

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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

**STATEMENT OF DEFENCE OF DARRYL LEVITT**

1. The Defendant, Darryl Levitt (“Levitt”), admits the allegations contained in paragraphs 6, and 31 of the Fresh as Amended Statement of Claim.
2. Levitt denies the allegations contained in all other paragraphs of the Fresh as Amended Statement of Claim.
3. Levitt denies that he is liable to the plaintiffs and denies that the plaintiffs are entitled to the relief sought in paragraph 1 of the Fresh as Amended Statement of Claim. Rather, this claim is a meritless attempt by the plaintiffs to silence and intimidate their critics, and to distract

from their wrongful misconduct, and furthermore to undermine the OSC Whistleblower Policy.

***The Discovery of Callidus' Loan Misconduct***

4. Levitt was an officer of Fortress Resources LLC (“Fortress Resources”). Fortress Resources took a loan from Callidus Capital Corporation (“Callidus”) in September 2014. Commencing from the time that Fortress had engaged with Callidus and throughout the loan term, Callidus and its officers made material misrepresentations to Levitt and other officers and directors of Fortress Resources, and acted wilfully and wrongfully in its loan management throughout the loan period. Throughout the loan term, Callidus, through its loan officers and underwriters, changed the loan terms, materially altered Levitt’s risk, and did not act honestly or in good faith. Fortress Resources was forced into Chapter 11 bankruptcy through the wilful and wrongful conduct of Callidus in a heavily contested bankruptcy proceeding.
5. Throughout the term of the loan with Callidus, there were instances of loan misconduct, including arbitrary withholding of funds that Callidus was contractually obliged to provide, thereby stressing the business and forcing it to declare bankruptcy. Callidus then attempted to seize the assets by way of credit bidding on the assets in bankruptcy, even though undertakings had been given by Callidus through its counsel that Callidus would not credit bid the assets. The State of Kentucky intervened to block the Callidus bid.
6. Ultimately, the value of Fortress Resources’ collateral was lost through Callidus’ ongoing conduct. Callidus brought an action against Levitt in connection with a guarantee that Levitt

had provided. Levitt has defended the claim against him, and Callidus' claim against Levitt related to the guarantee is outstanding.

7. By December 2015, after seeing Callidus' misconduct with respect to its loan to Fortress Resources, Levitt began researching other situations where Callidus was involved in litigation with other borrowers.
8. Through Fortress Resources' dealings with Callidus, Levitt learned of Callidus' predatory business practices, and Callidus' failure to act honestly and in good faith. As a result, in December 2015, Levitt began researching other cases of litigation that Callidus was involved in with other borrowers.
9. Through Levitt's research, he learned of evidence filed in other cases involving Callidus where Callidus exhibited similar misconduct. This information showed that other borrowers of Callidus had alleged similar loan misconduct, which demonstrated a pattern that appeared to be a pre-designed and integral part of Callidus' business plan.
10. In addition, Levitt learned, through publicly available information, of the identities of other individuals who had been sued by the plaintiffs (including the Defendants, Kevin Baumann, Jeffrey McFarlane, Gerald Duhamel, and Andrew Levy). Levitt contacted these individuals, in order to discuss their respective involvement with Callidus.

***There is no Illegal Coordination by the Guarantors***

11. From the discussions between Levitt and certain of the individuals referred to in the Fresh as Amended Statement of Claim as the "Guarantors", it was determined that these individuals had similar circumstances and potentially similar legal defences and claims

against Callidus (the “Affected Borrowers”). Further, Levitt and other Guarantors believed, based on their collective experience with Callidus, that Callidus’ conduct was part of a deliberate practice of wrongful misconduct by Callidus which was integral to Callidus’ business strategy.

12. Due to the potential high costs of litigation with Callidus, and the similarities between their respective situations, Levitt and the other Affected Borrowers, jointly sought legal advice regarding a potential claim against Callidus under the U.S. Racketeer Influence and Corrupt Organizations Act (“RICO”). In doing so, the Affected Borrowers sought referrals to appropriate legal counsel in the U.S. and had privileged meetings with U.S. lawyers to discuss their claims. In the course of this process of exploring their potential legal remedies against Callidus, the Affected Borrowers entered into mutual confidentiality agreements, in order to ensure that the information they were sharing with each other for the purposes of potentially pursuing litigation against Callidus remained confidential as between them.
13. The Affected Borrowers did not, ultimately, pursue a U.S. Rico claim, due to their inability to obtain sufficient litigation funding to do so, as a result of, among other things, (a) Callidus settling its \$19.5 million claim against Gary Smith of Fortress Resources for \$10,000 on the conditions that he withdraw his appeal and withdraw any statements critical of Callidus, and (b) Callidus settling with the principals of Esco Marine, Levy and Jaross, and requiring them to withdraw any statements critical of Callidus. Although other avenues to bring a claim against Callidus were pursued, from time to time, no joint claim against Callidus was brought. Rather, each of the Affected Borrowers proceeded to individually defend the claims brought against them by Callidus, although they continued to communicate with each other in order to assist in defending the claims against them.

*Levitt Reports the Plaintiffs' Misconduct to the Appropriate Authorities*

14. As a result of the investigations done by the Affected Borrowers into Callidus' conduct, Levitt reasonably believed that Callidus' actions raised red flags of fraudulent conduct which could potentially affect hundreds of borrowers who did business with Callidus.
15. The Affected Borrowers therefore compiled the information they had learned of through their investigations of Callidus and prepared a presentation to the Toronto Police Services (the "TPS"). As Levitt was located in Toronto, Levitt was one of the joint presenters to the TPS, at the request of the other Affected Borrowers. After the TPS received the information provided by them, Levitt understands that the TPS referred the matter to the RCMP's Joint Serious Offences Team.
16. In addition, Levitt filed a whistleblower complaint with the Ontario Securities Commission (the "OSC"). The whistleblower report, and any subsequent communications with the OSC, were based on the information discovered through the investigations undertaken by Levitt and the other Affected Borrowers, including information obtained from the plaintiffs which the plaintiffs had made publicly available.
17. The particulars of any steps undertaken by the TPS, the RCMP (including the Joint Serious Offences Team) or the OSC are not within the knowledge of Levitt, however Levitt believes that the matters remain under investigation by the Joint Serious Offences Team and/or the OSC.

18. Subsequent to Levitt delivering his whistleblower report to the OSC, the OSC took steps to stop Callidus from reporting on earnings using “yield enhancements”, which misuse had the effect of artificially inflating Callidus’ reported earnings without any reasonable basis. The improper use of “yield enhancements” by Callidus was one of the subject matters of the whistleblower report submitted by Levitt.
19. Levitt pleads that all information provided to the TPS, RCMP, or the OSC was presented in circumstances of absolute or qualified privilege, which has not been waived by Levitt. Any such information was provided to the TPS, RCMP, and the OSC with the reasonable belief that such information was true, and for the purpose of reporting potential illegal conduct to the relevant authorities.

***Levitt Has Not Defamed the Plaintiffs***

20. Levitt denies that he has defamed the plaintiffs.
21. With respect to any communications with the TPS, RCMP, or OSC, such communications:
  - a. Were true, or substantially true;
  - b. Were fair comment on matters of public interest;
  - c. Were made in circumstances of absolute or qualified privilege; and
  - d. Did not materially impact the reputation of the plaintiffs.
22. Levitt denies that he created or was responsible for any Twitter posts commenting on the plaintiffs.

23. Levitt did not contact or hire any of Bruce Livesey, Reuters, or the Wall Street Journal, or any other individual or entity, to write false or misleading articles about Catalyst, Callidus or Newton Glassman.
24. To the extent that Levitt has, from time to time, been contacted by journalists or media organizations, Levitt has provided truthful information about his dealings with Callidus and has provided publicly available information about the plaintiffs.

### *Conspiracy Allegations*

25. Levitt denies being a party to any conspiracy, or being involved in creating any plan to cause the value of the shares of Callidus to decline.
26. Levitt has not benefitted in the rise or decline of the Callidus stock price. Levitt has never taken a “short” position on any shares of Callidus. To the contrary, Levitt agreed with certain other Affected Borrowers that they would not short any stock of Callidus so as to not negatively influence any complaint filed with the TPS or OSC on the basis of any perceived attempt to influence the share price of Callidus.
27. Levitt has coordinated with other Affected Borrowers in order to investigate Callidus, report wrongdoing of Callidus to the relevant authorities, assess whether a RICO claim could be brought against Callidus, and to assist each other in defending claims brought against them by Callidus. All coordination between the Affected Borrowers was legal and properly done for the purposes of maintaining a joint legal position and reporting potential illegality to the relevant authorities.

28. To the extent any communications by Levitt were done by way of confidential messaging applications, any such communications are legal and common. In any event, a confidential mode of communication was necessary and appropriate due to the plaintiffs' illegal monitoring of Levitt's communications, on its own or through an organization such as Black Cube.

***The Plaintiffs' Improper Motives***

29. Since in or around October 2017, the plaintiffs have been taking steps to harass and intimidate Levitt and his family, directly and through other intermediaries such as Black Cube, including:
- a. Conducting surveillance on Levitt and obtaining Levitt's personal information (including private communications to and from Levitt) through illegal means, such as computer hacking and by breaking into Levitt's car and home; and
  - b. Harassing Levitt through phone calls, email communications, social networking communications.

30. Levitt pleads that this action is an abuse of process and is brought by the plaintiffs in order to harass or intimidate Levitt and the other defendants, rather than with a genuine belief in the merits of the claim.

***The Plaintiffs Have Suffered No Damages***

31. Levitt denies that the plaintiffs have suffered any damages from anything alleged to have been done by Levitt.



32. The decline in Callidus' share price and the failure of its business is solely as a result of the poor loan underwriting of the plaintiffs', other wrongful misconduct perpetrated by the plaintiffs that has come to light and been exposed, and the plaintiffs' failed business plan, and not as a result of any actions or statements of Levitt as herein alleged. For example:

- a. Beginning in February 2017, Callidus was embroiled in litigation with its former Senior VP of Underwriting, Craig Boyer ("Boyer"). In the litigation with Boyer, allegations were made that Boyer was involved in misconduct including artificially inflating financial results of borrowers of Callidus. During his litigation with Callidus, Boyer made statements that Callidus was subject to multiple complaints and regulatory investigations. These allegations were reported on publicly, both prior to and after the August 9, 2017 Wall Street Journal reporting on whistleblower complaints against Callidus.
- b. At the time of the August 9, 2017 Wall Street Journal whistleblower article, Callidus' share price was on a downward trajectory, since peaking briefly above \$20 per share in January 2017.
- c. On August 10, 2017, the day after the Wall Street Journal published its whistleblower article, Callidus released its results for the quarter ending June 30, 2017. Callidus reported a net loss of \$25.8 million for that quarter, compared to a profit of \$37.5 million in the same quarter a year earlier.
- d. Subsequent financial results for Callidus have continued to be extremely poor, including losses of \$218.5 million for the 2017 fiscal year, losses of \$183.6 million for the 2018 fiscal year, and losses of \$104 million in the first six months of 2019.

- e. Callidus failed to complete a privatization process which it announced in 2016, and which it had announced was intended to close by the end of the second quarter of 2017. Callidus was unable to find a buyer at the \$18 to \$22 per share price it sought, and its shares held by minority shareholders were ultimately sold in August 2019 for \$0.75 per share.
  - f. The OSC placed Callidus on its “Refiling and Errors List” in 2018 due to Callidus’ improper reliance on “yield enhancements” in its financial reporting.
  - g. In March 2019, Callidus’ interim CEO resigned abruptly, after preparing an internal report which was rumoured to provide details regarding loan misconduct at Callidus.
  - h. Callidus terminated its dividend in July 2018.
  - i. At present, no investment analysts are routinely covering Callidus, resulting in Callidus suspending its quarterly analyst conference calls.
33. As of the date of this pleading, the shares in Callidus are trading for well below \$1.00 per share. Levitt pleads that the loss in share value arises from Callidus’ extremely poor financial performance over a long period of time, rather than as a result of any conduct alleged against Levitt.
34. Levitt denies that the plaintiffs have suffered any damages, or that it is entitled to the various heads of relief claimed, and puts the plaintiff to the strict proof thereof. Any alleged damages are overly remote and speculative. In the alternative, the plaintiffs failed to mitigate their damages.

35. Levitt therefore requests that this claim be dismissed, with costs payable to him by the plaintiffs on a full indemnity basis.

Date: September 23, 2019

**Darryl Levitt**  
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Self-Represented

**TO: SERVICE LIST**

THE CATALYST CAPITAL GROUP  
INC. et al.  
Plaintiffs

v. WEST FACE CAPITAL INC. et al.  
Defendants

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

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SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE**

**Darryl Levitt**  
100-400 Applewood Cres.  
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