the OSC, JSOT and by the Toronto Police Service; and

(f) Callidus was also under active investigation for fraud and other criminal misconduct in connection with the above matters by JSOT and the Toronto Police Service.

127. In addition, in or about late June or early July, 2017, one or more of the Wolfpack Conspirators and the Guarantor Conspirators also alleged that:

(a) At least three separate "whistleblower" complaints had been filed with the OSC;

- (b) One of the whistleblower complaints had been filed by the defendant Baumann and stated that Catalyst and Callidus had engaged in false and deceptive accounting practices with respect to XTG;
- (c) Another whistleblower complainant stated that Callidus had misled its borrowers about their loans and had misled its shareholders about the value of Callidus' assets, and,
- (d) Another whistleblower complainant stated that Catalyst had misled its investors about the value of the investments in its portfolios.

128. At times known to the Defendants but not to the Plaintiffs, one or more of the Wolfpack Conspirators and the Guarantor Conspirators continued to communicate with Reuters and to make allegations about Catalyst and Callidus, including the following:

- (a) Catalyst's valuation procedures were flawed and improper and had been used to create an appearance of high but inaccurate returns in the Funds managed by Catalyst;
- (b) Catalyst's practices of using aggressive, inflated valuations had the effect of generating elevated fees for the benefit of Catalyst and Newton Glassman;
- (c) Glassman had been unfairly and improperly enriched by such practices and fees;
- (d) Catalyst's loan guarantees to Callidus had not been properly disclosed and created improper conflicts of interest; and
- (e) Catalyst and Callidus continued to be under active criminal investigation by JSOT and the Toronto Police Service.

129. 82. Prior to approaching Reuters, the Wolfpack Conspirators and the Guarantor Conspirators had 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 stories about Callidus and Catalyst. Those organizations also decided not to publish their stories.
130. 83. After being rejected by these credible media outlets, the Wolfpack Conspirators and the Guarantor Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.
131. 84. As a result of these continuing failures, in late July or early August 2017, the Wolfpack Conspirators and the Guarantor Conspirators contacted a different reporter, the Defendant 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.
132. 85. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Wolfpack Conspirators and the Guarantor Conspirators to further the Conspiracy.
133. The Wolfpack Conspirators and Guarantor Conspirators agreed that the Guarantor Conspirators and Anderson would disclose information relating to the fact and substance of the Complaints to Copeland, knowing and/or intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud and other improprieties by Catalyst and Callidus would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints 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 some number of them an opportunity to engage in profitable short selling of Callidus Shares, all of which was in furtherance of the Conspiracy.

134. 86. Copeland was directed by the Wolfpack Conspirators and the Guarantor Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint fully expecting that Copeland would publish those statements in the WSJ. 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, maliciously 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.
135. 87. During the course of writing the article requested by the Wolfpack Conspirators and the Guarantor Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.
136. 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.
137. 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 Wolfpack Conspirators and the Guarantor 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.

138. 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.

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

140. 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. Copeland and McNish acted maliciously.

141. 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, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff were in communication about the timing of the story. They encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised them Conspirators that he would do so and he did.

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

142. 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.
143. 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 Defendants Conspirators but unknown to the Plaintiffs.
144. 96. Langstaff and others, who are known to the Defendants 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.
145. 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.
146. 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.
147. 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.

148. ~~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.

149. ~~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.

150. ~~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.

151. ~~103.~~ At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on [thewallstreetjournal.com](http://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.

152. ~~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 Wolfpack Conspirators, the Guarantor Conspirators and Langstaff 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.
153. ~~105.~~ In addition to publication online on thewallstreetjournal.com, a revised version of the Article was published in the August 10, 2017 print edition of the Wall Street Journal under the headline “Top Buyout Firm Scrutinized on Loans”.
154. The Article was also 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.
155. ~~106.~~ Just prior to the publication of the Article on August 9, 2017 and the close of market at 4:00 pm EDT the same day, the trading in Callidus stock revealed that 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 Defendants Conspirators.
156. ~~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.

157. ~~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.

158. ~~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.

159. ~~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 earlier secured the naked short (and other simulated short positions) ~~at the beginning of the trading day.~~

160. ~~111.~~ The Defendants' ~~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).

161. Shortly after the above short-attack, the Anson Defendants including Kassam retweeted on September 27, 2017, Cohodes' tweet that included the following: "This is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".

**(I) ARTICLE AND COMPLAINTS ARE FALSE**

162. ~~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.

163. ~~143.~~ 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***

164. ~~144.~~ 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.

165. ~~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*.

166. ~~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*.

167. ~~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**

168. ~~118.~~ By participating in the Conspiracy and 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.
169. ~~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, lost revenues, loss of goodwill, as well as impairment of their ability to conduct and grow their business, implement strategic plans, and secure capital. In addition, the market manipulation of the Defendants caused significant harm to Callidus in the form of a loss in market capitalization.
170. The conduct of the Defendants in implementing the Conspiracy as described above, was directed at and intended to harm, punish and discredit the Plaintiffs. As described above, the purpose and effect of the Defendants’ activities were to damage the reputations, and undermine and destroy the business of, and otherwise cause harm to the Plaintiffs. The Defendants knew that harm would come to the Plaintiffs as a result of their conduct. By deceiving market participants and investors into believing that the Plaintiffs are dishonest, fraudulent and untrustworthy, and by engaging in an improper short attack, the Defendants deliberately tarnished and harmed their reputations in the financial, investing and business communities.
171. As a result of the Defendants’ implementation of the Conspiracy as described above, the Plaintiffs have suffered significant damages. Among other things, the Defendants have

impaired Callidus' ability to raise and retain invested capital, attract and keep employees, attract and grow its loan portfolio and make investments in other companies. This has led directly to the significant erosion of the equity value of Callidus from 2017. This is because the Defendants' conduct has:

- (i) deterred potential borrowers from doing any business with Callidus in light of the false allegations that Callidus engaged in fraudulent transactions, unethical accounting and unfair business practices with a view to wiping out equity ownership and taking control of borrowers;
- (ii) scared away potential employees who could have helped grow and develop the Callidus' business; and
- (iii) made it extremely difficult for Callidus to access third party capital necessary for the growth of its business.

172. ~~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**

173. ~~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. The role of the Individual Defendants in this regard extended beyond the nature and scope of their roles as officers and directors of the corporate Defendants and include direct personal involvement, improper intentions, and wrongful acts. 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.

174. ~~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**

175. ~~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.

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

### **Unjust Enrichment**

177. ~~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.

178. ~~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.

179. ~~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**

180. ~~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.

181. ~~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**

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

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

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

DATE: ~~November 7, 2017~~  
April 8, 2019

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and

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Defendants

Court File No. CV-17-~~586096~~  
587463-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED STATEMENT OF CLAIM**

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**TAB H**

THIS IS **EXHIBIT H**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a horizontal line.

A commissioner for taking affidavits

9:30AM

COUNSEL SLIP

COURT FILE NO CV-17-587463-00CL

DATE OCT 25, 2018

NO ON LIST 2

TITLE OF PROCEEDING  
THE CATALYST CAPITAL GROUP INC. et al.  
✓ WEST FACE CAPITAL INC. et al.

COUNSEL FOR: The defendant, Bruce Langstaff  
PLAINTIFF(S) Devin Jarraig, milburn & Associates  
APPLICANT(S)  
PETITIONER(S) Anson Defendants,  
Linda Plumpton, Toys LLP

PHONE & FAX NOS  
(647) 728-8086  
(647) 689-2983  
416-865-8193 (C)  
416-865-7380 (P)

COUNSEL FOR:  
DEFENDANT(S) David Moore  
RESPONDENT(S) Catalyst

PHONE & FAX NOS  
416-581-1218  
ext 222  
fax 416-581-1279

October 25, 2018

My endorsement is  
attached.

Hainey J.

The parties agree as follows:

(1) Langstaff shall have 30 days to file any reply, if so ~~adv~~ advised;

(2) \$1500 costs payable within 30 days;

(3) subject to further direction by the court, Affidavit of Documents restricted to documents specific to Langstaff to be ~~delivered~~ delivered within 60 days of the close of pleadings in the Langstaff aspect of the case.

Mr. Moore to deliver any factum in the October 29 motions prior to Friday, October 26, 2018

October 25, 2018

James J

# TAB I

THIS IS **EXHIBIT I**  
TO THE AFFIDAVIT OF  
GRETEL BEST  
AFFIRMED BEFORE ME THIS  
4<sup>TH</sup> DAY OF JULY, 2019



---

A commissioner for taking affidavits

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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, GERALD DUHAMEL,  
ANDREW LEVY, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY,  
CANACCORD GENUITY CORP.  
AND JOHN DOES #16-10

Defendants

**FRESH AS AMENDED AMENDED 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 \_\_\_\_\_  
 Address of \_\_\_\_\_  
 Court office: \_\_\_\_\_  
 Local Registrar

TO: WEST FACE CAPITAL INC.  
 2 Bloor Street E.  
 Suite 3000  
 Toronto, Ontario  
 M4W 1A8

AND TO: GREGORY BOLAND  
 c/o West Face Capital Inc.  
 2 Bloor Street E.  
 Suite 3000  
 Toronto, Ontario  
 M4W 1A8

AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA  
 111 Peter Street  
 Suite 904  
 Toronto, Ontario  
 M5V 2H1

AND TO: ADMIRALTY ADVISORS LLC  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: FRIGATE VENTURES LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON INVESTMENTS LP  
5950 Berkshire Lane Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CAPITAL LP  
420 Lyndon B. Johnson Freeway  
Suite 550  
Dallas, Texas, U.S.  
75240

AND TO: ANSON INVESTMENTS MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: AIMF GP,  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ANSON CATALYST MASTER FUND LP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: ACF GP  
5950 Berkshire Lane  
Suite 210  
Dallas, Texas, U.S.  
75225

AND TO: MOEZ KASSAM  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: ADAM SPEARS  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: SUNNY PURI  
111 Peter Street  
Suite 904  
Toronto, Ontario  
M5V 2H1

AND TO: BRUCE LANGSTAFF  
158 St. Leonard's Ave  
North York, Ontario  
M4N 1K7

AND TO: ROB COPELAND  
63 N. 3<sup>rd</sup> St.  
Apt. 207  
Brooklyn, New York  
11249

AND TO: CLARITYSPRING INC.  
545 5th Avenue  
8th Floor  
New York, New York, U.S.  
10017

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: ANDREW LEVY

AND TO: GERALD DUHAMEL

AND TO: GEORGE WESLEY VOORHEIS

AND TO: BRUCE LIVESEY

AND TO: CANACCORD GENUITY CORP.

AND TO: AND JOHN DOES #16-10

## 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), and civil conspiracy; and, in addition, for breach of the duty of loyalty, duty of honesty and fair dealing, and fiduciary duty as against the defendant, Bruce Langstaff, and breach of the duty of loyalty, duty of honesty and fair dealing, fiduciary duty, and negligence as against Canaccord Genuity Corp. 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) An order requiring the Defendants to:
    - (i) disclose in writing the means by which they obtained and/or the persons who provided them with any confidential documents of the Plaintiffs, including the documents referred to in paragraph 80 herein;
    - (ii) deliver to counsel for the Plaintiffs any and all such confidential documents, and any and all copies thereof, in their possession, power or control and to permanently destroy any electronic copies thereof; and

(iii) deliver a written declaration setting out the details of any and all circulation by them to any third parties of any of the confidential documents of the Plaintiffs, including any information derived therefrom, and warranting that they have delivered up any and all such confidential documents, in accordance with subparagraph 1(ed)(ii) above;

- (e) 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*”);
- (f) 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;
- (g) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
- (h) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
- (i) 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;
- (j) The costs of this action, plus the applicable taxes; and
- (k) 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 MSV 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 (“the “Corporate Anson Defendants””). 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 the Corporate Anson Defendants. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (Kassam, Spears and Puri are together, the “Individual Anson Defendants”). At all material times, under Kassam’s active direction and control, the Corporate Anson Defendants’ principal investment strategy has been to engage in short selling activities of publicly listed stocks. The resulting trading activity includes the illicit short selling of the publicly traded stock of Callidus pleaded in this Action.
20. The Individual Anson Defendants and the entities that comprise the Corporate Anson Defendants (collectively, the “Anson Defendants”) at all material times operated, acted and

marketed themselves as a single entity. The Individual Anson Defendants and the Corporate Anson Defendants are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and the Corporate Anson Defendants 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.

# The Defendant George Wesley Voorheis (“Voorheis”) is an individual residing in Toronto, Ontario. He is a lawyer and activist investor, and was the person named as John Doe #1.

# The Defendant Bruce Livesey (“Livesey”) is an individual residing in Toronto, Ontario. He is a freelance journalist and was the person named as John Doe #2.

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

# The Defendant Canaccord Genuity Corp. (“Canaccord Genuity”) is an investment banking and financial services company that provides mergers and acquisitions, corporate finance, restructuring, debt advisory and strategic advice and services for institutional and corporate clients. The Plaintiffs were clients of Canaccord Genuity to which it owed duties of loyalty, honesty and fair dealing, fiduciary duty and other common law duties to, among other things, act honestly, in good faith and in the best interests of the Plaintiffs and to not engage in any

conduct that prefers the interests of Canaccord Genuity or its other clients over the interests and to the harm of the Plaintiffs. Canaccord Genuity was the entity named as John Doe #3.

24. The Defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity. Langstaff was a Managing Director, Canadian Equity Sales, from November 18, 2013 until he was terminated by Canaccord Genuity effective September 26, 2017. While employed Canaccord Genuity, the Plaintiffs were clients of Langstaff. Canaccord Genuity. Canaccord Genuity owed ongoing fiduciary, statutory and contractual duties to act honestly, in good faith and in the best interests of the Plaintiffs and not to engage in any activity harmful to the Plaintiffs. While employed by Canaccord Genuity, Langstaff owed the same duties to the Plaintiffs.

# Canaccord Genuity is vicariously liable for the acts or omissions of Langstaff while he was an employee of Canaccord Genuity. In the alternative, Langstaff and Canaccord Genuity acted as agent for each other.

25. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ”) and resides in New York, New York. Copeland is a Defendant to a separate proceeding, *The Catalyst Capital Group Inc. v. Dow Jones and Co. et. al.* Court File No. CV-17-586094 (the “Dow Jones Action”) in which damages for defamation are claimed in relation to, among other things, the publication of the Article (defined *infra*).
26. The Defendants Boland, Kassam, Spears, Puri, and 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. Baumann was the President of Alken Basin Drilling Ltd. (“Alken Basin”), a borrower of Callidus.
28. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America. McFarlane was the CEO of Exchange Technology Group LLC (“XTG”), a borrower of Callidus.
29. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario. Levitt was an officer of Fortress Resources LLC (“Fortress”), a borrower of Callidus.
- ± 30. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.
- # The Defendant Gerald Duhamel (“Duhamel”) is an individual residing in Drummondville, Quebec. Duhamel was the President of Bluberi Gaming Technologies Inc. (“Bluberi”), a borrower of Callidus, and was the person named as John Doe #4.
- # The Defendant Andrew Levy (“Levy”) is an individual residing in the State of New York. Levy was the Chairman of Esco Marine Inc. (“Esco Marine”), a borrower of Callidus, and was the person named as John Doe #5.
31. Baumann, McFarlane, Levitt, Duhamel, Levy 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”.~~

32. ~~33.~~ John Doe ~~46-10~~ 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**

33. ~~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.

34. ~~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.

35. ~~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.

36. 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 and destroying their business; iii) caused the stock price of Callidus to drop; and (iv) in fact has caused significant damages to the Plaintiffs' business and caused the Plaintiffs to suffer damages as a result of their conduct.

37. The amendments now being made to the Plaintiffs' claim herein set out the additional material facts regarding the Conspiracy that the Plaintiffs have become aware of as of the date of the amendments. The Plaintiffs expressly reserve their right to make or seek to make additional amendments with respect to other material facts and information ascertained by them, when appropriate to do so. These amendments do not implement or respond to the decision of the Honourable Justice Wilton-Siegel dated January 9, 2019, with respect to certain motions brought by some of the Defendants, as the scope of such amendments remains in dispute between the Plaintiffs and the Moving Parties on those motions.

**(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 XTG ~~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.

# In addition, in or about November 2015, another borrower of Callidus, Bluberi Gaming Technologies Inc. (“Bluberi”) filed for protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “CCAA Proceeding”). At or around this time, Bluberi’s President, Gerald Duhamel, became connected with the other Guarantors and agreed to join the Conspiracy and otherwise provide his support, information, and advice to them in their concerted action against the Plaintiffs.

42. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and the CCAA Proceeding and to do so in substantially the same fashion and/or 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.

44. The Guarantors had difficulty retaining counsel to represent them in a RICO action against Callidus. Boland and West Face, through their external legal counsel, attempted to assist the Guarantor Conspirators by referring them to legal counsel in the United States to enable them to commence a RICO action against Callidus which would attract significant adverse publicity.

45. Due to difficulties they faced retaining counsel to commence a RICO action, 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.

46. 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.

47. 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.
48. 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.
49. 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.
50. 48. Baumann has made similar claims implying fraud against Callidus.
51. 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.
52. 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.

53. ~~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.

54. ~~52.~~ In addition to these coordinated activities, Levitt, Langstaff or McFarlane 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, Langstaff or McFarlane in order to mask his identity.

55. ~~53.~~ Through this alter ego, Levitt, Langstaff or McFarlane published false and defamatory statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt, Langstaff or McFarlane are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public. These tweets were re-tweeted by the other Defendants through other aliases including “@stopthescandal”; “@LRenard3”; @AlderLaneeggs”; “@ReganFCU”; “@DKellyFCU”; “@LexLexlucifer2”; “@KevinBa15422460”; “@DumpsterFire69”; and @ClarityToast”.

The false statements spread through these tweets included:

(a) Catalyst investors are “going to lose a lot of their money ... Chatter already in the industry (February 3, 2017);

(b) Callidus’ financial statements are “sublime works of fiction” (February 8, 2017);

- (c) Catalyst is “another likely fraud that Canadians should watch out for” (March 4, 2017);
- (d) Glassman is “Canada’s Madoff” (March 4, 2017);
- (e) Catalyst is the “Mozart of misleading disclosure” (April 20, 2017);
- (f) “Fallout” from Callidus “will be painful” for Callidus’ auditors, valuers and other service providers (May 1, 2017);
- (g) Callidus is a “dying business” (May 4, 2017);
- (h) “If you work for Catalyst Capital, you’re not going to see a penny of carry for all your heartache. Don’t wait for the endgame” (May 7, 2017);
- (i) “If you work at [Callidus], you still need to plan an exit. If you’re an officer or director, you really need a lawyer” (May 9, 2017);
- (j) “... one wonders if Hilco Appraisal Services and [Callidus] operate at arm’s length” (May 15, 2017);
- (k) “The word is out – take [Callidus’] money and your business is gone” (May 15, 2017)”
- (l) “Do you still work at Catalyst? Do you still think your carry is worth one thin dime? You still need to leave. You still need a lawyer” (June 15, 2017);
- (m) “It would be easier for a camel to pass through the eye of a needle than for [Callidus] to attract a third party buyer” (June 20, 2017);
- (n) “There’s life after Callidus. First get out. Then, blow the whistle” (July, 26, 2017);

- (o) “McNish again proving her chops with [Callidus] fraud story in WSJ” (August 9, 2017);
- (p) “Temperature rising at [Callidus] ... - do you know who your whistleblowers are?” (August 14, 2017); and
- (q) a photograph of a pack of wolves with the caption “The scariest beasts are the ones that roam your mind” (September 28, 2017).

56. 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, including those third parties identified in paragraph 182 below or other events.

57. 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**

58. By September 2016, Boland and West Face had a strong animus against Catalyst and Callidus, and against Newton Glassman (“Glassman”), Catalyst’s principal, because of prior and ongoing litigation between Catalyst and Callidus against West Face and Boland. Specifically, Boland and West Face took great exception to the fact that Catalyst and Callidus had instituted and was continuing to prosecute claims against them to assert the rights and protect the interests of Catalyst and Callidus. Specifically, Boland and West Face were aggravated by the fact that Catalyst instituted and was continuing a lawsuit against West Face and Brandon Moyse (former Catalyst employee that joined West Face), for the misuse of

Catalyst's confidential information to acquire "Wind Mobile". They were also very upset and aggravated by the fact that Catalyst had instituted and was continuing a lawsuit against VimpelCom, West Face, and several other defendants alleging (among other things) breaches of Catalyst's contractual rights in relation to VimpelCom's sale of WIND Mobile in July-September 2014. Boland and West Face knew that if this lawsuit proceeded to full productions, discovery, and a trial on the merits of Catalyst's allegations, serious improprieties by them and the other defendants in connection with the sale of WIND would be exposed. Boland and West Face were also strongly hostile to Catalyst and Callidus for having commenced a lawsuit against West Face and Veritas Investment Research Corporation for damages for defamation, conspiracy and intentional interference of economic relations associated with a prior wrongful short selling attack on Callidus Shares from fall 2014 to mid-2015 (the "Veritas Action"). As a result of these ongoing lawsuits, Boland and West Face had come to despise Catalyst, Callidus and Glassman and resulted in a very intense personal animus against them that has continued ever since.

59. 56. Initially, in or about late 2015, West Face and/or Boland retained Bruce Livesey ("Livesey"), an investigative journalist, to write a false and disparaging 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.

60. 57. As pleaded below, Livesey's efforts failed. However, during the course of Livesey's "investigation", he was directed by Boland and West Face to speak spoke to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

61. 58. As described below, in or about mid to 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. By this time, West Face and Boland had decided to do whatever they could to harm Catalyst, Callidus and Glassman. They devised and implemented a plan to harm them, after their efforts to engage Livesey to publish a disparaging article about Catalyst, Callidus and Glassman had not succeeded at that time in attracting any mainstream media publication interest.

62. As a result, Boland and West Face contacted:

- (a) The Guarantor Conspirators, namely Baumann, McFarlane, Levitt and Molyneux, who were facing personal guarantee collection actions by Callidus in Canada;
- (b) Levy and Jaross, who were facing collection proceedings by Callidus in Texas based on a guarantee Levy and Jaross had signed to support a loan from Callidus to a U.S. company operating in Brownsville Texas, known as Esco Marine; and
- (c) Gerald Duhamel ("Duhamel"), the President of Bluberi Gaming Technologies Inc. ("~~Bluberi~~"), a borrower of Callidus that had filed for CCAA protection in November 2015, and who subsequently began communicating with the other Guarantors and agreed to conspire to harm the Plaintiffs and otherwise provide his support, information, and advice to the Guarantors in their concerted action against them.

63. In or about mid to late 2016, Boland and West Face also identified and contacted the following additional persons who also had an animus against Catalyst, Callidus and Glassman to induce them to conspire to injure them:

- (a) Anderson and Anderson's company Clarity;

(b) Kassam and the other Anson Defendants (as defined herein); and

(c) Wes-Voorheis (“Voorheis”), a lawyer and activist investor.

64. Boland and West Face engaged in a series of meetings, telephone conversations and written communications with the above persons for the purpose of inducing and securing their agreement to conspire to harm the Plaintiffs and to implement the Conspiracy.

65. For example, in September 2016, Boland contacted Levy to describe his and West Face’s plan and to induce Levy and the Guarantor Conspirators to conspire to injure the Plaintiffs. On or about September 26, 2016, Boland had a lengthy conversation with Levy, during which Boland related his animosity towards Catalyst, Callidus and Glassman, impugned their integrity and their business practices, and accused them of fraud. Boland also advised Levy that the largest investors in the Catalyst managed funds included two significant institutions based in the United States, and that Callidus had marketed and sold part of its Initial Public Offering in the United States. Boland communicated these specific facts to Levy to make sure that Levy and the Guarantor Conspirators believed that Catalyst and Callidus were subject to the oversight of the U.S. Securities and Exchange Commission (“SEC”). Boland did so because part of the plan he had devised included making complaints about Catalyst and Callidus to the SEC as further described below.

66. Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would undermine the credibility of any complaints authored by them, and would confirm their plan to harm Catalyst, Callidus and Glassman in any way possible.

67. In fact, as Boland and West Face had anticipated and intended, Levy immediately spread the information he had received on September 26, 2016 from Boland to, among others, Levitt, Molyneux, Baumann, McFarlane, Jaross, Duhamel and his partner/associate, Marie-Claude Lapierre.
68. As a result of the above-noted conversation with Levy, and additional communications shortly thereafter, Boland and West Face were able to confirm that Baumann, McFarlane, Levitt and Molyneux, Jaross and Levy were still working together against Callidus. Boland and West Face also became aware that the above named individuals were personally very antagonistic to Catalyst, Callidus and Glassman, that they were desperate to avoid and deflect the guarantee claims against them, that they had coordinated their defences to the Guarantee Actions, and that they were willing to conspire with Boland and West Face to injure the Plaintiffs and implement the Conspiracy.
69. Boland also knew that Voorheis held a very strong personal animus towards Catalyst, Callidus and Glassman because of a bitter dispute which had arisen between Glassman and Voorheis in the Hollinger – Conrad Black legal proceedings over 10 years previously.
70. Boland contacted Voorheis to induce him to conspire to harm Glassman, Catalyst and Callidus. Voorheis readily agreed. Boland then introduced Voorheis to Levitt, McFarlane, Molyneux, Baumann, Jaross, Levy and/or Duhamel. From that time onwards, Voorheis remained in close contact with these individuals to assist and be part of the plans to harm Catalyst, Callidus and Glassman.
71. Indeed, following his discussion with Boland, Levy reported to the Guarantor Conspirators that he intended to call Voorheis, who he was told was apparently “closer to striking”.

72. The following day, on or about September 27, 2016, Levy did contact Voorheis and advised Voorheis of the allegations and information from Boland about the potential jurisdiction of the SEC over Catalyst and Callidus. Voorheis advised Levy that he had decided that he too intended to strike out at Glassman, Catalyst and Callidus.
73. During October-November 2016, with encouragement and additional assistance from Boland and West Face, the Defendants Levitt, McFarlane, Molyneux and Baumann, as well as Levy, Jaross, Duhamel and Voorheis, remained in close communications with each other regarding the Conspiracy. As a result, they agreed and decided to make allegations and file false complaints with the OSC and SEC alleging fraud and similar criminal and quasi-criminal misconduct against Catalyst, Callidus and Glassman, and to harm them by disparaging them in whatever way they could. This included making false allegations, including that under Catalyst's direction, Callidus had and was continuing to operate a criminal "loan to own" business, that Callidus' business practices were to trick and mislead its borrowers and prospective borrowers, that Callidus frequently made fraudulent misrepresentations to its borrowers, that Callidus often failed or refused to live up to its legal obligations, and that Catalyst, Callidus and Glassman were dishonest and untrustworthy. These false allegations were repeatedly made in furtherance of the Conspiracy to whoever would listen, and enabled the Defendants to achieve their intended purpose of causing economic harm to the Plaintiffs and illicit unlawful gains through the short attack of Callidus Shares. The Defendants knew or ought to have known that these allegations were false as many of the very same allegations had already been advanced by some of the Guarantor Conspirators in litigation with Callidus and rejected by the Courts.

74. ~~59.~~ Around the same time, West Face, Boland and/or Voorheis also encouraged another fund, the Anson Defendants to support its planned short attack. Amongst other things, West Face, Boland and/or Voorheis disclosed to Kassam, Puri and Spears Anson the identity of the Guarantors and their knowledge of coordination between the Guarantors.
75. Kassam held an animus against Glassman because of a business dispute between Catalyst and the Corporate Anson Defendants regarding the Corporate Anson Defendants' use of the name "Catalyst". In addition, Kassam was and is a business colleague and personal friend of Boland and from time to time the Corporate Anson Defendants and the West Face have collaborated in making joint investments in businesses and corporate entities, including engaging in coordinated short selling and other investments in such enterprises.
76. At the inducement of Boland and West Face and Voorheis, Kassam caused and directed the Corporate Anson Defendants, Puri, and Spears to participate in the conspiracy to harm Catalyst and Callidus, and subsequently directed, controlled and participated in the decisions by the Corporate Anson Defendants, Spears, Puri, and himself to be part of the Conspiracy, to approve, assist and participate in the acts in furtherance of the Conspiracy, and ultimately engage in the illicit and wrongful short selling in Callidus Shares pleaded herein.
77. ~~60.~~ In late 2016, West Face, Boland and Voorheis also made contacted with Anderson and Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged Anderson and Clarity to participate in the Conspiracy and in the upcoming wave of short attacks against Callidus.
78. As a result, Anderson and his company Clarity were induced to and agreed to conspire with the others to harm Catalyst and Callidus. In or about November 2016, Anderson was introduced to Levitt, Molyneux, McFarlane, Baumann, Levy and Duhamel.

79. To facilitate the preparation, sharing and dissemination of false information and allegations accusing Catalyst, Callidus and Glassman of serious misconduct, fraud and other criminal or quasi-criminal wrongdoing, the Wolfpack Conspirators and the Guarantor Conspirators, among other things:
- (a) Established a data room where such false information were shared and allegations were repeated; and
  - (b) Provided Anderson and Clarity with access to a Dropbox facility containing the false information and allegations to facilitate their continuing participation in the Conspiracy.
80. In addition, to further discredit and cause harm to the Plaintiff, in the latter part of 2016, Baumann wrongfully procured a highly confidential list of all of Callidus' borrowers and loan accounts and other private and confidential Callidus documents. This information constitutes material non-public information concerning Callidus, a public issuer. These confidential documents containing material non-public information were then openly shared on or about December 2, 2016 amongst the Defendants, either directly or through the use of the Dropbox facility referred to above, and/or other means known to the Defendants but not to the Plaintiffs.
81. Instead of immediately returning this material non-public information to Callidus when they knew or ought to have known that it was wrongfully obtained by Baumann, the Defendants used the material non-public information contained therein in furtherance of the Conspiracy, including the short attack which occurred in August 2017, in violation of applicable securities laws.

# Throughout this period, Boland kept Livesey informed of the plan and progress of the Conspiracy to harm the Plaintiffs. At the direction of and with financial incentives from West Face and/or Boland, Livesey frequently communicated with the Guarantor Conspirators and the other Wolfpack Conspirators to provide his support, assistance, encouragement and advice to them in their concerted actions against the Plaintiffs, spread false and disparaging statements about the Plaintiffs, and continued his efforts to have disparaging articles about Catalyst, Callidus and Glassman published in the media.

82. ~~61. In or about~~ Thus, by 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”).

83. ~~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.

84. ~~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.

85. ~~64.~~ The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they would spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators and Anderson/Clarity would file false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) and/or the SEC to “confirm”

the rumours (the “Complaints”). Third, once the false whistleblower Complaints were filed, the Wolfpack Conspirators and the Guarantor Conspirators would worked together to leak the existence and the substance of the allegations contained in the Complaints to the media and to the police in order to generate media interest. Fourth, the Wolfpack Conspirators, either directly or indirectly, would take ~~took~~ short positions in Callidus Shares, through the co-conspirator, Langstaff at Canaccord and others. Fifth, the Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Anderson would cause a false and defamatory ~~time~~ a media report about the Complaints to be released near the end of a trading day, which would caused the price of Callidus Shares to rapidly decline. Finally, the Wolfpack Conspirators would closed out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders. This plan was in fact executed.

86. In furtherance of the Conspiracy, the Defendants frequently communicated with each other and met in person to discuss and implement the Conspiracy. These communications included discussions about and agreements to make allegations about Catalyst and Callidus that included the following:

- (a) Callidus had falsely overstated the credit worthiness of its loan portfolio and had issued false statements about its loans to the public at large;
- (b) Catalyst had entered into numerous fraudulent related party transactions;
- (c) Catalyst and Callidus had engaged in money-laundering schemes; and
- (d) Catalyst and Callidus were guilty of fraudulent lending practices

The full particular of the places, dates, times, content of these communications and meetings to implement and carryout the Conspiracy are not known to the Plaintiffs. The Defendants

were keenly conscious of the need for secrecy around their activities. For example, on December 31, 2016, Levitt cautioned Levy that “we have to be discrete about what we are doing”.

87. ~~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.

88. ~~66.~~ The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff, and Copeland 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 Wolfpack Conspirators and Guarantor Conspirators compelled at least some of the Guarantors to sign nondisclosure agreements to prevent them from disclosing information relating to the Conspiracy.

89. Some or all of the Defendants also used encrypted and self-destructing messaging applications, such as “Confide”, to communicate in an effort to avoid leaving any trace of their activities. “Confide” is reputed to be an application, available online, which serves as a “confidential messenger” to enable users to communicate with each other “with the same level of privacy and security as the spoken word” and gives its users the “comfort” of sending “encrypted, self-destructing and screenshot-proof messages” with the knowledge that their “private communications will now truly stay that way.”

90. The full particulars of the details of the Defendants’ use of “Confide” to communicate with each other are currently unknown to the Plaintiffs. The Plaintiffs have knowledge however that on April 12, 2017, Levitt suggested to Langstaff that they should continue their communications about the Plaintiffs using “Confide” so that they could “chat [about the

Plaintiffs] confidentially with encrypted and disappearing messages”. While employed by Canaccord Genuity, Langstaff agreed to do so and he and Levitt communicated about the Plaintiffs using Confide on dates and times known to them, and not currently known to the Plaintiffs.

91. As a registrant with the OSC and the SEC and as an employee of Canaccord Genuity (a registrant with the OSC and the SEC), Langstaff’s use of “Confide” to conceal his communications with Levitt was in violation of (i) the applicable rules, regulations, and policies of the securities regulators; (ii) the standards and practices of the investment dealer and brokerage industry; and (iii) Canaccord Genuity’s own rules, policies and code of conduct.

**(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAMS**

92. 89-67. The first next 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 other abusive practices in relation to Ontario securities laws to come forward and make anonymous complaints about such matters without fear of reprisal.

93. 90-68. In furtherance of the Conspiracy, and with information from and at the direction of the Wolfpack Conspirators, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or as well as Anderson), with the assistance of the Wolfpack Conspirators agreed to file false and defamatory whistleblower Complaints (the

“Complaints”) with the OSC and/or the SEC 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 and the SEC.

94. 91. Prior to making false “whistleblower” complaints with the OSC and the SEC, in the third week of November 2016, Levitt (with the knowledge, approval and direct involvement of West Face, Boland, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors) contacted Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC.
95. 92. Levitt told Watson that Catalyst, Callidus and Glassman had been guilty of serious offences, including but not limited to fraudulent business and lending practices, penal offences in respect of Callidus’s financial affairs, and other criminal or quasi-criminal misconduct. These allegations were wholly false.
96. 93. These communications were made with the intention that the false allegations would be conveyed by Watson to other counsel within the OSC’s Enforcement Branch and with the law enforcement authority known as the Joint Serious Offences Team (“JSOT”), and that the OSC and JSOT would immediately institute an investigation and commence proceedings against the Plaintiffs.
97. 94. Plaintiffs plead that the above communications and allegations made to Watson and JSOT are separate and outside the scope of the OSC whistleblower program. Indeed, Watson declined to attend the December 7, 2016 meeting with OSC personnel regarding the whistleblower complaint, referred to below, as he knew that his participation in that process would taint the entire “whistleblower” process.

98. 95. In furtherance of the Conspiracy, in late 2016, Boland had further discussions with the Guarantor Conspirators in which he supplied them with false information that they could use in fabricating their allegations to the OSC and the SEC. For example, Boland and West Face provided Levy with copies of their Statement of Defence in the Veritas Action. They did so with the intention that Levy would pass on the allegations of misconduct and impropriety made in their Statement of Defence to Levitt, Molyneux, McFarlane, Baumann, Anderson and Duhamel, and that they would use those allegations to disparage Callidus, including in the intended communications to the OSC and JSOT which formed part of the Conspiracy. In fact, Levy did so, and the false allegations were used for the very purposes as planned by Boland and West Face, and agreed to by Levitt, Molyneux, McFarlane, Baumann and Anderson.

99. 96. Boland and West Face provided additional assistance the Guarantor Conspirators, Duhamel and Levy in the plan to harm Catalyst. This included:

- (a) On or about November 30, 2016, Boland and West Face authorized and directed their external counsel, Matthew Milne-Smith of Davies ("Milne-Smith"), to introduce Levitt to a class action litigator in the United States for the purpose of filing a RICO action against Catalyst and Callidus. Milne-Smith had discussions and exchanged correspondence with Levitt on this subjection. In so doing, Boland and West Face knew there was no basis for any such action. However, they hoped and intended that the corrupt practices which would be alleged in such an action would become public knowledge and that this would advance their plan to harm Catalyst, Callidus and Glassman by whatever means possible;

- (b) On or about December 3, 2016, Boland and West Face authorized and directed West Face's internal counsel, Philip Panet ("Panet"), to advise Levitt of a specific section of Callidus's 2015 MD&A referring to a loan with McFarlane's company, XTG. This was done to set the stage for false allegations conveyed by Boland to Levy, referred to below, about this loan. Panet had discussions and exchanged correspondence with the Guarantor Conspirators as instructed;
- (c) On or about December 3, 2016, Boland personally contacted Levy and falsely told Levy that Catalyst had improperly and fraudulently moved the XTG loan onto unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst;
- (d) On a date unknown to the Plaintiffs, Boland also authorized and directed Milne-Smith to assist the Guarantor Conspirators by providing them with, amongst others, a West Face "research report" which West Face used in the illicit short selling attack on Callidus Shares in 2015-2016 which is the subject of the Veritas Action. Milne-Smith, in turn, was in contact with the Guarantor Conspirators to provide this and other information to them; and
- (e) On January 20, 2017, Panet provided Levitt with a copy of a document which contained details about one of Callidus' borrowers which was then promptly provided (to Panet's knowledge) to the other Guarantor Conspirators and Anderson/Clarity.

100. 97. The above steps and communications were undertaken by Boland and West Face in furtherance of the Conspiracy and with the knowledge and intention that the false allegations and the assistance provided would be:

- (a) Shared among Livesey, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors; and
- (b) Used by the Guarantor Conspirators and Anderson in their communications with the SEC, OSC Enforcement Staff, JSOT, and in the planned meeting with the OSC Staff to file their whistleblower complaint.

101. 98.-In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.

102. 99.-To the knowledge of and with the agreement, assistance and support of the Wolfpack Conspirators and the Guarantor Conspirators, on or about December 7, 2016, Levitt met with OSC personnel. Among other things, he followed a carefully scripted "playbook" and showed them a powerpoint presentation which falsely alleged that Catalyst, Callidus, and Glassman had been guilty of serious misconduct, fraud and other criminal and quasi-criminal wrongdoing.

103. 400.-The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.

104. 401.-All of the above steps were taken with the knowledge, participation and consent of the Wolfpack Conspirators and the Guarantor Conspirators for the purpose of (i) persuading the OSC (and JSOT) to commence criminal or quasi-criminal proceedings against Catalyst, Callidus and Glassman, and (ii) to enable them to leak the contents of their false complaints to the media and to the police in furtherance of their purpose to harm the Plaintiffs and to enable the illicit short selling gains to be realized as part of the Conspiracy.

105. ~~102. 69.~~ The “complainants” disclosed the Complaints, or In addition, as described below, the Guarantor Conspirators, acting in concert with and at the direction of each of the Wolfpack Conspirators, supplied information relating to the existence and the substance of the Complaints, to WSJ reporters in New York and Toronto to encourage and induce them to publish false media articles, as described below.
106. ~~103.~~ They The Wolfpack Conspirators and the Guarantor Conspirators 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 cause third parties, including those identified in paragraph 182 below, to believe that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were the subject of to “investigation” by the securities regulators and the police; 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.
107. ~~104. 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 allegedly 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.

108. ~~105. 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.
109. ~~106. 72.~~ The sole motivation for filing the Complaints was in furtherance of the Conspiracy.
110. ~~107. 73.~~ The intention and purpose of the Complaints was to enable the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff 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.
111. ~~108. 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 Wolfpack Conspirators, the John Does, and Langstaff to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.
112. ~~109.~~ In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them.
113. ~~110.~~ Between December 2016 and February 2017, Anderson continued to receive and exchange information with the Wolfpack Conspirators and the Guarantor Conspirators about

the Plaintiffs. Anderson also communicated with them about their allegations and the “next steps” in the Conspiracy. The purpose was to enable the Wolfpack Conspirators and the Guarantor Conspirators to coordinate their continuing implementation of the Conspiracy and to facilitate the filing of false complaints with the SEC, which was something that Anderson, Voorheis and Boland had been tasked with accomplishing. Particulars of some of these communications include the following:

- (a) On December 20, 2016, Voorheis, McFarlane, Levitt and Anderson had a conference call to discuss their shared interest in “seeing [Newton Glassman] face justice”;
- (b) On January 20, 2017, the Guarantor Conspirators and Levy/Molyneux had a conference call with Anderson to receive an update from him, and to receive his instructions on “next steps”;
- (c) On February 15, 2017, Levitt and Duhamel arranged for a conference call with Anderson so that Anderson could answer “some questions”;
- (d) On February 16, 2017, McFarlane reached out to Anderson and Levitt and provided website links to two media reporters. This was done further to Anderson’s instructions to the Guarantor Conspirators to come up with names of reporters who would be interested in publishing a story based on the submission of the false complaints to the authorities and regulators that the Conspirators had prepared or were preparing;
- (e) On February 24, 2017, McFarlane again reached out to Anderson and Levitt and identified another Catalyst portfolio company as one that “would be very vulnerable to some of the concerns that may form an SEC complaint”; and

(f) On February 28, 2017, McFarlane provided Anderson with contact information for management of two of Callidus' borrowers so that Anderson could reach out to them directly.

114. 111. In addition, on February 13, 2017, Levitt was directed by one or more of the Wolfpack Conspirators and the Guarantor Conspirators to contact Marc Cohodes ("Cohodes"), a known short seller based in the United States. This contact was made to obtain assistance in formulating false allegations against Callidus, and to facilitate the implementation of the Conspiracy. The Wolfpack Conspirators and the Guarantor Conspirators remained in contact with Cohodes throughout 2017 and up to and including 2019 for the purposes of causing economic harm to the Plaintiffs. Cohodes was and is closely associated with the Anson Defendants and invests money with them, and therefore stood to benefit financially from the participation of the Anson Defendants in the Conspiracy.

115. 112. On February 27, 2017, Boland and Levy had another telephone call, this time to discuss Callidus' claim against its former employee, Craig Boyer ("Boyer"). Levy reported on this call to the Guarantor Conspirators and Duhamel.

116. 113. By early March 2017, Voorheis was also still actively assisting the Wolfpack Conspirators and the Guarantor Conspirators, including by (a) making attempts to elicit information helpful to their false allegations from and related to Boyer, and (b) assisting in the coordination of the Conspiracy and the filing of the complaint to the SEC. Particulars of some of these steps include the following:

(a) On March 2, 2017, McFarlane spoke with Voorheis and reported on the conversation to Levy. McFarlane reported that Voorheis said that he "made contact with Boyer's lawyer". Voorheis provided Boyer's lawyer with false information about the XTG

loan. In that same report, McFarlane advised Levy that Anderson had “been in Toronto for the last 2 days” and that McFarlane had asked Anderson to call him with an update. While in Toronto, Anderson met with Boland and Voorheis, amongst others;

- (b) On March 3, 2017, in response to a request for any news or development from Levitt, McFarlane responded that he would “stay in close contact with Wes so all our efforts are coordinated. Their stock is down about a dollar for the week-high of \$19.12 and around \$18.20 right now.” The need for close co-ordination expressed by McFarlane was because the planned public disclosure to the media of the false whistleblower complaints had to coincide with the short selling being implemented by Anderson, Boland, West Face, Voorheis, Langstaff, the Anson Defendants, and others. McFarlane had previously warned the Guarantor Conspirators against personally taking a short position in Callidus in order to keep the activities of the group as covert as possible; and
- (c) On March 22, 2017, McFarlane travelled to Toronto to meet in person with Voorheis to discuss the precise implementation of the Conspiracy. McFarlane’s trip to Toronto also included meetings with Langstaff, who through his employment as a broker-dealer at Canaccord was assisting the Defendants with their short-selling attack, and with John Tilak, a Toronto based reporter with Thomson Reuters.

117. 114. Throughout this period, the Anson Defendants were also involved in numerous discussions with Cohodes, Langstaff and other third parties known to the Defendants regarding the Conspiracy against the Plaintiffs. These communications and meetings were attended by senior executives of the Corporate Anson Defendants, including Kassam, Spears

and Puri, during which discussions were held and meetings were conducted with Cohodes and other persons known to the Anson Defendants, including the following:

- (a) An exchange of messages in May 2016 between Kassam and Langstaff whereby Langstaff, while employed by Canaccord Genuity, asked Kassam to provide him with the email address of Cohodes; declared that “[Callidus] must be stopped”; and instructed Kassam to “short” Callidus;
- (b) In the same message exchange, Kassam provided Langstaff with Cohodes’ email address told Langstaff to “Call ADAM [Spears] tmrw” as it would be “Best he [Spears] make the intro” to Cohodes. Langstaff in reply said “No problem. Hat tip to [S]pears on this one – wouldn’t have happened without him”;
- (c) ~~(a)~~ A meeting in December 2016, between the Anson Defendants and others in which plans were discussed to file a number of whistleblower complaints against several Canadian companies in order to legitimize short-selling activities that were to be undertaken by the Anson Defendants in conjunction with the Wolfpack Conspirators and the other John Does;
- (d) ~~(b)~~ A meeting by Kassam and Cohodes on or shortly before January 9, 2017, which Cohodes referred to as being “a perfect meal after a great day with members of the conspiracy”;
- (e) ~~(e)~~ A meeting at the Corporate Anson Defendants’ offices at 155 University Avenue in Toronto, in or about February 2017 during which Spears stated that “Glassman had made himself a target”, that Anson had received disparaging allegations about Catalyst and Callidus from Langstaff at Canaccord, and discussed “working up a

fraud complaint” against the Plaintiffs. Langstaff and Canaccord were described by Spears to be friends of Boland;

- (f) (d)-A meeting on or about March 5, 2017, at an unknown place, when Spears alleged that according to Langstaff, Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices. Spears also alleged that Langstaff and possibly one other person was a source for this “intel”; and
- (g) An exchange of messages on March 23, 2017 whereby Kassam asked Langstaff, a day after Langstaff had met with McFarlane who had spoken to Anderson and was advised that Anderson was 2-3 weeks away from filing an SEC complaint, whether “[Langstaff]” had any draft for [Kassam]”;
- (h) In the same message exchange, Langstaff advised Kassam that “I don’t have [a draft] yet” but went on to state he did “have something new though”, namely Langstaff alleged that there was “an undisclosed related party transaction that hides a loss”. Langstaff was referring to certain previously disclosed transactions relating to XTG which were later the subject of widespread false allegations made by the conspirators;
- (i) A follow up meeting between Kassam and Langstaff arranged in June 2017;
- (j) (e)-A dinner meeting at Barbarians restaurant in Toronto on or about July 14, 2017, attended by Kassam, Spears, Puri , Cohodes and approximately 10 other people whose identities are known to the Anson Defendants, during which the allegations referred to above were discussed as well as the SEC complaint that had been recently filed against Catalyst and Callidus by Anderson and other members of the

Conspiracy, the attempts to cause Reuters to publish false articles about the Plaintiffs, and the next steps that would be taken in furtherance of the Conspiracy.

118. While employed by Canaccord Genuity, Langstaff also engaged in numerous acts and communications with the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes in furtherance of the Conspiracy. Particulars of these acts and communications include the following:

- (a) on March 24, 2017 Langstaff told Levitt that a loan in Callidus' portfolio known as the "Leader [Energy] loan" was a "dismembered corpse" and that Callidus was getting ready to "stuff" this loan into another borrower with whom Callidus had a business relationship, in order to "hide the loss":
- (b) on March 28, 2017, Langstaff and Levitt discussed how best to make and substantiate fraud allegations against Catalyst and Callidus which they and their co-conspirators were and were intending to disseminate;
- (c) on March 29, 2017, Langstaff told Levitt that Callidus was probably about to take steps to "tap the guarantee on Blueberi" and of his conversation with the principal of Blueberi, "Gerrard" (Duhamel), about steps that Duhamel had taken or was about to take to disparage Catalyst and Callidus;
- (d) on March 30, 2017, Langstaff told Levitt that according to a "friend" of Langstaff (referring to Boland), an internal Callidus loan officer could be contacted to obtain allegations and or information thought to be harmful to the Plaintiff;
- (e) on April 12, 2017, Langstaff told Levitt that Callidus' growth was "severely negative";

- (f) on April 21, 2017, Langstaff was told by Levitt that a District Court Judge in Texas had “found instances of fraud” by Callidus in relation to Esco Marine and the guarantor actions against Levy and Jaross;
- (g) on April 25, 2017, Langstaff contacted Levy of Esco Marine and advised that “Greg Boland is a friend of mine”; he was “helping West Face” and was looking for “details”;
- (h) on April 30, 2017, Langstaff was told by Levitt that he was “Dropping off evidence binders tonight to police HQ. We can supplement with other new info” and that Nathan [Anderson] is coming tomorrow and Tuesday”;
- (i) on May 2, 2017, Langstaff and Levitt shared copies of questions which they and their co-conspirators had provided to the media and to analysts including a supposedly independent analyst at Canaccord Genuity covering Callidus, for the purpose of eliciting answers from Callidus which they hoped would be used to generate disparaging reports harmful to the Plaintiffs;
- (j) on May 3, 2017, Langstaff told Levitt that Callidus’ numbers were “horrific” and that “now is the time to go after Glassman”;
- (k) on May 3, 2017, Langstaff represented to Levitt that “Glassman had violated TSX rules”; that with “one good swat at [Glassman]” the conspirators “might get [Glassman] to lose control and that he was “trying” to make this happen;
- (l) on May 12, 2017, Langstaff received from Levitt numerous documents including materials which the Guarantor Conspirators delivered to JSOT, to be used and

distributed by Langstaff to “get some media traction” in furtherance of the Conspiracy;

- (m) on May 15, 2017, Langstaff told Levitt that he suspects that Hilco, a well-known and independent appraiser retained by Callidus to value Esco Marine and Bluberi, was “on the take from Callidus” to enable Callidus to “call in the loan[s]”; and
- (n) on June 3, 2017, Langstaff was told by Levitt that he supposedly had “evidence of ... money laundering” by Callidus and that “Reuters [was] working hard now”.

119. The communications between Langstaff and the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes also included material information which was not publicly known at the time of their communications, but which was being shared to assist in the circulation of disparaging allegations about the Plaintiffs, in furtherance of the Conspiracy. The sharing and circulation of such non-public material information for the above purposes occurred through and as a result of numerous communications among Levitt, Langstaff, and the other Defendants. Particulars of these communications include the following:

- (a) on March 28, 2017, communications by Levitt to Langstaff regarding (i) a PwC valuation of Bluberi obtained by Callidus, and (ii) future legal proceedings which had been described by Gerry Duhamel to Levitt, in which the PwC valuation was going to be disclosed by him; and
- (b) on May 3, 2017, communications by Levitt to Langstaff regarding evidence that was sealed and subject to a protective order, which had supposedly been considered by a District Court Judge in Texas, and who Levitt falsely alleged had found that Callidus had been guilty of fraud in its dealings with one of its borrowers, Esco Marine.

120. During the course of the numerous acts and communications by Langstaff with the Wolfpack Conspirators and the Guarantor Conspirators, Langstaff:

- (a) shared information with Boland, who he referred to as his “friend” with the other participants in the Conspiracy;
- (b) received documents and communications from and made by, or prepared at the direction of, his fellow participants in the Conspiracy, which disparaged the Plaintiffs;
- (c) circulated materials which he believed would further help the Conspiracy to succeed;  
and
- (d) encouraged the other participants in the Conspiracy by praising them for their efforts and by inciting their continued participation in the Conspiracy.

121. In furtherance of the Conspiracy, Langstaff breached his [duties of loyalty, honesty and fair dealing, fiduciary and other duties](#) owed to the Plaintiffs [as particularized in paragraphs XX below](#), and also engaged in improper activity with the predominate purpose of harming the Plaintiffs. Langstaff was reprimanded by Canaccord Genuity on August 9, 2017 for divulging [information to a short seller of a stock of another client in breach of Canaccord Genuity’s Confidentiality & Non-Disclosure Policy](#). Langstaff was terminated by Canaccord Genuity [the following month on September 26, 2017](#).

# [Canaccord Genuity is vicariously liable for the actions of Langstaff.](#)

# [In addition, Canaccord Genuity is liable for breach of its duty of loyalty, duty of honesty and fair dealing, and fiduciary duties to act in the best interests of the Plaintiffs and other duties as particularized in paragraphs XX below. Canaccord Genuity was also negligent in failing](#)

to monitor and properly supervise Langstaff and implement effective safeguards to ensure that Langstaff did not engage in any activity harmful to the Plaintiffs.

122. 115. In addition, as a result of these meetings and other communications among them, by the third week in April 2017, the Wolfpack Conspirators and the Guarantor Conspirators had prepared and distributed further written materials falsely accusing Catalyst, Callidus and Glassman of criminal wrongdoing, which the Conspirators intended to provide to the SEC, JSOT, and the Toronto Police Service. Like the allegations contained in the other materials which had previously been prepared, circulated and utilized by the Complainants when they met with the OSC in December 2016, the allegations in this documentation were false.
123. 116. In or about mid-April 2017, some or all of the Wolfpack Conspirators and Guarantor Conspirators had also contacted the Toronto Police Service for the purpose of making false allegations of criminal offences against Catalyst, Callidus and Glassman. These contacts were made by the Wolfpack Conspirators and Guarantor Conspirators to Gail Regan and Dianne Kelly of the Toronto Police Service. The purpose was to harm Catalyst, Callidus and Glassman and to make it possible to allege to the media that an active criminal investigation into frauds allegedly committed by Catalyst, Callidus and Glassman was underway by the responsible authorities. In furtherance of this element of the Conspiracy, the Wolfpack Conspirators and Guarantor Conspirators remained in contact with Regan and Kelly throughout April – May 2017, including but not limited to direct contacts on or about June 5, May 30, June 14-15 and July 6, 2017. These contacts and communications included the preparation and delivery to the Toronto Police Service of a document entitled “Callidus Fraud” and a request in early July 2017 that a formal fraud investigation be commenced.

124. ~~117.~~ The Toronto Police Service cautioned the Defendants about making any public reference to any “investigation” by the Toronto Police Service and ultimately, the Toronto Police Service confirmed to them that no investigation of Callidus or Catalyst would be commenced. However, none of this stopped the Wolfpack Conspirators and Guarantor Conspirators from relaying that false information to the media, as described below.

125. ~~118.~~ By this time, the Wolfpack Conspirators and Guarantor Conspirators had also filed, with the direct assistance and participation of Anderson, a false complaint with the SEC and OSC alleging that Catalyst, Callidus and Glassman were guilty of serious criminal misconduct.

126. ~~119.~~ The above acts were all in furtherance of the Conspiracy, including the plan by the Conspirators to persuade the financial media to publish false stories alleging that Catalyst, Catalyst and Glassman were the subject of active fraud investigation by the Toronto Police Service and by JSOT.

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

127. ~~120.~~ ~~75.~~ In or about spring 2017, the Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting newly identified journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

128. ~~121.~~ ~~76.~~ Initially, the Wolfpack Conspirators and the Guarantor Conspirators As pleaded above, initially, Boland and West Face had engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. The Wolfpack Conspirators West Face and Boland agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

129. ~~122. 77.~~ As a result, Livesey drafted a story based on information fed to him by one or more of the Wolfpack Conspirators and the Guarantor Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.
130. ~~123. 78.~~ In furtherance of the Conspiracy, the Wolfpack Conspirators West Face and Boland worked with Livesey to contact ~~two~~ different news outlets —including, Bloomberg, BuzzFeed, 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.
131. ~~124. 79.~~ Having been frustrated by the failure of ~~their first attempt,~~ the above failed attempts, the Wolfpack Conspirators and the Guarantor 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 Wolfpack Conspirators and the Guarantor Conspirators intended to create the appearance of a credible news story about alleged nefarious practices and fraudulent practices at Callidus and Catalyst.
132. ~~125. 80.~~ Callidus and Catalyst have positively denied any such “investigation”, and no such investigation was ever commenced.
133. ~~126. 81.~~ The Wolfpack Conspirators and the Guarantor Conspirators approached Reuters in June 2017 and advised, with the existence of the Complaints, and encouraged Tilak and a New York based Reuters reporter, Lawrence Delevigne, to publish a negative story about Callidus and Catalyst, including falsehoods that active criminal investigations about the

Plaintiffs and their businesses were actively underway by regulatory authorities, JSOT and the Toronto Police Services.

# In this regard, Livesey offered to be a source for the story and provided false information for the negative story that the Wolfpack Conspirators and the Guarantor Conspirators had encouragd Tilak and Delevigne to write. Livesey also provided Tilak and Delevigne questions to be asked of Catalyst, Callidus and Glassman that were based on patently false information from the Wolfpack Conspirators and Guarantor Conspirators designed to push a disparaging story about Catalyst, Callidus and Glassman.

# Reuters decided not to publish this false story. Reuters did not publish the story despite the Wolfpack Conspirators' and the Guarantor Conspirators' best efforts to entice it to do so by alleging, among other things, that:

- (a) Catalyst had misled its investors about the valuation of assets held in Catalyst's investment portfolios;
- (b) Callidus had misled its borrowers about loans extended to them by Callidus;
- (c) Callidus' misconduct included criminal fraud in relation to its borrowing practices;
- (d) both Catalyst and Callidus had engaged in false and deceptive accounting practices in relation to a loan which had been extended to XTG;
- (e) Catalyst was under active investigation for fraud and other criminal misconduct in connection with the above matters by the OSC, JSOT and by the Toronto Police Service; and
- (f) Callidus was also under active investigation for fraud and other criminal misconduct in connection with the above matters by JSOT and the Toronto Police Service.

134. ~~127.~~ In addition, in or about late June or early July, 2017, one or more of the Wolfpack Conspirators and the Guarantor Conspirators also alleged that:

- (a) At least three separate “whistleblower” complaints had been filed with the OSC;
- (b) One of the whistleblower complaints had been filed by the defendant Baumann and stated that Catalyst and Callidus had engaged in false and deceptive accounting practices with respect to XTG;
- (c) Another whistleblower complainant stated that Callidus had misled its borrowers about their loans and had misled its shareholders about the value of Callidus’ assets, and,
- (d) Another whistleblower complainant stated that Catalyst had misled its investors about the value of the investments in its portfolios.

135. ~~128.~~ At times known to the Defendants but not to the Plaintiffs, one or more of the Wolfpack Conspirators and the Guarantor Conspirators continued to communicate with Reuters and to make allegations about Catalyst and Callidus, including the following:

- (a) Catalyst’s valuation procedures were flawed and improper and had been used to create an appearance of high but inaccurate returns in the Funds managed by Catalyst;
- (b) Catalyst’s practices of using aggressive, inflated valuations had the effect of generating elevated fees for the benefit of Catalyst and Newton Glassman;
- (c) Glassman had been unfairly and improperly enriched by such practices and fees;

- (d) Catalyst's loan guarantees to Callidus had not been properly disclosed and created improper conflicts of interest; and
- (e) Catalyst and Callidus continued to be under active criminal investigation by JSOT and the Toronto Police Service.

136. ~~129.~~ ~~82.~~ Prior to approaching Reuters, the Wolfpack Conspirators and the Guarantor Conspirators had 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 stories about Callidus and Catalyst. Those organizations also decided not to publish their stories.

137. ~~130.~~ ~~83.~~ After being rejected by these credible media outlets, the Wolfpack Conspirators and the Guarantor Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.

138. ~~131.~~ ~~84.~~ As a result of these continuing failures, in late July or early August 2017, the Wolfpack Conspirators and the Guarantor Conspirators contacted a different reporter, the Defendant 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.

139. ~~132.~~ ~~85.~~ Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Wolfpack Conspirators and the Guarantor Conspirators to further the Conspiracy.

140. ~~133.~~ The Wolfpack Conspirators and Guarantor Conspirators agreed that the Guarantor Conspirators and Anderson would disclose information relating to the fact and substance of

the Complaints to Copeland, knowing and/or intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud and other improprieties by Catalyst and Callidus would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints 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 some number of them an opportunity to engage in profitable short selling of Callidus Shares, all of which was in furtherance of the Conspiracy.

141. ~~134. 86.~~ Copeland was directed by the Wolfpack Conspirators and the Guarantor Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint fully expecting that Copeland would publish those statements in the WSJ. 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, maliciously made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. The words uttered by McFarlane meant and were understood to mean that Callidus and Catalyst conducted business in an unethical manner, engaged in improper accounting practices, were dishonest, lacked integrity, and ought not to be trusted.

142. Similar conversations occurred with Baumann, Molyneux, Levitt, Duhamel, Levy and Anderson during which, or as a result of which the following false and defamatory statements were made to Copeland on the direction, encouragement, inducement of and in consultation with the Wolfpack Conspirators and the other Guarantor Conspirators:

- (a) Catalyst and Callidus are under active investigation by the Toronto police department and various regulators, including the OSC and the Alberta Securities Commission, regarding accounting irregularities, securities fraud and other criminal misconduct.

These words meant and were understood to mean that the Plaintiffs,

- (i) operate their businesses in a manner that is contrary to applicable law and regulation;
  - (ii) are involved in fraudulent activity of the type public authorities ought to be concerned with; and
  - (iii) conduct business in a dishonest and unethical manner.
- (b) Callidus and Catalyst failed to decrease the valuations of their loan collateral when companies in the Callidus portfolio ceased making interest payments or only made partial payments.

The words meant and were understood to mean that Callidus and Catalyst engaged in unethical accounting and other business practices so as to apply economic pressure on borrowers, for the unfair advantage of Callidus and Catalyst.

- (c) Callidus and Catalyst engaged in fraud by misleading borrowers about deal terms in order to withhold funds from borrowers at critical times and to allow the debt to balloon in order to assume control and ultimately ownership of borrowers.

These words meant and were understood to mean that Callidus and Catalyst illegitimately exercised their control over the cash flow of borrowers to artificially create a situation of economic distress enabling them to wipe out equity holders.

(d) Catalyst misled its investors about the valuation of assets held in Catalyst's investment portfolios to collect fees and other payments to which it was not entitled and that Callidus had misled its borrowers about loans extended to them by Callidus.

These words meant and were understood to mean that,

(i) Catalyst misled investors in the funds it managed in order to collect management and other fees to which it was not lawfully entitled; and

(ii) Callidus misled its borrowers about the terms of the loan agreements they were entering into and how Callidus' rights under those loans would be exercised.

(e) Callidus and Catalyst falsely certified that their financial statements were prepared in accordance with IFRS and, in particular, that they failed to conduct an appropriate impairment analysis on the assets of the Callidus borrowers and Catalyst funds despite disclosures in their financial statements that such analysis had been done.

These words meant and were understood to mean that Catalyst and Callidus made material misrepresentations in their financial statements and that their financial disclosure ought not to be trusted.

143. ~~135-87.~~ During the course of writing the article requested by the Wolfpack Conspirators and the Guarantor Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

144. ~~136-88.~~ 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.

145. ~~137. 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 Wolfpack Conspirators and the Guarantor 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.
146. ~~138. 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.
147. ~~139. 91.~~ In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.
148. ~~140. 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. Copeland and McNish acted maliciously.
149. ~~141. 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, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff were in communication~~

about the timing of the story. They encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised them ~~Conspirators~~ that he would do so and he did. Copeland did so with the knowledge, intention and purpose of harming the Plaintiffs and benefitting himself, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff.

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

150. ~~142-94.~~ 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.

151. ~~143-95.~~ The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions ~~through~~through Langstaff at Canaccord Genuity and others, who are known to the Defendants ~~Conspirators~~ but unknown to the Plaintiffs.

152. ~~144-96.~~ Langstaff and others, who are known to the Defendants ~~Conspirators~~ but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. While employed by Canaccord Genuity, 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 at Canaccord Genuity.

153. ~~145-97.~~ 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.

154. ~~146-98.~~ 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.

155. ~~147-99.~~ 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.

156. ~~148-100.~~ 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.

157. ~~149-101.~~ 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.

158. ~~150-102.~~ 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.

159. ~~151-103.~~ 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.

160. ~~152-104.~~ The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff intended — it impressed upon the general public, including the third parties identified in paragraph 182 below, that Callidus and Catalyst were under "investigation" by the authorities and that the "investigation" concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

161. ~~153-105.~~ In addition to publication online on thewallstreetjournal.com, a revised version of the Article was published in the August 10, 2017 print edition of the Wall Street Journal under the headline "Top Buyout Firm Scrutinized on Loans".

162. ~~154.~~ The Article was also 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.

163. ~~155-106.~~ Just prior to the publication of the Article on August 9, 2017 and the close of market at 4:00 pm EDT the same day, the trading in Callidus stock revealed that 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 Defendants Conspirators.
164. ~~156-107.~~ 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.
165. ~~157-108.~~ 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.
166. ~~158-109.~~ 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.
167. ~~159-110.~~ 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 earlier secured the naked short (and other simulated short positions) at the beginning of the trading day. Both Langstaff and Canaccord Genuity profited from the short selling trading that were executed directly or indirectly through them, or in the alternative, assisted other members of the Conspiracy to profit as pleaded.

168. ~~160-111.~~ The Defendants' ~~Conspirators'~~ short and distort attack was successful — beginning on August 9, 2017 through August 14, 2017, Callidus' share priced declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

169. ~~161.~~ Shortly after the above short-attack, the Anson Defendants including Kassam retweeted on September 27, 2017, Cohodes' tweet that included the following: "This is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".

# In addition, following the short-attack, Livesey continued his efforts to have false and disparaging articles about Catalyst, Callidus and Glassman published in the media. These include an article entitled "A private equity star's picks shine... until cash-out time" by Tilak and Delevigne on March 23, 2018 that contained a distorted photograph of Glassman taken by one of the Guarantor Conspirators at a Callidus shareholders meeting and shared with Tilak and Delevigne; a follow-up article entitled "Callidus shares tumble after Reuters report on Catalyst valuations" on March 26, 2018. Livesey himself wrote disparaging articles published by Southern Investigative Reporting Foundation on April 11, 2018 and November 27, 2018 entitled "Newton Glassman's Legacy of Ashes" and "Newton Glassman and Other People's Money". Livesey has continued his efforts to have disparaging articles published about Catalyst, Callidus and Glassman, including with Institutional Investors and Bloomberg.

(I) ARTICLE IS FALSE AND DEFAMATORY AND COMPLAINTS ARE FALSE

170. ~~162. 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 The Article contains the following false and defamatory statements of and concerning the Plaintiffs:~~

(a) The Article’s headline and first and second paragraphs state:

**“Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers**

Authorities looking into complaints that Catalyst inflated value of assets, deceived borrowers

...

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.”

...

Catalyst Capital Group Inc., one of Canada’s largest private-equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities Commission, the country’s leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.”

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
- (ii) Callidus ~~is~~ and Catalyst are engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal ~~or~~ wrongdoing

- (iv) Callidus and Catalyst are engaged in fraudulent activities in relation to Callidus's loan portfolios;
  - (v) Callidus and Catalyst have violated Ontario Securities law; and
  - (vi) Callidus and Catalyst have made false and misleading representations to investors;
- (b) A photograph of a Toronto Police car is published immediately after the headline of the Article along with a photo caption that states: “A unit of the Toronto Police Service has begun its own inquiries into Catalyst”. The third paragraph of the Article states: “A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a departmental spokeswoman said”.

These words meant and were understood to mean that:

- (i) Catalyst and Callidus are engaged in criminal conduct;
  - (ii) Catalyst and Callidus defrauded investors; and
  - (iii) ~~(iv)~~ Callidus and Catalyst are under “investigation” for fraud or other illegal activity by the OSC and/or the Toronto Police Service;
- (c) The six, ninth, twelfth, and twenty-sixth to twenty-seventh paragraphs of the Article state:

“...Catalyst mostly invests in high-interest loans to financially distressed firms such as casino game makers of biopharmaceutical companies, and sometimes takes control of the businesses if the loans aren't paid

...

Some but not all of the filers of Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman's firms, and later had their businesses seized, said people familiar with the matter.

...

...Callidus's lending practices are also a subject of the whistleblower complaints, according to the people and documents.

....

One of those borrowers is Jeff McFarlane.

Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report.

Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, "an amount equal to the total outstanding principal plus accrued and unpaid interest," filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and Catalyst delayed and underreported potential losses. "I have serious concerns about the integrity of Callidus's accounting around XTG," Mr. McFarlane said."

These words meant and were understood to mean that:

- (i) ~~(v)~~ Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (ii) ~~(vi)~~ Callidus and Catalyst improperly file "multiple lawsuits" against borrowers;

- (iii) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
  - (iv) ~~(vii)~~ Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
  - (v) ~~(viii)~~ Callidus and Catalyst improperly caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
  - (vi) ~~(ix)~~ Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
  - (vii) ~~(x)~~ Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
  - (viii) ~~(xi)~~ Callidus ~~misled~~ and Catalyst overvalued XTG, to the detriment of the funds managed by Catalyst;
  - (ix) Callidus and Catalyst caused Callidus to mislead its shareholders or investors;
  - (x) ~~(xii)~~ Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
  - (xi) ~~(xiii)~~ Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.
- (d) The nineteenth and twenty-eight paragraphs of the Article state that the Plaintiffs:
- “...sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange's debts that was far less than Callidus was seeking in a civil suit.

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly file "multiple lawsuits" against borrowers; and
- (ii) Callidus and Catalyst dealt with McFarlane unfairly or unjustly by pursuing him in a Guarantee Action.

171. 163-113. 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. The impact of the Article was exactly what the Defendants intended — it impressed upon the general public that Callidus and Catalyst were under "investigation" by the authorities and that the "investigation" concerned fraudulent activities by Callidus and Catalyst.

172. The statement made in the Article particularized in paragraph 170 above, and the statements made to Copeland by the Guarantor Conspirators and Anderson particularized in paragraphs 141-142 above are, collectively, the "Defamatory Words". The plain meaning of the Defamatory Words taken together is that the Plaintiffs act fraudulently with misstated financial statements, carry on nefarious business practices, and lack integrity in their business dealings. This is spurious, false, malicious, and damaging to the Plaintiffs' reputation and good will.

173. The Wolfpack Conspirators acted in concert with the Guarantor Conspirators and Copeland to publish the Defamatory Words.
174. Each of the Wolfpack Conspirators, Guarantor Conspirators, and Copeland participated in a common design to publish the Defamatory Words including but not limited to:
- (a) agreeing to the Conspiracy as particularized in paragraph 85 above,
  - (b) discussing and agreeing to the words to be used in the Complaints and ultimately the Article as particularized in paragraphs 86, 95-98, and 102-104 above;
  - (c) sharing of information, advice, and strategies for the purpose of and in furtherance of the conspiracy as particularized in paragraphs 93-96, and 98-104 above;
  - (d) approving of and directing the disclosure of the existence and substance of the Complaints to Copeland for the purposes of re-publication in the Article as particularized in paragraph 136-140 above; and
  - (e) making false and defamatory statements to Copeland, either directly in the case of the Guarantor Conspirators or indirectly in the case of the other Conspirators, as outlined in paragraphs 141-142 above.
175. The full extent of the Defendants' individual knowledge and participation in the Conspiracy and in the publication of the Defamatory Words is known to them and not known to the Plaintiffs.
176. The Wolfpack Conspirators, Guarantor Conspirators, and Copeland published the Defamatory Words complained in pursuit of their vendetta and vengeance against the Plaintiffs and to profit from short selling stocks in Callidus. Participating in the publication

of defamatory statements about the Plaintiffs with the internationally renowned WSJ was clearly designed to embarrass the Plaintiffs and seriously injure their reputations.

177. The Defendants' publication of the Defamatory Words have and will continue to cause serious damage, loss and injury to the Plaintiffs, who relies on their good reputation to carry on business.

**(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS**

**Breaches of the *Securities Act***

178. ~~164.~~ ~~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.

179. ~~165-115.~~ 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*.

180. ~~166-116.~~ 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*.

181. ~~167-117.~~ The Defendants' breaches of the *Securities Act* are “unlawful acts” that, in part, form the basis of the civil conspiracy claim, as pleaded above.

### **Breaches of Duties by Langstaff and Canaccord Genuity**

# The Plaintiffs were clients of Langstaff and Canaccord Genuity since late 2013. Langstaff and/or Canaccord Genuity provided the Plaintiffs with continuing and interrelated professional and advisory services, in several different contexts and capacities, including the following:

(a) as advisors and consultants to Catalyst and Callidus with respect to its business plans, financing options and strategic alternatives;

(b) as lead underwriter with respect to the preparation, marketing, distribution

and implementation of Callidus' April 2014 IPO;

(c) as the "market maker" for the trading in Callidus publicly traded shares, to ensure support, liquidity and orderly trading activities of Callidus;

# In the course of delivering advice and providing services to the Plaintiffs, Langstaff and Canaccord Genuity gained intimate knowledge of and was entrusted with the Plaintiffs' business and financial information and affairs. Langstaff and Canaccord Genuity owed a duty of loyalty, duty of honesty and fair dealing, and fiduciary duties and obligations to the Plaintiffs, including the following duties to:

(a) act honestly, in good faith and in the best interests of the Plaintiffs;

(b) avoid any conflict of interest between the Plaintiffs and Canaccord Genuity or between the Plaintiffs and other clients of Canaccord Genuity;

(c) comply with its policies including its Code of Business Conduct and Ethics, Conflicts Policy, Group and Operating Policies and Confidentiality & Non-Disclosure Policy, and to comply with regulatory and accepted standards of practice recognized by the securities and investment community in Canada;

(d) refrain from preferring or acting in the interests of Canaccord Genuity or its other clients over the interests of and to the harm of the Plaintiffs;

(e) refrain from engaging in or agreeing, assisting or encouraging others to engage in activities that were intended to harm the Plaintiffs;

(f) refrain from disparaging the business and affairs of the Plaintiffs;

(g) refrain from falsely accusing or expressing opinions that the Plaintiffs or their personnel were guilty of dishonest conduct;

(h) not to falsely allege that Callidus business was a fraud and to advise that short-selling of Callidus shares should be undertaken on the strength of this allegation;

(i) not to engage in the conspiracy against Catalyst and Callidus pleaded in this Action;

(j) ensure that its senior officers, executives and employees were aware of and that they strictly adhered to the above obligations;

(k) ensure that appropriate and effective systems and safeguards are in place to detect and deter any breaches of the above obligations by its senior officers, executives and employees; and

(l) if and when apprised of potential breaches of any of the above obligations, to conduct a full and thorough investigation into any potential breaches and to fully apprise Catalyst and Callidus of the results of such investigation.

# Langstaff repeatedly breached these duties by engaging in a course of conduct as pleaded herein, in concert with the other Defendants, with the specific purpose of causing harm to the Plaintiffs for his and the other Defendants' benefit. As pleaded above, Langstaff, among other things:

(a) gave advice to Kassam, another client of Canaccord Genuity, to "short" Callidus;

(b) disparaged Callidus by describing it as a "fraud" to Kassam;

(c) falsely alleged to the conspirators that Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices;

(d) falsely alleged that Callidus engaged in an undisclosed related party transaction to hide losses;

(e) discussed with Levitt how best to make and substantiate fraud allegations against Catalyst and Callidus which they and the other conspirators were intending to disseminate;

(f) falsely alleged that independent appraisers of Callidus were "on the take";

(g) met with members of the conspiracy including West Face and Boland, a friend and clients of Langstaff, to "help" and further advance the conspiracy to harm the Plaintiffs;

(h) received material non-public information about steps to be taken by the conspirators against Callidus and Catalyst including future lawsuits to be commenced against them and the planned short-attack;

(i) facilitated and executed the short selling trading to the harm of the Plaintiffs; and

(j) concealed his activities by using encrypted self-destructing messaging apps to communicate with the conspirators.

# Canaccord Genuity similarly breached its duties owed to the Plaintiffs. Canaccord Genuity is vicariously liable for the acts and omissions of Langstaff.

# In addition, Canaccord Genuity is liable for failing to appropriately supervise and monitor Langstaff and implement effective measures and safeguards to ensure that he complied with Canaccord Genuity's policies and did not engage in any communication or activity harmful to the Plaintiffs. The failure to supervise Langstaff and implement proper and effective safeguards to protect its clients was particularly egregious as against the Plaintiffs, as Canaccord Genuity knew that Langstaff had a history of breaching its policies to the detriment of their clients. The Plaintiffs relied on Canaccord Genuity to supervise its employees and have effective policies and safeguards to avoid a breach of duty of loyalty, honesty and fair dealing, and a breach of conflict of interest. These policies and safeguards were repeatedly breached by Langstaff, not only as against Callidus but also against other publically traded companies targeted by Langstaff and the other Wolfpack Conspirators including Cannabis Wheaton Income Corp. and Exchange Income Corporation.

# Moreover, Canaccord Genuity breached its regulatory requirements by permitting Langstaff to use "Confide" to communicate with clients and/or failed to properly supervise and prevent his use of an app like "Confide".

# The Plaintiffs advised Canaccord Genuity about their concerns that Langstaff was engaged in wrongful conduct, which included participation in the Conspiracy as alleged. Canaccord Genuity either became aware of Langstaff's wrongful conduct, or failed to conduct a thorough investigation, and misled the Plaintiffs by asserting that they had fully investigated the matter

and concluded that no wrongful activity occurred against the Plaintiffs. Such a misrepresentation was a further breach of Canaccord Genuity's duties to the Plaintiffs.

# Rather than implementing any preventative steps to ensure that Langstaff's pattern of misconduct was not repeated, or taking any disciplinary action against Langstaff to deter such conduct, Canaccord Genuity did nothing. Instead, following the Plaintiffs' express concerns, after the improper August 7, 2017 short-selling attacks on Callidus' stock, pleaded herein, Canaccord Genuity issued a warning letter to Langstaff which reaffirmed Langstaff's obligations to existing clients of the firm and made it clear that Langstaff had been aware of Canaccord Genuity's rules, policies, and Codes of Conduct.

#### **Causing loss by unlawful means/ intentional interference**

182. 168-118: By participating in the Conspiracy and the publication of the Defamatory Words, the Defendants deceived third parties -party market participants- into believing that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors 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. These third parties had actionable claims against the Defendants by reason of their conduct pleaded herein, and include but are not limited to the following persons: (i) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the Defendants' conduct; (ii) investors that sold shares in Callidus as a result of reading the Defamatory Words or in response to the resulting sell-off of Callidus shares due to the Defendants' implementation of the Conspiracy; (iii) service providers such as appraisers engaged to

appraise and alleged to have falsely valued borrowers' assets for the benefit of Callidus and Catalyst; and (iv) auditors, audit committee members and the independent directors of Callidus and Catalyst that are responsible for and allegedly failed to detect the supposed fraudulent activities carried out by the Plaintiffs.

183. 169-119. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors, directors and auditors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares, lost revenues, loss of goodwill, as well as impairment of their ability to conduct and grow their business, implement strategic plans, and secure capital. In addition, the market manipulation of the Defendants caused significant harm to Callidus in the form of a loss in market capitalization.

184. 170. The conduct of the Defendants in implementing the Conspiracy as described above, was directed at and intended to harm, punish and discredit the Plaintiffs. As described above, the purpose and effect of the Defendants' activities were to damage the reputations, and undermine and destroy the business of, and otherwise cause harm to the Plaintiffs. The Defendants knew that harm would come to the Plaintiffs as a result of their conduct. By deceiving market participants and investors into believing that the Plaintiffs are dishonest, fraudulent and untrustworthy, and by engaging in an improper short attack, the Defendants deliberately tarnished and harmed their reputations in the financial, investing and business communities.

185. 171. As a result of the Defendants' implementation of the Conspiracy as described above, the Plaintiffs have suffered significant damages. Among other things, the Defendants have impaired Callidus' ability to raise and retain invested capital, attract and keep employees, attract and grow its loan portfolio and make investments in other companies. This has led

directly to the significant erosion of the equity value of Callidus from 2017. This is because the Defendants' conduct has:

- (i) deterred potential borrowers from doing any business with Callidus in light of the false allegations that Callidus engaged in fraudulent transactions, unethical accounting and unfair business practices with a view to wiping out equity ownership and taking control of borrowers;
- (ii) scared away potential employees who could have helped grow and develop the Callidus' business; and
- (iii) made it extremely difficult for Callidus to access third party capital necessary for the growth of its business.

186. ~~172-120.~~ 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**

187. ~~173-121.~~ 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. The role of the Individual Defendants in this regard extended beyond the nature and scope of their roles as officers and directors of the corporate Defendants and include direct personal involvement, improper intentions, and wrongful acts. 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.

188. ~~174-122.~~ 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**

189. ~~175-123.~~ John Doe Defendants ~~16-10~~ 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.

190. ~~176-124.~~ John Doe Defendants ~~16-10~~ are jointly and severally liable for the wrongs committed by the Defendants.

### **Unjust Enrichment**

~~177. 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.

~~178. 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.

~~179. 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**

191. ~~180-128.~~ 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.

192. ~~181-129.~~ 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**

193. ~~182-130.~~ The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

194. ~~183-131.~~ The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

195. ~~184-132.~~ The Plaintiffs propose that this action be tried at Toronto.

DATE: ~~November 7, 2017~~

~~April 8, 2019~~

June 14, 2019

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and

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Defendants

Court File No. CV-17-587463-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FRESH AS AMENDED AMENDED STATEMENT OF CLAIM**

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Plaintiffs

and

WEST FACE CAPITAL INC. et al.  
Defendants

Court File No. CV-17-587463-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF GRETTEL BEST**  
(Affirmed July 4, 2019)

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THE CATALYST CAPITAL GROUP INC. et al  
Plaintiffs

and

WEST FACE CAPITAL INC. et al.  
Defendants

Court File No. CV-17-587463-00CL

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF MOVING PARTIES  
(Plaintiffs' Motion to Amend the  
Amended Amended Statement of Claim)**

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