

**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, DARRYL LEVITT, JEFFREY  
MCFARLANE, RICHARD MOLYNEUX, GERALD DUHAMEL,  
GEORGE WESLEY VOORHEIS, BRUCE LIVESEY, AND JOHN DOES #4-10

Defendants

**STATEMENT OF DEFENCE OF JEFFREY MCFARLANE**

1. This Statement of Defence is delivered by the defendant, Jeffrey McFarlane (“McFarlane”), in response the Fresh As Amended Statement of Claim, amended July 19, 2019 (the “SOC”).

***Naming Conventions***

2. This Statement of Defence adopts the same naming conventions as used in the SOC, except as may otherwise be clarified herein.

***Background and Overview***

3. McFarlane was the former President and CEO of Xchange Technology Group (“XTG”), a former borrower of the Plaintiff and in the paragraph 34 of the SOC is referred to as one of the “Guarantor Conspirators.
4. McFarlane denies that he is liable to the plaintiffs and denies that the plaintiffs are entitled to the relief sought in paragraph 1 of the SOC. This claim is yet another in a string of meritless litigation attempts by the plaintiffs to silence, intimidate and cause financial hardship for those who have criticized their questionable business and lending practices. It is also designed to distract and deflect from their self-inflicted, poor financial performance, and alleged fraud of by its own representatives and or employees and to undermine the OSC Whistleblower Program. McFarlane has never been involved in short selling stocks nor was he ever a part of coordinated effort or conspiracy to do so. McFarlane specifically denies that the Plaintiffs are entitled to the relief claimed in paragraph 1 of the Claim and puts the Plaintiffs to the strict proof thereof.
5. This action has been brought by the Plaintiffs for the purposes of: (a) improperly limiting expression on matters of material public interest by individuals and the media; (b) harassing the Defendants and their businesses; and (c) impugning the integrity of McFarlane and the administration of justice in Ontario. It should be dismissed under section 137.1 of the Courts of Justice Act (“Anti SLAPP Legislation”) and stayed under section 140 of the Courts of Justice Act on the basis that the Plaintiffs are vexatious litigants.
6. Callidus itself has now explicitly stated in its public disclosures that its inability to achieve superior value for its shareholders of more than \$0.75 per share was caused by: (a) a decline

in Callidus's operating and financial performance; (b) non-performing loans made by Callidus; (c) negative operating performance of its non-core subsidiaries; (d) senior personnel issues; and (e) an increasing inability to retain personnel, and not by any misconduct of McFarlane or the other Defendants.

***Paragraph-by-Paragraph Position***

7. The Defendant, Jeffrey McFarlane, admits the allegation contained in paragraphs 30 of the SOC.
8. McFarlane denies the allegations contained in all other paragraphs of the SOC.
9. The defendant qualifies his denial of paragraph 77 of the SOC by noting as follows: McFarlane has acknowledged he filed an OSC Whistleblower report, but specifically denies any claim that in any way the information was false and has been proven to be accurate and true given the numerous financial disclosure changes the OSC has forced Callidus to make in its financial reporting; in particular the use of Yield Enhancements, which artificially inflated Callidus' financial results.
10. The defendant qualifies his denial of paragraph 121(b) of the SOC by noting as follows: McFarlane acknowledges sending an email to Guarantors with explicit instructions not to take a short position against Callidus shares out of an abundance of caution. This was to avoid the potential for a conflict of interest given the ongoing litigation the parties were involved in. At no time was it ever discussed or inferred that short selling indirectly was encouraged or recommended. It was in fact tacit agreement that none of the parties considering joint litigation would engage in the practice of short selling.

11. The defendant qualifies his denial of paragraph 148 of the SOC by noting as follows:  
McFarlane acknowledges he accepted a telephone call from Rob Copeland of the Wall St Journal. The conversation focused on the stated accounting practices of Plaintiffs and how materially different they were in reality, as evidenced by their accounting treatment, and subsequent sale and material write-down of XTG as a going concern
  
12. The defendant qualifies his denial of paragraph 178 of the SOC by noting as follows:  
McFarlane acknowledges that his fair opinion on a matter of public interest was quoted in the Wall St Journal as “I have serious concerns about the integrity of Callidus's accounting around XTG” but the statement is neither false nor defamatory, simply an opinion based on true facts and made in good faith and without malice. This opinion echoed Callidus’s own assertion in the Statement of Defence and Counterclaim in litigation with its former Chief Underwriter Craig Boyer (“CV-17-569065”). Furthermore in paragraph 178 (c ii), to date the Plaintiffs have filed a total of 4 (four) frivolous and vexatious separate claims against McFarlane, his family and junior employees of companies he founded after XTG, further evidencing their attempts to intimidate and create financial hardship as well as silence for their perceived opponents, in particular, those who might be in a position to lawfully compete against the companies they have seized or acquired.
  
13. The defendant qualifies his denial of paragraph 178 (c vii) of the SOC by noting as follows:  
In its initial proposal to the court to acquire the XTG business, Callidus indicated the transaction would be concluded in December 2013, when in fact Callidus left the XTG business in receivership for the entire duration of 2014, only concluding the process in early January 2015, allegedly so as not to include the financial results of XTG in the first few quarters of public reporting since Callidus became publicly traded and to draw

attention to the fact that Callidus continued to misrepresented accrued interest to its shareholders which misrepresented Callidus' reporting earnings to the public markets and shareholders, instead of a more standard common industry practice of putting a loan in non-accrual status once the borrower is no longer capable of making interest payments. This practice had the effect of transferring a substantial loss to the Catalyst Funds III & IV, later disclosed to be in total, in excess of \$90 million, to the benefit of Callidus and its shareholders, to the detriment of the Catalyst Limited Partners in Funds III & IV.

***Not Part of Any Conspiracy***

14. In the course of defending himself and asserting his rights from facts undercover from aggressive and frivolous litigation from the Plaintiffs, there were from time to time, discussions between McFarlane and individuals referred to in the SOC as the "Guarantors". It was determined that these individuals not only had similar circumstances and potentially similar legal defences and claims against Callidus (the "Affected Borrowers"), but the consistent and willful misconduct of Callidus appeared to be an integral part of the internal "playbook" when executing a "loan to own" strategy. At no time was McFarlane ever a part of a conspiracy or short-selling attack.

15. Due to the potential high costs of litigation with Callidus, and the similarities between their respective situations, McFarlane 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 qualified counsel in the U.S. and had privileged meetings with U.S. lawyers to discuss their claims and experiences. 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.

16. The Affected Borrowers did not ultimately pursue a U.S. Rico claim. Although other avenues to bring a claim against Callidus were pursued, from time to time, no joint claim against Callidus was ever brought in the U.S. Rather, each party proceeded to individually defend the claims brought against them by Callidus and on occasion communicated with each other in order to assist in defending the claims against them.
17. McFarlane 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.
18. McFarlane never agreed to coordinate, work with or accepting funding from any of the Wolfpack Conspirators.
19. McFarlane never “spread false information through the bay street rumour mill” whether as part of any plan of action or otherwise;
20. Any coordination between McFarlane and any other Affected Borrowers of Callidus, was done in order to investigate Callidus, report wrongdoing of Callidus to the relevant authorities, assess whether a U.S. 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.

21. To the extent any communications by McFarlane were done by way of confidential messaging applications, any such communications are legal and common. A confidential mode of communication became necessary once it became clear that the Plaintiffs' were attempting to extract information through nefarious methods, like those employed Black Cube.

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

22. In addition, McFarlane, reasonably believing that the market participants and investing public were not aware of the magnitude the severe losses they were facing as a result of Plaintiff's actions, material misrepresentations, willful and wrongful conduct, filed a whistleblower complaint with the Ontario Securities Commission (the "OSC"). The whistleblower report was based on McFarlane's experience as a Borrower and relied heavily on interpreting publicly available information.
23. The particulars of any steps undertaken by the TPS, the RCMP, (including the Joint Serious Offences Team) or the OSC are unknown to McFarlane.

***Attacks on the legitimacy of the OSC Whistleblower Policy by the Plaintiff***

24. Subsequent to McFarlane 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 and highly subjective use of "yield enhancements" by

Callidus was one of the subject matters of the whistleblower report submitted by McFarlane.

25. McFarlane pleads that all information provided to the OSC was presented in circumstances of absolute privilege, which has not been waived by McFarlane. Any information was provided to the OSC with the reasonable belief that such information was accurate and for the purpose of reporting potentially illegal conduct to the appropriate authorities.

***Defamation and Injurious Falsehood***

26. The defendant denies doing or saying anything which constitutes defamation, and he denies the plaintiffs' claim for damages on that basis, as claimed at paragraph 1(a) of the SOC.

27. With respect to any communications with the OSC or any other regulators or authorities, such communications:

- a. Was 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.

28. To the extent that McFarlane has, from time to time, been contacted by journalists or media organizations, McFarlane has provided truthful information about his dealings with Callidus and has provided or interpreted publicly available information about the plaintiffs.



29. The Plaintiffs have not pleaded the required elements of the tort of injurious falsehood and have provided bald allegations only with respect to McFarlane's involvement in any claim. This claim is subsumed in the claims of defamation in this action and in another action - Court File No. CV-18-593156-00CL, and is untenable as a matter of law.

***Intentional Interference with Economic Relations***

30. The defendant committed no unlawful acts against any third parties, whether alone or in common with others. The defendant denies any liability for the tort of intentional interference with economic relations.

***No Breach of the Securities Act***

31. McFarlane denies that he violated of subsections 126.1 and 126.2 of the Securities Act, or any other sections, and puts the Plaintiffs to the strict proof thereof.

32. There is no basis pleaded for holding McFarlane liable for breaches of subsections 126.1 and 126.2 of the Securities Act and related regulations that were allegedly committed by other Defendants, as alleged in paragraph 1 of the Claim.

***The Plaintiffs' Improper Motives and Attempts to Entrap***

33. Since in or around October 2017, the plaintiffs, through other intermediaries such as Black Cube, have been taking steps to harass and entrap McFarlane and other Defendants. On or around October 13, 2017, McFarlane received a phone call at his place of employment from an "independent investor" asking a series of questions about Callidus, encouraging McFarlane to say something derogatory about the Plaintiffs and their questionable business

practices. McFarlane refused to do so and when McFarlane researched the phone number (416-512-2042) it was found to a payphone in Toronto located at 730 Sheppard Ave E.

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

34. McFarlane denies that the plaintiffs have suffered any damages from anything alleged to have been done by McFarlane.
35. The defendant denies the plaintiffs have identified any legal basis to claim the “investigation costs” claimed at paragraph 1(g) of the SOC.
36. The defendant denies the plaintiffs have identified any legal basis for the accounting and disgorgement claimed at paragraph 1(b) of the SOC.
37. The defendant denies the plaintiff is entitled to any punitive or aggravated damages as claimed at paragraph 1(h) of the SOC.
38. The decline in Callidus’ share price and the failure of its business is as a result of the poor loan underwriting of the plaintiffs’, other misconduct perpetrated by the plaintiffs and the plaintiffs’ failed business plan, the termination of its dividend, and not as a result of any actions or statements of McFarlane as herein alleged. Beginning in February 2017, Callidus was embroiled in litigation with its former Senior VP of Underwriting, Craig Boyer (“Boyer”). In his litigation with Callidus, Boyer made statements that Callidus was subject to multiple complaints and regulatory investigations. In its Statement of Defence and Counterclaim, Callidus alleges that Boyer:
  - a. “Had been failing to properly monitor loans in his portfolio”

- b. “Had encouraged certain portfolio companies, and in particular XTG, to artificially inflate the results shown on their financial projections and financial statements”
- c. “Boyer had directed one company in his portfolio (Horizontal) to create a letter on fake Callidus letterhead purporting to make financial commitments on Callidus’ behalf”

These allegations were reported on publicly, both prior to and after the August 9, 2017 Wall Street Journal reporting on whistleblower complaints against Callidus. They included Callidus’ own assertion that they had concerns with their accounting in XTG during a time the business was in under its ownership.

- 39. On August 10, 2017, one day after the Wall Street Journal published the article on the whistleblower reports, Callidus released its financial results for the second 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 the prior year.
- 40. Subsequent financial results for Callidus have been poor, including a loss of \$218.5 million for the 2017 fiscal year and losses of \$183.6 million for the 2018 fiscal year, and a further \$104 million in the first half of 2019.
- 41. Callidus failed to complete a privatization process announced in 2016, committing to a price of between \$18-\$22 which was expected to close in June 2017. They subsequently found a buyer for the minority shares for only \$0.75 per share in 2019.
- 42. The OSC placed Callidus on its “Refiling and Errors List” in 2018 due to Callidus’ improper reliance on and presentation of “yield enhancements” in its financial reporting.

43. In March 2019, Callidus' interim CEO resigned abruptly, shortly prior to the presentation of its 2018 financial results.

44. McFarlane 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.

***No Cause of Action***

45. McFarlane further pleads that this action is a gross abuse of the Court's process. The Plaintiffs have commenced this action in parallel action for defamation and conspiracy against McFarlane arising from the identical set of facts in Court File No. CV-18-593156-00CL. The identical allegations of defamation and conspiracy arising from the Online Article and the Print Article are made against McFarlane in that action.

46. The Plaintiffs are pursuing this action as a strategic lawsuit against public participation ("SLAPP") which is designed to discourage public discourse on matters of material public interest and to discourage individuals making whistleblower complaints to the OSC from speaking with the media about their concerns.

47. The Plaintiffs were served with a Response to Demand for Particulars on or around November 6, 2018 and to date have failed have failed acknowledge service despite multiple emails to their counsel or to provide any documentation that could implicate McFarlane in the claims advanced against him, further demonstrating the nature of this litigation is a SLAPP.

***Disposition Sought***

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

49. McFarlane also requests that any trial of this action be heard together with, or immediately before, the action bearing Court File No. CV-18-593156-00CL.

Date: September 30, 2019

**JEFFREY MCFARLANE**  
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Self-Represented

**TO: SERVICE LIST**

THE CATALYST CAPITAL GROUP v. WEST FACE CAPITAL INC. et al.  
INC. et al.  
Plaintiffs Defendants

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

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

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE**

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