

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CALLIDUS CAPITAL CORPORATION

Plaintiff/Defendant by 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 Chapter 7 Trustee of FORTRESS
RESOURCES, LLC d/b/a MCCOY ELKHORN COAL COMPANY, CALLIDUS
CAPITAL CORPORATION, OPES RESOURCES INC. and DARRYL LEVITT

Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

FRESH FRESH AS AMENDED NOTICE OF MOTION

The defendant (plaintiff by counterclaim) Richard Molyneux (“Molyneux”) will bring this Motion to the Honourable Mr. Justice McEwan (on a date to be scheduled by His Honour at a case conference, scheduled for November 12, 2019 at 9:00 a.m.). The scheduling by the Honourable Mr. Justice McEwan was directed by the Honourable Mr. Justice Hainey on June 28, 2019. The motion is to be heard at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING:

in writing under subrule 37.12.1(1) because it is (insert one of on consent, unopposed or made without notice);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

THE MOTION IS FOR

- (a) An order striking the motion for summary judgment (“MFSJ”) brought by the plaintiff in this proceeding (“Action”);
- (b) In the alternative, an order staying, or quashing, or dismissing the MFSJ;
- (c) An order that this Action and the action identified as court file number CV-17-587463-00CL (“New Action”) be placed on the trial list one after the other, to be heard by the same trial judge;
- (d) For such further or other directions of the trial judge as may be appropriate for the hearing of these actions;
- (e) Costs, if opposed, by the plaintiffs in the New Action and the plaintiff in this Action; and,
- (f) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

- (a) The plaintiffs in the New Action have amended the Amended Amended Statement of Claim. The Fresh as Amended Statement of Claim ("New Claim") was served on or about July 19th, 2019, a copy of which is attached hereto as Schedule "A"; and,
- (b) Molyneux has served a Statement of Defence to the New Claim on October 31, 2019, a copy of which is attached hereto as Schedule "B".

ALLEGATION OF A SPURIOUS OR FALSE DEFENCE

- (c) The plaintiffs to this Action and the New Action, Callidus Capital Corporation and Catalyst Capital Group (together, the "Plaintiffs") have commenced multiple proceedings as against many defendants across North America (the "Callidus/Catalyst Litigation");
- (d) In the New Action, the Plaintiffs have alleged that the various defendants to the Callidus/Catalyst Litigation (the "Callidus/Catalyst Defendants") conspired to manufacture false defences to their respective actions. In the New Action the Plaintiffs have pleaded that the defences of the Callidus/Catalyst Defendants are false and spurious;
- (e) Molyneux is named in the New Claim as one of the Callidus/Catalyst Defendants that was allegedly part of the conspiracy, based on the defence he submitted in this Action. Additionally, Darryl Levitt is also an alleged conspirator in the New Action based on the defences he raised in this Action;

- (f) The test on a motion for summary judgment is whether there is a genuine issue for trial. It is unlikely that the Court will find on the MFSJ that the defence is false or spurious as such, a finding is not necessary to the disposition of the MFSJ; and,
- (g) Furthermore, the Court will not deal with the issue of whether or not there was a conspiracy among all of the Callidus/Catalyst Defendants, as pleaded in the New Action, to manufacture a false defence to the claims of the Plaintiffs in the various Callidus/Catalyst Litigation, on the MFSJ.

ALLEGATIONS OF DEFAMATION

- (h) The New Claim claims that there was a conspiracy to defame the Plaintiffs in the New Action, and that Molyneux was part of that conspiracy. Additionally, there is a claim that Molyneux defamed the Plaintiffs in the New Action.
- (i) Part of Molyneux's defence to the New Claim includes the defence of justification. The evidence in support of the justification defence will also support Molyneux's position that the defence in the Action is meritorious and therefore not false. Molyneux's defences are supported by evidence of Callidus' immoral conduct. Molyneux's position is that the evidence also demonstrates how Callidus dealt with other loans to other borrowers by using the same commercially immoral business model of deception, intimidation, deceit, fraudulent misrepresentations, bad faith and illusion, in both the negotiation and performance of Callidus' contractual obligations, to its lenders, and in particular, to Molyneux.

- (j) As a result, the evidence before the court in this Action will also have to be considered by the Commercial Court at the trial of the New Action, in light of these allegations in the New Claim;
- (k) This creates a significant risk of inconsistent findings of fact arising from the same evidentiary record;
- (l) It is not proportional and it is contrary to Rules 1.04 and 1.05, to have the same evidence and witnesses dealt with twice by the Commercial Court on both the MFSJ and at the trial of this Action (if the MFSJ is unsuccessful), and, in any event, again at the trial of the New Action. The events now raised in both the Action and the New Action should only be dealt with once and at one trial, or trial process, before the same Judge;
- (m) The Plaintiffs' approach is an improper bifurcation of the issues that are to be tried in the New Action;
- (n) It is in the interests of justice that the trial judge have the benefit of live witness testimony, to hear and to observe the witnesses related to the allegations of conspiracy and related to the allegations that the defence raised by Molyneux is alleged to be false and spurious;
- (o) The principle of procedural fairness and the policy of the Courts to effectively use scarce resources and encourage cost efficiency, supports the making of the order sought;

- (p) The principles set out in the recent Court of Appeal decisions in *Bay Wood Homes Partnership vs. Haditaghi*, [2014] ONCA 450, *Hamilton (City) v. Their and Curran Architect's Inc.*, [2015] O.J. No. 458 (C.A.) and *Canadian Imperial Bank of Commerce vs. Deloitte & Touche*, [2017] O.J. No. 260(C.A.);
- (q) Furthermore, the MFSJ has been pending for three years as it was served in November 2016. A copy of the Notice of MFSJ is attached hereto as Schedule "C";
- (r) As a result, this is an appropriate case to order that the MFSJ be struck and that this Action be placed on the trial list to be tried with the New Action, one after the other, before the same trial judge, and to be dealt with as the trial judge may direct. Such a result is the most just, expeditious and least expensive manner to deal with the issues raised in the two actions;
- (s) Rules 1.04, 1.05, 6, 6.1.01 and 20 of the *Rules of Civil Procedure*, and the inherent jurisdiction of this Honourable Court; and,
- (t) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE

- (a) The pleadings and proceedings in this Action and the New Action;
- (b) Such further and other evidence as the lawyers may advise and this Honourable court may permit.

November 4, 2019

SOLMON ROTHBART GOODMAN LLP
Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC# 16156J)
msolmon@srglegal.com
Tel: 416-947-1093 (Ext. 333)
Fax: 416-947-0079

Lawyer for the defendant/plaintiff by
counterclaim
Richard George Molyneux

TO: DARRYL LEVITT
30 Speers Road
Suite 306
Oakville, Ontario
L6K 2E4

Tel: 416-879-6965

Defendant

AND TO: DANSON & ZUCKER
Barristers and Solicitors
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Symon Zucker
Tel: 416-863-9955
Fax: 855-696-5441

Lawyer for the defendant,
Opes Resources Inc.

AND TO: **DICKINSON WRIGHT LLP**
Barristers and Solicitors
199 Bay Street
Suite 2200
Commerce Court
Toronto, Ontario
M5L 1G4

John D. Leslie (LSUC# 29956P)
Tel: 416-646-4603
Fax: 416-865-1398
jleslie@dickinsonwright.com
Michael J. Brzezinski (LSUC# 63573R)
Tel: 416-777-2394
Fax: 416-865-1398
mbrzezinski@dickinsonwright.com

Lawyers for the plaintiff/defendant to the counterclaim

AND TO: **BINGHAM GREENEBAUM DOLL LLP**
3500 PNC Tower
101 South Fifth Street
Louisville, Kentucky
40202

Christopher B. Madden
cmadden@bgdlegal.com
Tel: 502-587-3770
Fax: 502-540-2270

Lawyer for the defendant to the counterclaim

TO: **MOORE BARRISTERS**
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, Ontario
M5G 1E6

David C. Moore (LSO# 16996)
Tel: 416-581-1818 ext. 222
Fax: 416-581-1279
david@moorebarristers.ca
Kenneth Jones (LSO# 299181I)
Tel: 416-581-1818
Fax: 416-581-1279
kenjones@moorebarristers.ca

GOWLINGS LLP
Barristers & Solicitors
Suite 1600
1 First Canadian Place
100 King Street W.
Toronto, Ontario
M5X 1G5

John E. Callaghan (LSO# 29106K)
Tel: 416-862-7525
Fax: 416-862-7661
john.callaghan@gowlingwlg.com
Benjamin Na (LSO# 40958O)
Tel: 416-862-7525
Fax: 416-861-7661
benjamin.na@gowlingwlg.com
Matthew Karabus (LSO# 61892D)
Tel: 416-862-7525
Fax: 416-862-7661
matthew.karabus@gowlingwlg.com

Lawyers for the plaintiffs,
The Catalyst Capital Group Inc. and Callidus Capital Corporation

AND TO: **MCCARTHY, TÉTRAULT LLP**
Barristers and Solicitors
TD Bank Tower
66 Wellington Street West
Suite 5300
Toronto, Ontario
M5K 1E6

R. Paul Steep (LSO# 21869L)
Tel: 416-601-7998
Fax: 416-868-0673
psteep@mccarthy.ca
Daniel Goudge (LSO# 69632J)
Tel: 416-601-7598
Fax: 416-868-0673
dgoudge@mccarthy.ca

Lawyers for the defendant,
George Wesley Voorheis

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
40th Floor - 155 Wellington Street West
Toronto, Ontario
M5V 3J7

Kent E. Thompson (LSO# 24264J)
Tel: 416-863-5566
Fax: 416-863-0871
kthompson@dwpv.com
Matthew Milne-Smith (LSO# 44266P)
Tel: 416-863-5595
Fax: 416-863-0871
mmilne-smith@dwpv.com
Andrew Carlson (LSO# 58850N)
Tel: 416-367-7437
Fax: 416-863-0871
acarlson@dwpv.com

Lawyers for the defendants,
West Face Capital Inc. and Gregory Boland

AND TO: **TORYS LLP**
Barristers and Solicitors
79 Wellington Street West, Suite 3000
Box 270, TD South Tower
Toronto, Ontario
M5K 1N2

Andrew Bernstein
Tel: 416-865-7678
Fax: 416-865-7380
abernstein@torys.com

Linda M. Plumpton
Tel: 416-865-8193
Fax: 416-865-7380
lplumpton@torys.com

Leora Jackson (LSO# 68448L)
Tel: 416-865-7547
Fax: 416-865-7547
ljackson@torys.com

Lawyers for the defendants,
M5V Advisors Inc., c.o.b. as ANSON GROUP CANADA, Admiralty Advisors
LLC, Frigate Ventures 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: **MILBURN & ASSOCIATES**
Barristers & Solicitors
20 Toronto Street
Suite 860
Toronto, Ontario
M5C 2B8

A. Jane Milburn
Tel: 647-728-8081
Fax: 647-689-2983
jmilburn@milburnlaw.ca

Lawyers for the defendant,
Bruce Langstaff

AND TO: **ST. LAWRENCE BARRISTERS LLP**
144 King Street East
Toronto, Ontario
M5C 1G8

Phil Tunley
Tel: 647-245-8282
Fax: 647-245-8285
phil.tunley@stlbarristers.ca
Alexi N. Wood (LSO# 54683F)
Tel: 647-245-8283
Fax: 647-245-8285
alex.wood@stlbarristers.com
Jennifer P. Saville (LSO# 68564F)
Tel: 647-245-2222
Fax: 647-245-8285
jennifer.saville@stlbarristers.ca

Lawyers for the defendant,
Rob Copeland

AND TO: **LERNERS LLP**
Barristers & Solicitors
130 Adelaide Street West
Suite 2400, Box 95
Toronto, Ontario
M5H 3P5

Brian N. Radnoff (LSO# 43739G)
Tel: 416-601-2387
Fax: 416-601-2412
bradnoff@lernalers.ca
Lucas E. Lung (LSO# 52595C)
Tel: 416-601-2673
Fax: 416-601-4192
llung@lernalers.ca

Lawyers for the defendants,
ClaritySpring Inc. and Nathan Anderson

AND TO: **HUNT PARTNERS LLP**
1404 - 21 Balmuto Street
Toronto, Ontario
M4Y 1W4

Andrew Burns (LSO# 345912W)
Tel: 416-943-4668
Fax: 416-943-1484
aburns@huntlegal.com
Melissa Brainis (LSO# 47071N)
Tel: 416-350-2934
Fax: 416-943-1484
mbrainis@huntlegal.com

Lawyers for the defendant,
Kevin Baumann

AND TO: **JEFFREY MCFARLANE**
220 Dominion Drive, Ste B
Morrisville, North Carolina
27560

defendant

AND TO: **DARRYL LEVITT**
100-400 Applewood Crescent
Vaughan, Ontario
L4K 0C3

defendant

AND TO: **WHITTEN & LUBLIN**
Barristers and Solicitors
141 Adelaide Street West
Suite 1100
Toronto, Ontario
M5H 3L5

Ben J. Hahn (LSO# 64412J)
ben@whittenlublin.com
Tel: 416-640-2667
Fax: 416-644-5198

Lawyers for the defendant,
Gerald Duhamel

AND TO: **CRAWLEY MACKEWN BRUSH LLP**
Barristers and Solicitors
179 John Street
Suite 800
Toronto, Ontario
M5T 1X4

Robert Brush (LSO# 40373N)
Tel: 416-217-0822
Fax: 416-217-0220
rbrush@cmlaw.ca
Clarke Tedesco (LSO# 55391C)
Tel: 416-217-0884
Fax: 416-217-0220
ctedesco@cmlaw.ca

Lawyers for the third party

RCP-E 37A (July 1, 2007)

SCHEDULE "A"

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

RULE/LA RÈGLE 28.02
 THE ORDER OF Justice Hainey
L'ORDONNANCE DU Justice Hainey

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

DATED / FAIT LE July 18, 2019 **ONTARIO**
SUPERIOR COURT OF JUSTICE

REGISTRAR W. E. Irwin
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE 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. 3rd 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 best interests of the Plaintiffs and not to engage in any activity harmful to the Plaintiffs. While employed by Canaccord Genuity, Langstaff owed the same duties to the Plaintiffs.

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 Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST

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 Moyse (former Catalyst employee that joined West Face), for the misuse of Catalyst’s confidential information to acquire “Wind Mobile”. They were

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

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 subject. 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^m

DATE: ~~July 18, 2019~~^m

GOWLING WLG (CANADA) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

John E. Callaghan (#29106K)
john.callaghan@gowlingwlg.com
Benjamin Na (#409580)
benjamin.na@gowlingwlg.com
Matthew Karabus (#61892D)
matthew.karabus@gowlingwlg.com

Tel: 416.862.7525

Fax: 416.862.7661

MOORE BARRISTERS

Professional Corporation

393 University Avenue, Suite 1600,

Toronto ON M5G 1E6

David C. Moore (#16996U)

david@moorebarristers.com

Tel: 416.581.1818 x.222

Fax: 416.581.1279

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

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

John E. Callaghan (#29106K)
john.callaghan@gowlingwlg.com

Benjamin Na (#409580)
benjamin.na@gowlingwlg.com

Matthew Karabus (#61892D)
matthew.karabus@gowlingwlg.com

Tel: 416.862.7525
Fax: 416.862.7661

MOORE BARRISTERS
Professional Corporation
393 University Avenue, Suite 1600
Toronto ON M5G 1E6

David C. Moore (#16996U)
david@moorebarristers.com

Tel: 416.581.1818 x.222
Fax: 416.581.1279

SCHEDULE "B"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, 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

STATEMENT OF DEFENCE OF RICHARD MOLYNEUX

General Pleading

1. The defendant, Richard Molyneux (“Molyneux”), admits the allegations contained in paragraphs 31, first sentence of 32, 34, 42 and 47 of the Fresh as Amended Statement of Claim.
2. Molyneux has no knowledge of the following paragraphs 2-30, 33, 35-38, 40, 43-45, 54, 56-61, 62-65, 66 (b), 67-68, 70, 73, 76, 78-81, 83-86, 88, 92, 96, 99-102, 105-107, 109, 113, 118(a) (c) (d) (e) (f), 119-129, 132-178, 190-192, 200-201 of the Fresh as Amended Statement of Claim.

3. Molyneux, denies all other allegations except as specifically pleaded herein.

Defined Terms

4. Molyneux adopts the definitions used throughout the Fresh as Amended Statement of Claim (“Claim”), which are as follows and are defined in the paragraphs of the Claim referred to below:

- (i) Anderson – paragraph 21;
- (ii) Article – paragraph 166;
- (iii) Baumann – paragraph 29;
- (iv) Boland - paragraph 7;
- (v) Boyer – paragraph 120;
- (vi) Callidus – paragraph 3;
- (vii) Callidus Shares - paragraph 6;
- (viii) Canaccord Guarantee – paragraph 26;
- (ix) Catalyst - paragraph 2;
- (x) Clarity – paragraph 21;
- (xi) Cohodes – paragraph 119;
- (xii) Complaints – paragraph 90;

- (xiii) Conspiracy - paragraph 87;
- (xiv) Copeland – paragraph 27;
- (xv) Duhamel – paragraph 33;
- (xvi) Fortress - paragraph 31;
- (xvii) Guarantee Actions - paragraph 42¹;
- (xviii) Guarantor Conspirators - paragraph 34;
- (xix) Guarantors – paragraph 42;
- (xx) Individual Defendants - paragraph 28²;
- (xxi) Jaross – paragraph 42 (b);
- (xxii) JSOT – paragraph 101;
- (xxiii) Kassam – paragraph 19;
- (xxiv) Langstaff – paragraph 26;
- (xxv) Levitt - paragraph 31;
- (xxvi) Levitt– paragraph 42 (b);
- (xxvii) Livesey – paragraph 24;

¹ The Claim refers to five Guarantee Actions in paragraph 39. There is a sixth action involving another borrower and Duhamel was a guarantor. This action was commenced in Quebec.

² This definition does not include Molyneux.

- (xxviii) MacFarlane – paragraph 30;
- (xxix) McNish – paragraph 151; and,
- (xxx) Molyneux – paragraph 32;
- (xxxi) OFC – paragraph 90;
- (xxxii) Puri – paragraph 19;
- (xxxiii) SEC - paragraph 69³;
- (xxxiv) Smith - paragraph 42 (d);
- (xxxv) Spears – paragraph 19;
- (xxxvi) Veritas Action - paragraph 62;
- (xxxvii) Voorheis- paragraph 23;
- (xxxviii) West Face -paragraph 7;
- (xxxix) Wolfpack Conspirators - paragraph 25⁴.

5. Further defined terms to be used in this pleading are found in the following paragraphs:

- (i) Big Sandy - paragraph 99(a);
- (ii) Conditions Precedent - paragraph 12;

³ The five Guarantee Actions are: (i) Baumann in Alberta, (ii) Levy and Jaross in Texas, (iii) Smith in Kentucky, (iv) McFarlane in Ontario and (v) Levitt and Molyneux in Ontario.

⁴ This definition does not include Molyneux.

- (iii) FLV (Forced Liquidation Value) - paragraph 93;
- (iv) Fortress Loan – paragraph 14 of this pleading;
- (v) Glassman, Riley, Reese, DiPucchio - paragraph 49;
- (vi) Katsma – paragraph 104
- (vii) Kentucky Action - paragraph 24;
- (viii) Lax O’Sullivan – paragraph 49
- (ix) Mine Assets – paragraph 9;
- (x) Mine – paragraph 7;
- (xi) MFSJ (Motion for Summary Judgment) - paragraph 26;
- (xii) Ontario Action - paragraph 25;
- (xiii) Opes – paragraph 12;
- (xiv) Overall Loan Agreement – paragraph 96;
- (xv) Permitted Liens – paragraph 108;
- (xvi) Phase I Loan – paragraph 9;
- (xvii) Phase II Loan – paragraph 10;
- (xviii) PWC (PriceWaterhouseCooper) - paragraph 101(b);

- (xix) The Molyneux Guarantee along with the guarantee of Levitt and the guarantee of Smith are hereinafter referred to as the “Guarantees”; and,
- (xx) The Written Guarantee of Molyneux of any indebtedness of Fortress to Callidus (“Molyneux Guarantee”).

6. Although the word Conspiracy is defined in the Claim, Callidus and Catalyst plead a number of different conspiracies not including the only conspiracy allegation that is defined as “Conspiracy”. The other conspiracies alleged appear to be part of and incorporated into the foundation of the Conspiracy. The conspiracies alleged, other than the Conspiracy in paragraph 87 of the Claim appear to be in the following paragraphs of the Claim:

- (i) conspiracy No. 1 – paragraph 39;
- (ii) conspiracy No. 2 – paragraph 65 and 67;
- (iii) conspiracy No. 3 – paragraph 68 and 72;
- (iv) conspiracy No. 4 – paragraph 74-76;
- (v) conspiracy No. 5 – paragraph 78; and,
- (vi) conspiracy No. 6 – paragraph 82.

Overview and Background of the Involvement of Molyneux with Callidus

7. Molyneux is 71 years of age and was an investor directly and indirectly in Fortress, a corporation that purchased the assets of an inactive coal mine located in Kentucky. At that time,

the business of the mine ("Mine") was no longer in operation and was under the control of a trustee in bankruptcy.

8. The other major investors were Smith and Levitt.

9. A significant part of the funds used to purchase the assets of the Mine ("Mine Assets") and provide start-up working capital was provided by a loan in the amount of \$11,350,000 from Callidus to Fortress (the "Phase I Loan").

10. Callidus also agreed to provide a loan for the necessary working capital of the Mine (referred to as phase II loan or the revolver loan) (the "Phase II Loan") to be advanced thirty days after the purchase of the Mine Assets. This was critical for the Mine to become operational and generate income.

11. Molyneux, Smith and Levitt agreed to provide temporary guarantees for the loan from Callidus to Fortress to purchase the Mine Assets.

12. Pursuant to the Overall Loan Agreement (as defined in paragraph 96 herein) among Callidus, Molyneux, Smith, Levitt and the applicable corporations (Fortress and Opes Resources Inc. ("Opes")), the Phase II Loan would be advanced to Fortress after specific conditions precedent ("Conditions Precedent") were satisfied.

13. The personal guarantees would be released when the Phase II Loan was advanced, that is, when those same Conditions Precedent were satisfied.

14. The Phase I Loan and the Phase II Loan are together referred to as the "Fortress Loan".

15. As pleaded herein, Callidus never intended to release the personal guarantees of Molyneux, Smith and Levitt. Callidus breached the Overall Loan Agreement, made material misrepresentations to the Guarantors intentionally, or in the alternative, recklessly not caring if they were true or false, in order to keep the Guarantees in place. Furthermore, there was no consideration provided by Callidus to the Guarantors, or the applicable corporations for this material change in the security provided for the Fortress Loan.

16. Callidus was required to do certain work and obtain reports to enable Fortress and the Guarantors to satisfy the Conditions Precedent. Callidus was responsible for materially delaying that work such that the receipt of the reports required to be produced by Callidus was delayed.

17. Callidus also breached its obligation to use its best efforts to do this work in a timely manner. By the time the Phase II Loan was advanced, the Mine was in a cash flow crisis.

18. Callidus knew that its misconduct would financially strangle the cash flow of the Mine, would adversely affect or destroy the relationships of the Mine with its suppliers, customers and employees and eventually would destroy the business of the Mine.

19. It was the strategy of Callidus that if the business of the Mine could not survive the cash flow crisis created by the misconduct of Callidus, Callidus intended to and eventually did in fact, attempt to purchase the Mine Assets during a court ordered process (a bankruptcy or a receivership).

20. This strategy of Callidus was part of their corporate culture and their method of doing business. This business plan provided that if the debtor could not pay the debt, interest and fees to Callidus, then Callidus would carry out its "loan to own strategy".

21. Part of the “loan to own” strategy included that Callidus would make a credit bid in the bankruptcy or receivership at a value far below the true value of the business and the assets. The low value would be justified by the financial distress in which the business had been placed by Callidus’ conduct.

22. With regard to the Fortress Loan, the credit bid strategy of Callidus was unsuccessful as Callidus was outbid during the court ordered process.

23. Callidus then sued on the Molyneux Personal Guarantee and the personal guarantees of Levitt and Smith.

24. Smith was sued first on December 11, 2015, in Lexington, Kentucky for approximately \$20 million US (the “Kentucky Action”).

25. Molyneux and Levitt were sued in Toronto, Ontario on January 18, 2016, which action was transferred to Commercial Court. Callidus claimed approximately \$20 million US (the “Ontario Action”).

26. Callidus brought motions for summary judgment (“MFSJ”) in both jurisdictions in 2016. The MFSJ in the Kentucky Action against Smith was brought in the spring and early summer of 2016. The MFSJ in the Ontario Action was served in November 2016.

27. Callidus delayed the motions for summary judgment in the Ontario Action.

28. Callidus proceeded with the motion for summary judgment against Smith in the Kentucky Action on September 8, 2016.

29. Callidus was successful on the motion for summary judgment against Smith. Smith appealed. Callidus and Smith then settled.

30. Callidus settled with Smith on the 18th day of July, 2017. Callidus agreed to accept \$10,000.00 US from Smith. Callidus released Smith from all other claims including the claim for \$20,000,000 US funds.

31. However, the release was conditional on Smith retracting all of his statements made under oath in the Kentucky Action that were critical of Callidus' conduct. Smith was also required to agree not to cooperate with or voluntarily assist anyone including Molyneux and Levitt and not to assist them in the Ontario Action. The words of the settlement agreement provided as follows:

"Without limiting the foregoing, it is expressly warranted and agreed by the Smiths that they retract and derogatory and/or disparaging comments they have previously made about any of the released parties [released parties include Callidus and past and present entities, subsidiaries, divisions, affiliated entities, shareholders, employees, officers, directors, owners, partners, successors, assigns, agents, attorneys and other representatives], will not make any derogatory and/or disparaging comments about the Released Parties in the future and will not publish or discuss in any manner this agreement or the settlement that could compromise evidence hereby, or any of the facts, circumstances, allegations, claims and/or alleged defences asserted by any party in the Action and/or the Appeal, with any other person or entity (including, but not limited to, on the internet or with the media). Further, the Smiths shall not voluntarily assist any other person or entity in the investigation or prosecution of any claims against any Released Party nor shall the Smiths voluntarily assist with the defence of any claims asserted by a Released Party again any other person or entity."

32. Callidus proceeded with Smith first so that it could obtain a settlement with Smith to prevent him from cooperating with Molyneux and Levitt and make it as difficult as possible for Molyneux and Levitt to obtain Smith's evidence as a witness, which they required for the Ontario Action. Smith was present at all relevant meetings and was in charge of the day to day operations of the Mine.

33. The motion for summary judgment in the Ontario Action has yet to be heard for almost three years.

34. During this time period, Molyneux has, along with other borrowers from Callidus, uncovered and pleaded the misconduct of Callidus in dealing with the Fortress Loan as well as other loans from Callidus made to various other borrowers in different businesses.

35. Molyneux is now a defendant in this proceeding sued by Callidus and Catalyst.

36. Molyneux is accused of being a part of, or involved in a number of civil conspiracies, including being part of a scheme to manipulate the price of the publically traded stock of Callidus, of short selling Callidus stock for profit and of defaming Callidus (along with other causes of action).

37. Molyneux has now been sued by Callidus for \$455 million.

38. Callidus also alleges that the defence of Molyneux in the Guarantee Action is “spurious” (paragraph 49 of the Claim) and Molyneux was making “false allegations” (paragraphs 77, 103 and 105 of the Claim for example).

39. Molyneux has had no business or other dealings with Catalyst. Catalyst has no valid cause of action against Molyneux. Each cause of action pleaded by Catalyst as against Molyneux is frivolous and vexatious.

40. The purpose of the Claim of Callidus and Catalyst as against Molyneux is to bring meritless litigation to attempt to silence, intimidate and cause financial hardship for Molyneux and others who have criticized the corrupt and wrongful business and lending practices of Callidus. It is also designed to distract and deflect from Callidus’ poor financial performance and the allegations of fraud by its own representatives and employees and its attempt to undermine the OSC and SEC Whistleblower programs.

41. Another purpose of this Claim, based on a meritless pleading with no foundation in fact is to attempt to improperly undermine solicitor-client privilege, common interest privilege, absolute privilege, qualified privilege and privilege associated with the Whistleblower program and the confidentiality protected by that program.

Overview of the Defence of Molyneux to these Claims

42. Molyneux learned of the pattern of wrongful conduct of Callidus and its commercially immoral business model related thereto as a result of the sharing of information among various borrowers from Callidus and those borrowers' principals.

43. The sharing of information was with Levitt, McFarlane, Levy and Duhamel. The sharing of information revealed the pattern of conduct and the commercially immoral business model of Callidus that each borrower from Callidus had individually experienced.

44. Molyneux states that there were no "coordinated defences" nor was any defence of Molyneux based on spurious or false allegations nor any conspiracy to allege spurious or false defences.

45. Molyneux was not part of any conspiracies (a number are pleaded) or the Conspiracy. The Claim pleads that all of the conspiracies are interrelated, connected and co-dependant. Therefore the claim for Conspiracy is dependent on the proof of the existence of each of the other pleaded conspiracies alleged by Callidus and Catalyst.

46. Molyneux did not defame Callidus nor did Molyneux conspire to defame Callidus.

47. Molyneux did not publish any statements about Callidus' conduct except in circumstances of absolute privilege or, in the alternative, in circumstances of qualified privilege.

48. Molyneux reasonably believed that the statements made involving Callidus' misconduct were true, or in the alternative, substantially true. This was known to Callidus and Catalyst.

49. Molyneux was not part of any short selling of Callidus stock. Molyneux did not purchase or sell any Callidus stock. This was known to Callidus and Catalyst and its principals, Newton Glassman, ("Glassman"), James Riley ("Riley") (a lawyer), David Reese, ("Reese") and Rocco DiPucchio ("DiPucchio") (a lawyer, formerly a partner with Lax O'Sullivan, Lisus, Gottlieb LLP ("Lax O'Sullivan") until August 7, 2018. He acted for Callidus). Lax, O'Sullivan were the former lawyers for Callidus and Catalyst before they removed themselves from the record of this action, on December 21, 2017, after the clandestine taping of a meeting with Black Cube employees or personnel, and a lawyer, the former Justice Frank Newbould, was reported in all the major newspapers in Canada, on November 24, 2017. Glassman, Riley, Reese, and DiPucchio were fully aware of all of the espionage activities they had instructed, contracted for and approved be carried out by Black Cube for Callidus and Catalyst. DiPucchio has been a full time employee at Callidus since the summer of 2018 and is the Chief Operating Officer and Managing Director).

50. The allegations in the Claim related to short selling Callidus stock, against Molyneux (which is the foundation of the damages claimed of \$450 million), is known by Callidus to be a fiction and designed to intimidate and manipulate.

51. Molyneux further pleads, based on information disclosed in the pleadings in this proceeding, that Callidus and Catalyst operate within an immoral corporate culture of deception, dishonesty, fraud and deceit, illusion, fantasy and manipulation and intimidation, disrespect for

and an abuse of the legal process and the administration of justice. Callidus is guided by advice from lawyers employed by Callidus, licensed to practice law in Ontario, which advice condones the use of unlawful, unethical and criminal conduct to attempt to have Callidus profit thereby irrespective of the effect of this conduct on the livelihood, privacy, and well-being of others. Callidus and Catalyst disregard and have no respect for the right to privacy.

52. Molyneux has never spoken with nor met with Baumann, Boland, Voorheis, Kassam, Spears, Puri, Cohodes, Regan, Kelly or Cameron Watson. Molyneux has never spoken with nor met with West Face officers or employees, or Anson officers or employees, or any reporters (Copeland, Livesey, and McNish) referred to in the Claim.

53. Molyneux became aware of the Whistleblower complaints in Ontario after they were submitted. Molyneux claims absolute privilege (or in the alternative qualified privilege) over any Whistleblower information and documentation and relies on the policy issued in that regard by the Ontario Securities Commission and the SEC in the USA all the particulars of which are known to Callidus and Catalyst.

54. Molyneux was aware of the complaint made to the Toronto Police Service before it was submitted. Molyneux was aware of the complaint made to the JSOT before it was submitted. Molyneux claims absolute privilege, or in the alternative, qualified privilege over any such information or documentation.

55. Molyneux did invest \$20,000.00 to assist with the Whistleblower complaint to the SEC. Molyneux did inform himself of the merits of that complaint prior to that complaint being filed and prior to agreeing to invest in this Whistleblower complaint. Molyneux claims confidentiality, and absolute privilege, or in the alternative, qualified privilege with regard to all information and

documentation in that regard. Molyneux relies on the policy of the SEC in the USA related to Whistleblower information and documentation, all the particulars of which are known to Callidus and Catalyst.

The Pleadings of other Defendants in this Proceeding

56. Molyneux adopts the facts pleaded by Clarity Spring and Anderson in paragraphs 4 to 24, 35 and 36 of their Statement of Defence.

57. Molyneux adopts the facts pleaded in paragraphs 30, 39, 40, 44, 45, 57, 58, 59, 60, 61, 62, 63, 80 and 81 in the Statement of Defence of Livesey.

58. Molyneux adopts the facts pleaded in the McFarlane Statement of Defence paragraphs 39 to 43.

59. Molyneux adopts as part of his pleading to demonstrate the conduct of Callidus as alleged paragraphs 86 to 89, 91 to 107, 109 to 112 and 120 to 123 of the pleading of Mr. Langstaff.

60. Molyneux adopts as part of this pleading and relies upon the facts pleaded in the defence and counterclaim of West Face and, in particular, paragraphs 26, 27, 28 and 29 and the facts as pleaded in the counterclaim of West Face to demonstrate the corporate culture of Callidus of dishonesty, deception, illusion, intimidation, fraudulent misrepresentation and disrespect for the legal process.

61. Molyneux adopts as part of his pleading the facts pleaded in the Statement of Defence of Levitt.

62. Specifically, Molyneux adopts all of these facts above in support of the pleading of the commercially immoral corporate culture of Callidus and Catalyst.

Defence to Conspiracy and Defamation

63. There was no agreement to injure. No steps were taken with the predominant purpose to harm Callidus or Catalyst. There is no common design to harm Callidus or Catalyst. Molyneux did not act in combination or in concert or by agreement with others for the predominant purpose of harming Callidus or Catalyst or in any way whatsoever.

64. Molyneux denies doing or saying anything that is defamatory of Callidus and Catalyst.

65. All statements made by Molyneux about Callidus were made in good faith, without malice and are Molyneux's honest and reasonable belief based on the information and documents available to him.

66. No publication against Molyneux referred to in the Claim is actionable, due to the applicability of absolute or qualified privilege.

67. In any event, any statements made by Molyneux were justified and true or substantially true and were fair comment they were also responsible communications on matters of public interest.

68. Callidus and Catalyst have not specified the words or statements made by Molyneux that are alleged to be defamatory. Further Callidus and Catalyst have failed to specify the meaning of any such words which, in any event, have not been pleaded.

69. The Claim contains no words or meanings to which Molyneux is required to respond to and, accordingly, the claim for defamation and the conspiracy to defame should be dismissed as against Molyneux.

70. Molyneux had no role in the publication of the Article.

Molyneux did not Breach the Securities Act

71. Molyneux did not violate sections 126.1 nor 126.2 of the *Securities Act* and has no knowledge that others might have done so.

72. In any event, there is no such statutory right of action.

No Other Torts Were Committed by Molyneux

73. Molyneux did not intentionally interfere with the economic relations of Callidus and Catalyst and did not deceive third parties and did not interfere with Callidus' and Catalyst's economic relations and did not commit any unlawful acts against any third parties.

74. Molyneux denies being in possession of, or of sharing, any confidential documents or any confidential information related to Callidus or Catalyst.

75. Molyneux did not share or circulate any non-public material information.

76. Molyneux denies liability for injurious falsehood with respect to Callidus and Catalyst.

The Financial Performance of Callidus and the Defence to the Damages Claims

77. Callidus has stated in public disclosures that its inability to achieve superior value for its shareholders of more than 75 cents per share, was caused by:

- (a) a decline in Callidus' operating and financial performance;
- (b) non-performing loans made by Callidus;
- (c) negative operating performance of its non-course subsidiaries;
- (d) senior personnel issues;
- (e) and increasing inability to retain personnel,

and not by any misconduct of Molyneux, all the particulars of which are known to Callidus and Catalyst and unknown to Molyneux. All the particulars of these facts are known to Callidus and Catalyst and unknown to Molyneux.

78. Callidus' and Catalyst's own financial disclosure, including but not limited to Callidus' management discussion and analysis prepared in conjunction with its most recent financial statements and other documents produced by Callidus and Catalyst in the public domain, reveal that Callidus has been or is in fact the subject of a continuous disclosure review by the OSC which has resulted in a negative restatement of its financial results. In addition, Callidus has suffered significant operating and credit losses arising from certain loans extended to Callidus' borrowers. All the particulars of these facts are known to Callidus and Catalyst and unknown to Molyneux.

79. The OSC has also taken steps to stop Callidus from reporting on earnings using "yield enhancements", which "creative" accounting characterization had the effect of artificially inflating

Callidus' reported earnings without any commercially reasonable basis. All the particulars of these facts are known to Callidus and Catalyst and unknown to Molyneux.

80. Molyneux pleads that any damage to the Callidus' reputation or to Callidus' share price was the direct result of the Callidus' poor business performance, its misconduct, and that of its officers, directors and employees.

81. Molyneux denies liability for damages as claimed by Callidus and Catalyst. In any event, the damages claimed are excessive and remote and not recoverable in law.

82. In the alternative, to the extent that Callidus and Catalyst have suffered any damages (which is expressly denied), such damages are the result of Callidus and Catalyst own conduct in business practices and not the result of any acts or admissions allegedly committed by Molyneux.

83. In any event, if Callidus and Catalyst have suffered any damages (which is expressly denied) they have failed to take any steps to mitigate those damages.

Defence to the Claim for an Accounting and Disgorgement of Profits and Unjust Enrichment

84. Callidus and Catalyst are not entitled to an accounting nor any disgorgement of profits as none were obtained by Molyneux.

85. Molyneux was not enriched in any way whatsoever.

Effect of the Anti-SLAPP Legislation

86. Molyneux submits that this action should be dismissed pursuant to section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, ch. 43. The stated purpose of section 137.1 is, among other things, to promote broad participation in debates on matters of public interest and to reduce the risk that participation by the public in debates and matters of public interest would be hampered by fear of legal action.

The Allegation of Funding for the Molyneux Defence of the Callidus Action

87. Molyneux never received any offer of funding of his defence in the Ontario Action brought by Callidus nor did he accept nor did he obtain any funding for the defence of the Ontario Action.

The Facts, (1) in Support of the Defence of Justification and (2) in Response to the Allegation that the Defence of Molyneux in the Ontario Action is Spurious and False and Comprised of False Allegations and that he Conspired to put Forth a False Defence

88. In 2015, Molyneux was involved in the negotiations with Callidus prior to the Overall Loan Agreement. Callidus knew that Molyneux was an investor.

89. Callidus initially represented to the Guarantors that it was an asset-based lender and did not require personal guarantees.

90. Callidus knew that Fortress and the Guarantors had obtained a loan commitment from Huntington National Bank to finance the purchase of the Mine Assets and for the working capital required to bring the Mine into operation.

91. Callidus knew that the Huntington National Bank commitment was less expensive but required the personal guarantees of Molyneux, Smith and Levitt.

92. Callidus agreed, in principle, to lend the funds required by Fortress and represented initially that there would be no need for personal guarantees of Molyneux, Smith and Levitt.

93. However, due to the urgent timing of the closing of the transaction for the purchase of the Mine Assets, Callidus did not have time to have its appraiser confirm the forced liquidation value ("FLV") of the Mine Assets being purchased.

94. As a result, Callidus, Molyneux, Levitt and Smith, Fortress and Opes agreed to a two stage loan (i) Phase I - \$11,350,000 to purchase the Mine Assets and for start-up working capital for a closing scheduled for September 5, 2014, (ii) thirty days later, a working capital loan (the Phase II Loan) of at least \$5 million, which would be provided for the operation of the Mine, and, (iii) that the working capital loan and the release of the guarantees would be interrelated and coordinated to occur at the same time. As a result, on closing on September 5, 2014, Callidus required and Smith, Molyneux and Levitt provided temporary guarantees.

95. Certain Conditions Precedent had to be satisfied for Fortress to obtain the working capital loan being advanced and the release of the Guarantees.

96. These were the material aspects of the Overall Loan Agreement set out in the September 3, 2014, term sheet (signed September 5, 2014 being the "Overall Loan Agreement").

97. The transaction for the purchase of the Mine Assets by Fortress closed on September 5, 2014. A loan agreement was entered into that flowed from the Overall Loan Agreement.

98. Fortress and the Guarantors had been working on the Conditions Precedent prior to the September 5, 2014 closing.

99. The Conditions Precedent included:

- (a) An equity injection or subordinated debt of \$2,000,000 to be advanced prior to the Phase II Loan:
 - (i) a corporation known as Big Sandy Company LP (“Big Sandy”), which owned land with coal in close proximity to the Fortress property, was willing to lend \$2 million to Fortress to assist in returning the Mine to an active, full production mine. Big Sandy would profit from royalties generated from the sale of the its mined, cleaned coal; and,
 - (ii) Callidus, Fortress and the Guarantors knew that Big Sandy was highly motivated to provide the further \$2 million in equity funding to satisfy this material Condition Precedent.

100. The other Conditions Precedent included:

- (a) Callidus had to obtain a report from its appraiser Hilco to confirm that the FLV determined by the Huntington National Bank appraiser (Darco Energy Management Corporation) of the equipment being purchased was accurate and acceptable to Callidus; and,
- (b) Callidus also wished to confirm the financial projections provided by Fortress and retained PriceWaterhouseCooper (“PWC”) to prepare a report in that regard.

101. Both the asset valuation by Hilco and the PWC report were delayed. This was the responsibility of, and under the control of, Callidus.

102. Callidus knew of the importance of the timely receipt of the working capital Phase II Loan so that the Mine could operate and generate income.

103. The timing is set out in the Overall Loan Agreement. This was to occur by October 6, 2014. Steps were taken to set up the Blocked Account system of Callidus over all of the cash of Fortress. This was required by Callidus before it would advance the Phase II Loan. It enabled Callidus to control the cash flow of Fortress.

104. By September 30, 2014, Callidus' counsel, Dickinson Wright, in Kentucky (Kristi Katsma ("Katsma")), had prepared the further loan agreement for the working capital (the amended and restated loan agreement was to be based on the Overall Loan Agreement). This amended and restated loan agreement amended the initial loan agreement by adding the Phase II Loan.

105. However, contrary to the Overall Loan Agreement and representations made by Callidus to the Guarantors, the draft amended and restated loan agreement did not provide for the intended and agreed to release of the Guarantees (even though it did provide for the anticipated advance of the working capital loan (the Phase II Loan)).

106. Callidus had no intention of releasing the Guarantees.

107. The facts that support this fraudulent misrepresentation include the following facts.

108. An internal memo of the officer of Callidus, Reeves dated September 4, 2014 stated that the Guarantees were to remain in place but at a reduced amount⁵

⁵ This was consistent with the representations made by counsel for Callidus, Katsma, when she wrote that the Guarantees would stay in place but would only guarantee the amount of the Permitted Liens (as defined in the loan agreement). As the Permitted Liens were eventually all paid; there was no amount to be guaranteed.

109. Callidus did not use its best efforts to satisfy, in a timely manner, the Conditions Precedent. Callidus took an excessive amount of time. This was the sole responsibility of Callidus and its agents to complete.

110. The lack of working capital (that Callidus had agreed to advance in a timely manner) was financially straining the Mine. Callidus knew that.

111. This also adversely affected the cash flow of the Mine. It affected the relationships with suppliers of services and customers. The Mine had been in bankruptcy and the market was watchful should signs of financial problems reappear. Callidus knew this.

112. Callidus received the Hilco appraisal on or about October 24, 2014. It indicated that Fortress was entitled to a further advance on the Phase I Loan of \$2,150,000.

113. By November 13, 2014, all parties knew that the Conditions Precedents were finally about to be satisfied. The PWC report was about to be received (and was received on November 18, 2014).

114. The only Condition Precedent that remained to be completed was the Big Sandy \$2 million loan as subordinated debt. The proposed loan agreement among Fortress, Callidus and Big Sandy was negotiated from prior to September 25, 2014.

115. However, Callidus was not cooperating in a timely manner to complete the proposed Big Sandy loan transaction.

116. Fortress and the Guarantors were finally able make arrangements to have a Callidus representative, Boyer attend a meeting in Lexington, Kentucky with the chair of Big Sandy, Chauncey Curtz at his office. Levitt, Molyneux and Smith also attended the meeting

117. This occurred on November 13, 2014.

118. Fortress, the Guarantors and Big Sandy wanted Callidus to approve the loan agreement that had been negotiated with Big Sandy, Fortress and Callidus over the fall, so that the \$2 million could be advanced, the working capital loan (Phase II Loan) put into place and the Guarantees released.

119. At that meeting, Callidus refused to approve the Big Sandy loan. Instead, Callidus represented (Boyer) that Callidus would advance the \$2 million at a lower interest rate than the rate offered by Big Sandy.

120. The Guarantors decided to take Callidus' offer. Levitt sent emails to Boyer on November 17, no response and again November 30, 2014 and again on December 10, 2014. Levitt advised that the less expensive funding from Callidus would be acceptable to Fortress.

121. Callidus delayed its response until December 10, 2014.

122. The reason for the delay was that Callidus was putting together its new plan, knowing it would result in a material misrepresentation of the initial statements about guarantees, made to the Guarantors. This plan was also contrary to the Overall Loan Agreement.

123. In a draft memo to the credit committee of Callidus on November 24, 2014, to carry out their fraud on Molyneux, Levitt and Smith, Callidus decided that they would represent they would

provide the \$2 million to Fortress (instead of Big Sandy) but delay payment to Fortress (and in fact never paid it). Callidus intended to keep the personal guarantees and also, later, to have the Big Sandy \$2 million invested as they knew Big Sandy was anxious to provide this funding so Big Sandy could receive royalties from the operating Mine.

124. This plan to manipulate the temporary guarantees into permanent guarantees was approved by the credit committee of Callidus on December 2, 2014.

125. The credit committee recorded as follows:

“There is risk in not proceeding, at this juncture, with the Big Sandy Investment. That risk is not only mitigated by its early results (stature yield), that over \$5 MM in excess equipment has been identified and will be sold (sale to occur by the middle of June – proceeds to be applied to Callidus debt but by the continuation of the personal guarantees which were to be released once the remaining \$2 MM investment was made cumulative net worth is \$10.5 MM) and our belief that the Big Sandy investment would always come later, if required.”

126. Fortress and the Guarantors were not told of this plan.

127. Instead, on December 10, 2014, after the lack of cash flow was financially destroying the Mine, Boyer finally responded to Levitt and stated:

“We waived the need for Fortress to put in the additional 2MM that was to come from Big Sandy. Not getting what else you are looking for...”

128. Callidus never did provide the \$2 million to replace Big Sandy’s anticipated loan. Callidus knew this was required by Fortress. Callidus intended to permanently adversely affect the cash flow of Fortress.

129. Callidus did provide the balance of the equipment loan (\$2,150,000 million) pursuant to the Overall Loan Agreement, as a result of the increased FLV appraised by Hilco. However those funds were not advanced by Callidus until December 5, 2014. There was no excuse for this delay.

130. However, even though Callidus had stated that they would waive the Big Sandy requirement, Callidus continued to delay the advance of the working capital loan (Phase II Loan).

131. Callidus also delayed the completion of the loan agreement that was required to include the Phase II Loan. This was also part of the Callidus manipulative business model.

132. The September 30 draft of the amended and restated loan agreement provided that the Guarantees were permanent:

“An unlimited guaranty of payment of the Loan granted by each of the Guarantors, jointly and severally.”

133. The drafting of the amended and restated loan agreement was finally continued on December 5, 2014, when Katsma again delivered the September 30, 2014 draft, which agreement provided that the Guarantees were to remain in place. The wording was the same as the September 30 draft agreement.

134. Fortress and the Guarantors objected. Callidus knew that Fortress and the Guarantors were cash starved and would have no alternative but to accept the new terms demanded by Callidus. Callidus maintained its position throughout December 2014.

135. On January 7, 2015 the lawyers for the Guarantors and Fortress drafted a clause for the release of the Guaranties. It provided:

“(b) Release of Personal Guarantees

The personal guarantees granted by Levitt, Smith and Molyneux pursuant to Paragraph 13(a)(ii), **shall** be released at the reasonable discretion of the lender, at such time as the borrower provides evidence satisfactory to lender of its receipt of cash proceeds as an additional equity infusion in the amount of no less than \$2 million.” [emphasis added]

136. Callidus refused.

137. As a result, on January 9, 2015 when the amended and restated loan agreement was finalized and signed, the guarantee clause now read as follows:

“(d) Release of Personal Guarantees

(e) The personal guarantees granted by Levitt, Smith and Molyneux pursuant to Paragraph 13(a)(iii), **may** be released, at the discretion of the lender, at such time that the borrower provides evidence satisfactory to lender of its receipt of cash proceeds as an additional equity infusion in the amount of no less than \$2 million.” [emphasis added]

138. As a result, the release of the Guarantees was now subject to a Condition Precedent that was not set out in the Overall Loan Agreement and was not discussed before, and was contrary to what was said by Callidus before September 5, 2014.

139. Even if Fortress obtained the \$2 million from Big Sandy, Callidus had a discretion to refuse to release the Guarantees.

140. There was no consideration provided by Callidus for this material change in the Overall Loan Agreement. This increased the value of the security provided to Callidus, which resulted in a material increase of the risk to the Guarantors in this loan transaction.

141. In substance, Callidus intentionally misrepresented that the temporary guarantees would be released on satisfaction of the Conditions Precedent set out in the Overall Loan Agreement and that that would all occur within thirty days, and thereafter, Callidus connived and manipulated the changes in the terms of the Overall Loan Agreement to maintain and keep the personal guarantees for no consideration and thereby defraud the Guarantors.

142. This corporate culture of deception, deceit, dishonesty and delay, manipulation and intimidation, while taking advantage of the financial crises engineered by Callidus, is part of Callidus' business plan, designed to give Callidus the power and the opportunity to purchase assets during a court ordered process at orchestrated and manipulated circumstances to decrease value.

143. All steps taken by Callidus in this loan relationship were designed to do this. Callidus created circumstances whereby Fortress had no alternative but to file for bankruptcy in order to attempt to save the Mine. Callidus knew this.

144. Furthermore, this plan of Callidus created the circumstances that permitted Callidus to have the opportunity to make a low credit bid for the Mine Assets. Callidus bid \$100,000.

145. However, the credit bid of Callidus was too low as it did not include the remediation of the Mine property and, as a result, Callidus was unsuccessful.

146. Callidus then sued in the Kentucky Action and the Ontario Action, on the former temporary guarantees, now fraudulently maintained and kept by Callidus.

147. Callidus, as part of its plan, also inflated the value of the assets in its public financial statements, in order to manipulate the price of its Callidus stock, thereby misleading the public.

Other Borrowers of Callidus - Similar Fact Evidence

148. Molyneux pleads that the basis of the allegation that Callidus had a corrupt, unlawful business plan, that it used against the borrowers that it induced, by misrepresentations, to borrow money from Callidus include the following:

- (a) Callidus would make representations that Callidus knew were not true or were made recklessly, not caring whether they were true or false, in order to induce a borrower to borrow from them including:
 - (i) Callidus was an asset-based lender and did not require personal guarantees; however for that reason, Callidus did charge higher interest rates;
 - (ii) if personal guarantees were required, they would be temporary and released when certain conditions were satisfied; and,
 - (iii) Callidus' role as a lender is to work with its customers, be flexible and to support the business of the borrower.

- (b) Contrary to its representations, Callidus would change its position, using last minute changes when the borrower has no alternative financing and no alternative but to accept the changes or lose the financing (and the borrower's business) including such matters as:

- (i) requiring guarantees, or changing temporary guarantees to permanent guarantees (for no consideration);
- (ii) changing contractual provisions to incorporate the discretion of Callidus as well as other onerous terms, to the detriment of the borrower, but to the benefit of Callidus;
- (iii) adding broad release language into the overall loan agreement to protect Callidus from its misconduct, including misrepresentations and breaches of its overall loan agreement;
- (iv) delay by dragging out the closing or completion of the overall loan agreement, so that the funding would become critical to the borrower and so that, in order to obtain the advance of the necessary funding from Callidus, Callidus could extract terms and conditions from the borrower to the benefit of Callidus and to the detriment of the borrower;
- (v) manipulating the borrower's circumstances in order to retain the personal guarantees while maintaining the high cost of the loan, including high interest rates and fees;
- (vi) manipulating the circumstances of the borrower by creating financial difficulty for the borrower, by delaying advances of funds, by not providing all funds to which the business is entitled pursuant to the overall loan agreement, knowing that this will place the business in financial jeopardy or in a position of default;

- (vii) using the credit committee as an excuse to delay decisions by Callidus and delay providing financing, thereby placing financial pressure on the borrower, when Callidus knew that the credit committee does not make the decisions, but rather they are made by Glassman;
- (viii) carrying out a “loan to own” strategy to connive or manipulate a default by the borrower so that bankruptcy or receivership proceedings occur and Callidus can then, as the only secured creditor, buy the assets at a deflated value using a credit bid in the court proceeding;
- (ix) Callidus then inflates the value of the assets to sell the assets in a non-arm’s length transaction, to support the market price of the Callidus stock sold to the public or sell the assets at a significant profit;
- (x) controlling access to the working capital of the borrower by either not providing the funds agreed to or delaying the advance of funds in a timely manner (as agreed with the borrower in the overall loan agreement), knowing that it will significantly adversely affect the working capital and the business relationship of the borrower with its suppliers, employees, customers and creditors; and,
- (xi) after the asset purchase, or attempted purchase by Callidus, at a shortfall, so that Callidus can sue on the guarantees.

149. As part of its business plan, Callidus obtains confidential information about the vulnerable elements of the business that Callidus can later misuse to exert financial pressure on the borrower,

to have the business and the guarantors succumb to Callidus' demands for increased security and contractual terms to the detriment of the borrower, to the benefit of Callidus.

150. Callidus deliberately interferes with the relationship with suppliers by not paying critical suppliers or prohibiting the business from paying critical suppliers in order to put financial pressure on the business and adversely interfere with the business relationships of the borrower.

151. Callidus will not permit payments to regulatory bodies for permits, required by law, governing the relevant industry sector of the business in order to effect the borrower's ability to carry on business.

152. In order to carry out this plan, Callidus and its officers, directors and employees, during negotiations and performance of the overall loan agreement, breach their duty of honest performance and fail to act in good faith. Callidus also fails to use its best efforts when required to perform steps in order to carry out the intent of the overall loan agreement, in order for Callidus to carry out their plan for a loan to own asset credit bid.

153. Some or all of this conduct is part of the commercially immoral business plan of Callidus that has come to light as a result of the McFarlane case in Ontario, the Baumann case in Alberta, the Duhamel case in Quebec and the Levy and Jaross case in the United States. There are other cases as may be determined after completion of examinations for discovery in this proceeding, all the particulars of which are known to Callidus and Catalyst and unknown to Molyneux.

154. Molyneux pleads the *Private Security and Investigative Act*, 2005, s.o. 2005, chapter 34, *Rules of Professional Conduct*, section 7.2-3 and 3.2-8 and the following sections of the *Criminal Code of Canada*, section 341, 366, 368, 368.1, 380, 402.1, 402.2(1), 403 and 465(1)(c) and (d), 21, 22, 22.2, 23, 467.1 and 467.11.

155. The defendant, Molyneux, asks that this action be dismissed with costs on a full indemnity basis, or in the alternative, on a substantial indemnity basis, or in the alternative on a partial indemnity basis.

Exceptional Circumstances

156. The Claim of Callidus and Catalyst as against Molyneux is based on speculation and conjecture.

157. Glassman, Riley, Reese and DiPucchio know that Molyneux was not involved in any short selling of the stock of Callidus and know that he did not profit in any way from the short selling of the stock in Callidus.

158. The conduct of Callidus and Catalyst is wrongful, heavy-handed, commercially immoral and illegal business practices all designed to intimidate Molyneux and others into silence about Callidus.

159. Callidus believed that its espionage tactics would not be discovered. It was only as a result of the fortuitous newspaper coverage in the USA that resulted in the discovery by West Face that the espionage and unlawful tactics used or directed or authorized by Callidus and Catalyst involving deceit, deception, dishonesty, illusion, fantasy, fraudulent misrepresentation and using and sending false documents and emails, and impersonating other or fictitious persons, all the

particulars of which are known to Callidus and catalyst and unknown to Molyneux. Callidus and Catalyst received legal advice that approved of this unlawful, unethical conduct and, as a result, chose to take that unlawful approach to attempt to intimidate and manipulate the individuals and manufacture “evidence”. Callidus and Catalyst attempted to obtain this information from those individuals. Callidus used false or forged and fictitious documents with the assistance of Black Cube employees and personnel, all the particulars of which, including all agreements to carry out these espionage tactics, are known to Callidus and Catalyst and unknown to Molyneux. Callidus and Catalyst intended to use this information it was conniving to obtain, knowing that it had no factual or legal basis, against Molyneux and others. The attempt to intentionally (and successfully) obtain solicitor client privileged information, as pleaded by West Face, is egregious as is the clandestine taping of lawyers, including a former judge. All the particulars of this are known to Callidus and Catalyst including employees who are also lawyers, and unknown to Molyneux.

October 31, 2019

SOLMON ROTHBART GOODMAN LLP
Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC# 16156J)
msolmon@srglegal.com
Tel: 416-947-1093 (Ext. 333)
Fax: 416-947-0079

Lawyers for the defendant,
Richard Molyneux

TO: **MOORE BARRISTERS**
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, Ontario
M5G 1E6

David C. Moore (LSO# 16996)
david@moorebarristers.ca

Kenneth Jones (LSO# 29918I)
kenjones@moorebarristers.ca

Tel: 416-581-1818 ext. 222
Fax: 416-581-1279

GOWLINGS WLG LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

John E. Callaghan
John.callaghan@gowlingswlg.ca
Benjamin Na
Benjamin.na@gowlingswlg.ca
Matthew Karabus
Matthew.karabus@gowlingswlg.ca

Tel: 416-862-7525
Fax: 416-862-7661

Lawyers for the plaintiffs

AND TO: **MCCARTHY, TÉTRAULT LLP**
Barristers and Solicitors
TD Bank Tower
66 Wellington Street West
Suite 5300
Toronto, Ontario
M5K 1E6

R. Paul Steep (LSO# 21869L)
Tel: 416-601-7998
Fax: 416-868-0673
psteep@mccarthy.ca
Daniel Goudge (LSO# 69632J)
Tel: 416-601-7598
Fax: 416-868-0673
dgoudge@mccarthy.ca

Lawyers for the defendant,
George Wesley Voorheis

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
40th Floor - 155 Wellington Street West
Toronto, Ontario
M5V 3J7

Kent E. Thompson (LSO# 24264J)
Tel: 416-863-0871
kthompson@dwpv.com

Matthew Milne-Smith (LSO# 44266P)
mmilne-smith@dwpv.com
Tel: 416-863-5595

Andrew Carlson (LSO# 58850N)
acarlson@dwpv.com

Tel: 416-863-0900
Fax: 416-863-0871

Lawyers for the defendants,
West Face Capital Inc. and Gregory Boland

AND TO: **TORYS LLP**
Barristers and Solicitors
79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto, Ontario
M5K 1N2

Linda M. Plumpton
Tel: 416-865-8193
Fax: 416-865-7380
lplumpton@torys.com

Andrew Bernstein
Tel: 416-865-7678
Fax: 416-865-7380
abernstein@torys.com

Lawyers for the defendants,
MSV Advisors Inc., c.o.b. as ANSON GROUP CANADA, Admiralty Advisors
LLC, Frigate Ventures 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: **MILBURN & ASSOCIATES**
Barristers & Solicitors
20 Toronto Street
Suite 860
Toronto, Ontario
M5C 2B8

A. Jane Milburn
Tel: 647-728-8081
Fax: 647-689-2983
jmilburn@milburnlaw.ca

Lawyers for the defendant,
Bruce Langstaff

AND TO: **ST. LAWRENCE BARRISTERS LLP**
144 King Street East
Toronto, Ontario
M5C 1G8

Phil Tunley
phil.tunley@stlbarristers.ca
Tel: 647-245-8282
Fax: 647-245-8285

Lawyers for the defendant,
Rob Copeland

AND TO: **LERNERS LLP**
Barristers & Solicitors
130 Adelaide Street West
Suite 2400, Box 95
Toronto, Ontario
M5H 3P5

Lucas E. Lung (LSO# 52595C)
Tel: 416-601-2673
Fax: 416-601-4192
llung@lernalers.ca

Rebecca Shoom
rshoom@lernalers.ca

Lawyers for the defendants,
ClaritySpring Inc. and Nathan Anderson

AND TO: **MILBURN & ASSOCIATES**
20 Toronto Street
Suite 860
Toronto, Ontario
M5C 2B8

A. Jane Milburn (LSO# 39199U)
jmilburn@milburnlaw.ca
Tel: 416-943-4668

Devin M. Jarcaig (LSO# 62223U)
djarcaig@milburnlaw.ca
Tel: 416-238-7865
Fax: 416-943-1484

Lawyers for the defendant,
Bruce Langstaff

AND TO: **HUNT PARTNERS LLP**
1404 - 21 Balmuto Street
Toronto, Ontario
M4Y 1W4

Andrew Burns (LSO# 345912W)
aburns@huntlegal.com
Tel: 416-943-4668
Fax: 416-943-1484

Lawyers for the defendant,
Kevin Baumann

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

Symon Zucker
sz@bondlaw.net
Tel: 416-863-9955
Fax: 1-855-696-5441

Lawyers for the defendant, Darryl Levitt

AND TO: **JEFFREY MCFARLANE**
220 Dominion Drive
Ste B
Morrisville, North Carolina
27560

defendant

AND TO: **BEN J. HAHN (LSO# 64412J)**
Barrister & Solicitor
31 Elm Street
Bloomsbury Law Chambers
Toronto, Ontario M5G 1H1
ben@

Lawyer for the defendant,
Gerald Duhamel

AND TO: **CRAWLEY MACKEWN BRUSH LLP**
Barristers and Solicitors
179 John Street
Suite 800
Toronto, Ontario
M5T 1X4

Robert Brush (LSO# 40373N)
Tel: 416-217-0822
Fax: 416-217-0220
rbrush@cmlaw.ca
Clarke Tedesco (LSO# 55391C)
Tel: 416-217-0884
Fax: 416-217-0220
ctedesco@cmlaw.ca

Lawyers for the third party

AND TO: **A. DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION**
360, Rue St. Jaques, Suite G101
Montreal, QC H2Y 1P5
A. Dimitri Lascaris (LSO# 50074A)
Tel: 514-941-5991
Fax: 514-941-5991

Lawyer for the defendasant,
Bruce J. Livesey

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

SOLMON ROTHBART GOODMAN LLP

Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC# 16156J)
msolmon@srglegal.com
Tel: 416-947-1093 (Ext. 333)
Fax: 416-947-0079

Lawyers for the defendant,
Richard Molyneux

File Number: 17983

RCP-E 4C (May 1, 2016)

SCHEDULE "C"

Court File No. CV-16-544639

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CALLIDUS CAPITAL CORPORATION

Plaintiff/
Defendant to the Counterclaim

and

OPES RESOURCES INC., RICHARD GEORGE MOLYNEUX
and DARRYL LEVITT

Defendants/
Plaintiffs by Counterclaim

NOTICE OF MOTION

The Plaintiff, Callidus Capital Corporation (“Callidus”) will make a Motion to a Judge on * at 10:00 a.m., or as soon after that time as the Motion can be heard, at the Courthouse at 393 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

- (a) If necessary, an Order abridging the time for service and filing, and validating the service of this Notice of Motion and Motion Record;
- (b) Summary Judgment for payment by the Defendants of the amount of \$19,512,339.95 (USD), together with interest thereon from December 11, 2015 to the date of payment at the rate of 21% per annum;

- (c) Summary Judgment dismissing the Counterclaim;
- (d) Costs of this Motion and of this action, 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) Pursuant to separate written guarantees each dated September 5, 2014 (the “Guarantees”), the Defendants are indebted to the Plaintiff in the principal amount of \$19,512,339.95 (USD), plus interest at 21% per annum from December 11, 2015 to the date of payment, and costs;
- (b) The Plaintiff demanded payment from the Defendants pursuant to the Guarantees on December 17, 2015, and no payment has been received;
- (c) The Statement of Defence fails to raise any genuine issues requiring a trial;
- (d) Rules 3.02, 20 and 60.10 of the Rules of Civil Procedure; and
- (e) 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) The Affidavit of * to be sworn;
- (b) The Statement of Claim dated January 18, 2016;

-3-

- (c) The Statement of Defence and Counterclaim dated July 13, 2016;
- (d) The Reply and Defence to Counterclaim dated July 25, 2016; and
- (e) Such further and other material as counsel may advise and this Honourable Court permit

Dated: October *, 2016

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
Fax: (416) 865-1398
Email: jleslie@dickinsonwright.com

LISA S. CORNE (27974M)
Tel: (416) 646-4608
Fax: (416) 865-1398
Email: lcorne@dickinsonwright.com

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)
Tel: (416) 863-9955 ext. 245
Fax: 1(855) 696-5411
Email: sz@bondlaw.net

Lawyers for the Defendants/Plaintiff by Counterclaim

CALLIDUS CAPITAL CORPORATION
Plaintiff/Defendant to the Counterclaim

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

Court File No. CV-16-544639

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

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)
Tel: (416) 646-3801
Fax: (416) 865-1398
Email: jleslie@dickinsonwright.com

LISA S. CORNE (27974M)
Tel: (416) 646-4608
Fax: (416) 865-1398
Email: lcorne@dickinsonwright.com

Lawyers for the Plaintiff/Defendant to the Counterclaim

TORONTO 57558-34 1207399v2

CALLIDUS CAPITAL CORPORATION
Plaintiff
RICHARD GEORGE MOLYNEUX
Plaintiff by Counterclaim

-and-
-and-

DARRYL LEVITT et al.
Defendants
CALLIDUS CAPITAL CORPORATION et al.
Defendants to the Counterclaim

Court File No. CV-17-11712-00CL / CV-17-587463-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

FRESH FRESH AS AMENDED NOTICE OF MOTION

SOLMON ROTHBART GOODMAN LLP

Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Melvyn L. Solmon (LSUC# 16156J)
msolmon@srglegal.com
Tel: 416-947-1093 (Ext. 333)
Fax: 416-947-0079

Lawyers for the defendant/plaintiff by counterclaim
Richard George Molyneux

File Number: 17683

RCP-E 4C (May 1, 2016)