

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

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and  
CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, MSV 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, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND  
JOHN DOES #4-10

Defendants

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**PLAINTIFFS' MOTION RECORD  
VOLUME I OF II  
(September 24, 2019 – Langstaff, Levitt and Confide)**

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September 24, 2019

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BETWEEN:

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Defendants

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**NOTICE OF MOTION**

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**THE PLAINTIFFS**, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), will make a motion to a Judge presiding over the Commercial List, on a date to be established by the Commercial List office, 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 requiring Confide Inc., a corporate entity whose principal place of business is located in the State of New York, U.S.A., to produce the information, data and documents as set out in the following subparagraphs (the "Confide Documents"):

(a) any and all documents and information Confide has in its possession in connection with the individuals named as defendants herein, namely:

- (i) Bruce Langstaff
- (ii) Darryl Levitt
- (iii) Moez Kassam
- (iv) Adam Spears
- (v) Sunny Puri
- (vi) Nathan Anderson
- (vii) Rob Copeland
- (viii) Kevin Baumann
- (ix) Jeffrey McFarlane
- (x) Richard Molyneux
- (xi) Gerald Duhamel
- (xii) George Wesley Voorheis
- (xiii) Bruce Livesey

(b) The documents and information referred to in sub-paragraph (a) above includes but is not limited to:

- (i) user names;
- (ii) physical and/or email addresses;

- (iii) cellular numbers used for verification;
  - (iv) dates of registration as well as time and time zone of the registration date;
  - (v) emails or messages between Confide and the defendants, including but not limited the confirmation email sent upon registration;
  - (vi) IP addresses; and
  - (vii) any other account details.
2. An Order requiring Confide to immediately and continually preserve, and prevent the deletion or destruction of, the Confide Documents until such time as the Confide Documents have been produced to the satisfaction of the Plaintiffs herein;
  3. An Order that the disclosure and production to be made pursuant to this Order be made within twenty (60) days of the date of the Order, or such other date as the Plaintiffs and Confide may agree;
  4. An order that the registrar issue a letter of request addressed to the appropriate judicial authorities in the State of New York, U.S.A., in the form attached hereto as Schedule "A", requesting their assistance in ordering and the issuance of such process as is necessary to compel Confide to preserve the Confide Documents and to produce the Confide Documents to the Plaintiffs herein;
  5. An Order declaring that the Confide Documents are necessary for the just determination of this proceeding and should be produced to the Plaintiffs;

6. To the extent necessary, an Order that the word “document” is used herein in the broadest possible sense, and includes, without limiting the generality of the foregoing, paper and electronic documents and data or data compilations, in any format, and stored in any medium whatsoever;
7. An Order that all electronic documents to be produced pursuant to this Order be produced in native format preserving all metadata;
8. To the extent necessary, an Order validating service of this Notice of Motion and all related materials on Confide;
9. To the extent necessary, an Order abridging the time for service and filing of this Notice of Motion and all related materials;
10. An order compelling the defendant Bruce Langstaff (“**Langstaff**”) to serve a further and better sworn affidavit of documents including,
  - (a) documents Langstaff failed or omitted to produce when he was ordered to do so by the order of Justice Hainey dated October 25, 2018; and
  - (b) information or documents in any way connected with Confide or transmitted by or between any of the defendants via the Confide encrypted instant messaging application.
11. An order against the defendant Darryl Levitt (“**Levitt**”),
  - (a) to serve a sworn affidavit of documents, including but not limited to
    - (i) any correspondence with any of the defendants in this action; and
    - (ii) information or documents in any way connected with Confide or transmitted by or between any of the defendants via the Confide encrypted instant messaging application; and

- (b) for an inspection of any of Levitt's electronic devices, including but not limited to computers, iPads, tablets, hard drives and cell phones, computer programs, computer tapes, computer disks, online storage and/or "cloud" storage to which Levitt has access or other data storage media in relation to the materials referred to in paragraph 4(a)(i) and 4(a)(ii) above.

- 12. The Plaintiffs' costs of this motion; and
- 13. Such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background to the Current Action***

- 14. This is an action commenced against Langstaff, Levitt and others claiming damages for, *inter alia*, defamation, intentional interference with economic relations, and civil conspiracy (the "**Conspiracy Action**").
- 15. The Plaintiffs allege, among other things, that the defendants entered into a conspiracy to harm the Plaintiffs (the "**Conspiracy**") 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;
  - (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 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.

***The Langstaff Production Order***

- 16. On January 15, 2018, Langstaff delivered a statement of defence and counterclaim against Callidus and Catalyst.
- 17. On or about September 19, 2018, the Plaintiffs delivered a reply and defence to Langstaff’s counterclaim.
- 18. On October 25, 2018, Justice Hainey ordered the Plaintiffs and Langstaff to deliver Affidavit of Documents restricted to documents specific to Langstaff, within 60 days of the close of pleadings in the Langstaff aspect of the case.
- 19. On January 30, 2019, the Plaintiffs delivered their documents relevant to Langstaff.
- 20. 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 AOD**”).
- 21. Langstaff failed to disclose and/or produce in the Langstaff AOD, numerous relevant documents, including:

- (a) Emails between Langstaff and any of the co-defendants herein prior to October 3, 2017;
  - (b) Emails between Langstaff and any of the co-defendants herein sent to or received through his Gmail account, as referenced in Tab 19 of Langstaff's AOD;
  - (c) Text messages between Levitt and Langstaff prior to February 24, 2017 and after July 11, 2017;
  - (d) Text messages between Moez Kassam and Langstaff prior to May 17, 2016, between May 18, 2016 - March 23, 2017, and after June 3, 2017;
  - (e) Text messages between Gregory Boland and Langstaff prior to September 21, 2017 and after November 7, 2017;
  - (f) Text messages between Jeffrey McFarlane and Langstaff prior to September 26, 2017, between November 14 – 22, 2017, and after November 24, 2017;
  - (g) Emails between Langstaff and Marc Cohodes as referenced in Tab 7 of Langstaff's AOD;
  - (h) Communications with Adam Spears as referenced in Tab 7 in Langstaff's AOD; and
  - (i) Messages between Langstaff and Levitt referencing communications through "Confide" as referenced in Tab 13 of Langstaff's AOD.
22. The categories of documents requested are relevant to the allegations in the Conspiracy Action pleadings and are necessary to understand the full involvement of Langstaff and the other defendants in the Conspiracy.



23. Schedule "C" of Langstaff's affidavit does not identify any of the documents referred to above, or any other documents, as being no longer in his possession, control or power.
24. The categories of documents requested exist and are within the power and control of Langstaff.

***The Levitt Documents***

25. Starting in or about 2014, Callidus commenced a number of actions against certain guarantors of loans advanced by Callidus ("**Guarantee Actions**"). This included an action against Levitt and others, in respect of their personal guarantees of Callidus' loan to Fortress Resources LLC ("**Fortress**"), commenced by statement of claim issued on January 18, 2016 (the "**Levitt Guarantee Action**").
26. Callidus brought a motion for summary judgment in the Levitt Guarantee Action for payment by Levitt and the other defendants in that action pursuant to their guarantees of indebtedness owing by Fortress.
27. Callidus cross-examined Levitt on his affidavit responding to the motion for summary judgment, during which certain undertakings were given, questions taken under advisement, and questions refused (the "**Levitt Undertakings**").
28. On motion commenced by Callidus, Justice Chiappetta ordered Levitt to, among other things, answer certain Levitt Undertakings, including question 285 (the "**First Chiappetta Order**").

29. Question 285 required Levitt to produce all correspondence between himself, Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann (the “**Guarantor Correspondence**”).
30. Levitt failed to comply with the First Chiappetta 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 “**Second Chiappetta Order**”). The Second Chiappetta 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, failing which the plaintiff may move on 2 days’ notice to find Mr. Levitt in contempt.
- [...]
- ... 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.
31. On February 22, 2019, Levitt brought a motion for an urgent stay of the Second Chiappetta Order while he brought a motion for leave to appeal to the Divisional Court. Justice Myers dismissed Levitt’s motion for a stay.
32. Pursuant to the First and Second Chiappetta Orders, Levitt ultimately produced approximately 2,600 pages of documents starting on or about March 8, 2019 (the “**Levitt Documents**”).

33. Levitt also made a forensic image of all his email accounts, ostensibly to ensure there was compliance with the First and Second Chiappetta Orders.
34. Callidus brought a motion in the Levitt Guarantee Action to have Levitt held in contempt on the grounds that he breached the First and Second Chiappetta Orders (the "**Levitt Contempt Motion**").
35. The Levitt Contempt Motion was resolved, in part, on the basis of a consent order that Callidus could conduct a forensic inspection of the imaged copy of Levitt's email accounts, for the purpose of obtaining copies of the Guarantor Correspondence.

#### ***Documents or Information Transmitted Via Confide***

36. The non-party Confide is a company incorporated pursuant to the laws of the State of New York. Confide operates as an encrypted instant messaging application for most major operating systems including Windows, macOS, and Android.
37. Confide's website refers to its product offering as follows:

##### **What is Confide?**

Confide is a confidential messenger. It allows you to have honest, unfiltered, off-the-record conversations. It allows you to speak freely, without the risk of what you say being forwarded on or permanently stored, just like when you're talking in person.

##### **How does it work?**

It's really simple. Receive messages from your friends and colleagues, "wand" over the words with your finger or mouse to read them, and watch them disappear without a trace when you're

done. They're gone for good — no forwarding, no printing and no archiving.

38. The Langstaff Documents disclose that Langstaff and Levitt made plans to use Confide to communicate for the specific purpose of keeping the communications secret, as part of the Conspiracy.
39. Any communications using Confide about the subject matter of this action which are in the possession, control or power of Levitt and Langstaff are relevant to the Conspiracy Action.
40. The communications between Langstaff and Levitt over Confide are disposable in nature and can be easily and quickly deleted or hidden. The Plaintiffs have a legitimate fear that if these relevant documents still exist, they will be destroyed or not produced if there is delay in the discovery process.
41. It is also apparent, based upon the past conduct of Levitt and Langstaff, that the ordinary discovery process — even when supported by explicit court orders — would not furnish information necessary for the proper determination of the matters in issue in this lawsuit.
42. Confide's direct evidence is not otherwise obtainable.
43. It would be unfair for the Plaintiffs to proceed to trial without the Confide Documents as the surreptitious nature of the communications make them likely to be the most material to the allegations of secret conspiracy made in the current action.

44. Various "John Doe" defendants have been named as parties to the Conspiracy Action as, given the secretive nature of conspiracy, there may be other conspirators not named in the claim who are proper parties to this action.
45. Further, the Plaintiffs need to examine any defendants that did use Confide for discovery and refresh their memories in respect of these communications.
46. Confide communications appear to be deleted in the hands of Confide users and it is more likely that any relevant information or remaining documents would be in the possession, control or power of Confide.
47. Confide has been asked to produce the Confide Documents but to date has not done so.
48. There is no unfairness to Confide.
49. The interests of justice favour the disclosure sought.
50. The Plaintiffs will indemnify Confide for reasonable costs arising out of the need to comply with the requested Order.
51. Rules 30.02, 30.06, 30.10, 32, 34.07 and 36 of the *Rules of Civil Procedure*, RRO 1990 Reg 194.
52. Section 96 of the *Courts of Justice Act*, RSO 1990 c C43
53. 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 Kenneth G. Jones sworn September 24, 2019, and the exhibits thereto;
- (b) the Fresh as Amended Statement of Claim herein, dated July 19, 2019; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

September 24, 2019

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TO: **SERVICE LIST**

THE CATALYST CAPITAL GROUP INC. et al  
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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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, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND  
JOHN DOES #4-10

Defendants

---

**AFFIDAVIT OF KENNETH G. JONES**  
(Sworn September 24, 2019)

---

I, Kenneth G. Jones, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a lawyer with the firm of Moore Barristers, Professional Corporation, counsel for the Plaintiffs herein, and as such I have knowledge of the matters contained in this

affidavit. Where my knowledge is based on information and belief, I have stated the source of the information and believe it to be true. In swearing this affidavit, I do not intend to waive any applicable legal or litigation privilege.

***Overview***

2. On November 7, 2017, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), commenced this claim against Bruce Langstaff ("**Langstaff**") and Darryl Levitt ("**Levitt**"), among others, claiming damages for defamation, injurious falsehood, the tort of unlawful means, civil conspiracy and unjust enrichment (the "**Conspiracy Action**").

3. It is alleged in the Conspiracy Action, among other things, that the Defendants entered into a conspiracy the predominant purpose of which was to damage the Plaintiffs' businesses and reputations, and, further to harm the Plaintiffs by unlawful means (the "**Conspiracies**"). The elements of the Conspiracies as alleged included the following:

- (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;
- (c) leaking the existence and substance of the allegations contained in the false "whistleblower" complaints to the media and to the police to generate media interest;

- (d) taking short positions, directly or indirectly, in the shares of 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 the short positions taken in Callidus Shares to the profit of the Defendants at the expense of the market value of Callidus.

4. The Statement of Claim has been amended as new facts relating to the Conspiracies have emerged. A copy of the Order of the Honourable Justice Hainey relating thereto, dated July 18, 2019 (without schedule), and the Fresh as Amended Statement of Claim in the Conspiracy Action are attached as **Exhibits A** and **B**.

***Facts relating to the order sought against Levitt***

5. I am advised by David Moore and verily believe that Callidus has commenced a number of actions against certain guarantors of loans advanced by Callidus (the "**Guarantee Actions**"). These proceedings include an action against Levitt and others, in respect of their personal guarantees of Callidus' loan to Fortress Resources LLC ("**Fortress**"), commenced by statement of claim issued on January 18, 2016 (the "**Levitt Guarantee Action**").

6. As appears from the Affidavit of Joshua Suttner, sworn August 9, 2019, a copy of which is attached hereto as **Exhibit C** (without exhibits), Callidus brought a motion for summary judgment in the Levitt Guarantee Action for payment by Levitt and the other Defendants in that action pursuant to their guarantees of indebtedness owing by Fortress.

7. Callidus cross-examined Levitt on his affidavit responding to the motion for summary judgment, during which certain undertakings were given, questions taken under advisement, and questions refused (the “**Levitt Undertakings**”).

8. On motion commenced by Callidus, Justice Chiappetta issued a consent order which required Levitt, among other things, to answer certain undertakings agreed to by Levitt during his cross-examination, including question 285 (the “**First Chiappetta Order**”). A copy of the Callidus notice of motion and annexed undertakings chart are attached as **Exhibit D**, and a copy of the First Chiappetta Order is attached as **Exhibit E**.

9. Question 285 required Levitt to produce all correspondence between himself, Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann, three of the guarantors named as Defendants in the Conspiracy Action.

10. Levitt failed to comply with the First Chiappetta 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 “**Second Chiappetta Order**”). 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, failing which the plaintiff may move on 2 days’ notice to find Mr. Levitt in contempt.

[...]

... 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.

Paragraph 2 of this Order also requires that all of Levitt's physical and electronic documents be preserved. A copy of the Second Chiappetta Order is attached as **Exhibit F**.

11. The individuals referred to in sub-paragraph (a) in the Second Chiappetta Order – Messrs. Duhamel, McFarlane and Baumann – are co-Defendants with Levitt, Langstaff and several other alleged co-conspirators named in the Conspiracy Action.

12. On February 22, 2019, Levitt brought a motion for a stay of the Second Chiappetta Order while he brought a motion for leave to appeal to the Divisional Court. Justice Myers dismissed Levitt's stay motion. A copy of the Decision of Justice Myers dated February 22, 2019 is attached as **Exhibit G**.

13. Callidus then brought a motion to have Levitt held in contempt on the grounds that he breached the First and Second Chiappetta Orders (the "**Levitt Contempt Motion**").

14. As appears from the Suttner Affidavit, referred to in paragraph 6 above, Levitt began producing documents in purported compliance with the First and Second Chiappetta Orders on January 18, 2019, and continuing thereafter (the "**Levitt Documents**"). The Suttner Affidavit refers to various exhibits, including endorsements made by Justices Chiappetta and Myers, which refer to some of the issues regarding Levitt's compliance with the First Chiappetta Order. The proceedings before Justice

Chiappetta also resulted in an endorsement dated June 11, 2019, in which Her Honour indicated that a motion to enable a forensic inspection of Levitt's electronic devices should be scheduled on an expedited basis. A copy of the June 11th endorsement of Justice Chiappetta is attached as **Exhibit H**.

15. By Order of Justice McEwen dated September 16, 2019 (the "**McEwen Order**"), the Levitt Contempt Motion was adjourned, for the time being, and Callidus was authorized to have a forensic inspection made of Levitt's email accounts and other electronic and hard copy documents relating to the correspondence between Levitt and Duhamel, McFarlane and Baumann, or correspondence relating to discussions between Levitt and the other guarantors regarding funding each other's defences. Copies of the endorsement of Justice McEwen dated September 16, 2019, and an email to Justice McEwen dated September 20, 2019, with the attached draft Order as approved by the parties, are attached as **Exhibit I**.

16. In light of the difficulties encountered in the implementation of the First and Second Chiappetta Orders, the concerns over compliance thereafter expressed by Justice Chiappetta, and the need to ensure full and complete preservation and production of all relevant documents and communications relating to and between Levitt and the other co-Defendants herein (i.e., in addition to the Defendants Duhamel, McFarlane and Baumann), the Plaintiffs seek a parallel order against Levitt in the same terms as the McEwen Order, but extending to documents or electronic devices located with and relating to all of the co-Defendants named in the Conspiracy Action.

***Facts relating to the order sought against Langstaff***

17. On January 15, 2018, Langstaff delivered a Statement of Defence and Counterclaim against Callidus and Catalyst, a copy of which is attached as **Exhibit J**.

18. On or about September 19, 2018, the Plaintiffs delivered a defence to Langstaff's counterclaim, a copy of which is attached as **Exhibit K**.

19. On October 25, 2018, Justice Hainey ordered the Plaintiffs and Langstaff to deliver Affidavits of Documents restricted to documents specific to Langstaff, within 60 days of the close of pleadings in the Langstaff aspect of the case (the "**October 2018 Endorsement**"). A copy of the October 2018 Endorsement is attached as **Exhibit L**.

20. I am advised by David Moore and verily believe that on January 30, 2019, the Plaintiffs delivered an Affidavit of Documents listing the documents in their possession specific to Langstaff, and copies of the listed documents themselves, to counsel for Langstaff.

21. I am advised by David Moore and verily believe that on May 14, 2019, Langstaff delivered his Affidavit of Documents, sworn April 1, 2019 ("**Langstaff AOD**"), together with his Schedule "A" productions, which consist of approximately 330 pages of documents. A copy of the Langstaff AOD is attached as **Exhibit M** (annotated to indicate the page references to the Schedule "A" productions, based on their location in the Motion Record). The Schedule "A" documents themselves are attached as **Exhibit N**.

22. It is apparent from a review of the Levitt Documents and Langstaff's AOD and Schedule A documents, that there were communications between Langstaff, Levitt and other Defendants to this action that have not been listed in Schedule A to the Langstaff AOD or produced by Langstaff. Examples of such omissions include the following:

- (a) On January 20, 2017, Levitt advised the Defendant Kevin Baumann ("**Baumann**") that,

We need to keep the regulators on side with the effected borrowers. These kinds of investigations can take months and even a couple of years and the regulators usually don't communicate with the complainants until a charge is ready to be laid and because of the complexities involved, this will take time.

In reply, Baumann advised Levitt, with a copy to Andrew Levy ("**Levy**"), Langstaff, and the Defendant Nathan Anderson, among others, that the regulators have sat back for three years now and have enabled Callidus. A copy of the email chain between Levitt and Baumann, copying Langstaff, as produced by Levitt as a result of his undertaking and the Orders of Justice Chiappetta referred to above, is attached as **Exhibit O**;

- (b) On March 21, 2017, McFarlane told Levy that he has "meetings with: - Bruce Langstaff, head of equities group at Canaccord – the firm that took Callidus public...". A copy of the email chain including reference to the meeting between Langstaff and McFarlane, as produced by Levitt, is attached as **Exhibit P**;
- (c) On May 12, 2017, Levitt sent Langstaff text messages stating "Sent to your gmail. Happy reading" and "Did you get all 5 attachments?". Langstaff replied "Aye I did". Langstaff has not produced any emails from his Gmail account. A copy of these text messages, which were produced in Tab 19 of Langstaff's AOD, is found at pages MR-385 – MR-388 of the Motion Record referable to the relief now being sought ("Motion Record");



- (d) Text messages between Langstaff and other co-Defendants in the Conspiracy Action which appear to be the continuation of earlier communications, or which contain significant gaps, including:
- (i) Text messages between Levitt and Langstaff prior to February 24, 2017 and after July 11, 2017;
  - (ii) Text messages between Langstaff and the Defendant Moez Kassam prior to May 17, 2016, between May 18, 2016 - March 23, 2017, and after June 3, 2017;
  - (iii) Text messages between Langstaff and the Defendant Gregory Boland prior to September 21, 2017 and after November 7, 2017;
  - (iv) Text messages between McFarlane and Langstaff prior to September 26, 2017, between November 14 – 22, 2017, and after November 24, 2017;
  - (v) Communications with the Defendant Moez Kassam regarding Langstaff's introduction to Marc Cohodes through Adam Spears, as referenced in Tab 7 in Langstaff's AOD (pages MR-331 – MR-332 of the Motion Record);
- (e) Text messages between Langstaff and Levitt referencing communications through "Confide" as referenced in Tab 13 of Langstaff's AOD, found at pages MR-350 – MR-354 of the Motion Record. The text messages between Langstaff and Levitt were sent between April 12, 2017 and May 2, 2017 and provide, in part, as follows (underlining added):

<u>Levitt</u>	<i>Will send you a link to <u>Confide</u>. Better way to communicate <u>Join me on Confide so we can chat confidentially with encrypted and disappearing messages</u></i>
---------------	---

<u>Langstaff</u>	<i>I have to call you back</i>
<u>Levitt</u>	<i>Ok Just got judgement in Esco summary judgment unsealed. I have a copy which is now public record. Judge found instances of fraud by Callidus.</i>
<u>Langstaff</u>	<i>Pls msg me with it.. thank you</i>
<u>Levitt</u>	<i>Are you on <u>confide</u>?</i>
<u>Langstaff</u>	<i>I will get it</i>
<u>Levitt</u>	<i>Sign up for the free version or I can email it. It is now publically available.</i>
<u>Langstaff</u>	<i>Bruce.langstaff@gmail.com or send on <u>confide</u> either works</i>

- (f) Emails between Langstaff and any of the co-Defendants including any such emails sent to or received through his Gmail account – bruce.langstaff@gmail.com. In addition to the reference in subparagraphs 22 (a) above, the Langstaff AOD and Schedule A documents indicate that Langstaff was continuing to send and receive messages from his gmail account referred to above long after his termination. This is evident from Tab 56 to the Langstaff AOD, which includes emails between Langstaff and the co-Defendant Voorheis on July 12, 2018 (see at pages MR-566 – MR-567 of the Motion Record).

***Additional facts relating to the relief sought against Confide***

23. The non-party Confide Inc. (“**Confide**”) is a company incorporated pursuant to the laws of the State of Delaware with its principal place of business in the State of New York. A copy of the annual franchise tax report for Confide is attached as **Exhibit Q**.

24. Confide's website refers to its product offering as follows:

**What is Confide?**

Confide is a confidential messenger. It allows you to have honest, unfiltered, off-the-record conversations. It allows you to speak freely, without the risk of what you say being forwarded on or permanently stored, just like when you're talking in person.

**How does it work?**

It's really simple. Receive messages from your friends and colleagues, "wand" over the words with your finger or mouse to read them, and watch them disappear without a trace when you're done. They're gone for good — no forwarding, no printing and no archiving.

A copy of the relevant part of Confide's website is attached as **Exhibit R**.

25. By virtue of the fact that Confide is specifically designed to delete communications in the hands of Confide users, I believe that Confide is the most likely party to still have evidence of any communications between Levitt and Langstaff, and any other of their co-Defendants, as well as the account details of any Defendants (known or unknown) who were users of Confide (the "**Confide Documents**").

26. Counsel for the Plaintiffs have written to Confide asking for the Confide Documents to be voluntarily produced. As of the date of this affidavit, Confide has not responded to that request. A copy of the letter written to Confide by counsel for the Plaintiffs dated September 6, 2019 is attached as **Exhibit S**.


27. I do not believe there is any reasonable basis for Confide to assert privilege over the Confide Documents.

28. I do not know of any alternate way available to the Plaintiffs by which the Confide Documents can be practicably obtained.

29. As indicated in Exhibit S, the Plaintiffs will indemnify Confide for reasonable costs arising out of the need to comply with the requested Order.

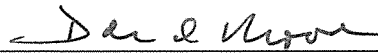
**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario, this 24th day of September, 2019.

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

}   
\_\_\_\_\_  
**Kenneth G. Jones**



This is Exhibit "A" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

A handwritten signature in cursive script, appearing to read "Dan L. Nelson", is written above a horizontal line.

A Commissioner for taking Affidavits, etc.

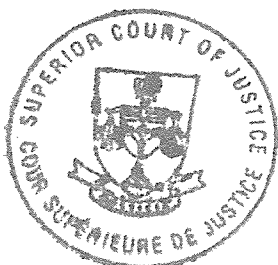
**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE G. HAINEY

)  
)  
)

THURSDAY, THE 18<sup>TH</sup>  
DAY OF JULY, 2019

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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**ORDER**

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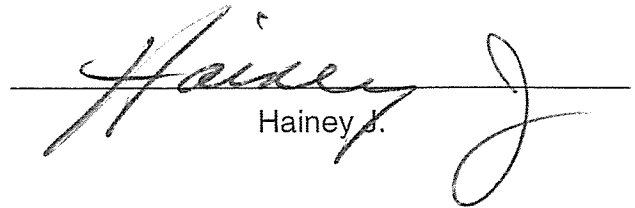
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THIS MOTION, made by the Plaintiffs, for order granting the Plaintiffs leave to amend the Amended Amended Statement of Claim, in whole or in part, was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

THIS MOTION HAVING BEEN adjourned, on terms, as against the proposed Defendants Canaccord Genuity Corp. and Andrew Levy.


ON READING the motion record, factum, and book of authorities of the Plaintiffs and on hearing the submissions of counsel for the Plaintiffs, and counsel for the Anson Defendants, Andrew Levy, and Gerald Duhamel, and upon being advised that counsel for the proposed Defendants Bruce Livesey, Wesley Voorheis and Gerald Duhamel do not oppose the granting of this order, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service filed.

1. THIS COURT ORDERS that the Plaintiffs be granted leave to amend the Amended Amended Statement of Claim in accordance with the Fresh as Amended Statement of Claim attached as Schedule "A".

  
Hainey J.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 19 2019

PER / PAR: 



This is Exhibit "B" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



---

A Commissioner for taking Affidavits, etc.

AMENDED THIS July 19/19 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (        )  
 THE ORDER OF Justice Hainey  
L'ORDONNANCE DU         

DATED / FAIT LE July 18, 2019

[Signature]  
REGISTRAR / CLERK OF COURT  
SUPERIOR COURT OF JUSTICE

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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,  
GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND JOHN DOES #4-10

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 "S. Slaunwhite"  
Local Registrar

Address of  
Court office:

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

330 UNIVERSITY AVE. 330 AVE. UNIVERSITY  
9TH FLOOR 9E ÉTAGE  
TORONTO, ONTARIO TORONTO, ONTARIO  
M5G 1R7 M5G 1R7

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: GERALD DUHAMEL

AND TO: GEORGE WESLEY VOORHEIS

AND TO: BRUCE LIVESEY

AND TO: AND JOHN DOES #4-10

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;
  - (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 84 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 Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity Corp. (“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 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.

27. 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*).
28. The Defendants Boland, Kassam, Spears, Puri, and Anderson, are hereinafter referred to collectively as the “Individual Defendants”.
29. 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.
30. 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.
31. 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.

32. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.
33. 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 #3.
34. Baumann, McFarlane, Levitt, Duhamel and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.
35. John Doe 4-10 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**

36. 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.

37. 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.
38. 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.
39. 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.

40. 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**

41. 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.

42. 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) Andrew Levy ("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”)

43. 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.
44. 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.
45. 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.
46. 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.
47. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus.

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.

53. 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.
54. Baumann has made similar claims implying fraud against Callidus.
55. 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.
56. 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.
57. 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.

58. 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.
59. 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).

60. 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 193 below, or other events.

61. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyses, 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**

62. 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 Moyses (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.

63. 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.
64. 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.

65. 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.
66. 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.
67. 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.
68. 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.
69. 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.
70. 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.

71. 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.
72. 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.
73. 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.
74. 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.

75. 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”.
76. 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.
77. 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.

78. 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.
79. 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.
80. 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.
81. 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.

82. 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.

83. 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.

84. 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.

85. 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.
86. 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.
87. 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").
88. 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.

89. 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.
  
90. 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.

91. 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”.

92. 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.

93. 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.

94. 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.”
95. 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.
96. 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**

97. 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.
98. 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.
99. 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.

100. 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.
101. 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.
102. 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.
103. 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.

104. 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.

105. 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.
106. In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.
107. 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.
108. The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.
109. 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.
110. 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.

111. 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 193 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.
112. 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.
113. 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.

114. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.
115. 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.
116. 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.
117. In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them.
118. 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.
119. 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.
120. 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.
121. 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.

122. 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.

123. 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”.

124. 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.

125. 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.

126. 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 191

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.

127. 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.
128. 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.

129. 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.
  130. 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.
  131. 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**
132. 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.

133. 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.
134. 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.
135. 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.
136. 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.
137. Callidus and Catalyst have positively denied any such "investigation", and no such investigation was ever commenced.

138. 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.
139. 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.
140. 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.

141. 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.

142. 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.
143. 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.
144. 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.
145. 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.

146. 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.
147. 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.
148. 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.

149. Similar conversations occurred with Baumann, Molyneux, Levitt, Duhamel 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.

150. 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.

151. 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.

152. 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.

153. 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.
154. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.
155. 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.
156. 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**

157. 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.
158. 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.
159. 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.
160. 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.
161. 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.

162. 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.
163. 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.
164. 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.
165. 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.
166. 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.

167. 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 193 below, that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.
168. 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”.
169. 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.
170. 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.

171. 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.
172. 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.
173. 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.
174. 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). Langstaff profited from the short selling trading that was executed directly or indirectly through him, or in the alternative, assisted other members of the Conspiracy to profit as pleaded.



175. 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).
176. 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".
177. 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**

178. 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.

179. 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.

180. The statement made in the Article particularized in paragraph 178 above, and the statements made to Copeland by the Guarantor Conspirators and Anderson particularized in paragraphs 148-149 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.

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

182. 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 90 above,
  - (b) Discussing and agreeing to the words to be used in the Complaints and ultimately the Article as particularized in paragraphs 92, 100-103, and 107-109 above;
  - (c) Sharing of information, advice, and strategies for the purpose of and in furtherance of the conspiracy as particularized in paragraphs 86, 98-100, and 103-109 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 143-147 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 148-149 above.
183. 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.
184. 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.

185. 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***

186. 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.
187. 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*.
188. 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*.
189. 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**

190. The Plaintiffs were clients of Langstaff since late 2013.
191. In the course of delivering advice and providing services to the Plaintiffs, Langstaff gained intimate knowledge of and was entrusted with the Plaintiffs' business and financial information and affairs. Langstaff 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 Canaccord's 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 engaging in or agreeing, assisting or encouraging others to engage in activities that were intended to harm the Plaintiffs;
  - (e) Refrain from disparaging the business and affairs of the Plaintiffs;
  - (f) Refrain from falsely accusing or expressing opinions that the Plaintiffs or their personnel were guilty of dishonest conduct;
  - (g) 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;
  - (h) Not to engage in the conspiracy against Catalyst and Callidus pleaded in this Action;
192. 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.

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

193. 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.
194. 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.

195. 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.

196. 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.

197. 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**

198. 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.

199. 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**

200. John Doe Defendants 4-10 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.

201. John Doe Defendants 4-10 are jointly and severally liable for the wrongs committed by the Defendants.

**Punitive Damages**

202. 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.

203. 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**

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

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

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

*~ November 07, 2017<sup>m</sup>*  
DATE: ~~July 18, 2019~~<sup>m</sup>

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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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This is Exhibit "C" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



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A Commissioner for taking Affidavits, etc.

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

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

BETWEEN:

CALLIDUS CAPITAL CORPORATION

Plaintiff/  
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
and DARRYL LEVITT

Defendants/  
Plaintiffs by Counterclaim

AND BETWEEN:

RICHARD GEORGE MOLYNEUX

Plaintiff by Counterclaim

and

J. CLAIRE EDWARDS, not individually, but as a Chapter 7 Trustee for  
FORTRESS RESOURCES, LLC d/b/a/ MCCOY ELKHORN COAL MINING COMPANY,  
CALLIDUS CAPITAL CORPORATION, OPES RESOURCES INC., and DARRYL LEVITT

Defendants to the Counterclaim

**AFFIDAVIT OF JOSHUA SUTTNER**

I, JOSHUA SUTTNER, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a lawyer with the law firm of Dickinson Wright LLP (“DW”), counsel for the Plaintiff in this action, Callidus Capital Corporation (“Callidus”), and have personal knowledge of the matters to which I hereinafter depose.

**Background of the Action**

2. This is an action by Callidus for payment by the Defendants of \$19,512,339.95 USD, plus accrued interest and costs, pursuant to their guarantees of the indebtedness owing by Fortress Resources, LLC (“Fortress”) to Callidus.

3. The Defendants have denied liability and counterclaimed against Callidus for damages of \$1 million for, *inter alia*, misrepresentation, and punitive damages of \$5 million.

4. Callidus moved for summary judgment for payment by the Defendants under their guarantees, and dismissal of the Defendants’ counterclaims (the “**Summary Judgment Motion**”).

5. The Summary Judgment Motion was scheduled to be heard for two consecutive days commencing November 13 and 14, 2018 but was adjourned to February 11 and 12, 2019, and subsequently adjourned again to April 10 and 11, 2019. A new hearing date has not been set.

**Overview of the Within Motion**

6. On this motion, Callidus seeks an order:

- (a) that the Defendant Darryl Levitt (“**Levitt**”) be found in contempt of two orders for the production of documents by Justice Chiappetta, made January 7, 2019 and February 12, 2019;
- (b) appointing a forensic inspector of all Evidence, as defined in Justice Chiappetta’s February 12, 2019 Order; and,

- (c) compelling Levitt to answer all outstanding undertakings, questions taken under advisement and refusals from his May 7, 2019 cross-examination, as set out below.

7. On January 7, 2019, Justice Chiappetta ordered Levitt to produce certain documentation relevant to undertakings given at his June 21, 2018 cross-examination. On February 12, 2019, Justice Chiappetta affirmed the January 7, 2019 Order and gave Levitt a deadline of February 28, 2019 to produce all documentation relevant to his outstanding undertakings.

8. On numerous occasions, Levitt has represented to Callidus and to the Court that he has produced all documents in his possession that are responsive to his outstanding undertakings. In every instance, however, Levitt has contradicted himself by subsequently producing additional documents which he had previously failed to produce.

9. The following chart summarizes Levitt's misrepresentations regarding his compliance with his obligation to produce documents, with reference to the relevant paragraph below and exhibit hereto which supports the items on the chart:

Date (2019)	Relevant paragraph(s) below	Exhibit(s)	Statement by Levitt, Order of the Court or <u>Further Disclosure</u>
January 7	15-17	E	<p><b>Endorsement of Justice Chiappetta –</b></p> <p>Levitt is ordered, on consent, to answer question numbers 285, 291-293, 294-295, 387 and 428 from his June 21, 2018 cross-examination. The questions can be broadly categorized as relating to Guarantor Correspondence (defined below) and Funding Correspondence (defined below).</p>

January 18-25	<b>18-22</b>	<b>F-H</b>	Levitt produces incomplete and insufficient answers to the undertakings and refusals.
January 23	<b>22</b>	<b>H</b>	<b>Levitt to Callidus by email –</b> “I cannot locate correspondence amongst borrowers financing each other's cases but I recall only an offer by Mr Baumann to invest selectively in borrower cases. If I am able to locate correspondence, I will provide it.”
January 25	<b>23-24</b>	<b>I-J</b>	<b>Order of Justice Chiappetta –</b> Justice Chiappetta finalizes a consent order with respect to the January 7 endorsement that Levitt answer question numbers 285, 291-293, 294-295, 387 and 428 from his examination. Levitt agrees to provide his answers by January 30, 2019 at 4 pm.
February 3	<b>27</b>	<b>M</b>	<b>Levitt to Callidus by email –</b> “The volume of documentation has taken longer than I anticipated. I estimate it would take me 2-3 weeks to go through the materials properly and comprehensively. Should I knowingly present less than I am supposed to, that could be contempt but I assure you I intend to go through the materials properly and fully without violating privilege and for relevancy. It is not my intention to frustrate the court process.”
February 12	<b>28-29</b>	<b>N</b>	<b>Order of Justice Chiappetta –</b> Levitt is ordered to produce all documents responsive to his undertakings and refusals “regardless of any claim or privilege” by no later than February 28 at 4 pm.
February 22	<b>33-34</b>	<b>R-S</b>	<b>Levitt to Justice Myers on a motion to stay Justice Chiappetta’s February 12 Order –</b> P. 11, line 21 – “I’ve printed every document. I’ve gone and taken all the emails, and more, and preserved them...” P. 17, line 13 – “...I took steps to preserve all my emails. I’m not trying to his from the court. I’m happy to tender it into the court, my laptop – I’m happy to do that.”

February 26	<b>35-36</b>	<b>T</b>	<b>By Stanley Levitt on Levitt's behalf to the Court –</b> “I have taken steps to comply with the court order of your Honour...I have taken steps to preserve all emails from all email addresses for the refusals and undertakings.”
February 26	<b>35-36</b>	<b>T</b>	Levitt produces 89 pages of Funding Correspondence.
March 4	<b>40-41</b>	<b>W</b>	<b>Levitt to Justice Chiappetta as recorded in the endorsement –</b> ...the documents...are prepared and ready...the USB stick represented to be all the documents...shall be delivered...on March 6, 2019.
March 6	<b>42-45</b>	<b>X-Z</b>	Levitt produces the USB Documents (defined below), which contain approximately 1,022 documents.
March 11	<b>51-52</b>	<b>DD</b>	<b>To Callidus –</b> “I have provided to you every communication to and from Baumann, McFarlene [sic], DuHamel that is in my possession or under my control notwithstanding privilege or confidentiality. Every communication that has any one of those persons listed in the recipient or from such persons has been disclosed and sent to you notwithstanding privilege or confidentiality. In addition, I have answered all questions about funding and provided all documents.”
May 6	<b>56-57</b>	<b>GG</b>	Levitt provides the Schedule B (defined below), which refers to emails not previously disclosed.
May 7	<b>59, 97-98</b>	<b>II</b>	<b>During cross-examination –</b> Levitt stated that it is his position that he has produced all documents in his possession and control in accordance with the Production Orders. (at questions 586, 587, 589, 592, 715, 723, 725, 1116, 1196, 1197, 1236 and 1256) Levitt stated there is no further Funding Correspondence to produce (at questions 595 and 596) Levitt stated he has produced every communication or document



			to Callidus (at questions 598, 603, 619, 715, 723, 725, 1116, 1196, 1204, 1207, 1236, 1237, 1244, 1245, 1247 and 1256)
May 24	67	PP	<p><b>To Callidus –</b></p> <p>“If you went through the materials diligently you will find them...They have been produced...”</p> <p>“...my position has been that the materials, as ordered, have been produced...The order required production and I have complied.”</p>
May 27	72-74	SS-UU	Levitt produces Tab 13 (defined below) and Tab 24 (defined below), which together contain 68 new documents not previously produced.
June 27	79-86, 89(c)	WW-ZZ	<p>Callidus receives the Forensic Report (defined below) which contains:</p> <ul style="list-style-type: none"> <li>• 280 emails which were not marked “Submitted”. By Forensic Restitution’s own methodology, it is clear these emails were not previously produced; and,</li> <li>• 222 emails that were not produced by Levitt, in the USB Documents or otherwise.</li> </ul>

10. Based on Levitt’s misrepresentations, the documents which he has produced and other evidence described herein, including Levitt’s admissions on a subsequent cross-examination that he has deleted certain emails, it is clear that Levitt is in possession of further evidence responsive to the undertakings Justice Chiappetta ordered him to answer on January 7, 2019.

#### **First Cross-Examination of Levitt**

11. On May 11, 2017 Levitt executed a Responding Affidavit to the Summary Judgment Motion. A copy of Levitt’s Affidavit (without attachments) is attached as **Exhibit “A”**.

12. Levitt was cross-examined on his Affidavit by counsel for Callidus in Toronto on June 21, 2018. During his cross-examination, Levitt or his counsel took under advisement or refused to answer, *inter alia*, the following questions:

- (a) 285 – To produce all email correspondence between Mr. Duhamel, Mr. McFarlane, and Mr. Baumann (the “**Guarantor Correspondence**”); and,
- (b) 291-293 – To answer whether Levitt had any discussion amongst other guarantors with respect to funding each other's defences in the actions (the “**Funding Correspondence**”).

13. Attached as **Exhibit “B”** are copies of the relevant pages of the transcript of Levitt’s cross examination, in respect of the above questions.

14. On November 1, 2018, counsel for Callidus wrote to Levitt requesting that he answer the undertakings, questions taken under advisement and refusals given on his cross-examination. A copy of the letter from counsel for Callidus to Levitt, which enclosed a chart of the undertakings given at his examination and requested that he answer those outstanding undertakings, is attached as **Exhibit “C”**.

#### **The Orders of Justice Chiappetta**

15. Levitt failed and/or refused to answer certain of the undertakings, questions taken under advisement, or refusals given on his cross-examination and on January 7, 2019, Callidus brought a motion to compel Levitt to answer the outstanding undertakings and refusals (the “**Refusals Motion**”). A copy of Callidus’ Amended Notice of Motion and Schedule “3” thereto is attached as **Exhibit “D”**.

16. At the Refusals Motion, the parties met with Justice Chiappetta in chambers and were able to resolve the issue of Levitt's outstanding undertakings. Levitt consented to answering question numbers 285, 291-293, 294-295, 387 and 428 from his examination. Justice Chiappetta's endorsement stated as follows:

...Mr. Levitt is representing himself...upon discussions with me...the parties were able to resolve most of the outstanding issues between them. They will send me a draft order for signature in this regard.

17. A copy of Justice Chiappetta's January 7, 2019 endorsement is attached as **Exhibit "E"**.

18. Following the attendance on January 7, 2019, but prior to the parties providing a draft order to Justice Chiappetta, Levitt proceeded to provide partial answers to the undertakings he consented to answering.

19. On January 18, 2019, Levitt purported to provide answers to his undertakings and refusals. However, Levitt's responses were insufficient and did not address the undertakings and refusals as ordered by Justice Chiappetta. In particular, Levitt did not produce any documents relating to the Guarantor Correspondence or the Funding Correspondence. A copy of the answers to undertakings and refusals provided by Levitt on January 18, 2019 is attached as **Exhibit "F"**.

20. On January 22, 2019, counsel for Callidus advised Levitt that the answers provided were incomplete and requested that he provide complete answers. A copy of the January 22, 2019 email from counsel for Callidus to Levitt is attached as **Exhibit "G"**.

21. Between January 23 and 25, 2019, counsel for Callidus and Levitt exchanged multiple emails wherein Levitt provided further incomplete and insufficient answers and counsel for

Callidus advised Levitt of the deficiencies. In these exchanges, Levitt produced a total of 21 emails. Copies of the emails exchanged between counsel for Callidus and Levitt are attached as **Exhibit “H”**.

22. With respect to the Funding Correspondence, on January 23, 2019, Levitt advised counsel for Callidus as follows:

...I cannot locate correspondence amongst borrowers financing each other's cases but I recall only an offer by Mr Baumann to invest selectively in borrower cases. If I am able to locate correspondence, I will provide it. We did not receive financing from anyone.

23. On January 25, 2019, the parties attended a case conference before Justice Chiappetta and provided a draft order pursuant to Her Honour's January 7, 2019 endorsement. Justice Chiappetta made an order in the form of the draft provided by the parties and on Levitt's consent, which stated as follows:

THIS MOTION...for an Order directing...Levitt to answer certain of the undertakings...set out in Schedule “1” through “3” of the Amended Notice of Motion of Callidus...were heard this day...

...on hearing the submissions of counsel...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...

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.

24. A copy of Justice Chiappetta's order entered January 25, 2019 (the "**Chiappetta Order**") is attached as **Exhibit "I"**. A copy of Justice Chiappetta's handwritten endorsement, which confirms Levitt was in attendance when the Chiappetta Order was signed, is attached as **Exhibit "J"**. At the case conference, Levitt agreed to deliver his answers to undertakings and refusals by 4pm on January 30, 2019.

25. On January 30, 2019, Levitt produced 11 additional emails however, the responses he provided still did not respond fully to the undertakings and refusals as ordered by Justice Chiappetta. Attached and marked as **Exhibit "K"** is a true copy of the answers to undertakings and refusals provided by Levitt on January 30, 2019.

26. On January 31, 2019, I served Levitt with a Notice of Motion for an order holding Levitt in contempt of the Chiappetta Order and requiring that Levitt preserve all relevant evidence in Levitt's possession. A copy of my email to Levitt and the enclosed Notice of Motion is attached as **Exhibit "L"**.

27. On February 3, 2019, Levitt responded to my email and indicated:

...The volume of documentation has taken longer than I anticipated. I estimate it would take me 2-3 weeks to go through the materials properly and comprehensively. Should I knowingly present less than I am supposed to, that could be contempt but I assure you I intend to go through the materials properly and fully without violating privilege and for relevancy. It is not my intention to frustrate the court process...

Attached and marked as **Exhibit "M"** is a true copy of Levitt's February 3 email.

28. On February 12, 2019, counsel for Callidus and Levitt attended a case conference before Justice Chiappetta. At the case conference, Justice Chiappetta made, *inter alia*, the following order:

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...

4. 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...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.

29. A copy of Justice Chiappetta's February 12, 2019 Order (the "**Preservation Order**") and together with the Chiappetta Order, collectively the "**Production Orders**") is attached as **Exhibit "N"**.

#### **Levitt's Motion for an Urgent Stay of the Preservation Order**

30. On February 19, 2019 Levitt emailed counsel for Callidus advising that he required a further attendance before Justice Chiappetta to obtain directions regarding compliance with the Production Orders. Counsel for Callidus responded that the Preservation Order was abundantly clear and no further attendance was necessary. A copy of the email exchange is attached as **Exhibit "O"**.

31. On February 20, 2019, Levitt wrote to the Divisional Court to schedule an urgent motion on February 22, 2019, for a stay of the Preservation Order pending leave to appeal the same. Levitt stated in his letter that he wished to appeal the portion of the Preservation Order requiring that he produce documents regardless of privilege. He indicated that he would file a Notice of Motion and Motion Record by end of day on February 21, 2019. A copy of Levitt's letter is attached as **Exhibit "P"**.

32. On February 21, 2019, at 2:03 p.m., Levitt served his Motion Record for the motion to stay the Preservation Order pending an appeal of the same. A copy of the Motion Record (without exhibits) is attached as **Exhibit "Q"**.

33. On February 22, 2019, Justice Myers dismissed Levitt's motion to stay. In the endorsement dismissing Levitt's motion at paragraphs 18 and 19, Justice Myers stated:

...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.

...

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.

34. A copy of Justice Myers endorsement is attached as **Exhibit "R"**. A transcript of the submissions made to Justice Myers by Callidus and Levitt is attached as **Exhibit "S"**.

#### **Levitt is Admitted to Hospital**

35. On February 26, 2019, DW received an email from Stanley Levitt, Levitt's brother. Stanley advised that he was sending the correspondence on Levitt's behalf. His email advised, in part, as follows:

- (a) Levitt, was admitted to the Emergency Department of Mackenzie Health Hospital on Sunday February 24 at approximately 22:15 with chest pain and shortness of breath. My brother currently remains in hospital within the Cardiology Unit;
- (b) Darryl's discharge from hospital is uncertain at this time. Various tests and procedures remain ongoing. We have just been notified that he is scheduled for an angiogram on Wednesday, February 27<sup>th</sup>;
- (c) [Levitt] advised me to relay to you the following:
  - (i) "I have taken steps to comply with the court order of your Honour. I do not have access to the material while in the hospital.



- (ii) What I can forward at this time is a copy of my letter to Norton Rose and a copy of their response and copies of email correspondence of my efforts to access the Opes Resources email server.
  - (iii) I have taken steps to preserve all emails from all email addresses for the refusals and undertakings.
  - (iv) An Affidavit of Documents for production including a Schedule B.
  - (v) An updated chart of undertakings, questions taken under advisement and refusals.”
- (d) Once [Levitt] is discharged from the hospital, he has advised that he can and will provide all the requisite materials per the court order.
36. Attached as Tab D to Stanley’s email was “Copy of attending cardiologist to Darryl Levitt”. Copies of Stanley Levitt’s email and Tab D to the email are attached as **Exhibit “T”**.
37. That same day, DW wrote to Levitt and advised him that:
- (a) Levitt had advised Justice Myers at the hearing of his stay motion that he was ready to produce all necessary documents without delay upon receipt of Justice Myers’ order;
  - (b) the Production Orders and Justice Myers endorsement were clear: all documents, including privileged documents were to be produced. Accordingly, no “Schedule B” was required; and,
  - (c) no extension would be granted for the delivery of the documents required pursuant to the Production Orders.
38. A copy of DW’s letter is attached as **Exhibit “U”**.

39. DW wrote to Levitt again on February 27, 2019, to reiterate that Callidus did not consent to an extension of the deadline for delivery of the court ordered documents. A copy of DW's letter is attached as **Exhibit "V"**.

40. On March 4, 2019, counsel for Callidus and Symon Zucker, acting as Levitt's agent, attended a case conference before Justice Chiappetta. Justice Chiappetta granted Levitt a brief extension to deliver his documents and stated in the endorsement, in part:

...I will extend compliance with my orders until March 6, 2019. This should not be an issue as Levitt has confirmed...that the documents...are prepared and ready for delivery on a USB...It is expected therefore that the USB stick represented to be all the documents in compliance with my orders shall be delivered to Mr. Leslie on March 6, 2019.

It has been suggested by Mr. Levitt that he has "Schedule B" documents. To be clear, my orders require production independent of privilege and confidentiality such that compliance means there shall be no Schedule B documents. [Emphasis added]

41. A copy of Justice Chiappetta's endorsement is attached as **Exhibit "W"**.

#### **March 6, 2019 Productions**

42. On March 6, 2019, pursuant to the Production Orders, Levitt produced a USB containing certain documents responsive to his outstanding undertakings, being the Guarantor Correspondence and the Funding Correspondence (the "**USB Documents**"). Attached as **Exhibit**

“X” is a copy of an email exchange between Levitt and Jennifer Samuels (“Samuels”), a law clerk at DW, confirming the delivery of the USB.

43. Samuels arranged for the USB Documents to be printed by Ricoh Canada (“Ricoh”), a document processing and printing company. Prior to delivering the USB to Ricoh, I am advised by Samuels that she took screen grabs of the contents of the USB. Some of the USB Documents were titled with a number and others were not. In order to allow Ricoh to sort and tab the documents once they were printed, Samuels printed the screen grabs of the contents of the USB and handwrote numbers next to the non-numbered documents (the “USB Index”). I am advised by Samuels that she provided the USB Index to Ricoh, who proceeded to print the USB Documents in accordance with the USB Index. A copy of the USB Index is attached as **Exhibit “Y”**.

44. Ricoh printed the USB documents into 11 volumes and delivered them to DW’s office on March 7, 2019. Ricoh printed and bound its own index of the USB Documents contained in each volume to the front of each volume. A copy of the index Ricoh bound to the front of volume 1 and volumes 2-11 of the printed USB Documents is attached as **Exhibit “Z”**.

45. As can be seen from the USB Index and the index Ricoh bound to volumes 2-11 of the USB Documents, on the USB Levitt provided, he included PDFs labeled 1-12, 14-23 and 25 but did not include PDFs labeled 13 or 24.

**The USB Documents are Indexed, Sorted and run through Optical Character Recognition**

46. Upon reviewing the printed USB Documents, it was clear that rather than save copies of the Guarantor Correspondence and Funding Correspondence directly to his computer, Levitt had

chosen to print out the relevant documents and re-scan large sets of them. As a result, the USB Documents were:

- (a) not sorted or organized, either chronologically, by subject or by parties to the correspondence, in a logical or comprehensive way;
- (b) no longer in their original form and Levitt had made handwritten notations directly on certain documents;
- (c) missing many of the attachments which had been attached to the email correspondence; and,
- (d) in many instances, illegible due to repeated and poor printing and scanning.

47. As a result, I instructed Patricia Bertucci, a practice support analyst at DW, and Syndy Littman, a paralegal at DW, to take the following steps with regard to the USB Documents:

- (a) separate each of the PDFs into individual emails and corresponding attachments;
- (b) remove any duplicates they could easily identify in their initial review;
- (c) once the emails and attachments had been separated into individual PDFs, add to each PDF: the date of the document, the parties to the email and the subject of the email;
- (d) to sort the PDFs chronologically and create a single PDF of the USB Documents in chronological order;
- (e) generate an index of the chronological USB Documents;

- (f) process the USB documents using Optical Character Recognition (“OCR”), which would attempt to recognize text in the PDFs and make it possible to search the text of the USB Documents for key words;<sup>1</sup> and,
- (g) generate PDFs of the USB Documents separated by year.

48. A copy of the chronological index generated by Bertucci and Littman is attached as **Exhibit “AA”**.

49. A copy of the USB Documents which are dated January 2017 are attached as **Exhibit “BB”**, as a representative sample of the USB Documents.

50. Upon reviewing the USB Documents, it was clear that Levitt had not produced all of the Guarantor Correspondence in his possession, as there were significant and unexplained chronological gaps in the USB Documents. On March 8, 2019 DW wrote to Levitt advising him of the apparent gaps and requesting that he immediately provide all documentation required pursuant to the Production Orders. A copy of DW’s letter is attached as **Exhibit “CC”**.

51. On March 11, 2019, Levitt responded to DW and stated, *inter alia*;

Madame Justice Chiappetta’s order required me “to answer the following undertakings given and questions refused on his cross-examination held on June 21st, 2018: Question numbers 285, 291-293, 294-295 and 428.”...

As such I have provided to you every communication to and from Baumann, McFarlene [sic], DuHamel that is in my possession or under my control notwithstanding privilege or confidentiality. Every communication that has any one of those persons listed in the

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<sup>1</sup> This proved only marginally successful as the illegibility of the documents prevented most of them from being processed effectively.

recipient or from such persons has been disclosed and sent to you notwithstanding privilege or confidentiality. In addition, I have answered all questions about funding and provided all documents. [emphasis added]

52. A copy of Levitt's letter is attached as **Exhibit "DD"**.
53. On March 12, 2019, the parties attended a case conference with Justice Chiappetta (Levitt appearing by telephone). In the endorsement, Justice Chiappetta stated:

Mr. Levitt has made disclosure. It remains unclear to the court as to whether there has been full compliance with my orders. Cross-examinations on the productions are likely. To this end the plaintiff's contempt motion remains outstanding...

54. A copy of Justice Chiappetta's endorsement is attached as **Exhibit "EE"**.

#### **Levitt Provides a Schedule B and is Re-Examined**

55. On April 10, 2019, at a further case conference, Justice Chiappetta ordered that Levitt shall be cross-examined on May 7, 2019. A copy of Justice Chiappetta's endorsement is attached as **Exhibit "FF"**.

56. On May 6, 2019, the day before his cross-examination, Levitt delivered a 40-page Affidavit of Documents, which contained only a "Schedule B", namely a list of documents Levitt objected to producing on the grounds that they are privileged (the "**Schedule B**"). A copy of the Schedule B is attached as **Exhibit "GG"**. Levitt provided his Schedule B despite Justice Chiappetta's unambiguous statement in the March 4 endorsement that her orders "require production independent of privilege and confidentiality such that compliance means there shall be no Schedule B documents".

57. Upon receiving the Schedule B, I compared the documents listed therein with the documents Levitt had produced to date, including the USB Documents. Upon reviewing the dates, parties and subject line of the documents listed in Schedule B, I identified a number of items that did not appear to have been produced previously (the “**Missing Schedule B Documents**”).

58. That same day, Levitt also delivered a Supplementary Responding Affidavit (the “**Levitt Supplementary Affidavit**”). A copy of the Levitt Supplementary Affidavit is attached as **Exhibit “HH”** (without attachments). At the May 7 cross-examination, Callidus advised Levitt that it opposed the filing of the Levitt Supplementary Affidavit at such a late stage.

59. On May 7, 2019, Levitt was cross-examined on the productions he made pursuant to the Production Orders. A copy of the condensed transcript of Levitt’s May 7, 2019 cross-examination is attached as **Exhibit “II”**.

60. During the May 7 cross-examination, Levitt gave at least 46 undertakings, took 3 questions under advisement and refused to answer at least 29 questions. Levitt undertook to provide all answers to undertakings by no later than end of business on May 9, 2019. A list of the undertakings and refusals given by Levitt at his May 7 cross-examination is attached as **Exhibit “JJ”**. The answers Levitt has provided to date are included in the undertakings and refusals chart.

#### **The Missing Schedule B Documents**

61. During the May 7 cross-examination, Levitt undertook (at undertakings 4 and 6-30 of the undertakings chart attached as Exhibit “JJ” hereto) to determine whether the Missing Schedule B

Documents had been produced in his previous productions. Levitt's answers regarding the Missing Schedule B Documents are further discussed below.

62. On May 8, 2019, Levitt sent a series of emails with attached copies of documents which Levitt purported to be some of the Missing Schedule B Documents. Copies of the emails Levitt sent (without attachments) are attached as **Exhibit "KK"**. While some of the documents Levitt provided appeared to have been produced in his previous productions, it remained unclear whether the majority of the Missing Schedule B Documents had been produced previously.

63. On May 14, 2019, DW wrote to Levitt requesting the answers to his May 7 undertakings. A copy of DW's letter is attached as **Exhibit "LL"**, which enclosed a complete list of Levitt's undertakings.

64. On May 22, 2019, Levitt provided a purported list of references where the Missing Schedule B Documents could be found in the USB Documents. Levitt advised that the remaining undertakings would not be answered without a direction to do so from Justice Chiappetta. A copy of Levitt's email is attached as **Exhibit "MM"**.

65. I attempted to use Levitt's purported list of references to locate the Missing Schedule B Documents but was unsuccessful in locating a single document. I advised Levitt of the issue I was having locating the Missing Schedule B Documents using his list and arranged a phone call to review the list together. A copy of my email exchange with Levitt is attached as **Exhibit "NN"**.

66. On May 23, 2019, Levitt and I spoke on the phone for approximately one hour. In that time, we were able to locate just a single item from the Missing Schedule B Documents. I



advised him that the issue may be a result of the omission of PDFs labeled 13 and 24 from the original USB that was delivered to our office. During the phone call, Levitt did not agree that was an issue. We concluded the phone call with Levitt undertaking to review the items again and to provide a list and instructions that were easier to navigate. Following our call, Levitt advised that he would provide copies of the Missing Schedule B Documents rather than a reference to where they can be found. A copy of Levitt's email is attached as **Exhibit "OO"**.

67. On May 24, 2019, Levitt sent a series of emails with attachments purporting to be the Missing Schedule B Documents. That same day, when I advised Levitt that it was still difficult to determine if the emails he was now providing were in fact previously produced, Levitt stated:

- (a) "...You will need to do the exercise yourself. I am sorry I am one person and you are a large firm. If you went through the materials diligently you will find them. Respectfully I am not doing your work for you. They have been produced."; and,
- (b) "...I intend to bring the references to chambers of the produced materials and my position has been that the materials, as ordered, have been produced. Our call yesterday was to try and accommodate you in finding the materials as there were around 25 piles. The order required production and I have complied. I was not compelled to formulate lists for you."

68. A copy of my May 24, 2019 email exchange with Levitt is attached as **Exhibit "PP"**.

69. Between May 24-26, I reviewed each and every document Levitt provided on May 24 and compared them to the following:

- (a) the original set of USB Documents printed by Ricoh;

- (b) the chronological index of the USB Documents;
- (c) the chronological PDFs of the USB Documents which were organized by year;  
and,
- (d) the original PDFs contained in the USB provided by Levitt, before they were organized chronologically.

70. On May 26, 2019, I emailed Levitt and advised him that based on my comprehensive review of the USB Documents, I was certain that the Missing Schedule B Documents referred to in undertakings 11-13, part of 16, and 17-19 had not been previously produced, in violation of the Production Orders and advised him that he still had not provided the Missing Schedule B Documents referred to in undertakings 4, 6-10, 14, 15, 21-25, 27, 29 and 30. I also provided him with a copy of the USB Index for his review, to determine if there were any documents missing. A copy of my email is attached as **Exhibit “QQ”**.

71. On May 27, 2019, Levitt provided a chart of where each of the Missing Schedule B Documents could be found, with reference to the USB Documents. A copy of Levitt’s email and chart is attached as **Exhibit “RR”**.

72. Upon reviewing the chart, it became even clearer that many of the Missing Schedule B Documents had not been produced as part of the USB Documents, due to the fact that Levitt had not included PDFs labeled 13 or 24 on the original USB he delivered. I immediately called him to advise him of the omission. During the phone call, he agreed to provide the PDFs labeled 13 and 24. A copy of my email exchange with Levitt following the phone call is attached as **Exhibit “SS”**.

73. Levitt produced PDFs labeled 13 (“**Tab 13**”) and 24 (“**Tab 24**”). Copies of Tab 13 and Tab 24 are attached as **Exhibit “TT”** and **Exhibit “UU”** respectively. Tab 13 and Tab 24 contained approximately 68 total documents, which Levitt had not previously produced.

74. Upon reviewing Tab 13 and Tab 24, I was able to identify the emails referred to in undertakings 7, 8, 9, 11, 12, 13, 16, 17, 18 and part of 19 from Levitt’s May 7 cross-examination.

#### **Levitt’s Refusal to Answer Undertakings**

75. In addition to his undertakings to determine if the Missing Schedule B Documents had been produced (in respect of which undertakings 4, part of 19, 27 and 30 remain outstanding), Levitt gave further undertakings which he has refused to answer. In particular, undertakings 1 and 31-46 remain outstanding, in addition to all under advisements and refusals given.

76. On May 14, 2019, DW provided a list of undertakings to Levitt. On May 24 and 26, 2019, Levitt advised that he would not be producing any answers to his undertakings without further direction from Justice Chiappetta:

May 24, 2019

...I had stated numerous times that at no stage have I waived my rights as a result of the production or any time at all in fact. Given the seriousness of the issue and the continued trampling of my rights by your client and the fact that improper use of the materials has been made for an ulterior purpose, all matters related to production would need the direction of the court and Justice Chiappetta [sic] so as to afford the maximum protection possible to the production...

May 26, 2019

...As regards so-called “ undertakings ” you referenced in May 7th examination, it was absolutely emphasized that I will not be producing anything given the possible breach of the deemed undertaking by yourselves and until I receive directions from Justice Chiappetta [sic] which would be sought. I did not voluntarily undertake anything without directions from Justice Chiappetta [sic] given the improper use of materials for an ulterior purpose...

77. A copy of my email exchange with Levitt is attached as **Exhibit “VV”**.

78. On May 30, 2019, the parties attended a case conference with Justice Chiappetta. I am advised by John Leslie and verily believe that at the case conference, Callidus advised that it would consent to the admission of the Levitt Supplementary Affidavit, if Levitt consented to an order for the appointment of a forensic inspector of his electronic devices, to determine if Levitt was in compliance with the Production Orders.<sup>2</sup>

#### **Forensic Restitution Affidavit and Report**

79. On June 27, 2019, a letter and USB stick were delivered to DW. The letter was from a company called Forensic Restitution and was labeled “Production Material for Court Order Compliance”. A copy of the letter is attached as **Exhibit “WW”**.

80. The USB stick contained the following three documents:

- (a) the *curriculum vitae* of David Oswald (“**Oswald**”);
- (b) an Affidavit of Oswald (the “**Oswald Affidavit**”); and,

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<sup>2</sup> DW contacted the Court to obtain a copy of Justice Chiappetta’s endorsement but the Court file did not contain a copy of the endorsement.

- (c) a report summarizing a forensic review of Levitt's emails, with respect to communications with Baumann, Duhamel and McFarlane (the "**Forensic Report**").

81. Copies of the Oswald Affidavit and his *curriculum vitae* are attached as **Exhibit "XX"**.

82. The Oswald Affidavit states, in part:

3. I have no interest in the litigation that Darryl Levitt is involved in with Callidus Capital Corporation and Catalyst Capital Group in case number CV-17-11712-00CL

4. On 22 February 2019, Darryl Levitt (Levitt) asked me to preserve his emails in accordance with the court order he had received. A copy of the following emails was made

darryl.levitt@gmail.com, darryllevitt71@gmail.com, Darryl@darryllevitt.com, Darryl@dlevittassociates.com, Darryl@forensicrestitution.com

7. On 19 June 2019 Levitt asked me to compare emails that were presented as part of the order and ensure that email production that has already been made be compared with the preserved emails to ensure that he is in compliance with the order.

8. The process followed was

a. Extract all emails using Encase 8.08 for Baumann, Duhamel, MacFarlane on which the parties were sent to...sent from...cc'd...bcc'd.

b. The emails were extracted for each of the above circumstances...

c. The emails were then compared to schedule B, which was supplied to me by Levitt. The following items were then compared:

i. parties

ii. date

iii. subject or brief description

d. If the emails passed the above criteria, the emails were deemed to be submitted. We have not checked the contents of the emails [sic] to ensure that they are identical. [emphasis added]

e. All emails discovered have been produced, whether or not they exist in schedule B.

9. There are no other emails from the preserved materials that fit into the above-mentioned category for production.

83. The Forensic Report contains copies of 1,278 email threads (2,622 pages), which were sent between Levitt and one of Duhamel, Baumann and/or McFarlane. Many of the emails are duplicative of each other. A copy of the index and introduction pages of the Forensic Report are attached as **Exhibit “YY”**.

84. In order to determine whether the Forensic Report contained any Guarantor Correspondence which Levitt had not previously produced, I reviewed each and every document in the Forensic Report and compared them to the following:

- (a) the chronological index of the USB Documents;
- (b) the chronological PDFs of the USB Documents which were organized by year;
- (c) the original PDFs contained in the USB provided by Levitt, before they were organized chronologically; and,
- (d) Tab 13 and Tab 24.

85. Upon comparing the Forensic Report to the documents Levitt had previously produced to date, I identified approximately 196 emails (approximately 305 pages) that had not been previously produced by Levitt. Of the 196 previously undisclosed emails approximately:

- (a) 45 were new email threads which enclosed an attachment;
- (b) 64 were new email threads which did not enclose an attachment; and,
- (c) 87 were previously undisclosed responses to emails which had been previously disclosed.

86. A representative sample of the three categories of previously undisclosed emails is attached as **Exhibit “ZZ”**.

**The Forensic Report and the Oswald Affidavit are not Reliable**

87. Upon receiving the Forensic Restitution documents, DW wrote to Levitt to advise him of the following deficiencies in the Oswald Affidavit and the Forensic Report:

- (a) the emails were purportedly preserved on February 22, 2019, 10 days after Justice Chiappetta’s February 12th Order to “take immediate steps to preserve all evidence”;
- (b) Forensic Restitution made no efforts to determine if any emails or evidence had been deleted prior to February 22, 2019;
- (c) some emails post-date the preservation date, and there is no mention of steps taken to ensure that all emails after February 22, 2019 were preserved and produced; and,
- (d) the Forensic Report only purported to address the Guarantor Correspondence. No steps were taken to ensure that all emails regarding litigation funding were produced and/or preserved.

88. A copy of DW's letter is attached as **Exhibit "AAA"**. Levitt did not respond to the substance of the letter.

89. In reviewing the Forensic Report, I discovered a number of issues which cast doubt on the reliability and objectivity of the Forensic Report:

- (a) at paragraph 3 of the Oswald Affidavit, Oswald states that he has no interest in the within action. However, Oswald is copied on a significant amount of the email correspondence which forms the subject matter of the Forensic Report. He is copied on emails between Levitt and McFarlane, Duhamel and Baumann as early as January 11, 2017. In an email dated May 9, 2017, McFarlane introduces Oswald as "the owner of Forensic Restitution and has been assisting some of the former Callidus borrowers". A copy of the January 11, 2017 and May 9, 2017 emails is attached as **Exhibit "BBB"**. Oswald is the sender or recipient of a number of other emails in the Forensic Report;
- (b) the Forensic Report states that Levitt has "worked from time to time on matte[r]s as external counsel for Forensic Restitution." Levitt also has a Forensic Restitution email address ([darryl@forensicrestitution.com](mailto:darryl@forensicrestitution.com)). The Forensic Report does not contain a single email address from Levitt's Forensic Restitution email address;
- (c) as described in the Forensic Report, to determine if an email was previously "Submitted" by Levitt, Oswald compared the parties to the email, the date of the email and the subject of the email to the information contained in the Schedule B. If the information matched an item on the Schedule B, it was deemed to have



been submitted. The contents of the emails were not reviewed. Using the methodology described in the Forensic Report, if Levitt listed a single email sent to McFarlane, Duhamel and Baumann on a certain date on the Schedule B, because the Forensic Report does not review the contents of the email sent, it would mark all emails between those four parties, sent on that date, with the same subject line as "Submitted". Accordingly, if one of the parties sent a reply email on the same date and with the same subject, the Forensic Report would mark that email as "Submitted", whether or not it was listed in the Schedule B;

- (d) a number of the emails in the Forensic Report may have been damaged or improperly preserved, as they contain text that is unintelligible and do not appear to be the original email that was sent between the parties. A sample of some of the damaged emails from the Forensic Report is attached as **Exhibit "CCC"**;
- (e) a number of emails do not contain any content, enclose any attachments or have a subject line. A sample of some of these emails from the Forensic Report is attached as **Exhibit "DDD"**;
- (f) there are emails that form part of larger email threads in the Forensic Report and which meet the criteria set out in the Oswald Affidavit but are not disclosed as their own separate documents. For example, the Forensic Report included a reply email from Levitt to McFarlane dated July 21, 2017 at 5:50 pm, but did not include McFarlane's original email, sent to Levitt one minute earlier. A copy of this email, as well as another sample demonstrating this inconsistency in the Forensic Report are attached as **Exhibit "EEE"**; and;

- (g) there are emails that Levitt himself has previously disclosed, which meet the criteria set out in the Oswald Affidavit but are not included in the Forensic Report. A representative sample of these emails is attached as **Exhibit “FFF”**.

90. For these reasons, the Forensic Report is neither objective nor helpful in determining whether Levitt is in compliance with the Production Orders.

#### **Case Conference before Justice Hainey**

91. On June 28, 2019, Callidus and Levitt, among others, attended a case conference before Justice Hainey. I am advised by John Leslie, counsel for Callidus, and verily believe that at the case conference, Levitt raised the issue of the alleged breach of the deemed undertaking rule, on which he relied to resist further production and answering his undertakings from his May 7 cross-examination without an order or direction of the Court. Justice Hainey advised Levitt that if he intended to proceed with his allegation that the deemed undertaking rule had been breached, Levitt would be required to bring the motion within a week's time to be heard by Justice Hainey. Justice Hainey advised Levitt that his likelihood of success was non-existent and should he bring such motion and lose, he will be liable for significant cost consequences. Levitt did not proceed with his motion. A copy of Justice Hainey's endorsement is attached as **Exhibit “GGG”**.

92. Despite Justice Hainey's outright dismissal of Levitt's allegations that Callidus has breached the deemed undertaking rule, Levitt has refused and/or failed to answer 22 of the undertakings, all three questions taken under advisement and all 29 questions refused during his May 7 cross-examination.

**Levitt is in Possession of Further Evidence**

93. Levitt has refused or neglected to produce all documentation relevant to the outstanding answers to undertakings and questions refused and to this action generally. A summary of Levitt's misrepresentations regarding his compliance with his obligation to produce documents is included above.

94. In addition, Callidus and DW have been able to identify a number of documents responsive to Levitt's undertakings that Levitt has failed to produce, despite their obvious existence.

*Additional Guarantor Correspondence*

95. On April 17, 2019, Andrew Levy provided DW with an email thread between Levitt, Baumann and McFarlane, dated January 20, 2017. A copy of the January 20, 2017 email is attached as **Exhibit "HHH"**. Notwithstanding the obvious applicability of the Production Orders to this email, Levitt has never produced a copy of this email.

96. During his May 7 cross-examination, Levitt stated a number of times that:

- (a) he does not save every document; and,
- (b) he does not keep every email (when asked if he has deleted any emails).

97. A copy of the transcript of Levitt's May 7 cross-examination was previously attached as Exhibit "II". The instances where Levitt makes the above statements have been highlighted.

98. Levitt has stated that he has not kept every email (i.e. deleted) and the Forensic Report did not verify if any emails which are responsive to the Production Orders had been deleted from Levitt's emails.

99. The Forensic Report did not analyze Levitt's cell phones, computers or other electronic devices to determine if they contained any emails which are responsive to the Production Orders or if they contained any of the emails or documents Levitt has admitted to deleting, which could be recovered. Levitt has used at least four different cell phones for the purposes of sending the Guarantor Correspondence and the Funding Correspondence:

- (a) Samsung Galaxy (see Exhibit ZZ-2 at pg 1716 of the Forensic Report);
- (b) China Unicorn (see Exhibit ZZ-3 at pg 1963 of the Forensic Report);
- (c) iPhone (see Exhibit ZZ-3 at pg 2040 of the Forensic Report); and,
- (d) Huawei Mobile (see Exhibit ZZ-3 at pg 2063 of the Forensic Report).

100. The Preservation Order defined evidence "to include, without limitation, all physical and electronic documents, video or audio recordings, transcripts, physical evidence or evidence of any nature". Levitt has not produced any Guarantor Correspondence or Funding Correspondence other than emails and he has not taken any steps to determine if such evidence exists.

*Attachments and Links missing from Previous Disclosure*

101. Throughout the Guarantor Correspondence and the Funding Correspondence provided to date, there are many references to attachments or online file sharing locations which contain additional documents and form part of the email communications between the parties. In many

instances where Levitt has produced an email pursuant to the Production Orders he has failed to produce the corresponding attachments.

102. None of the emails contained in the Forensic Report were provided with attachments. There were approximately 74 emails in the Forensic Report which referenced an attachment (in some cases multiple attachments) but did not provide the attachment(s) referenced. A further 17 emails in the Forensic Report refer to Dropbox or online file sharing locations which have not been produced.

103. In addition, there were approximately 17 emails which Levitt produced prior to the Forensic Report which referenced but did not include copies of attachments. These emails were not ultimately included in the Forensic Report.

#### **Further Requests for the Missing Documents**

104. On August 2, 2019, DW wrote to Levitt and requested that he:

- (a) answer all outstanding undertakings, questions taken under advisement and refusals from his May 7 cross-examination;
- (b) provide all attachments referred to in his productions which had not been produced, as well as the original email files so that the attachments could be authenticated; and,
- (c) provide copies of all attachments sent via online file-sharing.

105. A copy of DW's letter is attached as **Exhibit "III"**.

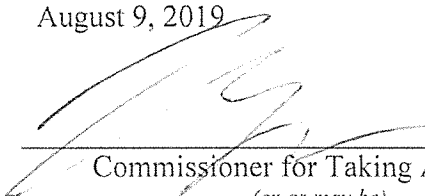
106. To date, Levitt has refused and/or neglected to respond to or produce any such documentation despite being ordered to answer the following questions:

Q. 285 – To produce all email correspondence between Mr. Duhamel, Mr. McFarlane and Mr. Baumann.


Q. 291-293 – Whether Levitt had any discussions amongst other guarantors with respect to funding each other’s defences in the actions.

107. I make this affidavit in support of Callidus’ motion to find Levitt in contempt of court, to compel answers to undertakings and refusals and for an order appointing a forensic investigator and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on August 9, 2019

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

*Nathan I. Lean*

}   
\_\_\_\_\_  
JOSHUA SUTTNER

This is Exhibit "D" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



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A Commissioner for taking Affidavits, etc.

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

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

B E T W E E N:

CALLIDUS CAPITAL CORPORATION

Plaintiff/  
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
and DARRYL LEVITT

Defendants/  
Plaintiffs by Counterclaim

A N D B E T W E E N:

RICHARD GEORGE MOLYNEUX

Plaintiff by Counterclaim

and

J. CLAIRE EDWARDS, not individually, but as a Chapter 7 Trustee for  
FORTRESS RESOURCES, LLC d/b/a/ MCCOY ELKHORN COAL MINING COMPANY,  
CALLIDUS CAPITAL CORPORATION, OPES RESOURCES INC., and DARRYL LEVITT

Defendants to the Counterclaim

**AMENDED NOTICE OF MOTION**

The Plaintiff, Callidus Capital Corporation (“**Callidus**”) will make a Motion to a Judge of the Commercial List on October 29, 2018 at 10:00 a.m. or as soon after that time as the Motion can be heard, at the Courthouse at 330 University Avenue, Toronto, Ontario.

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



**THE MOTION IS FOR:**

- (a) An Order directing the Defendant, Richard George Molyneux (“**Molyneux**”) to re-attend in Toronto, at the expense of the Defendant, for cross-examination on his affidavit sworn March 27, 2018 to answer the undertakings and refusals set out in Schedule “1” hereto, and all proper questions arising therefrom;
- (b) An Order overruling the objections raised by Molyneux to the questions listed on Schedule “2” hereto and declaring that the answers given by Molyneux to the questions set out in Schedule “2” hereto may be used as evidence at the hearing of the Plaintiff’s motion for summary judgment;
- (c) An Order directing the Defendant, Darryl Levitt (“**Levitt**”) to re-attend in Toronto, at the expense of the Defendant, for cross-examination on his affidavit sworn May 11, 2017 to answer the undertakings, questions taken under advisement, and refusals set out in Schedule “3” hereto, and all proper questions arising therefrom;
- (d) Costs of this Motion, on a full indemnity basis; and
- (e) Such further or other relief as counsel may advise and this Honourable court may deem just.

**THE GROUNDS FOR THE MOTION ARE**

- (a) This is an action by Callidus for payment by the Defendants of \$19,512,339.95 USD, plus accrued interest and costs, pursuant to their guarantees of the indebtedness owing by Fortress Resources, LLC (“**Fortress**”) to Callidus;

- (b) The Defendants have denied liability and counterclaimed against Callidus for damages of \$1 million for, *inter alia*, misrepresentation, and punitive damages of \$5 million;
- (c) Callidus moved for summary judgment for payment by the Defendants under their guarantees, and dismissal of the Defendants' counterclaims (the "**Summary Judgment Motion**");
- (d) The Defendants subsequently moved to stay the Summary Judgment Motion (the "**Stay Motion**");
- (e) Molyneux and Levitt delivered their Affidavits sworn May 11, 2017 and March 27, 2018 in response to the Summary Judgment Motion, and in support of the Defendants' Stay Motion and were cross-examined on their Affidavits by counsel for Callidus in Toronto on March 27, 2018 and June 21, 2018, respectively;
- (f) Levitt has not answered any of the undertakings, questions taken under advisement, or refusals on his cross-examination;
- (g) Molyneux agreed to re-attend for cross-examination on October 2, 2018 and, under objection, answered certain questions previously refused, subject to obtaining a ruling of the Court, regarding the propriety of the questions;
- (h) A detailed listing of the undertakings, questions taken under advisement, and refusals given on the cross-examinations of Molyneux is attached as Schedules "1" hereto;

- (i) A detailed listing of the questions answered under objection by Molyneux is attached as Schedule “2” hereto;
- (j) A detailed of the undertakings, questions taken under advisement, and refusals given on the cross-examination of Levitt is attached as Schedule “3” hereto;
- (k) The undertakings, questions taken under advisement, and refusals are proper questions, as the information sought is relevant to the matters in issue in the Summary Judgment Motion and the Stay Motion;
- (l) The majority of the questions which the Defendants refused to answer relate to an alleged conspiracy by Molyneux, Levitt and others to short-sell Callidus stock referred to as the “Wolfpack Conspiracy”, which is the subject of a separate action by Callidus against Molyneux and Levitt and others (the “**Wolfpack Conspiracy Action**”);
- (m) In his Affidavit sworn March 27, 2018, Molyneux states that the Wolfpack Conspiracy Action is an attempt by Callidus to intimidate him and force him into a settlement of this action for payment on his guarantee, and denies any involvement in the Wolfpack Conspiracy;
- (n) The Defendants asserted in their Stay Motion that the claim and defences in this action are also raised and in issue in the Wolfpack Conspiracy Action, and as such, have opened the door to questions with respect to their involvement in the Wolfpack Conspiracy;
- (o) Rules 104, 2.01, 3.02, 34 and 37 of the *Rules of Civil Procedure*; and

- (p) Such further and other grounds as counsel may advise and to this Honourable Court seems just.

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

- (a) Affidavit of Darryl Levitt sworn May 11, 2017 (without exhibits);
- (b) Affidavit of Richard George Molyneux sworn March 27, 2018 (without exhibits);
- (c) The Statement of Claim issued January 18, 2016;
- (d) The Statement of Defence and Counterclaim dated July 13, 2016;
- (e) The Reply and Defence to Counterclaim dated August 2, 2016;
- (f) Fresh as Amended Statement of Defence and Counterclaim of Richard George Molyneux amended March 28, 2018;
- (g) Reply and Defence to Fresh as Amended Statement of Defence and Counterclaim of Richard George Molyneux dated August 2, 2016 (amended May 3, 2018);
- (h) Fresh as Amended Statement of Defence and Counterclaim of Darryl Levitt amended July 24, 2017;
- (i) Notice of Motion for Summary Judgment dated October 2016;
- (j) Notices of Motion to Stay Motion for Summary Judgment dated April 3, 2018 and May 8, 2018;

- (k) Transcript of the Cross-Examination of Richard George Molyneux held May 24, 2018;
- (l) Transcript of the Cross-Examination of Darryl Levitt held June 21, 2018;
- (m) Transcript of the Continued Cross-Examination of Richard George Molyneux held October 2, 2018; and
- (n) Such further and other material as counsel may advise and this Honourable Court permit

Dated: October 19, 2018

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, Ontario M5L 1G4

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Lawyers for the Plaintiff/Defendant to the  
Counterclaim

TO: **DANSON & ZUCKER**  
Symon Zucker Professional Corporation  
Barristers and Solicitors  
375 University Avenue, Suite 701  
Toronto, Ontario M5G 2J5

**SYMON ZUCKER (15832C)**  
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Lawyers for the Defendant, Darryl Levitt

AND  
TO: **SOLMON ROTHBART GOODMAN LLP**  
Barristers  
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Toronto, Ontario M5G 2J5

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Lawyers for the Defendant, Richard George Molyneux

Schedule "3"

Court File No. CV-16-544639

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CALLIDUS CAPITAL CORPORATION**

Plaintiff/Defendant by Counterclaim

- and -

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

Defendants/Plaintiffs by Counterclaim

**CHART OF UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS GIVEN AT THE CROSS  
EXAMINATION OF DARRYL LEVITT  
(ON HIS AFFIDAVITS SWORN ON MAY 11, 2017)**

List of Undertakings from the examination of Darryl Levitt on June 21 2018			
UNDERTAKING	PAGE NO(S)	QUESTIONS NO(S)	RESPONSE OR PRECISE REASON FOR NOT ANSWERING
1 Undertaking to produce document indicating Opes requested an amount and said "why are you not giving us the	92	387	

**List of Undertakings from the examination of Darryl Levitt on June 21 2018**

	amount? Because we have the availability?"			
2	Undertaking to produce any other inducements that resulted in D. Levitt signing his guarantee	105	428	

**List of Under Advisements from the examination of Darryl Levitt on June 21 2018**

	<b>UNDER ADVISEMENTS</b>	<b>PAGE NO(S).</b>	<b>QUESTIONS NO(S).</b>	<b>RESPONSE OR PRECISE REASON FOR NOT ANSWERING</b>
1	Request to produce all email correspondence between Mr. Duhamel, Mr. McFarlane, and Mr. Baumann	66	285	



**List of Refusals from the examination of Darryl Levitt on June 21 2018**

	<b>REFUSALS</b>	<b>PAGE NO(S).</b>	<b>QUESTIONS NO(S).</b>	<b>RESPONSE OR PRECISE REASON FOR NOT ANSWERING</b>
1	Refusing to answer whether he had discussions with the other guarantors with respect to bringing his story to the press generally, and specifically to either the Wall Street Journal or Reuters	67	287 - 290	
2	Refusing to answer whether Levitt had any discussions amongst other guarantors with respect to funding each other's defences in the actions	67	291/293	Irrelevant
3	Refusing to answer whether Levitt personally offered financial support to any other defendants	68	294/295	
4	Refusing to answer whether there were discussions among guarantors about filing a whistleblower complaint with the Ontario Securities Commission	68	296	
5	Refusing to answer whether there were any discussions with co-guarantors relating to any complaint to the Toronto Police Services	68	297 - 298	
6	Refusing to answer whether Levitt met with the other guarantors in Albany to talk about a possible RICO action against Callidus	69	300	

**List of Refusals from the examination of Darryl Levitt on June 21 2018**

<b>7</b>	Refusing to answer whether there were any other discussions with any of the parties mentioned in questions 306 – 320 in respect of reporting the actions of Callidus to either the press, OSC, or Toronto Police Services	73	324	
<b>8</b>	Refusing to answer whether Levitt advised Boland of the status of his defence or gave an update re same	74	330	Irrelevant
<b>9</b>	Refusing to answer whether Levitt advised Nathan Anderson of the update on the status of his defence or strategy of his defences	74	331	Irrelevant
<b>10</b>	Refusing to answer whether he spoke to Boland, Anderson, or Spears regarding the status of his defence, the strategy of his defence, and how he was proceeding against Callidus	75	334	Irrelevant
<b>11</b>	Refusing to answer whether there were any discussions with Mr. Cohodes regarding the status of his defence and the strategy that he is employing against Callidus	75 - 76	336	Irrelevant
<b>12</b>	Refusing to answer whether there were discussions with Boland, Anderson, Spears, or Cohodes regarding taking his case to the Wall Street Journal, Reuters, or the press	76	337	Irrelevant
<b>13</b>	Refusing to answer whether he had discussions with Boland, Anderson, Spears,	76	338	Irrelevant

## List of Refusals from the examination of Darryl Levitt on June 21 2018

	Cohodes or anyone mentioned in questions 306 – 320, with regards to filing a whistleblower complaint				
14	Refusing to answer whether he entered into confidentiality agreement with other guarantors regarding the non-divulgence of who may have made a whistleblower complaint against Callidus	76	339		Irrelevant
15	Refusing to answer whether there were discussions with Boland, Anderson, Spears, Cohodes, or other parties mentioned in questions 306 – 320, regarding attempts to possibly bring a RICO action against Callidus	77	340		Irrelevant
16	Refusing to answer whether Boland, Anderson, Spears, Cohodes, or any other parties mentioned in questions 306 – 320 offered to provide financial funding for his defence against Callidus	77	341		Irrelevant
17	Refusing to provide any documentation, correspondence or notes of any communications, conversations, emails, etc. with Boland, Anderson, Spears, Keiper, Puri, Kassam, Kimel, MacIsaac, Cohodes, Adrangji, Langstaff, Delevingne, Tilak, Copeland, and McNish	77 - 78	342 - 343		

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

**AMENDED NOTICE OF MOTION**

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, Ontario M5L 1G4

**JOHN D. LESLIE (29956P)**  
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Lawyers for the Plaintiff/Defendant to the Counterclaim

TORONTO 57558-34 1489110v2

This is Exhibit "E" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



---

A Commissioner for taking Affidavits, etc.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM

MONDAY, THE 7<sup>TH</sup>

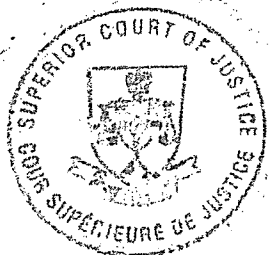
JUSTICE CHIAPPETTA

DAY OF, JANUARY 2019

CALLIDUS CAPITAL CORPORATION

Plaintiff/  
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX  
and DARRYL LEVITTDefendants/  
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

-2-


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.

-3-

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.



*J. G. [Signature]*

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 25 2019

PER / PAR:

*[Signature]*



This is Exhibit "F" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



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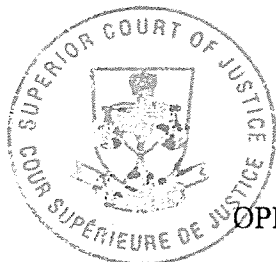
A Commissioner for taking Affidavits, etc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM ) TUESDAY, THE 12<sup>TH</sup>  
 )  
JUSTICE CHIAPPETTA ) 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. ~~3.~~ **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. ~~4.~~ **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*  
 ¶ 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.

ENTERED AT / INSCRIT A TORONTO  
 ON / BOOK NO:  
 LE / DANS LE REGISTRE NO:  
 FEB 12 2019

PER / PAR:

*R*

*Levitt*

CALLIDUS CAPITAL CORPORATION  
Plaintiff/Defendant to the Counterclaim

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

Court File No. CV-17-11712-00C163

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

**ORDER**


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199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, Ontario M5L 1G4

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Lawyers for the Plaintiff/Defendant to the Counterclaim

This is Exhibit "G" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



---

A Commissioner for taking Affidavits, etc.

**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.

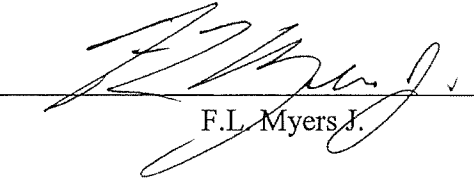


[23] Finally, and in any event, I would not find that the balance of convenience favours a stay in this case. Although Mr. Levitt asserts great urgency, he has allowed ten days to pass since the making of the order and he has no motion for leave to appeal prepared. While he is self-represented, he is 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

---

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

This is Exhibit "H" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*Dave Moore*

---

A Commissioner for taking Affidavits, etc.

# COUNSEL SLIP

COURT FILE NO 17-11712

DATE June 11th, 2019

NO ON LIST ~~11/16/19~~  
3

TITLE OF  
PROCEEDING

Callidus Capital v. Oper

COUNSEL FOR:

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S)

John D. Leslie  
Dickinson Wright

PHONE & FAX NOS

416-646-3801

J.Leslie@dickinsonwright.com

COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

Melvyn L. Solman

(Richard Molyneux)

PHONE & FAX NOS

4169471093 ext 333

m.solmane@rsglegal.com

MJ Chiappetta      June 11, 2019

In behalf of his client, Mr. Leslie wishes to schedule a motion seeking a forensic review of Mr. Levitt's devices further to compliance with my order for production. Mr. Levitt is not in attendance today. He advised that he was not available to attend but provided no reason for his non-attendance. In my view, the motion, which should not take more than one hour, should be scheduled on an

**MR-172**

expedited basis and prior to Aug 12, 2019,  
when I am available. On June 28, 2019,  
Mr. Levitt has scheduled an attendance  
before Justice Hainey to speak to his  
concerns about the deemed undertaking  
rule. Subject to ~~the~~ Justice Hainey's  
discretion, Mr. ~~Levitt's~~ <sup>Leslie's</sup>  
motion may be scheduled at that time,  
by Justice Hainey.

Geraghty

This is Exhibit "I" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



---

A Commissioner for taking Affidavits, etc.

2:15  
COUNSEL SLIP

COURT FILE NO CV-17-11712-00CL

DATE 16-SEP-2019

NO ON LIST ADD-ON #1

TITLE OF PROCEEDING Callidus v. Levitt et al

COUNSEL FOR: John D. Leslie  
PLAINTIFF(S)  
APPLICANT(S) Joshua Sumner  
PETITIONER(S)

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COUNSEL FOR: Levitt  
DEFENDANT(S)  
RESPONDENT(S) Mark Wiffen

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(416) 47-317-1515  
mark.wiffen@wiffenlaw.ca

Court File Number: CV-17-1171200CL

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Callidus \_\_\_\_\_  
Plaintiff(s)

AND

Opes et al \_\_\_\_\_  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
<u>V. Leslie / T. Suttner</u>		
<u>M. Cripps</u>		

- Order     Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows):

Counsel appeared before me today with respect to disagreements concerning the wording of an order with respect to preservation and production of documents. After receiving submissions on the discrete issues in dispute I order as follows:

① Paragraph 2(b) as proposed by M. Cripps

16 Sept 19  
Date

[Signature]  
Judge's Signature

Additional Pages 2

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The Pl. shall be included in order. In my view this is in keeping with the intent/wording of Justice Chiappetta's order dated Feb 12/19.

② Para 3(b) shall also be included for the same reason

③ Para 3(c)(ii) shall also be included for the same reason

④ Para 8 - parties have agreed to the wording and will include it in the draft order

⑤ Para 11 - will go in accordance with the def's draft

⑥ Para 12 - the parties cannot agree on the wording of this paragraph. I order that nothing in this order precludes either party from arguing the issue of a deemed or implied left as it relates to the production of docs. prior to the release of any docs. For the time being the contempt motion is



Court File Number: \_\_\_\_\_

**Superior Court of Justice  
Commercial List**

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

*held in abeyance*

*MOEST*

Page 3 of 3

Judges Initials PM

## Ken Jones

---

**From:** Joshua Suttner <JSuttner@dickinson-wright.com>  
**Sent:** Friday, September 20, 2019 11:44  
**To:** Thomasjohn.mcewen@scj-csj.ca  
**Cc:** John D. Leslie; Mark Wiffen; Lisa S. Corne  
**Subject:** Callidus v. Levitt et al. - CV-17-11712-00CL  
**Attachments:** TORONTO-#1659765-1-Order and Protocol Appointing BDO as Forensic Inspector.PDF

Your Honour,

Attached is a copy of the Order to appoint BDO as forensic inspector of Mr. Levitt's Records, which has been approved and consented to by counsel for each party. We ask that Your Honour's assistant please email to advise when the Order is ready to be picked up.

Thank you

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) FRIDAY, THE 20TH  
 )  
JUSTICE MCEWEN ) DAY OF, SEPTEMBER 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 (i) finding the Defendant Darryl Levitt (“**Levitt**”) in contempt of this Court and (ii) to appoint and install an inspector to review the Records (hereinafter defined) was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion dated August 9, 2019, the Affidavit of Joshua Suttner dated August 9, 2019, the Affidavit of Darryl Levitt sworn August 23, 2019, the Affidavit of Dave Oswald sworn August 26, 2019, and hearing the submissions of counsel for Callidus and Levitt:

1. **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@darryllevitt.com, darryl.levitt@nortonrosefulbright.com, darryl@dlevittassociates.com, darryllevitt@icloud.com, darryl@forensicrestitution.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.

2. **THIS COURT ORDERS** that BDO Canada LLP is hereby appointed Inspector of the following (collectively, the “Records”):

(a) any electronic devices, including but not limited to computers (including desktop computers, laptops, and/or servers), iPads, tablets, hard drives and cell phones, computer programs, computer tapes, computer disks, USB drives, online storage and/or “cloud” storage to which Levitt has access or other data storage media, whether containing any Evidence or otherwise in Levitt’s possession or control; and,

- (b) hardcopy documents which relate to paragraphs 1(a) and 1(b) of this Order in Levitt's possession or control.

3. **THIS COURT ORDERS** that the Inspector's appointment shall be to:

- (a) Preserve any Evidence located in the Records;
- (b) To determine if Levitt has preserved all evidence in his possession, power or control in any way related to, arising out of or referring to the within action as of February 12, 2019; and
- (c) Review and report on any Evidence in the Records which has not already been produced in this litigation, but which constitutes:
  - (i) Emails between Levitt and any of Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann; or
  - (ii) Communications between Levitt and other guarantors, including but not limited to any of Richard Molyneux, Gary Smith, Andrew Levy, Richard Jaross, Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann, where the discussions in those communications relate to the funding of each other's defences.

The Evidence identified in 3(c) shall be collectively referred to here as the "Undertaking Communications".

4. **THIS COURT ORDERS** that the Inspector shall obtain, preserve, review and report on the Records in accordance with the provisions of this Order and the protocol set out in Schedule

“A” to this Order (the “**Protocol**”). Callidus and Levitt may agree, in writing, to modify the Protocol without a further order of this Court.

5. **THIS COURT ORDERS** that Levitt shall forthwith advise the Inspector of the existence of any Records in his possession or control, and shall provide to the Inspector or permit the Inspector access to the Records. The Inspector shall forensically image, recover and/or take away copies of any of the Records, provided that any Records removed from Levitt’s possession are returned to Levitt within 24 hours.

6. **THIS COURT ORDERS** that Levitt shall provide the Inspector with all necessary assistance in gaining immediate access to the information in the Records as the Inspector may in its discretion require including providing the Inspector with instructions on the use of any computer or other system and providing the Inspector with any and all access codes, passwords, pin numbers (including verification codes for dual authentication), encryption/decryption keys, account names and account numbers (the “Login Information”) that may be required to gain access to the information.

7. **THIS COURT ORDERS** that any Records, or any images, copies (in whole or in part) or other reproductions of the Records, and the Login Information shall be maintained in a secure manner, and shall be kept strictly confidential by the Inspector, except to the extent authorized by this Order. Upon completion of its report set out in this Order, the Login Information received from Levitt shall be promptly deleted and/or destroyed by the Inspector, subject to further order of this court.

8. **THIS COURT ORDERS** that the Inspector shall conduct a review and analysis of the Records in accordance with the Protocol and provide a report to Levitt and Callidus, which

report shall identify and sufficiently describe, without disclosing the underlying Evidence, only the following:

- (a) all Undertaking Communications, if any, which the Inspector believes have not been produced in the within action;
- (b) Evidence which has been deleted from the Records since February 12, 2019; and,
- (c) any steps taken by anyone, since February 12, 2019, to reformat, delete, scrub or otherwise erase any Evidence contained in the Records.

9. **THIS COURT ORDERS** that the Inspector shall, at the time of delivery of the report to Levitt pursuant to paragraph 7, above, provide Levitt with copies of the documents or any other Evidence that is identified in the report.

10. **THIS COURT ORDERS** that within 7 days of receipt of the Inspector's report, Levitt shall advise whether he objects to the disclosure of any documents or other information set out in the Inspector's report. For greater certainty, any objections to the disclosure of documents or other information shall be limited to objections to the disclosure of documents or information that do not fall within the definition of Undertaking Communications and Levitt shall provide the basis for any objections on a document by document basis. Any such information shall be retained by the Inspector on a confidential basis, subject to further order of the court.

11. **THIS COURT ORDERS** that upon the earlier of receipt of Levitt's objections (if any), or the passage of 7 days from delivery of the Inspector's report, the Inspector shall disclose all Undertaking Communications set out in the Inspector's report to Callidus and Levitt and to the court, except for the documents or information to which Levitt objects. Disclosure of any

documents or information objected to by Levitt will be subject to a further order of the Court on motion to be made by any party on five days notice. On any such motion, Levitt shall file with the Court under seal unredacted copies of the Undertaking Communications which he objects to producing, subject to further Court order as to the production of such documents to Callidus or its counsel for the purpose of the motion.

12. **THIS COURT ORDERS** that the parties may return to Court to deal with any issues arising from this Order, to expand or clarify the scope of the Order or to implement this Order on five days notice.

13. **THIS COURT ORDERS** that the Inspector's Costs incurred in completing the forensic analysis and reporting thereon shall be borne in the first instance by Callidus, with the ultimate determination as to the responsibility for those costs to be the subject of a further Order of this Court.

14. **THIS COURT ORDERS** that for the time being, the contempt motion is held in abeyance.



Schedule "A"

**SEE ATTACHED**

*Callidus Outline of Protocol*

**Schedule "A"**

1. Purpose & Scope of Forensic Examination

- a. The purpose of this document is to provide analysis instructions to be performed on the forensic images identified as being relevant to this Order. In general, this document has been structured with specific tasks that are anticipated, and a description of the output from each task.
- b. Unless otherwise instructed, all forensic analysis shall be conducted using EnCase or other industry standard, generally accepted forensic software application.
- c. Unless otherwise noted below, the timeframe for this analysis shall be files created and/or modified between **January 1, 2016** and the date the forensic images were made.
- d. The intent of this protocol is that both parties' forensic experts will be permitted to maintain an open dialog during the execution of the analysis, allowing for more fluid and timely communication.
- e. This document will provide instructions covering the following topics:
  - i. External Device Analysis
  - i. Deletion Analysis
  - ii. Secure Deletion/Wiping Analysis
  - iii. Internet History Analysis
  - iv. Keyword Search Terms

2. Evidence Listing

Identify, collect and secure all devices, email and messaging accounts and records (digital and analog) relevant to the Order.

a. The email accounts to be secured include:

- (i) darryl.levitt@gmail.com
- (ii) Darryllevitt71@gmail.com
- (iii) Darryl.levitt@nortonrosefulbright.com
- (iv) darryl@dlevittassociates.com
- (v) darryl@forensicrestitution.com
- (vi) dlevitt@opesresources.ca
- (vii) Any other email accounts that are disclosed by Mr. Levitt or identified by the Inspector as being used by Levitt

b. The messaging applications to be secured include

- (i) Confide
- (ii) Whatsapp
- (iii) Text/SMS/iMessage
- (iv) Facebook
- (v) Instagram
- (vi) Twitter
- (vii) LinkedIn
- (viii) Skype

c. The Inspector may take any steps, in its absolute discretion, to image and analyze the Records to determine all current and previous email addresses, phone numbers, usernames or other contact information unique to the following individuals: Gerald Duhamel, Jeffrey McFarlane, Kevin Baumann, Richard Molyneux, Gary Smith, Andrew Levy and Richard Jaross, for the purposes of identifying Evidence which is relevant to the scope and purpose of the Forensic Examination.

d. Devices to be examined:

Custodian Name	Device	Make	Model	Serial/IMEI Number

### 3. Desktop & Laptop - External Device Analysis

#### a. Windows OS analysis

For each computer forensic image provided which contains a Windows post-XP operating system, extract reports from the following locations:

- i. SYSTEM and LOCAL Registry database locations:-
  - a. SYSTEM\CurrentControlSet\Enum\USBSTOR
  - b. SYSTEM\CurrentControlSet\Enum\USB
  - c. \CurrentControlSet\Enum\USBSTOR\Ven\_Prod\_Version\USB
  - d. SYSTEM\MountedDevices
  - e. NTUSER.DAT\Software\Microsoft\Windows\CurrentVersion\Explorer\MountPoints2
- ii. Plug and Play log files locations:
  - a. Windows XP - C:\Windows\setupapi.log
  - b. Windows post-XP - C:\Windows\inf\setupapi.dev.log
- iii. Microsoft-Windows-DriverFrameworks-UserMode\Operational - Connection and Disconnection Event ID's 2003/2004 and 2100/2102.
- iv. Microsoft-Windows-WPD-MTPClassDriver - Connection and Disconnection Event ID's 1000 and 1002
- v. Generate Link File, Shellbag and Jump List reports.

#### b. Mac OSX analysis:-

For each computer forensic image provided which uses Mac OSX, extract reports from the following locations:

- i. /private/var/log/system.log – Search for log entries containing ‘USBMSC Identifier’
- ii. /private/var/log/daily.out
- iii. /private/var/log/weekly.out

- iv. /private/var/log/monthly.out
- v. /private/var/log/fsck\_hfs.log
- vi. /Users/<user>/Library/logs/DiskUtility.log
- vii. /Users/<user>/Library/logs/fsck\_hfs.log
- viii. /Users/<user>/Library/Preferences/com.apple.sidebarlists.plist
- ix. /Users/<user>/Library/Preferences/com.apple.iPod.plist

#### 4. External Device Analysis

- a. For each forensic image of an external device (i.e. thumb drive or external hard drive) provided for review, perform the following additional analysis to identified User Usage history and also Format history of the external devices.
  - i. User Usage History – Export a full file listing, including all associated metadata, for each forensic image.
  - ii. Format History – If the external device has an NTFS file system, provide the date/time stamp(s) for the “\$MFT” and/or the “\$LogFile”.

#### 5. Mobile Device Analysis (smartphones & tablets)

- a. For each forensic image of a smartphone or tablet device, generate the following reports.
  - i. Export text messages, SMS, and multimedia messages (MMS) in a format such as .XML, .XLSX or .UFED.
  - ii. Review of application activity:
    - 1. Provide a report of applications installed on each mobile device.
    - 2. To the extent appropriate and reasonable, and to the extent that such analysis can be done, additional reports from specific applications will be provided.

#### 6. Desktop & Laptop Analysis

- a. Document the following attributes of each desktop/laptop:
  - i. Device manufacturer
  - ii. Model name

- iii. Serial number
  - iv. Install date of operating system
  - v. Operating system type and version
  - vi. Internal hard drive make, model, serial number and capacity
  - vii. Identification of user profiles
  - viii. First and last appearance of user profiles
  - ix. Date of last access (and supporting evidence)
- b. Recover Folders:
- i. Use Encase to run “Recover Folders” process over all identified partitions within the forensic images to scan for and identify metadata stored within deleted folders. Verify that the process executed successfully and all identified files were re-added into the Encase view.
  - ii. Use Encase to review identified “Lost Files” and all other files and folders identified as “Is Deleted”
  - iii. Produce a spreadsheet file listing of all identified deleted files and folders for review. This spreadsheet should also de-duplicate those entries that may be identified in Encase as “Is Deleted” but for which the forensic image currently contains an active file analog (i.e. by the same file name). That is, the spreadsheet produced should contemplate and account for the known behavior under more recent versions of the Windows operating system whereby MFT records can include the “Is Deleted” attribute, when in fact the document has never been deleted at all. The de-duplication process should be performed using both the filename and the last modified date and time of the files.
  - iv. Produce a separate spreadsheet file listing of all files and folders located in any local Recycle Bins in the forensic images.
- c. Recycle Bin Analysis:
- i. Windows XP – Parse for active and deleted INFO2 records. Generate a spreadsheet file listing of all identified records for review.
  - ii. Windows post-XP – Parse for active and deleted \$I and \$R system files. Generate a spreadsheet file listing of all identified records for review.

d. \$USNJRL Analysis:

- i. Parse the current \$USNJRNL file in the forensic image if present.

Produce export listing spreadsheet of parsed records

e. System Backup Analysis:

- i. Generate a list of the Volume Shadow Copies (“VSC”) that exist on each machine.
- ii. Parties will agree on which VSC’s will be subjected to additional analysis.
- iii. For those VSC’s that will be subjected to additional analysis, the following tasks will be done, per processes outlined within this protocol:

1. Generate a USB devices report
2. Generate a LNK files report
3. Generate an Internet History report
4. Subject the files contained within the VSC to keyword searching

f. Additional Areas of Review

- i. Identify batch “.bat” files on the forensic images
- ii. Apply the search terms identified in Section 7 of this protocol against the .bat files and report on hits accordingly.
- iii. Provide a listing of all installed and uninstalled applications in the Program Files directory

g. Secure Deletion & Wiping Analysis

- i. Windows OS – Cipher Wipe process: Inspect the RunRMU key located at HKCU\Software\Microsoft\Windows\Current Version\Explorer\RunMRU and report on any references to Cipher.exe.

- ii. Mac OSX – Secure Erase process: Inspect the “EmptyTrashSecurely” PLIST value to determine if it is set to YES. Report accordingly.

h. 3<sup>rd</sup> Party Tools Review

- i. Parse the Prefetch files using the Prefetch Parser EnScript over active and recoverable Prefetch files and export results to .CSV for review.
- ii. Generate a report of the user profiles on each machine. From the profile associated with the “custodian” associated with the machine, identify and extract common NTuser.dat registry keys using Didier Stevens “RegRipper” tool and export the output for review.
- iii. Parse the “AppCompatCache” (also known as the “ShimCache”) using the ShimCache Parser EnScript and export results to a .CSV file.

i. Internet History Analysis

- i. Generate a report on all available internet history found in all active and unallocated space of each forensic image

7. Keyword Search

- i. Add the Evidence files into Encase.
- ii. Run the forensic process “File Mounter” to identify and expand the following archive file types (DOCX, GZ, PPTX, PST, RAR, TAR, TGZ, XLSX and ZIP) within the output harvested data for each forensic image. If OST files are present then these will need to be mounted separately in the standard Encase view.
- iii. Using the following keywords, import them into Encase or add them as a keyword list.

The proposed filters include:



- a) Correspondence between: Mr. Levitt, Gerald Duhamel, Jeffrey McFarlane and Kevin Baumann;
- b) Documents relating to discussions among any of the following parties regarding funding of defences: Mr. Levitt, Richard Molyneux, Gary Smith, Andrew Levy, Richard Jaross, Gerald Duhamel, Jeffrey McFarlane or Kevin Baumann;
- c) For the purposes of identifying documents that fall within the scope of 7(ii)(a) or 7(ii)(b), utilize the following keywords:

Entities/Persons

- Callidus Capital Corporation
- Adam Spears
- ClaritySpring Inc.
- Nathan Anderson
- George Wesley Voorheis
- Andrew Levy
- Bruce Livesey
- Bruce Langstaff
- Rob Copeland
- Kevin Baumann
- Jeffrey McFarlane
- Alken Basin Drilling Ltd.
- Exchange Technology Group LLC
- Richard Molyneux
- Gerald Duhamel
- Bluberi Gaming Technologies Inc.
- Esco Marine
- Fortress Resources LLC
- Bryan Wood
- Steven Buttacavoli
- Berman DeValerio
- Harbour

Terms

- “mutual interest”
- funding
- “financial support”
- financing
- fraud

- guarantee
- guarantor
- default
- legal costs
- legal fees
- contribution
- “statement of account”
- disbursement
- “non-disclosure agreement”
- NDA
- “class action”
- RICO
- RICOH
- defences

iv. Ensure that all keywords have the following options selected:

- ANSI Latin-1
- Unicode
- UTF-8
- Outlook Compressible Encryption - Code page 65003

v. Run the keywords outlined herein against the image.

vi. Provide an all files-like report, identifying all of the files that received one or more keyword hit.

vii. Remove any files that contain the word “Wiffen” prior to any manual review

viii. Manually review the all files-like report to remove all files that do not fall within the scope of 7(ii)(a) or 7(ii)(b)

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**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, Ontario M5L 1G4

**JOHN D. LESLIE (29956P)**  
Tel: (416) 646-3801  
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**LISA S. CORNE (27974M)**  
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Fax: (416) 865-1398  
Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)

Lawyers for the Plaintiff/Defendant to the Counterclaim

This is Exhibit "J" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

A handwritten signature in blue ink that reads "David Moore".

---

A Commissioner for taking Affidavits, etc.

MILBURN  
&  
ASSOCIATES

A. JANE MILBURN | B.A., LL.B.  
TEL 647.728.8081 | jmilburn@milburnlaw.ca

20 Toronto Street | Suite 860 | Toronto, ON M5C 2B8  
MAIN LINE 416.238.7865 | FACSIMILE 647.689.2983  
www.milburnlaw.ca

January 15, 2018

***PRIVATE & CONFIDENTIAL***

***DELIVERED***

**To: Schedule "A" (attached)**

Dear Counsel:

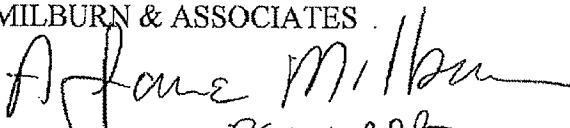
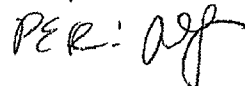
**Re: Langstaff, Bruce re Canaccord  
Our File No. 217143**

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Enclosed please find a copy of the Statement of Defence and Counterclaim of Bruce Langstaff, which is being served upon you in accordance with the *Rules of Civil Procedure*.

Yours very truly,

MILBURN & ASSOCIATES

  
A. Jane Milburn PER:   
DMJ/gml  
Enclosure

MR-196

**SCHEDULE "A"**

**TO: DELIVERED BY FAX: 416-581-1279**

Moore Barristers  
Barristers & Solicitors  
393 University Avenue, Suite 1600  
Toronto ON M5G 1E6

Attn: David C. Moore

**TO: DELIVERED BY FAX: 416-863-0871**

Davies Ward Phillips & Vineberg LLP  
Barristers and Solicitors  
155 Wellington Street West, 37th Floor  
Toronto ON M5V 3J7

Attn: Kent E. Thomson  
Matthew Milne-Smith  
Andrew Carlson

**AND TO: DELIVERED BY FAX: 416-865-7380**

Torys LLP  
Barristers and Solicitors  
79 Wellington Street West Suite 3000  
Box 270, TD South Tower  
Toronto ON M5K 1N2

Attn: Andrew Bernstein  
Linda M. Plumpton

**AND TO: DELIVERED BY REGULAR MAIL**

Clarityspring Inc.  
545 5th Avenue  
8th Floor  
New York NY 10017

**AND TO: DELIVERED BY REGULAR MAIL**

Nathan Anderson  
c/o ClaritySpring Inc.  
545 5th Avenue, 8th Floor  
New York NY 10017

AND TO: **DELIVERED BY FAX: 647-245-8285**

St. Lawrence Barristers  
144 King Street East  
Toronto ON M5C 1G8

Attn: Phil Tunley

AND TO: **DELIVERED TO EMAIL E.Bodnar@scottventuro.com**

Scott Venturo Rudakoff LLP  
Lawyers  
1500, 222 3rd Ave SW  
Calgary AB T2P 0B4

Attn: Eugene J. Bodnar

AND TO: **DELIVERED BY REGULAR MAIL**

Jeffrey McFarlane  
220 Dominion Drive, Suite B  
Morrisville, NC  
27560 USA

AND TO: **DELIVERED BY FAX: 855-696-5441**

Danson & Zucker  
Barristers and Solicitors  
375 University Avenue, Suite 701  
Toronto ON M5G 2J5

Attn: Symon Zucker

AND TO: **DELIVERED BY FAX: 416-947-0079**

Solomon Rothbart Goodman LLP  
Barristers  
375 University Avenue, Suite 701  
Toronto ON M5G 2J5

Attn: Melvyn L. Solomon

AND TO: **DELIVERED BY REGULAR MAIL**

Newton Glassman  
17 Ardworld Gate  
Toronto, Ontario  
M5R 2W1

AND TO: **DELIVERED BY REGULAR MAIL**

**B.C. STRATEGY LTD.**  
City Point  
1 Ropemaker Street  
Moorgate, London  
EC2Y 9HT  
England

AND TO: **DELIVERED BY REGULAR MAIL**

**B.C. STRATEGY UK LTD.**  
City Point  
1 Ropemaker Street  
Moorgate, London  
EC2Y 9HT  
England



**ONTARIO  
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

B E T W 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 and JOHN DOES

#1-10

Defendants

**STATEMENT OF DEFENCE AND COUNTERCLAIM  
OF BRUCE LANGSTAFF**

1. The defendant, Bruce Langstaff, admits the allegations contained in paragraphs 3, 4, 5, 6, 7, 9, 10, 11 12-19, 21, 23-25, 34-36, 97, 101 and 132 of the Statement of Claim.
2. The Defendant, Bruce Langstaff, has no knowledge in respect of the allegations contained in paragraphs 27-30, 38, 39-43, 44-48, and 89-90 of the Statement of Claim.
3. The plaintiff, Bruce Langstaff, denies the balance of the allegations contained in the Statement of Claim except as expressly admitted below.

4. Capitalized terms not otherwise defined have the meaning ascribed to them in the Statement of Claim.

### Overview

5. The damages sought by the plaintiffs in the main action are related to alleged short-selling in the stock of the plaintiff, Callidus and other allegations.

6. The defendant, Bruce Langstaff, is an individual residing in Toronto, Ontario. Until September 26, 2017 Mr. Langstaff was employed with Canaccord Genuity Corp. ("Canaccord"). Canaccord is a full-service independent investment bank that carries on business in two segments of the financial services industry: wealth management and capital markets. Canaccord is one of the largest independent investment dealers in Canada.

7. In his capacity as an employee of Canaccord, Mr. Langstaff was employed as Managing Director, Canadian Equity Sales. He worked with a range of clients of Canaccord such as hedge funds, family offices, and other institutional investors in relation to their capital markets needs.

8. Although the plaintiffs allege that there was a Conspiracy perpetrated by the defendants, or each of them, with the intent of causing harm to the plaintiffs, Mr. Langstaff pleads and the fact is that no such Conspiracy exists. In the alternative, if any conspiracy exists, which is expressly denied, Mr. Langstaff has no knowledge of it and was not a participant.

9. Mr. Langstaff is not named as a party to any of the subsets of defendants referred to in the Statement of Claim other than the Individual Defendants. For greater clarity, it is admitted by the plaintiffs that Mr. Langstaff is not a part of the Wolfpack Conspirators, the Guarantor Conspirators, or the John Doe Defendants.

10. Mr. Langstaff has essentially been sued for doing his job. The allegations made against him relate to the general plea of conspiracy and the only specific acts or omissions attributed to Mr. Langstaff in the Statement of Claim relate to activities allegedly carried out by him on behalf of Canaccord's clients in the course of his employment.

11. Anson and West Face were clients of Canaccord and have each engaged its services to recommend trading strategies and execute trades on their behalf from time to time over the course of several years. In his capacity as an employee and agent of Canaccord, Mr. Langstaff recommended trading strategies to clients of Canaccord he covered, including but not limited to Anson and West Face. (Anson and West Face are hereinafter referred to collectively as the "Clients"). At all material times, Mr. Langstaff recommended trading strategies to his Clients in the usual course of his role and duties of employment which were carried out honestly and in good faith. Although Mr. Langstaff facilitated trades, other members of Canaccord executed trades on behalf of the Clients.

12. Mr. Langstaff believes that in or around the dates alleged in the Statement of Claim from August 9-14, 2017, neither West Face nor Anson sold shares in Callidus at Canaccord through any communications with Mr. Langstaff, nor is he aware of either Client selling stock in Callidus through any other broker. Mr. Langstaff did not facilitate trading strategies or conduct any business on behalf of any of the other Conspirators named in the main action. It is possible other clients of Canaccord traded in Callidus during August 9-14, 2017, but such trades were not facilitated by Mr. Langstaff. Mr. Langstaff did not place any trades relating to short-selling of Callidus stock on his own behalf in August, 2017.

13. Mr. Langstaff did not conduct trades on behalf of any of the Guarantors or other named individual defendants, nor did he regularly carry on business with any of those individuals. Mr. Langstaff has no knowledge whatsoever as to the identity of any of the persons or entities referred to as "John Doe Defendants 1-10."

14. For greater clarity, Mr. Langstaff specifically pleads that:

- (a) During the time period in question, neither Anson nor West Face were selling any Callidus shares using Canaccord to the best of Mr. Langstaff's knowledge;
- (b) To Mr. Langstaff's knowledge, none of the other named defendants were short-selling any Callidus shares through Canaccord, facilitated by Mr. Langstaff, and Mr. Langstaff never facilitated trades on behalf of any of the other named defendants, nor did he solicit any orders from them in any security;
- (c) Mr. Langstaff had no control or direction over how any other trades were being conducted or carried out by other employees or agents of Canaccord;
- (d) To the extent that Mr. Langstaff facilitated trading strategies on behalf of the Clients, he was doing so in the usual course of his role and duties as an employee of Canaccord which were carried out honestly and in good faith; and
- (e) Mr. Langstaff did not engage in any trades in Callidus stock in the August, 2017 period pleaded in the Statement of Claim on his own behalf.

15. To the extent that the plaintiffs have suffered any financial losses or reputational harm, which is not admitted but explicitly denied, Mr. Langstaff pleads that the plaintiffs, or each of

them, bear responsibility for those losses. The plaintiffs are currently parties to a number of other lawsuits and information published by the plaintiffs confirms that Callidus is the subject of a Continuous Disclosure Review by the OSC. The losses described in the Statement of Claim were caused by the plaintiffs' own conduct and business practices rather than by any acts or omissions allegedly perpetrated by any other party, including Mr. Langstaff.

16. Mr. Langstaff pleads that the Statement of Claim is vexatious. The plaintiffs have commenced this action in bad faith and not for any lawful purpose, but rather as part of an overall strategy to harm the defendants and to deflect attention away from other issues facing the plaintiffs. It should be noted that the plaintiffs provided a copy of the Statement of Claim in the within action to various media outlets prior to serving a copy on Mr. Langstaff.

17. As particularized in greater detail herein, Mr. Langstaff pleads and the fact is that his employment with Canaccord was terminated without cause on or about September 26, 2017. The decision to terminate Mr. Langstaff's employment was carried out by Canaccord in whole or in part as the result of pressure placed on members of its senior management or any of them by representatives of Catalyst and Callidus, who are also clients of Canaccord.

18. Mr. Langstaff pleads that the plaintiffs induced Canaccord to breach his contract of employment and as such the plaintiffs are liable to Mr. Langstaff for inducing breach of contract and interfering with his economic relations as described in the Counterclaim herein.

19. To the extent that Mr. Langstaff is liable for any of the damages sought in the main action, which is not admitted but is explicitly denied, Mr. Langstaff pleads that Canaccord is vicariously liable for his conduct and is responsible for indemnifying him for any and all damages, costs, interest and other consequences of any kind.

**Alleged Conduct by the Guarantors**

20. Mr. Langstaff pleads that he has no knowledge of any loans which were made by Callidus to any of the defendants, other than information that is available through the public domain. None of the Guarantors were clients of Canaccord with whom Mr. Langstaff had any material business dealings during the course of his employment.

21. In response to paragraphs 40-48 of the Statement of Claim, Mr. Langstaff has no knowledge of any claims or defences raised by any of the Guarantors in the context of the Guarantee Actions. Moreover, Mr. Langstaff is not a party in any of those proceedings.

22. With respect to paragraphs 49-51 of the Statement of Defence, Mr. Langstaff denies that there was any coordinated effort by the Guarantors to cause harm to the plaintiffs. In the alternative, the plaintiff denies that he had any knowledge or involvement of any activities related to the Guarantor Actions and has no liability in relation to those actions.

**Whistleblower Complaints**

23. With respect to paragraph 67 of the Statement of Claim Mr. Langstaff is aware of the existence of the OSC's "whistleblower" program. He admits that the purpose of the program is to allow individuals with information about an alleged securities-related violation to report it to the OSC on a confidential basis without fear of reprisal.

24. It is not in dispute that Mr. Langstaff never filed a whistleblower complaint with the OSC concerning the plaintiffs and accordingly he pleads that he is not liable for any damages allegedly caused by the filing of the Complaints by other parties.

**Publication of Articles**

25. The allegations as pleaded in paragraphs 58-66 of the Statement of Claim are denied but in the alternative, if such discussions occurred, Mr. Langstaff was not a participant.

26. With respect to media coverage, the plaintiffs are parties in a number of other lawsuits involving West Face, as well as the plaintiffs' former employees and these lawsuits or some of them, have been the subject of various public reports in the media and otherwise.

27. In fact, this information has become known to the public not because of any alleged conspiracy perpetrated by the defendants. Rather, it is because the plaintiffs, or each of them, have publically disseminated information about these lawsuits, directly or indirectly, to various media outlets.

28. With respect to paragraphs 84-93 of the Statement of Claim, Mr. Langstaff was not present at any meeting that took place on or about August 8, 2017 nor was he a party to any discussions that allegedly took place at that meeting.

29. Mr. Langstaff explicitly denies that he was aware of the existence of the Wall Street Journal article prior to publication and as such he was certainly not involved in encouraging any publication of the article near the end of the trading day on or about August 9, 2017.

30. With respect to paragraphs 103-104 of the Statement of Claim, the plaintiff has no knowledge of what could be viewed by non-subscribers concerning the Wall Street Journal article's headline. The plaintiff admits that the article was published at around 3:29 pm on August 9, 2017. However, Mr. Langstaff denies that the contents of the article are false or defamatory and puts the plaintiffs to the strictest proof thereof. In addition or in the alternative, Mr. Langstaff

explicitly denies that the information contained in the Article and the Complaints is false or defamatory and puts the plaintiffs to the strictest proof thereof.

31. Mr. Langstaff admits to the existence of stock market rules that prohibit Callidus from being in the market after 3:30 pm through its Normal Course Issuer Bid.

32. With respect to paragraphs 107-108 of the Statement of Claim, Mr. Langstaff pleads that the plaintiffs misstated the price of Callidus shares by the end of the trading day. In fact, the price of Callidus shares at the end of trading day on August 9, 2017 was approximately \$12.05.

**Events of August 9, 2017**

33. With respect to paragraphs 94-96 of the Statement of Claim, as pleaded above Mr. Langstaff did not receive instructions from Anson or West Face on or about August 9, 2017 to sell or otherwise facilitate trades in Callidus shares on behalf of the Clients on that date.

34. Mr. Langstaff believes that other employees of Canaccord facilitated the sale of shares in Callidus stock on or about August 9, 2017 on behalf of clients of Canaccord. However, none of these shares were traded with Mr. Langstaff's involvement. Mr. Langstaff has no information that any of those trades involved in a short sale.

35. Although it is possible that the defendants conducted trades through Canaccord or another investment broker, Mr. Langstaff pleads that he has no direct or indirect knowledge of any alleged trades in Callidus shares in the August 9-14, 2017 timeframe involving any of the defendants.

36. To the extent that Callidus suffered a decline in its stock price on August 9, 2017 and thereafter, Mr. Langstaff pleads that there are a number of factors which resulted in the decline in



Callidus share price, including but not limited to, information already in the public domain and information released by Callidus in its quarterly earnings report and conference call held on August 11, 2017 and information disseminated therein as well as the reaction of the marketplace to the information released by Callidus.

**Liabilities and Damages Claimed in Relation to the Alleged Short Attacks**

37. With respect to paragraphs 114-122 of the Statement of Claim, Mr. Langstaff explicitly denies that he engaged in any conspiracy or coordinated short-selling of Callidus stock or any of the conduct pleaded in these paragraphs and he puts the plaintiffs to the strictest proof thereof.

38. To the extent that he was involved in facilitating any trading strategies or trades of Callidus stock from time to time, Mr. Langstaff pleads that he was acting in the usual course of his duties of employment with Canaccord which were carried out honestly and in good faith.

39. Mr. Langstaff denies that any of his conduct, whether directly or indirectly, caused the plaintiffs to suffer any economic harm or that he interfered with the plaintiffs' economic interests and he puts the plaintiffs to the strictest proof thereof.

40. In addition or in the alternative, Mr. Langstaff pleads that he did not exercise control over any of the named Corporate Defendants, nor did he cause any of the defendants to engage in tortious and unlawful conduct as alleged in the Statement of Claim.

41. Mr. Langstaff has no knowledge of the identities of any of the individuals or entities identified as the John Doe Defendants #1-10.

42. With respect to paragraphs 125-127 of the Statement of Claim, Mr. Langstaff explicitly denies that he is liable for any damages on the basis of unjust enrichment and puts the plaintiffs to the strictest proof thereof. Any damage to the plaintiffs' reputation or to Callidus' share price was the direct result of the plaintiffs' own conduct and that of its officers, directors, and employees. In that regard, Mr. Langstaff repeats and relies upon the allegations contained herein.

43. Mr. Langstaff denies that the plaintiffs have suffered any damages arising from his conduct, or at all, and puts the plaintiffs to the strictest proof thereof.

44. If the plaintiffs have suffered any damages, which is not admitted but expressly denied, he pleads that the damages claimed by the plaintiffs are excessive and remote.

45. In the further alternative, Mr. Langstaff pleads that the plaintiffs, or each of them, did not take adequate steps to reasonably mitigate their damages.

46. Mr. Langstaff asks that the action against him be dismissed with costs on a substantial indemnity basis, or in the alternative, on a partial indemnity basis, plus any and all applicable taxes.

## COUNTERCLAIM

47. The Plaintiff by Counterclaim, Bruce Langstaff, claims as against the Defendants by Counterclaim, The Catalyst Capital Group Inc. and Callidus Capital Corporation:

- (a) damages in the sum of \$1,150,000 for inducing breach of contract and for intentional interference with economic relations;
- (b) damages in the sum of \$2,000,000 for loss of competitive advantage;
- (c) damages in the sum of \$100,000 for intentional or negligent infliction of emotional distress;
- (d) in addition or in the alternative to the relief sought in the preceding paragraph, punitive and aggravated damages in the sum of \$100,000;
- (e) interest on any amounts found due and owing to the Plaintiff by Counterclaim at the rate equal to the reasonable return which he would have earned had those funds been paid to him when due;
- (f) in the alternative to the relief sought in the preceding paragraph, pre-judgment interest in accordance with and at the rate provided under Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) post-judgment interest in accordance with and at the rate provided under Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) the costs of this proceeding on a substantial indemnity basis, or in the alternative, on a partial indemnity basis, plus any and all applicable taxes; and,

(i) such further and other relief as to this Honourable Court may seem just.

48. Mr. Langstaff repeats and relies upon the allegations in the Statement of Defence in support of the Counterclaim.

49. All capitalized terms contained herein have the meaning ascribed to them in the Statement of Claim.

50. The Plaintiffs (“Defendants by Counterclaim”), Callidus and Catalyst, are hereinafter referred to collectively as the “plaintiffs”.

51. Mr. Langstaff was employed by Canaccord until his employment was terminated without cause on or about September 26, 2017.

52. At the time of his termination, Mr. Langstaff had approximately 4 years of service with Canaccord but he has spent his entire working life in the financial services industry.

53. As particularized in greater detail herein, Mr. Langstaff pleads that his employment at Canaccord was terminated in whole or in part as the result of pressure exerted by representatives of the plaintiffs, or one of them, on Canaccord.

54. Mr. Langstaff pleads and the fact is that both Callidus and Catalyst are clients of Canaccord or in the alternative, have been clients of Canaccord and have paid Canaccord significant fees in relation to their past business. In addition, a number of the principals of the plaintiff corporations are well known to members of senior management of Canaccord.

55. Newton Glassman is the Chief Executive Officer of each of the plaintiff corporations and their controlling shareholder. James Riley is a lawyer and currently holds the title of Managing

Director and Chief Operating Officer of Catalyst and the Corporate Secretary of Callidus. Gabriel de Alba is a Managing Director and Partner of Catalyst.

56. Mr. Langstaff pleads that Mr. Glassman, Mr. Riley, Mr. de Alba or one or some combination of them pressured Canaccord to end Mr. Langstaff's employment under threat of negative consequences to Canaccord if it failed to do so.

### **Termination of Employment**

57. On or about August 16, 2017, Mr. Langstaff was asked to attend a meeting with his manager, Jason Melbourne, Head of Institutional Equity Sales, and Darren Hunter, Head of Trading.

58. At that meeting, Mr. Melbourne advised Mr. Langstaff that another meeting had recently occurred between Mr. de Alba and Chris Blackwell, Head of Investment Banking at Canaccord. During that meeting, Mr. Langstaff was advised that Mr. de Alba told Mr. Blackwell that:

- (a) Catalyst had made a complaint to the OSC regarding an alleged short-selling attack on the stock of Callidus;
- (b) Mr. Langstaff was currently under investigation by the OSC for his alleged role in the short-selling attack; and
- (c) There was a piece of business that Canaccord was hoping to do with Catalyst and that Mr. Langstaff's continued employment would be an impediment to Catalyst awarding that business to Canaccord.

59. Mr. Langstaff pleads and the fact is that at no time has he ever been approached by the OSC in connection with Catalyst or Callidus. Further, at no time has he ever been advised that he is the subject of any investigation by the OSC.

60. At a subsequent meeting on or about September 6, 2017, Mr. Melbourne also advised Mr. Langstaff that Dan Daviau, President and CEO of Canaccord had recently spoken to Mr. Glassman and Mr. Glassman made an allegation that Mr. Langstaff had engaged in improper conduct in relation to Callidus.

61. At the same meeting, Mr. Langstaff was advised by Patrick Burke, President of Capital Markets at Canaccord, that several representatives of the plaintiffs, including but not limited to Mr. Riley and Mr. Glassman, had alleged that Mr. Langstaff was part of the group they called the "Wolfpack" which allegedly conspired to conduct a short-selling attack as against Callidus. These allegations were made to both Mr. Daviau and Canaccord's internal legal counsel and possibly others at Canaccord in or around August or September 2017.

62. In addition, Mr. Burke also advised Mr. Langstaff that Mr. Glassman and/or Mr. Riley had made the following statements or threats to members of senior management at Canaccord:

- (a) The "Wolfpack" was "going to be brought down"; and
- (b) That if Canaccord was not careful, "it would get caught in the crossfire."

This meeting was the first time that Mr. Langstaff had become aware of the term "Wolfpack" in reference to certain named defendants in the main action.

63. At that same meeting, Mr. Langstaff was advised that an internal investigation had been commenced by Canaccord into his conduct.

64. Mr. Langstaff was interviewed as part of the internal investigation on or about September 14, 2017. Mr. Langstaff met with Martin Maclachlan, Chief Legal Officer, and Andrew Viles, internal legal counsel for Canaccord and Bruce Maranda, Chief Compliance Officer. At all material times, Mr. Langstaff cooperated during the investigation process. During the interview that occurred as a part of that investigation, Mr. Viles explicitly asked Mr. Langstaff if he was part of the "Wolfpack." Mr. Langstaff advised that he was not aware of any such group or organization. It is now known to Mr. Langstaff that the term "Wolfpack" was coined by Callidus, Catalyst, and members of their senior management team.

65. In the course of the internal investigation, Mr. Langstaff advised the individuals present that he had alerted Mr. Burke in or about the summer of 2016 to concerns he had regarding the accuracy of Callidus' disclosure documentation that had been completed some years earlier in connection with certain business Canaccord had done on behalf of Callidus. At the request of Mr. Burke he provided Mr. Burke with a memorandum outlining his concerns but he took no other steps internally or externally with respect to that issue. At that time, Mr. Langstaff explicitly advised Mr. Burke that he had alerted Canaccord that there were potential issues with the aforementioned documentation as early as December 2014, but that no action was taken.

66. Shortly after the investigation meeting on September 14, 2017, Mr. Langstaff was told by Mr. Viles, that the investigation report had been submitted to senior management and there was no evidence that Mr. Langstaff had engaged in any wrongdoing.

67. Mr. Langstaff's employment was terminated without cause on or about September 26, 2017. The Statement of Claim in this action was issued on November 7, 2017. Canaccord was not named as a defendant.

**Events Subsequent to Mr. Langstaff's Termination**

68. Shortly after his employment was terminated, Mr. Langstaff was advised by Mr. Hunter that his employment was terminated because of the Callidus situation.

69. Mr. Langstaff had conversations with member of senior management subsequent to his termination at meetings initiated by those individuals. In the course of those discussions, he was advised of the following:

- (a) Mr. Burke told Mr. Langstaff that:
  - (i) "the reasons [Mr. Langstaff] surmised as to what happened with his employment termination were probably correct";
  - (ii) There was no evidence of any wrongdoing by Mr. Langstaff in the internal investigation Canaccord conducted.
  
- (b) Mr. Melbourne told Mr. Langstaff that, among other things:
  - (i) His employment was terminated in order to insulate Canaccord from the litigation that Mr. Glassman and other representatives of the plaintiffs had threatened to commence against Canaccord;
  - (ii) Mr. Glassman had induced Mr. Daviau to terminate Mr. Langstaff's employment;



- (iii) Both he and Mr. Burke had strenuously objected to the decision to terminate Mr. Langstaff's employment;
  - (iv) There was no evidence of any wrongdoing by Mr. Langstaff in the internal investigation Canaccord conducted; and
- (c) Mr. Hunter told Mr. Langstaff that Mr. Daviau had directed the termination of Mr. Langstaff's employment because he "had a gun to his head." That is, Mr. Daviau was aware that the within action was pending and that Canaccord would be named as a party to the main action unless it took steps to terminate Mr. Langstaff's employment.

70. Mr. Langstaff pleads that the plaintiffs, acting through members of their senior management described above, threatened Canaccord with inclusion in litigation and/or loss of further business and/or other negative consequences known to the plaintiffs and Canaccord but not Mr. Langstaff, if Canaccord did not fire Mr. Langstaff.

71. Mr. Langstaff pleads that the plaintiffs are vicariously liable for the wrongful conduct of its officers, directors, and employees, including but not limited to Mr. Glassman, Mr. Riley, and Mr. de Alba. The plaintiffs were fully aware of the conduct perpetrated by these individuals and knew or reasonably ought to have known of its impact on Mr. Langstaff.

#### **Inducing Breach of Contract**

72. Mr. Langstaff pleads that the plaintiffs knew he had a contract of employment with Canaccord and the plaintiffs, through its employees and agents, deliberately and willfully

contacted members of Canaccord's senior management team for the improper purpose of causing harm to Mr. Langstaff and in order to pressure Canaccord to terminate his employment.

73. The plaintiffs' efforts were successful and Canaccord ultimately terminated Mr. Langstaff's employment. Canaccord made the decision to terminate Mr. Langstaff's employment in order to avoid being named as a defendant in the main action and/or to avoid the negative press coverage that would inevitably arise from being associated with any litigation commenced by the plaintiffs, and/or to avoid loss of future business from the plaintiffs.

74. Prior to his employment termination, Mr. Langstaff was a well-compensated and senior employee at Canaccord with a strong reputation among his colleagues at Canaccord and in the financial services industry. As a direct result of the plaintiffs' conduct, Mr. Langstaff has lost his job and has suffered damages arising from the wrongful dismissal of his employment and damages to his reputation.

75. The fact that Mr. Langstaff's employment termination is associated with the litigation commenced by the plaintiffs in the main action has and will continue to have a negative impact on his ability to reemploy in the financial services industry and/or on the level of compensation he will earn. Mr. Langstaff may never re-employ in a position comparable to the one he has lost.

76. The plaintiffs made false allegations to Canaccord, including but not limited to, the claim that Mr. Langstaff was being investigated by the OSC and was part of a group engaging in coordinated short-selling attacks on Callidus with the purpose of damaging Mr. Langstaff's reputation and encouraging his employer to terminate his employment.

**Interference with Economic Relations**

77. Mr. Langstaff pleads that the plaintiffs, through their agents and employees, deliberately contacted Canaccord as particularized herein for the purpose of causing injury to Mr. Langstaff.

78. The plaintiffs interfered with Mr. Langstaff's economic relations by illegal or unlawful means by, *inter alia*:

- (a) Falsely accusing Mr. Langstaff of engaging in improper conduct;
- (b) Making false or misleading statements which suggested that Mr. Langstaff was the subject of a regulatory complaint to the OSC;
- (c) Suggesting that Mr. Langstaff's continued employment would be an impediment to the plaintiffs awarding new business to Canaccord; and
- (d) Threatening to commence litigation as against Canaccord unless it terminated Mr. Langstaff's employment.

79. As particularized in greater detail herein, the plaintiffs' campaign to interfere with Mr. Langstaff's economic relations was successful and his employment was ultimately terminated by Canaccord.

80. In all of the circumstances, Mr. Langstaff claims damages in the sum of \$1,150,000 for inducing breach of contract and intentional interference with economic relations.

81. Mr. Langstaff pleads that as a result of the plaintiffs' tortious conduct in causing Canaccord to terminate his employment and naming him as a defendant in the within lawsuit and by taking steps to publicize the within lawsuit, the plaintiffs have caused Mr. Langstaff long-term damage

to his reputation within the financial services industry and will cause him to suffer damages well beyond the usual notice period for which an employer is responsible in the case of wrongful dismissal at common law.

82. The defendant pleads that given the highly publicized pieces of litigation between the plaintiffs and West Face, the public scrutiny attached to the within litigation and the history of the plaintiffs for frequently litigating disputes, other prospective employers will be reluctant to hire Mr. Langstaff as long as he remains a defendant to this lawsuit. As a result, Mr. Langstaff will likely be out of the job market longer than if he was not the target of the plaintiffs' allegations and given the permanent damage done to his reputation, he is unlikely to ever reemploy in a position comparable to the contract which the plaintiffs induced Canaccord to breach. Alternatively, if he does reemploy, it will likely be at a level of compensation lower than he otherwise could have earned. As a result he has suffered a loss of competitive advantage. He estimates the damages will extend for the balance of his career and estimates those damages at \$2,000,000.

#### **Infliction of Emotional Distress and Punitive Damages**

83. The plaintiffs have deliberately engaged in a course of conduct that was designed to cause harm to Mr. Langstaff and to induce Canaccord to wrongfully terminate his employment. Based on these false allegations, Canaccord failed to provide Mr. Langstaff with reasonable notice and deprived him of significant components of his compensation.

84. The course of conduct by the plaintiffs has continued even after the plaintiffs succeeded in securing the termination of Mr. Langstaff's employment. The plaintiffs directly or indirectly engaged the private investigation and/or litigation support firm, Black Cube, and possibly others to contact Mr. Langstaff under false pretenses and claim it was interested in interviewing him for

a job. The individual contacting him purported to represent a search firm looking for a financial services professional to assist a European-based family office. However, Mr. Langstaff was not satisfied the firm could be adequately verified and aspects of the communications were odd and inconsistent with other recruitment processes he had experienced so he ended the communications at a fairly early stage. Mr. Langstaff subsequently discovered that the individual who had contacted him was in fact a representative of Black Cube, a private investigative firm staffed with former Mossad and Israeli Defence Force intelligence operatives. Mr. Langstaff pleads that the plaintiffs retained Black Cube to use false pretenses to elicit confidential information that could be used to their advantage in the course of the litigation; intimidate or discredit the defendants, including Mr. Langstaff; and for other improper purposes.

85. As a direct result of the plaintiffs' conduct in their dealings with Canaccord, this litigation and use of Black Cube, Mr. Langstaff has experienced stress, anxiety, loss of sleep, and other physical manifestations of stress.

86. Mr. Langstaff pleads that the plaintiffs knew or ought to have known that the allegations against him were baseless and were made in part as an overall strategy to detract attention from the plaintiffs' other business problems.

87. The plaintiffs' conduct is planned, deliberate, and designed to allow the plaintiffs to profit or otherwise obtain some benefit at the expense of the defendants, including Mr. Langstaff.

88. Mr. Langstaff pleads that the plaintiffs' conduct was flagrant, outrageous, reprehensible, and calculated to cause him harm.

89. Mr. Langstaff pleads that such actions are worthy of censure by this Honourable Court and he claims damages for intentional infliction of emotional distress in the amount of \$100,000. In addition or in the alternative, Mr. Langstaff claims punitive and aggravated damages in the sum of \$100,000.

**Procedural Matters**

90. Mr. Langstaff pleads and relies upon Rule 27.01 of the *Rules of Civil Procedure*, R.S.O. 1990, Reg 194.

91. Mr. Langstaff proposes that this action be tried either consecutively or concurrently with the trial of the main action.

92. Mr. Langstaff proposes that the counterclaim be tried in the City of Toronto.

January 15, 2018

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Defendant by Counterclaim

AND TO: **GABRIEL DE ALBA**

Defendant by Counterclaim

AND TO: **JAMES RILEY**

Defendant by Counterclaim

AND TO: **VIRGINIA JAMIESON**

Defendant by Counterclaim

AND TO: **EMMANUEL ROSEN**

Defendant by Counterclaim

AND TO: **B.C. STRATEGY LTD.**

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England

Defendant by Counterclaim

AND TO: **B.C. STRATEGY UK LTD.**

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England

Defendant by Counterclaim

AND TO: **PSY GROUP INC.**

Defendant by Counterclaim

*(final)*

THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs

-and-  
Defendants

WEST FACE CAPITAL INC. et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE – COMMERCIAL  
LIST**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF DEFENCE AND COUNTERCLAIM**

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Bruce Langstaff

This is Exhibit "K" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*Dan Moore*

---

A Commissioner for taking Affidavits, etc.

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

Defendants

**STATEMENT OF DEFENCE OF THE CATALYST CAPITAL GROUP INC. and**  
**CALLIDUS CAPITAL CORPORATION**  
**TO THE COUNTERCLAIM OF BRUCE LANGSTAFF**

1. The Defendants by Counterclaim, The Catalyst Capital Group Inc. (“Catalyst”) and Callidus Capital Corporation (“Callidus”) (collectively referred to hereinafter as the “Defendants by Counterclaim”), admit the allegations contained in paragraphs 51, 54, a portion of paragraph 55 (Newton Glassman is the indirect controlling shareholder of Catalyst, but is not the controlling shareholder of Callidus), and paragraph 67 of the Counterclaim delivered on behalf of Bruce Langstaff (“Counterclaim”).

2. Subject to paragraph 10 below, the Defendants by Counterclaim have no knowledge of the allegations contained in paragraphs 52, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68 and 69 of the Counterclaim.

3. Except as expressly admitted below, the Defendants by Counterclaim deny the balance of the allegations contained in the Counterclaim, and put Bruce Langstaff (“Langstaff”) to the strict proof thereof.

4. The Defendants by Counterclaim repeat the material facts pleaded in the Statement of Claim delivered in this Action and rely upon said facts in defence of the Counterclaim.

5. Commencing on August 9, 2017, Callidus was the subject of an unlawful short selling attack which was coordinated with the publication of a defamatory article about Callidus and Catalyst in the Wall Street Journal on the same date, as pleaded in this Action and in Action No. 17-CV-586094 (18-CV-593156-00CL).

6. Subsequently, the Defendants by Counterclaim became concerned that Langstaff was involved in the short selling attack and other inappropriate conduct related thereto. Ultimately, the Defendants by Counterclaim decided to commence legal proceedings against Langstaff and others because of his and their role in the short selling attack and the other wrongful actions pleaded in this Action. The resulting Statement of Claim was issued in the Ontario Superior Court of Justice on November 7, 2017.

7. At the time of the events referred to in paragraph 5, Catalyst and Callidus had arm’s length professional relationships with the Third Party herein, Canaccord Genuity Corp. (“Canaccord”), in which Canaccord had and was continuing to provide brokerage, investment

banking, and related services to the Defendants by Counterclaim, as part of Canaccord's normal business.

8. The Defendants by Counterclaim concluded that it was appropriate to advise Canaccord of bona fide concerns which they held regarding Langstaff, so that Canaccord could make such inquiries and take such steps as Canaccord deemed appropriate. In so doing, the Defendants by Counterclaim did not make any inducements, apply any pressure or threaten Canaccord in any way. The Defendants by Counterclaim expressly deny that they acted with malice or intent to injure, contrary to what Langstaff alleges. The Defendants by Counterclaim further plead that the concerns expressed to Canaccord were not actionable, and that to the extent the Counterclaim is based upon any allegation of defamation, such communications were and are subject to qualified privilege.

9. The Defendants by Counterclaim further state that they were not involved in, exerted no pressure over, made no threats about, and had no awareness of the subsequent decisions made and actions taken by Canaccord in relation to Langstaff's employment.

10. With respect to paragraphs 58, 60, 61, 62 and 69 of the Counterclaim, the Defendants by Counterclaim have no knowledge of the dates, participants or statements made in any alleged meetings or conversations which supposedly took place among the individuals named in said paragraphs, but specifically deny, if any such communications took place, that any of the statements attributed to officers and employees of the Defendants by Counterclaim in said paragraphs were made by them to Canaccord.

11. The Defendants by Counterclaim further state that although they had no knowledge of or involvement in the above matters, the following material facts are evident from the contents of



paragraphs 20-26 of the Third Party Statement of Defence delivered by Canaccord in response to Langstaff's allegations against Canaccord, and the Defendants by Counterclaim rely upon such material facts in defence of the Counterclaim:

- (1) Canaccord made its own inquiries and conducted an independent review of Langstaff's conduct;
- (2) Canaccord concluded that Langstaff had not been guilty of any improper conduct in relation to the matters of concern expressed by the Defendants by Counterclaim;
- (3) Canaccord did not terminate Langstaff because of any inducements, pressure or threats made by the Defendants by Counterclaim (no such inducements, pressure or threats occurred), but rather elected to terminate Langstaff for lawful and bona fide reasons, because of Canaccord's own conclusions and concerns about Langstaff and as part of a restructuring which Canaccord decided to implement;
- (4) Canaccord advised Langstaff that he was being terminated *without cause*;
- (5) Consequently, Canaccord paid Langstaff his statutory entitlements under the Employment Standards Act and offered to pay Langstaff reasonable compensation in lieu of common law notice, and,
- (6) Langstaff refused to entertain Canaccord's offer of payment of reasonable compensation in lieu of notice.

12. The Defendants by Counterclaim plead that by refusing to accept reasonable compensation in lieu of notice, Langstaff has failed to mitigate any damages allegedly resulting

from his termination, and further that Langstaff has failed to seek alternate employment following his termination.

13. The Defendants by Counterclaim further state that Langstaff's termination was not caused in any way by their actions and that any claim Langstaff may have for wrongful dismissal (the validity of which is expressly denied) is an independent action which lies, if at all, against Canaccord.

14. The Defendants by Counterclaim further deny that Langstaff has suffered any damages whatsoever.

15. The Defendants by Counterclaim therefore request that this Counterclaim be dismissed with costs.

September 19, 2018

**MOORE BARRISTERS**

393 University Avenue, Suite 1600  
Toronto, ON M5G 1E6

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Fax: (416) 581-1279

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AND TO: **DAVIES WARD PHILLIPS & VINEBEG LLP**

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Capital Inc. and Gregory Boland**

AND TO: **TORYS LLP**  
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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**

AND TO: **LERNERS LLP**  
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**SCOTT VENTURO RUDAKOFF LLP**  
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[gbodnar@svrlawyers.com](mailto:gbodnar@svrlawyers.com)

Breanne Campbell  
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Tel. 403-261-9043  
Fax 403-265-4632

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Symon Zucker  
T. 416-863-9955  
F. 1-855-696-5441  
[sz@bondlaw.net](mailto:sz@bondlaw.net)

**Lawyers for Darryl Levitt**

AND TO: **SOLMON ROTHBART GOODMAN LLP**  
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**Lawyers for Richard Molyneux**

AND TO: **Jeffrey McFarlane**

AND TO: **John Does #1-10**

AND TO: **ADAIR GOLDBLATT BIEBER LLP**  
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**Lawyers for the Defendants to the Counterclaim of West  
Face and Boland, B.C. Strategy Ltd. d/b/a Black Cube  
and B.C. Strategy UK Ltd. d/b/a Black Cube**

AND TO: **MACKENZIE BARRISTERS**

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[gavin@mackenziebarristers.com](mailto:gavin@mackenziebarristers.com)

**Lawyers for the Defendant to the Counterclaim of West Face and Boland, Virginia Jamieson**

AND TO: **EMMANUEL ROSEN**

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Hod Hasaron Merkus 45000

**Defendant to the Counterclaim of West Face and Boland**

AND TO: **PSY GROUP INC.**

No. 51-517203-9  
25 Basel Street  
Petah Tikva 49000

**Defendant to the Counterclaim of West Face and Boland**

AND TO: **CRAWLEY MACKEWN BRUSH LLP**

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Clarke Tedesco  
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Tel. 416-217-0110  
Fax 416-217-0220

**Lawyers for the Third Party Canaccord Genuity Corp.**

**THE CATALYST CAPITAL GROUP INC. et al.**  
**Plaintiffs**

and

**WEST FACE CAPITAL INC. et al.**  
**Defendants**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE  
OF THE CATALYST CAPITAL GROUP INC. and  
CALLIDUS CAPITAL CORPORATION  
TO THE COUNTERCLAIM OF BRUCE LANGSTAFF**

**MOORE BARRISTERS**

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Toronto, ON M5G 1E3

Tel: 416-581-1818

Fax: 416-581-1279

**David C. Moore (#16996U)**

Ext. 222

david@moorebarristers.ca

**Lawyers for the Plaintiffs,  
Defendants by Counterclaim**



This is Exhibit "L" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*David Brown*

---

A Commissioner for taking Affidavits, etc.

9:30AM  
COUNSEL SLIP

H

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) *Devia Jarraig, Milburn & Associates*  
APPLICANT(S)  
PETITIONER(S) *Anson Defendants;*  
*Linda Plumptre, Toms LLP*

PHONE & FAX NOS  
*(647) 728-8086*  
*(647) 689-2983*  
*416-865-8193 (T)*  
*416-865-7380 (F)*

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 motion prior to Friday, October 26, 2018

October 25, 2018

Harvey J

This is Exhibit "M" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*David Hoover*

---

A Commissioner for taking Affidavits, etc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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 and JOHN DOES #1-10

Defendants

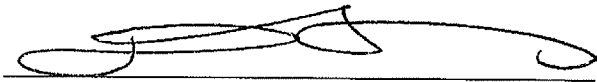
**AFFIDAVIT OF DOCUMENTS**

I, Bruce Langstaff, of the City of Toronto, in the Province of Ontario, the Defendant (Plaintiff by Counterclaim) in this Action, MAKE OATH AND SAY:

1. I have conducted a diligent search of my records and made appropriate enquiries of others to inform myself in order to make this Affidavit. This Affidavit discloses, to the full extent of my knowledge, information and belief, all documents relevant to any matter in issue in this action that are or have been in my possession, control or power.
2. I have listed in Schedule "A" those documents that are in my possession, control or power and that I do not object to producing for inspection.
3. I have listed in Schedule "B" those documents that are or were in my possession, control or power and that I object to producing because I claim they are privileged, and I have stated in Schedule "B" the grounds for each such claim.
4. I have listed in Schedule "C" those documents that were formerly in my possession, control or power but are no longer in my possession, control or power, and I have stated in Schedule "C" when and how I lost possession or control of or power over them and their present location.

5. I have never had in my possession, control or power any document relevant to any matter in issue in this action other than those listed in Schedules "A", "B" and "C".

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on  
April 1, 2019



Commissioner for Taking Affidavits  
(or as may be)

**DEVIN M. JARCAIG**

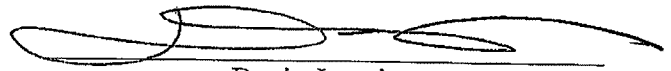


**BRUCE LANGSTAFF**

## LAWYER'S CERTIFICATE

I CERTIFY that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action;
- (b) what kinds of documents are likely to be relevant to the allegations made in the Pleadings; and
- (c) if the action is brought under the simplified procedure, the necessity of providing the list required under rule 76.03.



Devin Jarcaig

**Pages MR-244 to MR-583 have been redacted  
from this Motion Record.**



This is Exhibit "O" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*Deedilwoe*

---

A Commissioner for taking Affidavits, etc.

**Andrew Levy**

---

**From:** Kevin Baumann <kevin.baumann@whiteswanltd.com>  
**Sent:** Friday, January 20, 2017 10:24 AM  
**To:** Darryl L  
**Cc:** Andrew Levy; jmcfarlane@triathloncc.com; rjaross@aol.com; nathan@clarityspring.com; bruce.langstaff@gmail.com  
**Subject:** Re: Callidus conduct

Sorry Darryl . I'll call you on that one . the regulator is now in a delicate situation and has sat back for just shy of 3 years now

I have several examples of small Alberta reporting issuers that were on their board but have been reprimanded and delisted for less then what Callidus has blatantly admitted too . When someone purposely works me over for 1 Billion , I'm going for the throat so to speak , including their enablers which is all that the OSC has been to date

Sincerely

Kevin Baumann

403-505-7784

On Jan 20, 2017, at 6:15 AM, Darryl L <darryl.levitt@gmail.com> wrote:

Kevin

We need to keep the regulators on-side with the affected borrowers. These kinds of investigations can take months and even a couple years and the regulators usually don't communicate with the complainants until a charge is ready to be laid and because of the complexities involved, this will take time .

It's more helpful to keep them focussed on the task at hand which is getting them to investigate and not just issuing a response, which is likely to then be dismissed.

On Jan 20, 2017, at 3:51 AM, Kevin Baumann <kevin.baumann@whiteswanltd.com> wrote:

FYI

Kevin Baumann

403-505-7784

Begin forwarded message:

**From:** Kevin Baumann <kevin.baumann@whiteswanltd.com>  
**Date:** January 19, 2017 at 7:53:32 PM MST  
**To:** "inquiries@osc.gov.on.ca" <inquiries@osc.gov.on.ca>  
**Subject:** Fwd: Callidus conduct

WITHOUT PREJUDICE

The Callidus borrowers group hereby demands an immediate response please . It is long overdue

Kevin Baumann

403-505-7784

Begin forwarded message:

**From:** <[kevin.baumann@whiteswanltd.com](mailto:kevin.baumann@whiteswanltd.com)>  
**Date:** January 19, 2017 at 2:44:27 PM MST  
**To:** <[Valerie.Douville@tmx.com](mailto:Valerie.Douville@tmx.com)>, <[julianne.head@tmx.com](mailto:julianne.head@tmx.com)>  
**Subject:** Callidus conduct

WITHOUT PREJUDICE

When is this issuer being cease traded or halted by the exchange or OSC ?

FYI my company they stole from me by withholding rightful availability announced a billion dollar drilling contract , this is referred to in Glassman's 2016 earnings calls which he refers to as their poster child company . Shortly after Craig boyer's company buys my assets via the Callidus controlled receivership they announce a Billion Dollar contract ( a contract of this size is not negotiated in a few months )

How can your agencies not determine like all others involved have ,that Callidus loans are for an improper purpose ( to take over all borrower firms ) with the assistance of the OSC and exchange whereby unsuspecting people feel they are legitimate being they are listed . The MO is even mentioned by Glassman in Callidus 2016 earnings call transcripts , where he states we are like catalyst ( LOAN TO OWN ) in so many words . I'd be happy to send this to you !!

FYI I am considering a claim for 1 Billion which I am considering inclusion of your agencies due to the lack of action and facilitation .

See contract details at Sinclair Range blog , and Altair ownership via Alberta corporate registry

<IMG\_20170119\_123940.jpg>

This is Exhibit "P" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.



---

A Commissioner for taking Affidavits, etc.

From: Jeff McFarlane [mailto:jmcfarlane@triathloncc.com]  
Subject: RE: A few updates  
Date: Mar 21, 2017 at 5:46:27 PM  
To: Andrew Levy alevy@redstonecc.com  
Cc: Darryl Levitt (darryllevitt71@gmail.com) <darryllevitt71@gmail.com>

That's very good to hear.

Let me put together a list of questions that we might want to consider asking him.

With the schism that's been created between them, I think directionally we'll want to try and get him to acknowledge things that will help our cases by establishing a pattern of activity, and at the same time might be self-serving to him in his defense of the counterclaim he's now dealing with.

From: Andrew Levy [mailto:alevy@redstonecc.com]  
Sent: Tuesday, March 21, 2017 5:42 PM  
To: Jeff McFarlane <jmcfarlane@triathloncc.com>  
Cc: Darryl Levitt (darryllevitt71@gmail.com) <darryllevitt71@gmail.com>  
Subject: RE: A few updates

Jeff,

We have Boyer scheduled for deposition in Windsor, Ontario on April 7. Since Callidus probably no longer has access to him, I have asked our lawyers to be very careful in questioning so they do not give him or Callidus the opportunity to get matters on the record they might want to put there. If you have any questions you suggest we ask Boyer, by all means bring them forward.

Andy Levy

---

From: Jeff McFarlane [mailto:jmcfarlane@triathloncc.com]  
Sent: Tuesday, March 21, 2017 5:32 PM  
To: Andrew Levy  
Subject: A few updates

Andy, on a different note, I'm heading to Toronto tomorrow to shake the bushes a little.

I've got meetings with:

- Bruce Langstaff, head of equities group at Canaccord Genuity – the firm that took Callidus public
- Wes Voorheis
- John Tilak – a reporter from Thomson Reuters who's been following the story for a couple of years

I also spoke to Nathan yesterday. He's still about 2-3 weeks away from filing SEC docs

I also spoke with my Canadian counsel and we probably all want to ensure we coordinate with whomever has the first opportunity to cross-examine or dispose Boyer around the fraud revelations.

I promised Kevin I was going to put together some questions to use in the Boyer examination(s) which I will share with everyone.

Do you have any firm dates / next steps in your process?

Jeff

This is Exhibit "Q" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*Deid Moore*

---

A Commissioner for taking Affidavits, etc.

# State of Delaware

## Annual Franchise Tax Report

CORPORATION NAME			TAX VR.
CONFIDE, INC.			2018
FILE NUMBER	INCORPORATION DATE	RENEWAL/REVOCACTION DATE	
5441700	2013/12/03		
PRINCIPAL PLACE OF BUSINESS			PHONE NUMBER
1133 BROADWAY, SUITE 701 NEW YORK, NY 10010			(646) 831-5896
REGISTERED AGENT			AGENT NUMBER
CORPORATION SERVICE COMPANY 251 LITTLE FALLS DRIVE WILMINGTON DE 19808			9000014
BEGIN DATE	AUTHORIZED STOCK END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
2016/02/24		COMMON	8,700,000 .0001000000
		PREFERRED	2,450,188 .0001000000
OFFICER	NAME	STREET/CITY/STATE/ZIP	TITLE
JON BROD		1133 BROADWAY, SUITE 701 NEW YORK, NY 10010	PRESIDENT
DIRECTORS	NAME	STREET/CITY/STATE/ZIP	
JON BROD		1133 BROADWAY SUITE 701 NEW YORK, NY 10010	
	MICHAEL WALRATH	1133 BROADWAY SUITE 701 NEW YORK, NY 10010	
	HOWARD LERMAN	1133 BROADWAY, SUITE 701 NEW YORK, NY 10010	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR) JON BROD 1133 BROADWAY, SUITE 701 NEW YORK, NY 10010 US		DATE 2019/02/19	TITLE PRESIDENT

**MR-589**



This is Exhibit "R" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

*David Wilson*

---

A Commissioner for taking Affidavits, etc.

# Frequently Asked Questions

## What is Confide?

Confide is a confidential messenger. It allows you to have honest, unfiltered, off-the-record conversations. It allows you to speak freely, without the risk of what you say being forwarded on or permanently stored, just like when you're talking in person.

## How does it work?

It's really simple. Receive messages from your friends and colleagues, "wand" over the words with your finger or mouse to read them, and watch them disappear without a trace when you're done. They're gone for good — no forwarding, no printing and no archiving.

## How did the idea come about?

It's actually a funny story. A short while ago, co-founder Howard Lerman (/team) emailed Jon Brod (/team) asking for a reference for someone who used to work for him. As most people do, Jon emailed back saying "I'll call you". Since they were both busy executives, it took them six days to actually synch up via phone. When they finally did they commented that "there had to be a better way". This was the "a-ha" moment for Confide.

They then spent nights and weekends building the app, assembling the team and creating the plan.

## What are good use cases for Confide?

Any time you want to have honest, unfiltered, confidential conversations. We think there are three primary cases:

1. Anytime you send an email or text saying "Confidential — don't forward"
2. Anytime you respond to an email or text with "I'll call you"
3. Anytime you say "Can you send me your personal email; I'd prefer this conversation not be on work servers"

More specifically, common use cases include: Job referrals, HR issues, deal discussions, and even some good-natured office gossip.

Off-the-record conversations happen all the time in the offline world — phone calls, hallway discussions, meet-ups, grabbing lunch or coffee. We are bringing this offline experience online, in a fast, easy and efficient way.

## Why are you doing this?

We think the concept of the digital permanent record is crazy. Why should all of our online communication be around forever, with copies of things being spewed and stored in people's inboxes and the Cloud? Imagine if everything you ever SAID (spoken words) were stored like that and the person you said it to had a copy of it. We think this is fundamentally broken and we set out to fix it. We created Confide to bring off-the-record professional communication to the digital world. Honestly, we built Confide for ourselves. We enjoyed using it privately, and wanted to bring it to the world.

## Do you support photos, videos, documents and voice messages? What about group messaging?

Yes and yes. Confide supports text, photos, videos, documents and voice messages. You can also send Confide messages to one person or multiple recipients.

## How secure is this and do messages really disappear?

We employ end-to-end encryption to ensure conversations remain confidential and are private to you. Even we at Confide cannot decrypt or see any messages. Yes, after messages are read once they disappear.

## How does it prevent screenshots?

Screenshots have the potential of making the impermanent permanent. Confide

prevents screenshots with our patent-pending ScreenShield technology.

For extra privacy on iOS and Android, our patented reading experience ensures that only one line of the message is unveiled at a time and that the sender's name is not simultaneously visible.

ScreenShield for iOS is a new technology which is only supported when the message recipient is using a recent version of the Confide app. But don't worry, older versions of Confide are still screenshot-protected by our reading experience.

## Has Confide undergone a third-party security audit?

Yes, we periodically undergo third-party security audits. You can see an executive summary of one of our audits here ([https://static.getconfide.com/audits/Confide-PT\\_A4.ENG.0001.02.pdf](https://static.getconfide.com/audits/Confide-PT_A4.ENG.0001.02.pdf)).

## On what platforms is Confide available?

Confide is currently available on iPhone, iPad, Android, Windows, Mac and Siri.

On iPhone and iPad, video is only supported on iOS 10.3 or later.

## What is Confide for iMessage?

Confide for iMessage allows you to send and receive Confide messages from the comfort and convenience of iMessage. Messages are encrypted, private and self-destructing, like regular Confide messages. And it's completely frictionless – you don't even need to create an account. Download Confide for iMessage ([https://itunes.apple.com/app/apple-store/id779883419?app=messages&at=1010lxBu&ct=website\\_faq&mt=8&pt=24310801](https://itunes.apple.com/app/apple-store/id779883419?app=messages&at=1010lxBu&ct=website_faq&mt=8&pt=24310801)) (requires iOS 10 or later)

Confide messages sent via iMessage will not appear in the main Confide app, and vice versa. These are two separate Confide apps and experiences. Due to technical limitations imposed by Apple on iMessage apps, Confide for iMessage does not offer the same level of screenshot protection as the main app.

I need help with Confide for iMessage. What should I do?

For problems enabling, downloading, accessing and using Confide for iMessage, please consult Use iMessage apps on your iPhone, iPad, and iPod touch (<https://support.apple.com/en-us/HT206906>).

For additional inquiries, please e-mail [support@getconfide.com](mailto:support@getconfide.com) (<mailto:support@getconfide.com>)

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## Reporting Security Vulnerabilities

We take our security and user privacy very seriously. If you believe you've found a security vulnerability in our product or service, please let us know ([/whitehat](#)) right away and our security team will review the information and respond as soon as possible.

Made in NYC (<http://nytm.org/made>)

FAQ ([/faq](#))

Blog (<https://blog.getconfide.com/>)

Media Resources ([/media](#))

Team ([/team](#))

Jobs ([/jobs](#))

Terms of Service ([/terms](#))

Privacy Policy ([/privacy](#))

 English ▼

<https://twitter.com/confide>   <https://facebook.com/getconfide>  
<https://www.linkedin.com/company/getconfide/>

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<https://getconfide.com/faq>



This is Exhibit "S" referred to in  
the Affidavit of Kenneth G. Jones  
Sworn before me this  
24th day of September, 2019.

A handwritten signature in blue ink that reads "David Moore".

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A Commissioner for taking Affidavits, etc.

MOORE BARRISTERS  
PROFESSIONAL CORPORATION

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September 6, 2019

By Mail and Email  
jon@getconfide.com

Jon Brod  
Confide Inc.  
1133 Broadway, Suite 701  
New York, NY 10010

Dear Sir:

I am writing by way of follow up to your communications earlier this week regarding a motion to the Ontario Superior Court on behalf of The Catalyst Capital Group Inc. (“Catalyst”) and Callidus Capital Management (“Callidus”). We will be the counsel acting on the motion on behalf of Catalyst and Callidus.

To provide further context, I can advise as follows.

Our clients have commenced a lawsuit in Ontario, Canada, alleging they have been subject to illegal and improper conspiracies to, among other things, spread negative rumors about both companies in order to cause serious harm to their business and to attempt to drive down the price of and enable improper short selling of Callidus stock.

We believe that some or all of the individuals alleged to have participated in the conspiracy have or have had Confide accounts and used Confide’s messaging platform to communicate in furtherance of their conspiracies.

Accordingly, we seek disclosure and production of any and all documents and information Confide has in its possession in connection with the individuals named as defendants in the current lawsuit, as detailed below.

Our understanding is that Confide does not provide such information voluntarily for privacy reasons, and that we would be required to obtain a court order requiring disclosure before Confide would be willing to provide the above information. Would you please confirm that

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this is indeed Confide's position? I would also ask you to confirm that Confide would not oppose a court application for such an order, presuming no costs would be sought against Confide? We will pay for any costs associated with this review and retrieval of information.

With respect to two defendants to the current lawsuit, Mr. Darryl Levitt and Mr. Bruce Langstaff, we believe they would have registered with Confide before August 2017. We further believe that the email addresses which they used to register with Confide are:

darryl@dlevittassociates.com, dlevitt@opesresources.ca, darryllevitt71@gmail.com, daryll@darryllevitt.com, darryllevitt@icloud.com, Darryl.levitt@gmail.com, dar7916@gmail.com and bruce.langstaff@gmail.com.

Both of these individuals reside in Ontario and would likely have Canadian URL addresses.

Our clients also believe Confide was used by other participants in the conspiracy.

For purposes of the requested investigation and preservation of documents and data, the other defendants to the current lawsuit are Gregory Boland, Moez Kassam, Adam Spears, Sunny Puri, Nathan Anderson, Bruce Langstaff, Rob Copeland, Kevin Baumann, Jeffrey McFarlane, Darryl Levitt, Richard Molyneux, Gerald Duhamel, George Wesley Voorheis and Bruce Livesey. We also believe an individual named Andrew Levy may have been involved.

The information we are seeking from Confide in respect of these individuals includes but is not limited to:

- user names;
- physical and/or email addresses;
- cellular numbers used for verification;
- dates of registration as well as time and time zone of the registration date;
- emails or messages between Confide and the defendants, including but not limited the confirmation email sent upon registration;
- IP addresses; and
- any other account details.

I stress that our clients have no intention of advancing any claim against Confide, and do not suggest Confide bears any liability for the consequences of the conspiracy in issue.

We will be seeking a Court order for this information to be released, but in the interim, we request that you take immediate steps to preserve this information and data.

Please do not hesitate to contact the undersigned if you need further details or have any questions.

Thank you for your anticipated cooperation.

Yours very truly,

MOORE BARRISTERS

A handwritten signature in cursive script that reads "David Moore". The signature is written in black ink and is positioned above the typed name.

Per: David C. Moore

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**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF KENNETH G. JONES**  
(Sworn September 24, 2019)

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Plaintiffs

and

WEST FACE CAPITAL INC. et al.  
Defendants

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

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PROCEEDING COMMENCED AT TORONTO

**PLAINTIFFS' MOTION RECORD**  
(Volume II of II, September 24, 2019)

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