

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and
CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK
CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**MOTION RECORD OF THE DEFENDANTS,
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(RE: CATALYST'S REFUSALS
RETURNABLE DECEMBER 15, 2020)
VOLUME 1 OF 4**

November 17, 2020

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO# 24264J)

416.863.5566

kentthomson@dwpv.com

Matthew Milne-Smith (LSO# 44266P)

416.863.5595

mmilne-smith@dwpv.com

Andrew Carlson (LSO# 58850N)

416.367.7437

acarlson@dwpv.com

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by
Counterclaim), West Face Capital Inc. and
Gregory Boland

TO: GOWLING WLG (CANADA) LLP

1 First Canadian Place
1600-100 King Street West
Toronto ON M5X 1G5

Richard G. Dearden

Email: richard.dearden@gowlingwlg.com
Tel: 613.786.0135

John Callaghan

Email: john.callaghan@gowlingwlg.com
Tel: 416.369.6693

Benjamin Na

Email: benjamin.na@gowlingwlg.com
Tel: 416.862.4455

Matthew Karabus

Email: matthew.karabus@gowlingwlg.com
Tel: 416.369.6181

Fax: 416.862.7661

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: MOORE BARRISTERS

Suite 1600
393 University Avenue
Toronto ON M5G 1E6

David C. Moore

Email: david@moorebarristers.ca
Tel: 416.581.1818 ext. 222

Ken Jones

Email: kenjones@moorebarristers.ca
Tel: 416.581.1818 ext. 224

Fax: 416.581.1279

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: TORYS LLP
79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto ON M5K 1N2

Linda M. Plumpton
Email: lplumpton@torys.com
Tel: 416.865.8193

Leora Jackson
Email: ljackson@torys.com
Tel: 416.865.7547

Stacey Reisman
Email: sreisman@torys.com
Tel: 416.865.7537

Fax: 416.865.7380

Lawyers for the Defendants, M5V Advisors Inc. c.o.b. Anson Group Canada, Admiralty Advisors LLC, Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, ACF GP, Moez Kassam, Adam Spears and Sunny Puri

AND TO: LERNERS LLP
130 Adelaide Street West
Suite 2400
Toronto ON M5H 3P5

Lucas E. Lung
Email: llung@lerner.ca
Tel: 416.601.2673

Rebecca Shoom
Email: rshoom@lerner.ca
Tel: 416.601.2382

Fax: 416.867.9192

Lawyers for the Defendants, Clarityspring Inc. and Nathan Anderson

AND TO: MATHERS MCHENRY & CO.
161 Bay Street, Suite 2700
Toronto ON MSJ 2S1

Devin Jarcaig
Email : devin@mathersmchenryandco.com
Tel: 416.572.2147

Fax: 647.660.8119

Lawyers for the Defendant, Bruce Langstaff

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

Phil Tunley
Email: Phil.Tunley@Stlbarristers.ca
Tel: 647.245.8282

Jennifer Saville
Email: jennifer.saville@stlbarristers.ca
Tel: 647.245.2222

Alexi Wood
Email: alexi.wood@stlbarristers.ca
Tel: 647.245.8283

Fax: 647.245.8285

Lawyers for the Defendant, Rob Copeland

AND TO: KEVIN BAUMANN
Email:pekiskokb@gmail.com
Tel: 403.505.7784

Defendant

AND TO: JEFFREY MCFARLANE
220 Dominion Drive
Suite B
Morrisville NC 27560
Email: jmcfarlane@triathloncc.com

Defendant

AND TO: DARRYL LEVITT
Suite 100
400 Applewood Cres.
Vaughan ON L4K 0C3

Email: darryl@dlevittassociates.com
Tel: 416.879.6965

Defendant

AND TO: SOLMON ROTHBART GOODMAN LLP
701-375 University Avenue
Toronto ON M5G 2J5

Melvyn L. Solmon
Email: msolmon@srglegal.com
Tel: 416.947.1093

Nancy Tourgis
Email: ntourgis@srglegal.com
Tel: 416.947.1093

Fax: 416.947.0079

Lawyers for the Defendant, Richard Molyneux

AND TO: WHITTEN & LUBLIN
Suite 1100
141 Adelaide Street West
Toronto ON M5H 3L5

Ben J. Hahn
Email: ben@whittenlublin.com
Tel: 647.494.9445

Fax: 416.644.5198

Lawyers for the Defendant, Gerald Duhamel

AND TO: INVOP LTD. D/B/A/ PSY GROUP
ID 58615667
7 Menahem Begin Str., (12 Floor)
Ramat Gan 5268102

Defendant to the Counterclaim

AND TO: MCCARTHY, TÉTRAULT LLP
TD Bank Tower
5300-66 Wellington Street West
Toronto ON M5K 1E6

R. Paul Steep
Email: pstEEP@mccarthy.ca
Tel: 416.601.7998

Erin Chesney
Email: echesney@mccarthy.ca
Tel: 416.601.8215

Fax: 416.868.0673

Lawyers for the Defendant, George Wesley Voorheis

AND TO: A. DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION
G101-360 Rue Saint-Jacques
Montreal QC H2Y 1P5

A. Dimitri Lascaris
Email: alexander.lascaris@gmail.com
Tel: 514.941.5991

Fax: 519.660.7845

Lawyers for the Defendant, Bruce Livesey

AND TO: MACKENZIE BARRISTERS
120 Adelaide Street West
Suite 2100
Toronto ON M5H 1T1

Gavin MacKenzie
Email: gavin@mackenziebarristers.com
Tel: 416.304.9293

Brooke MacKenzie
Tel: 416.304.9294
Email: brooke@mackenziebarristers.com

Fax: 416.304.9296

Lawyers for the Defendant to the Counterclaim, Virginia Jamieson

AND TO: EMMANUEL ROSEN
ID No. 56548456
26 Shaar Ha'amakim Street
Hod Hasaron Merkus 4500

Defendant to the Counterclaim

AND TO: ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830
Toronto ON M5J 2N7

John Adair
Email: jadair@agbllp.com
Tel: 416.941.5858

Michael Darcy
Email: mdarcy@agbllp.com
Tel: 416.583.2392

Fax: 647.689.2059

Lawyers for the Defendants to the Counterclaim, B.C. Strategy Ltd. d/b/a
Black Cube and B.C. Strategy UK Ltd. d/b/a Black Cube

AND TO: CRAWLEY MACKEWN BRUSH LLP
179 John Street
Suite 800
Toronto ON M5T 1X4

Robert Brush
Email: rbrush@cmblaw.ca
Tel: 416.217.0822

Clarke Tedesco
Email: ctedesco@cmblaw.ca
Tel: 416.217.0884

Lawyers for the Third Party, Canaccord Genuity Corp.

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

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Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

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THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
Defendants to the Counterclaim

**NOTICE OF MOTION OF
WEST FACE CAPITAL INC. AND GREGORY BOLAND AND**

**(RE: CATALYST'S REFUSALS
RETURNABLE DECEMBER 16, 2020)**

The Defendants (Plaintiffs by Counterclaim), West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**"), will bring a refusals motion to The Honourable Justice McEwen on December 16, 2020 at 10:00 a.m., or as soon after that time as it can be heard, by Zoom videoconferencing facility or as otherwise directed by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard:

in writing under subrule 37.12.1(1);

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

orally.

THE MOTION IS FOR:

- (a) An Order compelling James Riley ("**Riley**") to re-attend, on or before a date to be fixed by the Court, to be cross-examined on his Affidavit dated December 5, 2019, his two Affidavits dated May 29, 2020, and his Affidavit dated August 20, 2020, and to answer any and all proper questions relevant

to the pending Anti-SLAPP Motions (as defined below), including but not limited to the questions that were refused and/or taken under-advisement during his cross-examination by counsel to West Face and Boland on Monday, October 26, 2020 and Tuesday, October 27, 2020, as set out in the Undertakings and Refusals Chart appended hereto as **Appendix “A”**;

- (b) Declarations and associated Directions and Production Orders confirming that no sustainable claim of litigation privilege, solicitor-client privilege, or other privilege that may be asserted by any one or more of The Catalyst Capital Group Inc. (“**Catalyst**”), Callidus Capital Corporation (“**Callidus**”), Newton Glassman (“**Glassman**”), Gabriel De Alba (“**De Alba**”), and Riley (collectively, the “**Catalyst Parties**”) applies to the following categories of relevant documents:
- (i) **Category 1:** Communications with or involving external media contacts, public relations and/or industrial relations agencies, and/or other reputation management firms,¹ including communications with or involving:
- (A) Dan Gagnier (“**Gagnier**”) and/or the “strategic public relations and industrial relations agency” known as Gagnier Communications;

¹ In all cases, including any of their respective directors, officers, employees, representatives, agents, or contractors.

- (B) the “strategic design and production agency” known as Haystack Needle (“**Haystack Needle**”) and/or the search engine optimization (“**SEO**”) and reputation management business known as Haystack Reputation (“**Haystack Reputation**”, and together with Haystack Needle, “**Haystack**”); and
- (C) any other person or organization where the communication was for the purpose of adversely impacting the public perception of West Face and/or Boland, or favourably impacting the public perception of any of the Catalyst Parties;
- (ii) **Category 2:** Communications with or involving investment research firm Due Diligence Consulting LLC (“**DDC**”);
- (iii) **Category 3:** Communications with or involving Marc Cohodes, a U.S.-based private investor, and Derrick Snowdy, a private investigator; and
- (iv) **Category 4:** Documents relating to the Catalyst Parties’ investigations into and due diligence concerning the allegations made in the email received by Glassman on August 11, 2017 from “Vincent Hanna”, including their communications with or involving any potential author of the “Vincent Hanna” email, including without limitation Danny Guy and/or Danny Guy’s counsel, John Kingman Phillips;

- (v) **Category 5:** The “Strategic Review & Remediation Plan” that was authored and delivered to Callidus’s Board of Directors by Callidus’s consultant and Interim Chief Executive Officer Patrick Dalton, as set out in Callidus’s Management’s Discussion & Analysis for the year ended December 31, 2018 (the “**Dalton Report**”) as well as other reports, documents, or communications authored by Dalton;
- (vi) **Category 6:** Communications with or involving: (i) Canadian securities regulators, including the Ontario Securities Commission (the “**OSC**”); (ii) the U.S. Securities and Exchange Commission (the “**SEC**”); (iii) Toronto Police Services; and/or (iv) any other law enforcement agency;
- (c) An Order that the Catalyst Parties deliver further and better Affidavits of Documents, including further and better Schedule Bs setting out not merely the dates of the documents listed thereon, but other particulars sufficient to identify the documents as required by Form 30A of the *Rules of Civil Procedure* and the Sedona Canada Principles;
- (d) The costs of this motion; and
- (e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (f) This is the fourth action that one or more of the Catalyst Parties have commenced against West Face.

- (i) Two of the Catalyst Parties' prior actions against West Face concerned West Face's acquisition of WIND Mobile ("**WIND**") in 2014 after Catalyst had failed in its efforts to acquire WIND. The first WIND-related action was dismissed by Justice Newbould after a full trial in June 2016, and the second such action was dismissed by Justice Hainey as an abuse of process in April 2018 on a motion by West Face.
- (ii) Catalyst unsuccessfully appealed both WIND-related actions to the Court of Appeal for Ontario, and unsuccessfully sought leave to appeal to the Supreme Court of Canada. Catalyst's last leave application in this regard was dismissed on November 14, 2019.
- (iii) The Catalyst Parties' third action against West Face was commenced in June 2015 and alleges that West Face and another party had conspired to defame Callidus in the period from November 2014 to April 2015. Callidus has taken no material steps to advance that action since it was commenced;
- (g) The main action in this proceeding (*i.e.*, the Catalyst Parties' fourth lawsuit against West Face) alleges that West Face and Boland conspired with the other defendants to: (i) file false whistleblower complaints with the Ontario Securities Commission and Toronto Police Services about Callidus; (ii) otherwise spread false rumours about Callidus; (iii) publish a false article about Callidus in the *Wall Street Journal*; and (iv) short-sell the shares of

Callidus and then profit from their decline in value as a result of the pleaded actions. West Face and Boland have categorically denied all of these allegations;

- (h) West Face and Boland have asserted a Counterclaim against the Catalyst Parties alleging that they conspired to: (i) retain the Counterclaim Defendants B.C. Strategy Ltd. and B.C. Strategy UK Ltd. (collectively, “**Black Cube**”) to conduct unlawful “stings” against various current and former employees of West Face and Justice Newbould; (ii) retain the Counterclaim Defendants Invop Ltd. doing business as Psy Group (“**Psy Group**”) and Emmanuel Rosen (“**Rosen**”) to publicize the fruits of the “stings” in the traditional media; (iii) disseminate false and defamatory stories about West Face and Boland on the internet that were consistent with the false allegations made by the Catalyst Parties against West Face and Boland in the main action; and (iv) publish various press releases and investor letters that were consistent with the false allegations made by the Catalyst Parties against West Face on the internet and in the main action, that relied on the fruits of the stings by Black Cube, and that were also false and defamatory of West Face and Boland;
- (i) West Face and Boland have brought a motion to dismiss the main action as against them under section 137.1 of the *Courts of Justice Act* (the “**CJA**”) on the basis that it is a “strategic lawsuit against public participation” (a “**SLAPP**”) with no merit (“**West Face’s Anti-SLAPP Motion**”);

- (j) Various other Defendants to the main action have also brought anti-SLAPP motions to dismiss the proceeding as against them;
- (k) The Catalyst Parties have brought an anti-SLAPP motion to strike out narrow portions of West Face's and Boland's Counterclaim (the "**Catalyst Parties' Partial Anti-SLAPP Motion**");
- (l) All of the various Anti-SLAPP Motions have been pending since the Fall of 2019 and are scheduled to be heard together by Justice McEwen over a week-long hearing in early March 2021;
- (m) On December 31, 2019, after all of the Anti-SLAPP Motions had been initiated, the parties to these proceedings exchanged their sworn Affidavits of Documents and documentary productions, pursuant to directions made by Justice Hainey;
- (n) In Schedule B to the Affidavit of Documents delivered by Catalyst and Callidus in respect of the Counterclaim, Catalyst and Callidus asserted privilege over virtually every document in their possession concerning Black Cube. The Catalyst Parties also asserted privilege over all but two documents in the possession of Black Cube, and required Black Cube to list all of those allegedly privileged documents in its Schedule B;
- (o) The Catalyst Parties' extensive claims of privilege over Black Cube-related documents, as well as its claims of privilege over certain documents in West Face's possession relating to Psy Group, are being adjudicated in a

separate motion by West Face scheduled to be heard by Justice Boswell on December 1 to 3, 2020, prior to the hearing of this motion;

- (p) On Tuesday, October 13, 2020 – less than two weeks before the commencement of cross-examinations in the various pending Anti-SLAPP Motions – Catalyst and Callidus (but not Glassman, De Alba, or Riley) delivered a Supplemental Schedule B in respect of the main action (the **“Plaintiffs’ Supplemental Schedule B”**) disclosing for the first time 554 additional relevant documents over which Catalyst and Callidus are asserting privilege;
- (q) It was only as a result of the Plaintiffs’ delivery of the Supplemental Schedule B that West Face and Boland first learned that the Plaintiffs were asserting privilege over hundreds of relevant communications and other documents that do not relate to Black Cube, and which are the subject of this motion;
- (r) Riley is Catalyst’s former Chief Operating Officer and a former officer and director of Callidus. He is the Catalyst Parties’ sole fact Affiant in respect of the various pending Anti-SLAPP Motions that have been brought against and by the Catalyst Parties;
- (s) On Monday, October 26, 2020 and Tuesday, October 27, 2020, counsel to West Face cross-examined Riley on the various Affidavits he has sworn in respect of the various pending Anti-SLAPP Motions;

- (t) During Riley's cross-examination, the Catalyst Parties improperly refused to answer questions relevant to West Face's Anti-SLAPP Motion and the Catalyst Parties' Partial Anti-SLAPP Motion, including on the basis that Riley's cross-examination was not "the time and place to ask questions about privilege, the grounds of privilege and facts relating to privilege";²
- (u) To be clear, the Catalyst Parties did not merely refuse to answer questions that would purportedly invade an alleged privilege asserted by them. They also refused to answer any questions relevant to the grounds or factual basis of the privilege being asserted;
- (v) The onus to establish that a privilege exists lies with the party asserting the privilege. The Catalyst Parties have not and cannot meet this significant burden and have in fact refused to even explain the basis for the claims of privilege;
- (w) No sustainable claim of litigation privilege, solicitor-client privilege, or other privilege exists over the following categories of documents or information;

A. CATEGORY 1: NO PRIVILEGE OVER THE CATALYST PARTIES' EFFORTS TO MANAGE THEIR PUBLIC REPUTATIONS

- (x) Gagnier Communications is a strategic public relations agency based in New York City. Dan Gagnier is a Managing Partner;

² Cross-examination of James Riley held Monday, October 26, 2020, p. 12, lines 10-22.

- (y) Gagnier is Catalyst's longstanding external public relations consultant and media contact. Riley confirmed during his cross-examination that Gagnier performs "investor relation type services and press coordination" for Catalyst, and that he does not perform a legal role;³
- (z) The Catalyst Parties have already disclosed and produced to West Face numerous emails to/from/cc'ing Gagnier, including: (i) dozens of emails to/from/cc'ing Gagnier and the Catalyst Parties that do not involve any other parties external to the Catalyst Parties; and (ii) dozens of emails to/from/cc'ing Gagnier and parties external to the Catalyst Parties, including journalists;
- (aa) Haystack Needle is a "strategic design and production agency" based in New York City. According to its public website, it "supports leaders in marketing, corporate communications, crisis communications and investor relations by creating brands, events, websites, videos, apps, presentations and photography, alongside social strategy, content management, digital reputation and print campaigns";
- (bb) Haystack Reputation is a search engine optimization ("**SEO**") and reputation management business that is affiliated with Haystack Needle and also based in New York City;

³ Cross-examination of James Riley held Monday, October 26, 2020, p. 11, qq. 10-14, lines 4-22.

- (cc) The Plaintiffs' Supplemental Schedule B lists 39 emails to/from/cc'ing Gagnier, and claims both solicitor-client privilege and litigation privilege over every one of them (and their attachments). Many of these 39 emails are entirely external to the Catalyst Parties and/or their counsel (that is, many of these emails were not sent or received by or copied to any of the Catalyst Parties or their counsel);
- (dd) The Plaintiffs' Supplemental Schedule B lists 13 emails to/from/cc'ing executives of Haystack, and claims both solicitor-client privilege and litigation privilege over every one of them (and their attachments). Not a single one of these 13 emails was sent or copied to any of the Catalyst Parties or their counsel. Every one of these 13 emails was to or from Gagnier (these 13 emails involving Haystack personnel are a subset of the 39 emails involving Gagnier referred to in the preceding paragraph);
- (ee) There is no evidence to support a claim of privilege over any of these documents;

B. CATEGORY 2: NO PRIVILEGE OVER COMMUNICATIONS WITH OR INVOLVING DUE DILIGENCE CONSULTING

- (ff) Due Diligence Consulting LLC ("**DDC**") advertises itself as "a boutique consulting firm that specializes in comprehensive, detailed executive background checks and investment research";
- (gg) The Plaintiffs' Supplemental Schedule B lists 66 emails to/from/cc'ing DDC personnel referred to above, and claims either solicitor-client privilege alone

or solicitor-client and litigation privilege over these emails (and their attachments). Many of these 66 emails were not even copied to the Catalyst Parties or their counsel. For example, many were solely between or among DDC personnel and Gagnier;

(hh) There is no evidence to support a claim of privilege over these documents;

C. CATEGORY 3: NO PRIVILEGE OVER COMMUNICATIONS WITH OR INVOLVING DERRICK SNOWDY AND/OR MARC COHODES

(ii) Derrick Snowdy is a private investigator. There is no evidence that he was ever retained by the Catalyst Parties;

(jj) Marc Cohodes is a prominent U.S.-based investor and short-seller. He is also not an agent of the Catalyst Parties (and indeed the Catalyst Parties have produced documents indicating that he is adverse in interest to the Catalyst Parties;

(kk) The Plaintiffs' Supplemental Schedule B lists seven emails to/from/cc'ing Snowdy and/or Cohodes, and claims solicitor-client privilege over every one of these emails (and their attachments). Five of these seven emails are between Riley and Snowdy. Another is from Cohodes to Snowdy, and another is from Cohodes to Snowdy and Adam Spears (a Defendant to the main action);

(ll) There is no evidence to support a claim of privilege over these documents;

D. CATEGORY 4: NO PRIVILEGE OVER COMMUNICATIONS WITH OR INVOLVING VINCENT HANNA, DANNY GUY, AND/OR JOHN KINGMAN PHILLIPS

(mm) On August 9, 2017, the *Wall Street Journal* published an article titled: “Canadian Private-Equity Giant Accused by Whistleblowers of Fraud” (the “**WSJ Article**”), which reported that Callidus was the subject of whistleblower complaints made to, and inquiries by, the Ontario Securities Commission and Toronto Police Services (West Face and Boland have delivered sworn evidence that they had nothing to do with the publication of this article);

(nn) On August 14, 2017, Catalyst sent a letter to investors of its funds (the “**First Investor Letter**”) that included the following statement:

As a brief update on the West Face and Wind litigation, new facts helpful to the case have been discovered. These relate not only to their stand-alone behaviour **but also to possible interference and market manipulation involving West Face and others in Callidus.** (emphasis added)

(oo) West Face alleges in its Counterclaim that the above-quoted statement was false and defamatory, including because it accused West Face of market manipulation;

(pp) The Catalyst Parties’ Partial Anti-SLAPP Motion seeks to strike out the portions of West Face’s Counterclaim relating to First Investor Letter, on the basis that it was a legitimate and bona fide expression on a matter of public interest;

- (qq) In support of the Catalyst Parties' Partial Anti-SLAPP Motion, Riley attached to his Affidavit of December 5, 2019 an email that Glassman allegedly received from someone named "Vincent Hanna" on August 11, 2017;
- (rr) "Vincent Hanna" is not a real person. It was the name of Al Pacino's character in the movie "Heat";
- (ss) According to the "Vincent Hanna" email, West Face and Boland were part of a "cabal" of companies and individuals (including Marc Cohodes, referenced above) engaged in illegal stock manipulation, whose goal was to "bring down" Callidus and Glassman by "acting in concert to short" Callidus's stock. The email suggested the WSJ Article was published in connection with this conspiracy;
- (tt) Riley states in his December 5, 2019 Affidavit that upon Glassman's receipt of the "Vincent Hanna" email, Catalyst had a fiduciary obligation to "inform" their investors of West Face's alleged stock manipulation;
- (uu) Riley further explained in his responding Affidavits of May 29, 2020 delivered in response to West Face's Anti-SLAPP Motion that Riley has since learned that Vincent Hanna's true identity is Danny Guy, a director of Harrington Global Opportunities Fund;
- (vv) Mr. Riley did not explain in any of his Affidavits how he supposedly learned that Danny Guy was "Vincent Hanna" and refused to answer any questions in this regard;

- (ww) The Plaintiffs' Supplemental Schedule B lists 17 emails to/from/cc'ing Vincent Hanna, Danny Guy, and/or John Kingman Phillips (Guy's lawyer), and claims solicitor-client privilege and litigation privilege over every one of these emails (none have attachments);
- (xx) In short, the Catalyst Parties have heavily relied upon the single "cherry picked" "Vincent Hanna" email of August 11, 2017 as the basis for why they had a "fiduciary duty" to "inform" Catalyst's investors in their First Investor Letter of August 14, 2017 that West Face was allegedly involved in a market manipulation scheme, which is one of the specific subjects of West Face's Counterclaim that the Catalyst Parties are attempting to strike out in their Partial Anti-SLAPP Motion;
- (yy) There is no evidence to support a claim of privilege over these documents;
- (zz) To the extent a litigation privilege might have existed over these communications in the hands of the Catalyst Parties (which is strongly denied), Catalyst waived any such privilege by publishing the first Vincent Hanna email. Fairness and consistency require that all such communications with or concerning "Vincent Hanna" be disclosed;

E. CATEGORY 5: NO PRIVILEGE OVER THE DALTON REPORT

- (aaa) Patrick Dalton was hired by Callidus as a consultant and Interim CEO effective November 5, 2018. He resigned from Callidus approximately four months later, on March 8, 2019;

- (bbb) Callidus publicly disclosed in its Management's Discussion & Analysis for the year ended December 31, 2018 that Mr. Dalton had "greatly assisted" Callidus by completing and delivering to Callidus's Board of Directors a "Strategic Review & Remediation Plan" (previously defined as the "**Dalton Report**") that "will help [Callidus] in setting its future direction";
- (ccc) The Dalton Report is a strategic review of the company's business, and a remediation plan for that business going forward. The Dalton Report will provide important evidence regarding why Callidus's business has failed, which the Catalyst Parties attribute entirely to the conduct of the Defendants;
- (ddd) Riley testified during his cross-examination that the Dalton Report concerned "how to proceed forward with Callidus post-privatization".⁴ He did not testify that it had anything to do with litigation or the seeking or giving or legal advice. The Dalton Report is clearly not litigation privileged or solicitor-client privileged;
- (eee) More generally, Dalton did not have a legal role. There is no evidence to support a claim of privilege over the Dalton Report or over any of Dalton's other reports, documents, or communications\;

⁴ Cross-examination of James Riley held Tuesday, October 27, 2020, p. 320, q. 993, lines 8-10.

F. CATEGORY 6: NO PRIVILEGE OVER COMMUNICATIONS WITH THE OSC AND OTHER LAW ENFORCEMENT AGENCIES

(fff) Significant and highly relevant aspects of Catalyst's and Callidus's claim against the Defendants in the main action are its allegations that:

- (i) In furtherance of the conspiracy alleged by Catalyst and Callidus against the Defendants (the "**Alleged Wolfpack Conspiracy**"), certain of the Defendants filed false whistleblower complaints with the Ontario Securities Commission (the "**OSC**") and/or with the U.S. Securities and Exchange Commission (the "**SEC**");⁵
- (ii) The Defendants' "intent" and "purpose" in filing these allegedly false and abusive whistleblower complaints was: (i) to cause the OSC and the Joint Serious Offences Team ("**JSOT**") to investigate and/or commence proceedings against one or more of the Catalyst Parties, and (ii) to enable the Defendants to "leak the contents of their false complaints to the media and to the police" (including Toronto Police Services) to cause harm to the Plaintiffs and to enable their allegedly illicit and profitable short selling of Callidus shares;⁶ and
- (iii) The whistleblower complaints were "not *bona fide*", were wholly false, and constituted an "abuse" of the whistleblower program;

⁵ Plaintiffs' Fresh as Amended Statement of Claim, at para. 90. See also more generally paras. 97 to 131.

⁶ Plaintiffs' Fresh as Amended Statement of Claim, at para. 101, 109, 115, & 127.

- (ggg) Indeed, in their prayer for relief in their Statement of Claim, Catalyst and Callidus seek a Declaration that the Defendants breached sections 126.1 and 126.2 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (*i.e.*, they seek a finding that the Defendants engaged in securities fraud and market manipulation by filing the allegedly false whistleblower complaints);
- (hhh) More generally, the Plaintiffs also allege that the Defendants made false and defamatory statements that the Plaintiffs: (i) operated their business in a manner contrary to applicable law and regulation; (ii) were involved in fraud; (iii) conducted their business in a dishonest and unethical manner; (iv) engaged in unethical accounting and other business practices; (v) misled investors; and (vi) falsely certified that their financial statements were prepared in accordance with IFRS accounting principles and/or made material misrepresentations in their financial statements;
- (iii) The Plaintiffs have put squarely in issue the truth and “*bona fide*” nature of the whistleblower complaints, as well as their own accounting and business practices more generally, including in respect of the manner in which they were publicly reporting their financial results using IFRS or non-IFRS metrics, such as Callidus’s former reporting of “yield enhancements”;
- (jjj) In that regard, Callidus publicly disclosed several corrections to its continuous disclosure practices that were required by the OSC, and Callidus was listed on the OSC’s Refilings and Errors List on at least four

occasions over 2017 and 2018 (both before and after the WSJ reported that Callidus was subject to the whistleblower complaints to the OSC);

- (kkk) The Catalyst Parties have also failed or refused to disclose the extent to which they have had communications with the OSC or other securities or financial regulators about West Face, which is directly relevant given their allegations against West Face and other Defendants;
- (lll) The Catalyst Parties did not disclose in or produce with their initial Affidavits of Documents delivered on December 31, 2019 a single communication with any one or more of the OSC, SEC, JSOT, or Toronto Police Services;
- (mmm) The Plaintiffs' Supplemental Schedule B delivered October 13, 2020 lists 71 emails to/from/cc'ing OSC Staff and/or other personnel, and claims a "case-by-case privilege" over every one of these emails (as well as their 67 attachments);
- (nnn) No existing privilege exists over these documents, and the significant and difficult burden of establishing a case-by-case privilege over these documents rests with the Catalyst Parties;
- (ooo) There is no evidence to support a claim of privilege over these documents (or over any other existing relevant communications with the OSC, SEC, JSOT, and/or Toronto Police Services);

(ppp) To this day, the Catalyst Parties have failed to disclose any communications with the SEC, JSOT, and/or Toronto Police Services despite their relevance;

G. OTHER GENERAL GROUNDS

(qqq) None of the above categories of documents of information are litigation privileged, because none of them were generated for the “dominant purpose” of litigation;

(rrr) None of the above categories of documents or information are solicitor-client privileged, because none of them are confidential communications between a lawyer and his or her client(s) for the purpose of seeking or giving legal advice;

(sss) Furthermore, there is no evidence that any of the above-noted parties (who were external to the solicitor-client relationship between the Catalyst Parties and their lawyers) were acting as agents for the Catalyst Parties in respect of the seeking or giving of legal advice, or – even if they were – that they played an indispensable a role in the seeking or giving of legal advice such that a solicitor-client privilege over these third party communications could have been formed or retained;

(ttt) The onus of establishing that a privilege exists lies on the party asserting the privilege. The Catalyst Parties have not and cannot meet that significant burden;

- (uuu) Mr. Riley failed or refused to answer relevant and proper questions asked of him during his cross-examination and/or has otherwise not provided an answer to the questions he undertook to answer and/or which were taken under advisement;
- (vvv) The Catalyst Parties' Affidavits of Documents, including in particular the Schedule Bs thereto (including the Plaintiffs' Supplemental Schedule B), are wholly deficient, including because they fail to provide sufficient information to enable the individual documents listed thereon to be separately identified, as required by Form 30A of the *Rules of Civil Procedure* and the Sedona Canada Principles;
- (www) Rules 30, 34, 39 of the *Rules of Civil Procedure* and the Sedona Canada Principles;
- (xxx) The "Three Cs" of the Commercial List: cooperation, communication, and common sense;
- (yyy) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (zzz) The Affidavit of Debra Bilous affirmed November 17, 2020;
- (aaaa) Rules 30, 31, 34, 37, and to the extent necessary, Rule 22 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

(bbbb) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 17, 2020

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)
Tel: 416.863.5566
kentthomson@dwpv.com

Matthew Milne-Smith (LSO #44266P)
Tel: 416.863.5595
mmilne-smith@dwpv.com

Andrew Carlson (LSO #58850N)
Tel: 416.367.7437
acarlson@dwpv.com

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by
Counterclaim),
West Face Capital Inc. and Gregory
Boland

THE CATALYST CAPITAL GROUP INC.
et al.

-and-

WEST FACE CAPITAL INC. et al.

-and-

CANACCORD GENUITY CORP.

Plaintiffs

Defendants

Third Party

WEST FACE CAPITAL INC. et al.

-and-

THE CATALYST CAPITAL GROUP INC.
et al.

Plaintiffs by Counterclaim

Defendants to the Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION OF
WEST FACE CAPITAL INC. AND GREGORY BOLAND**

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)
: kentthomson@dwpv.com
Tel: 416.863.5566

Matthew Milne-Smith (LSO #44266P)
mmilne-smith@dwpv.com
Tel: 416.863.5595

Andrew Carlson (LSO #58850N)
acarlson@dwpv.com
Tel: 416.367.7437

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by Counterclaim),
West Face Capital Inc. and Gregory Boland

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC. C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- 2 -

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION, NEWTON GLASSMAN,
 GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY LTD.
 D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK CUBE and INVOP LTD. D/B/A PSY GROUP
 Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
 Defendants to the Counterclaim

UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS
given at the Cross-Examination of James Riley held on October 26 and 27, 2020
(cross-examination by counsel to West Face Capital Inc. and Gregory Boland)

Table 1: From the Cross-Examination of James Riley held on Monday, October 26, 2020

No.	Page(s)	Question(s)	Category	Specific Question	Documents Referenced in Transcript	Answer or Precise Basis for Refusal
1.	10	9	ADV	To advise whether or not Catalyst has disclosed all communications from June 2014		

				to the present between Catalyst - including at a minimum Messrs. Riley, Glassman, de Alba, Jean Lepine (Catalyst's Director of Corporate Communications) and Dan Gagnier (Catalyst's external public relations consultant) - on the one hand, and any third party, on the other hand, about West Face, Mr. Boland, and/or any of the five pieces of litigation involving West Face and Catalyst. To the extent that all of such communications have not been disclosed, to disclose them.		
2.	11	15	REF	To advise of the basis on which privilege has been asserted over any number of communications involving Dan Gagnier (as set out in the Plaintiffs' Supplemental Schedule B to their Affidavit of Documents delivered October 13, 2020).		
3.	14	16	REF	To advise for what reason Haystack Needle (a marketing, corporate communications, crisis communications, and investor relations firm) was retained by Catalyst.		
4.	16	24	REF	To acknowledge that to the extent people are observing Callidus's public disclosure and are making future projections		

				about the company's prospects based on that public disclosure, that is a matter of opinion for them to make.		
5.	17	25	REF	To acknowledge that, as an officer of a public company (i.e., Callidus), Mr. Riley understands that members of the public may come to and express opinions about the future prospects of a public company like Callidus.		
6.	19	34	REF	To acknowledge that Catalyst frequently engaged in public relations campaigns to promote the future prospects of Callidus.		
7.	32	77	REF	Given that Documents 1, 2, 3, 4, 5, 6, and 7 of Exhibit 2 to the cross-examination of Mr. Riley were produced by Catalyst and Callidus, to confirm that the public relations campaigns referred to in those documents are not privileged.	Documents #1 (CAT_C_00000289); #2 (CAT_C_00000323); #3 (CAT_C_00000324); #4 (CAT_C_00000325); #5 (CAT_C_00000352); #6 (CAT_C_00000353); and #7 (CAT_C_00000824) of Exhibit 2	
8.	39	110	REF	To accept that, given that the Moyse Action was dismissed by Justice Newbould following a trial, and the VimpelCom Action was dismissed by Justice Hailey following a motion, and the Court of Appeal for Ontario dismissed Catalyst's appeals in those proceedings, and the Supreme Court of Canada		

				dismissed Catalyst's applications for leave to appeal in those proceedings, Catalyst cannot now bring any further proceedings claiming relief arising out of West Face's acquisition of Wind Mobile.		
9.	49	147	UT	To provide Catalyst's best reconstruction of the dates on which the documents referred to by Mr. Riley as "The Additional Evidence" in paragraphs 74-91 of his Affidavit dated December 5, 2019 were first disclosed to Catalyst (whether in the Moyse Action, in the Plan of Arrangement proceeding, or in both proceedings).	Affidavit of James Riley dated December 5, 2019, at paras. 74-91, and the Exhibits thereto	
10.	50	148	ADV	To advise if Catalyst has any evidence contrary to the following proposition: All of the documents referred to by Mr. Riley as "The Additional Evidence" in paragraphs 74-91 of his Affidavit dated December 5, 2019 were produced to Catalyst <i>before</i> the trial in the Moyse Action (whether in the Moyse Action, in the Plan of Arrangement proceeding, or in both proceedings).	Affidavit of James Riley dated December 5, 2019, at paras. 74-91, and the Exhibits thereto	
11.	50	149	UT	To advise if Catalyst has any evidence contrary to the following proposition:	Affidavit of James Riley dated December 5, 2019, at	

				Each of the documents referred to by Mr. Riley as "The Additional Evidence" in paragraphs 74-91 of his Affidavit dated December 5, 2019 was in fact relied on by Catalyst both at the trial of the Moyse Action and at the hearing of the appeal of the Moyse Action.	paras. 74-91, and the Exhibits thereto	
12.	52	155	UT	To advise if Catalyst's appeal materials in the Moyse Action made any allegation of bias on the part of Justice Newbould and, if so, to indicate where in Catalyst's appeal materials such an allegation was made.		
13.	62	194	ADV	To confirm that Document 17 of Exhibit 2 to the cross-examination of Mr. Riley (being a chain of internal West Face emails dated November and early December 2014 about a report that West Face was preparing on Callidus), bearing the production number WFV00022061, was produced by West Face <u>only</u> in the Veritas Action, and was <u>not</u> produced by West Face in the Wolfpack Action.	Document #17 of Exhibit 2 (WFV00022061) (attached as Exhibit 49 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
14.	63	195	ADV	To advise if Catalyst has any evidence contrary to the following proposition:	Document #17 of Exhibit 2 (WFV00022061) (attached as Exhibit 49 to the Conspiracy Affidavit of	

				Document 17 of Exhibit 2 to the cross-examination of Mr. Riley (being a chain of internal West Face emails dated November and early December 2014 about a report that West Face was preparing on Callidus), bearing the production number WFV00022061, was produced by West Face <i>only</i> in the Veritas Action, and was <i>not</i> produced by West Face in the Wolfpack Action.	James Riley dated May 29, 2020)	
15.	63	196	ADV	To confirm that Catalyst or Callidus did not obtain Document 17 of Exhibit 2 to the cross-examination of Mr. Riley (being a chain of internal West Face emails dated November and early December 2014 about a report that West Face was preparing on Callidus), bearing the production number WFV00022061, from any source other than from West Face's production of the document in the Veritas Action.	Document #17 of Exhibit 2 (WFV00022061) (attached as Exhibit 49 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
16.	64	197	ADV	To confirm that Document 18 of Exhibit 2 to the cross-examination of Mr. Riley (being an email dated December 12, 2014 from Greg Boland to Jacquie McNish together with its attachment) was produced by West Face <i>only</i> in the Veritas Action, and <i>not</i> in the Wolfpack Action, and that Catalyst or	Document #18 of Exhibit 2 (WFV00023942 and WFV00023944) (attached as Exhibit 51 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	

				Callidus did not obtain it from any other source.		
17.	68	214	ADV	<p>To advise if Catalyst has any evidence contrary to the following proposition:</p> <p>The Affidavit of Craig Boyer (referred to in Document 19 of Exhibit 2 to the cross-examination of Mr. Riley) was filed in a (public) court file.</p>	<p>Document #19 of Exhibit 2 (WFV00018938, WFV00018942, WFV00023924, WFV00023925, WFV00022684, WFV00023950, WFV00024009, and WFV00000716) (attached as Exhibit 52 to the Conspiracy Affidavit of James Riley dated May 29, 2020)</p>	
18.	70	219	ADV	<p>To confirm that Documents 19 and 20 of Exhibit 2 to the cross-examination of Mr. Riley were produced by West Face <u>only</u> in the Veritas Action, and <u>not</u> in the Wolfpack Action, and that Catalyst or Callidus did not obtain either of them from any other source.</p>	<p>Document #19 of Exhibit 2 (WFV00018938, WFV00018942, WFV00023924, WFV00023925, WFV00022684, WFV00023950, WFV00024009, and WFV00000716) (attached as Exhibit 52 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and</p> <p>Document #20 of Exhibit 2 (WFV00014714) (attached in Exhibit C to the Reply Affidavit of Gregory Boland dated August 21, 2020)</p>	

19.	71	222	UT	<p>To advise if Catalyst has any evidence contrary to the following proposition:</p> <p>The email from Greg Boland to Ben Dummett dated December 12, 2014 at 2:53 pm (i.e., the third email included in Document 19 of Exhibit 2 to the cross-examination of Mr. Riley) attached only excerpts from the publicly filed receivership application of Xchange Technology (also known as XTG).</p>	<p>Document #19 of Exhibit 2 (WFV00018938, WFV00018942, WFV00023924, WFV00023925, WFV00022684, WFV00023950, WFV00024009, and WFV00000716) (attached as Exhibit 52 to the Conspiracy Affidavit of James Riley dated May 29, 2020)</p>	
20.	81	260	ADV	<p>To advise if Catalyst has any evidence contrary to the following proposition:</p> <p>West Face obtained all its information about the identities of Callidus' borrowers from public sources.</p>	<p>Document #21 of Exhibit 2 (WFV00022048, WFV00022083, WFV00024211, WFV00024399, and a transcription of WFV00022047) (attached as Exhibit 57 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and</p> <p>Document #22 of Exhibit 2 (WFV00022049) (attached as Exhibit D to the Reply Affidavit of Greg Boland dated August 21, 2020)</p>	
21.	82	265	ADV	<p>To confirm that Documents 21 and 22 of Exhibit 2 to the cross-examination of Mr. Riley were produced by West Face <u>only</u> in the Veritas Action, and <u>not</u> in the</p>	<p>Document #21 of Exhibit 2 (WFV00022048, WFV00022083, WFV00024211, and a</p>	

				<p>Wolfpack Action, and that Catalyst or Callidus did not obtain either of them from any other source.</p>	<p>transcription of WFV00022047) (attached as Exhibit 57 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and</p> <p>Document #22 of Exhibit 2 (WFV00022049) (attached as Exhibit D to the Reply Affidavit of Greg Boland dated August 21, 2020)</p>	
22.	83	267	REF	<p>To confirm that Catalyst and Callidus are pursuing relief in the Veritas Action in respect of West Face's communications with Veritas as set out in Documents 21 and 22 of Exhibit 2 to the cross-examination of Mr. Riley.</p>	<p>Document #21 of Exhibit 2 (WFV00022048, WFV00022083, WFV00024211, WFV00024399, and a transcription of WFV00022047) (attached as Exhibit 57 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and</p> <p>Document #22 of Exhibit 2 (WFV00022049) (attached as Exhibit D to the Reply Affidavit of Greg Boland dated August 21, 2020)</p>	
23.	86	268	ADV	<p>To advise whether or not West Face's communications with Veritas as set out in Documents 21 and 22 of Exhibit 2 to the cross-examination of Mr. Riley are part of what Catalyst and</p>	<p>Document #21 of Exhibit 2 (WFV00022048, WFV00022083, WFV00024211, WFV00024399, and a transcription of WFV00022047) (attached as Exhibit 57 to the</p>	

				Callidus are suing West Face about in the Veritas Action.	Conspiracy Affidavit of James Riley dated May 29, 2020); and Document #22 of Exhibit 2 (WFV00022049) (attached as Exhibit D to the Reply Affidavit of Greg Boland dated August 21, 2020)	
24.	90	293	ADV	To advise if Catalyst has any evidence contrary to the following proposition: The entire 45-page document marked as Document 24 of Exhibit 2 to the cross-examination of Mr. Riley (and which was attached as Exhibit 61 to Mr. Riley's Conspiracy Affidavit dated May 29, 2020) does not refer to West Face or Mr. Boland by name.	Document #24 of Exhibit 2 (attached as Exhibit 61 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
25.	97	322	REF	To acknowledge that it might be a reasonable inference to draw from the allegations made by Catalyst in paragraph (vv) of its Notice of Motion dated January 13, 2015 (filed publicly in the Moyse Action) (Document 25 of Exhibit 2 to the cross-examination of Mr. Riley), that if West Face "had prepared a research report that purported to reveal problems with Callidus's loan book" and was "talking down the stock" (as alleged),	Document #25 of Exhibit 2	

				then West Face might also have shorted the shares of Callidus.		
26.	98	324	ADV	To confirm that the Catalyst Parties have no evidence of any communications between Wes Voorheis and West Face from in or around early 2015.	Document #24 of Exhibit 2 (attached as Exhibit 61 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and Document #25 of Exhibit 2	
27.	107	351	UT	Document 32 of Exhibit 2 to the cross-examination of Mr. Riley is an email dated December 9, 2015 sent from Bruce Langstaff to a list of "undisclosed recipients" and which was received by Tony Griffin of West Face. To advise of any evidence that Mr. Griffin knew who the other undisclosed recipients of this email were.	Document #32 of Exhibit 2 (WF001091) (attached as Exhibit 71 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
28.	119	403	REF	On March 8, 2016, Bruce Langstaff emailed Greg Boland an article published by Streetwise which was critical of Catalyst. In his responding email (Document 35 of Exhibit 2 to the cross-examination of Mr. Riley), Mr. Boland stated: "I have [not] seen that kind of rebuke in a while". To acknowledge that it was fair comment by Mr. Boland to have	Document #35 of Exhibit 2 (WF000915) (attached as Exhibit 70 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	

				stated that he had not seen a rebuke like that in a while, because, whether the article was true or not, it was in fact a rebuke of Catalyst.		
29.	121	409	UT	<p>Document 36 of Exhibit 2 to the cross-examination of Mr. Riley includes an email dated July 18, 2016 sent from Bruce Langstaff to a list of "undisclosed recipients" and which was received by Tony Griffin of West Face.</p> <p>To advise of any evidence that Mr. Griffin knew who the other undisclosed recipients of this email were.</p>	Document #36 of Exhibit 2 (WF001085, WF001087, and WF001104)) (attached as Exhibit 73 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
30.	124	415	UT	<p>Document 36 of Exhibit 2 to the cross-examination of Mr. Riley includes an email dated July 18, 2016 sent from Bruce Langstaff to a list of "undisclosed recipients" and which was received by Tony Griffin of West Face.</p> <p>To advise of any evidence that Mr. Griffin was aware of who the other undisclosed recipients of this email were.</p>	Document #36 of Exhibit 2 (WF001085, WF001087, and WF001104)) (attached as Exhibit 73 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
31.	125	420	UT	Document 36 of Exhibit 2 to the cross-examination of Mr. Riley includes an email dated May 4, 2017 sent from Bruce Langstaff	Document #36 of Exhibit 2 (WF001085, WF001087, and WF001104)) (attached as Exhibit 73 to the	

				<p>to a list of "undisclosed recipients" and which was received by Philip Panet of West Face.</p> <p>To confirm that the Catalyst Parties are not aware of any evidence that Mr. Panet was aware of who the other undisclosed recipients of this email might have been.</p>	Conspiracy Affidavit of James Riley dated May 29, 2020)	
32.	131	442-442	UT	<p>To advise if Catalyst has any evidence contrary to the following proposition:</p> <p>Contrary to the statement in paragraph 158 of Mr. Riley's Conspiracy Affidavit dated May 29, 2020, Schedule B to West Face's and Mr. Boland's Affidavit of Documents discloses that it was Darryl Levitt who contacted Philip Panet on November 22, 2016 about IMET, and not vice versa.</p>		
33.	132	445-447	UT	<p>To advise if Catalyst has any evidence contrary to the following proposition:</p> <p>Contrary to the statement in paragraph 171(d) of Mr. Riley's Conspiracy Affidavit dated May 29, 2020, Schedule B to West Face's and Mr. Boland's Affidavit of Documents discloses that it was Darryl Levitt who contacted Philip Panet on</p>		

				December 3, 2016 about the "Callidus Catalyst Fraud Outline", and not vice versa.		
34.	145	491	UT	To advise if the Catalyst Parties disagree that the documents that Philip Panet attached and/or provided links to in his emails to Bruce Livesey dated November 23, 2016 (Document 43 of Exhibit 2 to the cross-examination of Mr. Riley) may be properly characterized as: (a) a Jewish community group newsletter that announced Mr. Glassman's wedding; and (b) other public documents such as a family law application and affidavit.	Document #43 of Exhibit 2 (WF000529 and WF000437) (attached as Exhibit 171 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
35.	149	501-502	UT	In reference to the email dated November 23, 2016 from Philip Panet to Bruce Livesey, in which Mr. Panet stated: "These documents from the family law file should make the connection between Laura Macdonald and Newton Glassman from Catalyst. For the Exhibit C document, I've left out the more difficult exchanges and limited it to showing an email that has a Catalyst Capital email signature - the other stuff is more difficult, but not really very relevant" (Document 32 of Exhibit 2 to the cross-examination of Mr. Riley), and in reference to the version of the document that Mr. Panet	Document #43 of Exhibit 2 (WF000529 and WF000437) (attached as Exhibit 171 to the Conspiracy Affidavit of James Riley dated May 29, 2020); and Document #44 of Exhibit 2 (WF000455)	

				<p>attached to that email (Document 44 of Exhibit 2 to the cross-examination of Mr. Riley), and in reference to the complete version of that document (omitted), to advise whether the Catalyst Parties disagree with the following proposition:</p> <p>What Mr. Panet stated in his email was correct: he had deleted or otherwise omitted from the document he had sent to Mr. Livesey irrelevant but difficult exchanges, including exchanges that were highly personal to and/or highly prejudicial of Mr. Glassman.</p>		
36.	161	545	UT	<p>To advise if the Catalyst Parties disagree with the following proposition:</p> <p>As shown in the Schedule Bs to the Catalyst Parties' Affidavits of Documents, the Catalyst Parties have claimed privilege over any number of communications between Mr. Riley and individuals at Catalyst.</p>		
37.	165	568	REF	<p>To acknowledge that the article by Al Rosen and Mark Rosen titled "How Companies Are Pushing the Reporting Envelope" dated June 30, 2017 (Document 56 of Exhibit 2 to the cross-examination of Mr. Riley) may be described as an article</p>	<p>Document #56 of Exhibit 2 (WF000327 and WF000328) (attached as Exhibit 138 to the Conspiracy Affidavit of</p>	

				in which the authors were making the argument that Callidus was pushing the reporting envelope.	James Riley dated May 29, 2020)	
38.	174	603	REF	To advise whether Callidus accused West Face of involvement in stock manipulation to the Ontario Securities Commission in the period leading up to the July 25, 2017 letter from Rocco DiPucchio to Mr. Milne-Smith (Document 58 of Exhibit 2 to the cross-examination of Mr. Riley).	Document #58 of Exhibit 2	
39.	179	623	REF	To answer questions about the basis for the Catalyst Parties' assertions of privilege over their communications with Vincent Hanna, Danny Guy and/or John Kingman Phillips.		
40.	180	625	REF	To produce and provide complete disclosure of the communications between the Catalyst Parties on the one hand and Vincent Hanna, Danny Guy and/or John Kingman Phillips on the other.		
41.	183	633	ADV	To produce any internal Catalyst emails, memoranda, correspondence, investigative materials, or other documents concerning the initial email from Vincent Hanna to Newton Glassman (Document 63 of	Document #63 of Exhibit 2 (CAT_LANG00000001_001) (attached as Exhibit 38 to the Conspiracy Affidavit of	

				Exhibit 2 to the cross-examination of Mr. Riley)	James Riley dated May 29, 2020)	
42.	184	640	REF	To answer questions about the email from Abraham Ronen (of Psy Group) to Philip Elwood dated September 14, 2017 attaching an info-graphic that purports to describe the "wolfpack" (attached as Exhibit B to the Affidavit of Philip Elwood dated May 12, 2020).	Exhibit B to the Affidavit of Philip Elwood dated May 12, 2020 (WF008989)	
43.	188-189	650-651	REF	To agree that a reasonable reader of subparagraphs 105(d) and (e) of Mr. Riley's Conspiracy Affidavit dated May 29, 2020 would most likely conclude that Mr. Milne-Smith had provided a copy of the report that West Face had prepared about Callidus to Andrew Levy. and, further, that was, in fact, what Mr. Riley intended to convey.	Riley Affidavit, May 29, 2020, para. 105(d)	
44.	195	666	UT	To indicate where in the transcript of the examination of Andrew Levy held on August 30, 2017 (Document 65 of Exhibit 2 to the cross-examination of Mr. Riley) Mr. Levy refers to coordinating with Mr. Levitt or discussing with Mr. Levitt the filing of complaints to the OSC about Callidus' lending practices.	Document #65 of Exhibit 2 (CAT_C_00000977) (attached as Exhibit 39 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	

45.	197	669	UT	To advise of any emails or other documents that show Mr. Boland and Andrew Levy coordinating or discussing the activities of Mr. Levy or the other guarantors regarding a RICO action.		
46.	202	681	UT	To indicate where in the transcript of the examination of Andrew Levy held on August 30, 2017 (Document 65 of Exhibit 2 to the cross-examination of Mr. Riley) Mr. Levy suggests that anyone intended to or did in fact spread false rumours about Callidus.	Document #65 of Exhibit 2 (CAT_C_00000977) (attached as Exhibit 39 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
47.	202	682	UA	To indicate where in the transcript of the examination of Andrew Levy held on August 30, 2017 (Document 65 of Exhibit 2 to the cross-examination of Mr. Riley) Mr. Levy testifies about: (a) false rumours about Callidus; (b) short-selling; (c) speaking to the Wall Street Journal after 2015; or (d) participating in or even discussing a complaint to the OSC or Toronto Police Services.	Document #65 of Exhibit 2 (CAT_C_00000977) (attached as Exhibit 39 to the Conspiracy Affidavit of James Riley dated May 29, 2020)	
48.	203	685	REF	To agree that the transcript of the examination of Andrew Levy held on August 30, 2017 (Document 65 of Exhibit 2 to the cross-examination of Mr. Riley) in fact refutes the allegations	Document #65 of Exhibit 2 (CAT_C_00000977) (attached as Exhibit 39 to the Conspiracy Affidavit of	

				that Mr. Levy was coordinating with Mr. Boland or West Face regarding (a) whistleblower activities; (b) complaints to the OSC; (c) short-selling; or (d) spreading false rumours about Callidus.	James Riley dated May 29, 2020)	
49.	209	703	UT	To confirm that the transcription of the audio recording of Mr. Livesey's telephone conversation with Mr. Levy on April 17, 2015, which transcription was attached as Exhibit A to the Reply Affidavit of Bruce Livesey dated September 4, 2020, is a fair and accurate transcription of the recording in question (i.e., to advise if for any reason the Catalyst Parties' position is that the transcript is incorrect).	Reply Affidavit of Bruce Livesey dated September 4, 2020, and Exhibit A thereto	
50.	218	722-723	REF	The article published by Christie Blatchford of the National Post titled "Exclusive: The Judge, the Sting, Black Cube and Me" stated, in part: "a source authorized to speak for Catalyst acknowledges that a subcontractor working for a security company it hired carried out the sting on the judge. But the source said Catalyst did not order the sting or know about it until after it happened." To advise if Mr. Riley was the "source authorized to speak for	Document #67 of Exhibit 2 (WF000100) (attached as Exhibit 1 to the Affidavit of Christie Blatchford dated May 21, 2019)	

				Catalyst" and, if not, who was the source authorized to speak for Catalyst.		
51.	218	724	UT	To advise of the basis for the redactions made to the calendar bearing document production number CAT_E_00000317 (Document 68 of Exhibit 2 to the cross-examination of Mr. Riley).	Document #68 of Exhibit 2 (CAT_E_00000317)	
52.	220-221	729-730	REF	To answer questions about the contents or purposes of any of the meetings disclosed in the August, September, and October (2017) calendars produced by the Catalyst Parties.	Document #68 of Exhibit 2 (CAT_E_00000317). See also Doc #72 of Exhibit 2 (CAT_E_00000322).	
53.	222	731	REF	To confirm that Mr. Riley met with Virginia Jamieson on or about September 21, 2017 in order to deliver to her a USB key containing the contents of the sting on Justice Newbould for dissemination to the media, including Christie Blatchford.		
54.	222	733	ADV	In an email from Mr. Glassman to Mr. Riley dated September 20, 2017, with the subject "Virginia Jamieson", and attaching Ms. Jamieson's contact card, Mr. Glassman states: "This is the person they want you to contact".	Document #78 of Exhibit 2 (CAT_E_00000144)	

				To confirm that the "they" being referred to is Psy Group.		
55.	233	734	ADV	<p>In an email from Mr. Glassman to Mr. Riley dated September 20, 2017, with the subject "Virginia Jamieson", and attaching Ms. Jamieson's contact card, Mr. Glassman states: "This is the person they want you to contact".</p> <p>To advise how Mr. Glassman knew that Ms. Jamieson was the person "they" wanted Mr. Riley to contact.</p>	Document #78 of Exhibit 2 (CAT_E_00000144)	
56.	233	735	ADV	<p>In an email from Mr. Glassman to Mr. Riley dated September 20, 2017, with the subject "Virginia Jamieson", and attaching Ms. Jamieson's contact card, Mr. Glassman states: "This is the person they want you to contact".</p> <p>To advise what Mr. Riley knew about the request to contact Ms. Jamieson in advance of receiving this email from Mr. Glassman.</p>	Document #78 of Exhibit 2 (CAT_E_00000144)	
57.	224	737	ADV	To acknowledge that there are phone records indicating that Mr. Riley called Virginia Jamieson twice on the morning		

				of September 21, 2017 at 8:46am and 9:33am.		
58.	224	738	REF	To answer any questions in respect of the email from Sharon Kisluk of Psy Group to Mr. Riley dated October 23, 2017, which email was produced by the Catalyst Parties (Document 81 of Exhibit 2 to the cross-examination of Mr. Riley).	Document #81 of Exhibit 2 (CAT_E_00000167)	
59.	225	741	ADV	The October 21, 2017 entry on Mr. Glassman's calendar states "Yossi, Newton, Michael" and "Michael Buckstein" (Document 72 of Exhibit 2 to the cross-examination of Mr. Riley). To advise as to the identity of Michael Buckstein.	Document #72 of Exhibit 2 (CAT_E_00000322)	
60.	226	742	ADV	The October 10, 2017 entry on Mr. Glassman's calendar refers to a meeting with Gad Benefraim (sometimes spelled Gaddi Ben Afraim). To advise as to the identity of this person and what role he played that is relevant to this litigation.	Document #72 of Exhibit 2 (CAT_E_00000322)	
61.	227	743	REF	To answer any questions concerning any and all efforts by Virginia Jamieson to solicit interest from Christie Blatchford, USA Today, the Globe and Mail,		

				and any other sources of articles relating to the sting on Justice Newbould.		
62.	227	744	ADV	To confirm that, prior to the sting (or interview) of Justice Newbould, none of Rocco DiPucchio, Brian Greenspan, David Moore, or anyone at Catalyst, was aware that the sting (or interview) was to take place.		
63.	229	746	ADV	To confirm without qualification that the contents of the letter from Brian Greenspan dated November 29, 2017 (Document 85 of Exhibit 2 to the cross-examination of Mr. Riley) are true (i.e., as of the date of Mr. Riley's cross-examination on October 26, 2020, and with respect to anybody and not merely the author of the letter), including specifically the passage of Mr. Greenspan's letter that was highlighted in green in Mr. Riley's cross-examination stating: "Neither Mr. Moore nor I [Mr. Greenspan] had any pre-knowledge nor involvement in the events which led to the interview of Frank Newbould or the resulting tape recordings nor with respect to any other similar investigative activities in relation to any West Face personnel and	Document #85 of Exhibit 2 (WF009337)	

				we have been assured by Catalyst that the same applies to them."		
64.	230	747	REF	To advise whether Mr. Riley knows who Avi Janus (alternatively spelled Avi Yanus) is, or to answer any questions that get into areas of overlap with Black Cube and Psy Group and other privilege-related issues.		
65.	230	748	ADV	<p>The article published by Calcalist titled "Black Cube Testimony Describes Undercover Employee's Recording of Former Judge" refers to a witness statement of Black Cube founder Avi Yanus (Document 86 of Exhibit 2 to the cross-examination of Mr. Riley).</p> <p>To provide consent to Black Cube to disclose a complete list of parties to whom this witness statement of Avi Yanus was given</p>	Document #86 of Exhibit 2 (WF001744)	
66.	232	753	REF	As Catalyst has a duty to give its investors fair, complete and accurate information to the best of its abilities, to confirm that it would be inconsistent with its fiduciary duties in that regard to provide investors with		

				inaccurate, incomplete or misleading information.		
67.	238	768	REF	To confirm that Catalyst did not disclose in its letter to investors dated March 19, 2018 that Yu-Jia Zhu (a former employee of West Face) had agreed during the sting (or interview) of him with a statement by the operative of Black Cube to the effect that Catalyst's theory in the WIND lawsuits were (to use the Black Cube operative's words) "bullshit" (as set out in the transcript of Mr. Zhu's interview) (Document 89 of Exhibit 2 to the cross-examination of Mr. Riley).	Document #89 of Exhibit 2 (CAT_E_00000324)	
68.	241	773	UT	Catalyst's letter to investors dated March 19, 2018 (Document 90 of Exhibit 2 to the cross-examination of Mr. Riley) states in part "Catalyst is also in possession of numerous emails which support the opinions quoted above and which corroborate that there was improper leakage of confidential information in connection with the sale of WIND to the West Face consortium, during Catalyst's exclusivity period." To confirm that the "numerous emails" referred to in that letter were in fact the same emails that Catalyst had relied on at the	Document #90 of Exhibit 2 (WF001268)	

				trial of the Moyse Action in June 2016 and which were referred to by Mr. Riley as "The Additional Evidence" in paragraphs 74-91 of his Affidavit dated December 5, 2019.		
69.	242	775	REF	To confirm that Catalyst did not disclose in its letter to investors dated March 19, 2018 (Document 90 of Exhibit 2 to the cross-examination of Mr. Riley) that the "numerous emails" referred to in that letter had in fact already been argued before Justice Newbould and that Catalyst's arguments and claims in that respect had been rejected by Justice Newbould.	Document #90 of Exhibit 2 (WF001268)	

Table 2: From the Cross-Examination of James Riley held on Tuesday, October 27, 2020

No.	Page(s)	Question(s)	Category	Specific Question	Documents Referenced in Transcript	Answer or Precise Basis for Refusal
70.	254	777	REF	To answer any questions regarding privilege of any kind, including concerning the document listed on the Schedule Bs to the Catalyst Parties' Affidavits of Documents, including the Plaintiffs' Supplemental Schedule B, and including questions intended to test the assertions of		

				privilege over Tamara Global, Yossi Tanuri, the U.S. Securities and Exchange Commission, the Ontario Securities Commission, Patrick Dalton, Vincent Hanna/Danny Guy or his counsel, Dan Gagnier, and Virginia Jamieson.		
71.	256	778	REF	To answer any questions regarding privilege of any kind, including questions that would explore the basis for the privilege assertions being made.		
72.	259	786	ADV	In reference to the Bloomberg News article titled "Glassman's Catalyst Says Third Fund Plunged More Than 60%" and dated May 14, 2020 (Document 91 of Exhibit 2 to the cross-examination of Mr. Riley), which states in part: "The Toronto-based firm, which invests primarily in distressed debt and private equity, marked down the value of the portfolio in the Catalyst Fund Limited Partnership III to about \$320 million at the end of last year [2019], from about \$820 million at the start of the year, according to a document sent to its limited partners", to produce the document sent to Catalyst's investors that is referred to in this article.	Document #91 of Exhibit 2	
73.	262	796	ADV	To produce Catalyst's communications and/or reporting to its investors in Fund III, Fund IV, and Fund V in respect of Catalyst's 2019 year-end financial results, including the document referred to in the Bloomberg News article titled "Glassman's Catalyst Says Third Fund Plunged More Than 60%" and	Document #91 of Exhibit 2	

				dated May 14, 2020 (Document 91 of Exhibit 2 to the cross-examination of Mr. Riley), and whatever the equivalent communications and/or reporting were for Funds IV and V.		
74.	263	796	ADV	To the extent that Catalyst's communications and/or reporting to its investors referred to in No. 73 above relied on financial reporting by auditors, accountants and/or other external firms, to produce the underlying reporting of those firms.	Document #91 of Exhibit 2	
75.	263	797	ADV	To the extent that Catalyst's communications and/or reporting to its investors referred to in No. 73 above relied on financial reporting by auditors, accountants and/or other external firms, to produce the final reports (<i>i.e.</i> , the "end product") of those firms that were relied upon by Catalyst in its communications and/or reporting to its investors.	Document #91 of Exhibit 2	

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and
CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK
CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**AFFIDAVIT OF DEBRA BILOUS
(AFFIRMED NOVEMBER 17, 2020)**

I, Debra Bilous, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a senior law clerk employed by the law firm of Davies Ward Phillips & Vineberg LLP ("**Davies**"), the lawyers for the Defendants (Plaintiffs by Counterclaim) West Face Capital Inc. ("**West Face**") and its CEO, Gregory Boland ("**Boland**"). As such, I have knowledge of the facts and matters deposed to in my Affidavit, except where I have stated such knowledge to be based on information from others, in which case I verily believe such information to be true.

2. I understand that this Affidavit will be filed in support of a motion by West Face and Boland in respect of, among other things, refusals given during the cross-examination of James Riley by counsel to West Face and Boland on October 26 and 27, 2020.

A. Pleadings Relevant to West Face and Boland

3. A copy of the Fresh as Amended Statement of Claim of The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**") is attached as **Exhibit 1**.

4. A copy of West Face and Boland's Fourth Fresh as Amended Statement of Defence and Counterclaim (the "**Counterclaim**") is attached as **Exhibit 2**.
5. A copy of the Amended Reply and Statement of Defence to Counterclaim of Catalyst, Callidus, Newton Glassman, Gabriel De Alba, and James Riley (together, the "**Catalyst Parties**") is attached as **Exhibit 3**.
6. A copy of the Statement of Defence to Counterclaim of B.C. Strategy Ltd. and B.C. Strategy UK Ltd. (together, "**Black Cube**") is attached as **Exhibit 4**.
7. A copy of the Statement of Defence to Counterclaim of Virginia Jamieson ("**Jamieson**") is attached as **Exhibit 5**.
8. I am informed by Andrew Carlson, a Partner at Davies and counsel to West Face and Boland, and believe, that the Defendants to the Counterclaim Invop Ltd. d/b/a Psy Group ("**Psy Group**") and Emmanuel Rosen ("**Rosen**") never filed Statements of Defence to the Counterclaim, were noted in default in 2018, and have not participated in any step of these proceedings.

B. Affidavits of Documents of the Non-Defaulted Counterclaim Defendants

9. A copy of Jamieson's Affidavit of Documents sworn March 6, 2019 in respect of the Counterclaim is attached as **Exhibit 6**.
10. A copy of Catalyst's and Callidus's Affidavit of Documents sworn December 31, 2019 (by Rocco DiPucchio) in respect of the main action, excluding Schedule A thereto, is attached as **Exhibit 7**.

11. A copy of Catalyst's and Callidus's Affidavit of Documents sworn December 31, 2019 (by Rocco DiPucchio) in respect of the Counterclaim, excluding Schedule A thereto, is attached as **Exhibit 8**.

12. Copies of the Affidavits of Documents sworn by Newton Glassman (on December 30, 2019), Gabriel de Alba (on December 31, 2019), and James Riley (on December 31, 2019) are attached as **Exhibits 9, 10, and 11**.

13. A copy of Black Cube's Affidavit of Documents sworn December 31, 2019 (by Dr. Avi Yanus) in respect of the Counterclaim is attached as **Exhibit 12**.

14. A copy of a letter from Mr. Milne-Smith to counsel to the Catalyst Parties dated January 16, 2020 is attached as **Exhibit 13**. I am informed by Mr. Carlson and believe that the Catalyst Parties' counsel never responded to this letter.

15. A copy of an email dated Tuesday, October 13, 2020 from counsel to the Catalyst Parties attaching a Supplemental Schedule B of Catalyst and Callidus (but not of Newton Glassman, Gabriel De Alba or James Riley) (the "**Plaintiffs' Supplemental Schedule B**") is attached as **Exhibit 14**.

16. Copies of further emails between counsel to West Face and Boland and counsel to the Catalyst Parties concerning the Plaintiffs' Supplemental Schedule B are attached as **Exhibits 15 and 16**.

C. Cross-Examination of James Riley in the Anti-SLAPP Motions

17. A copy of an Order of Justice McEwen dated August 26, 2020 fixing a timetable for pending "**Anti-SLAPP Motions**" is attached as **Exhibit 17**.

18. The revised final transcripts of the cross-examination by Mr. Milne-Smith (counsel to West Face and Boland) of James Riley on his Affidavits filed in respect of the pending Anti-SLAPP Motions held on Monday, October 26, 2020 and Tuesday, October 27, 2020 are attached as **Exhibits 18 and 19**.

19. A copy of an email from Mr. Carlson (counsel to West Face and Boland) to counsel to the Catalyst Parties attaching the Undertakings, Under Advisements, and Refusals Chart concerning the portion of the cross-examination of James Riley conducted by counsel to West Face and Boland on October 26 and 27, 2020 is attached (together with the PDF attachment) as **Exhibit 20**.

D. Documents Relevant to Privilege Assertions

(i) Category 1: Communications With or Involving External Media Contacts, Public Relations Agencies, and/or Reputation Management Firms

20. A screenshot of the website of Gagnier Communications is attached as **Exhibit 21**.

21. Copies of a number of different emails sent from, to, or copying Dan Gagnier of Gagnier Communications in the period from 2016 to 2018, which were produced by Catalyst and Callidus together with their Affidavits of Documents, are attached as follows:

- (a) Emails exchanged September 13 and 14, 2016 between Dan Gagnier and Andrew Willis are attached as **Exhibit 22**;¹

¹ CAT_E_00000082.

- (b) Emails exchanged September 20, 2016 between Dan Gagnier and Bruce Livesey are attached as **Exhibit 23**;²
- (c) An email sent October 20, 2016 from Dan Gagnier to Theresa Tedesco, together with its attachment, is attached as **Exhibit 24**;³
- (d) An email sent July 31, 2017 from Jacquie McNish to Dan Gagnier is attached as **Exhibit 25**;⁴
- (e) Emails exchanged September 27, 2017 between Dan Gagnier and Newton Glassman are attached as **Exhibit 26**;⁵
- (f) An email sent September 27, 2017 from Emmanuel Rosen to Dan Gagnier is attached as **Exhibit 27**;⁶
- (g) Emails exchanged October 3, 2017 between Dan Gagnier and Newton Glassman are attached as **Exhibit 28**;⁷
- (h) Emails exchanged October 5, 2017 between Dan Gagnier, Newton Glassman, and James Riley are attached as **Exhibit 29**;⁸
- (i) An email sent October 10, 2017 from Emmanuel Rosen to Dan Gagnier, together with its attachments, is attached as **Exhibit 30**;⁹

² CAT_C_00000514.

³ CAT_E_00000116 & CAT_E_00000117.

⁴ CAT_C_00000726.

⁵ CAT_E_00000153.

⁶ CAT_E_00000154.

⁷ CAT_E_00000157.

⁸ CAT_E_00000162.

⁹ CAT_E_00000163, CAT_E_00000164, & CAT_E_00000165.

- (j) An email sent November 15, 2017 from Jacquie McNish to Dan Gagnier is attached as **Exhibit 31**;¹⁰
 - (k) Emails exchanged December 1, 2017 between Dan Gagnier, David Reese, James Riley, Lawrence Delevingne, and John Tilak are attached as **Exhibit 32**;¹¹
 - (l) Emails exchanged December 4, 2017 between Dan Gagnier and Caroline Simson, together with an attachment thereto, are attached as **Exhibit 33**;¹²
 - (m) Emails exchanged December 6 and 7, 2017 between Ori Amir, Dan Gagnier, James Riley, Newton Glassman and others are attached as **Exhibit 34**;¹³
 - (n) Emails exchanged February 23, 2018 between Dan Gagnier and Bruce Livesey are attached as **Exhibit 35**;¹⁴ and
 - (o) Emails exchanged March 22, 2018 between Dan Gagnier, Lawrence Delevingne and John Tilak (and bcc'ing James Riley) are attached as **Exhibit 36**.¹⁵
22. Screenshots from the website of Haystack Needle are attached as **Exhibit 37**.
23. Screenshots from the website of Haystack Reputation are attached as **Exhibit 38**.

¹⁰ CAT_E_00000181.

¹¹ CAT_E_00000218.

¹² CAT_E_00000225 & CAT_E_00000226.

¹³ CAT_E_00000230.

¹⁴ CAT_C_00000890.

¹⁵ CAT_E_00000254.

(ii) **Category 2: Communications With or Involving Investment Research Firm Due Diligence Consulting**

24. Screenshots from the website of Due Diligence Consulting are attached as **Exhibit 39**.

(iii) **Category 3: Communications With or Involving Marc Cohodes and/or Derrick Snowdy**

25. Copies of a number of different emails sent from, to, or copying Marc Cohodes and/or Derrick Snowdy were listed by Catalyst and Callidus in Schedule A to the Affidavit of Documents that they delivered in respect of the Counterclaim and produced to West Face and Boland on December 31, 2019, are attached as follows:

- (a) An email sent January 20, 2016 from Marc Cohodes to Adam Spears and Derrick Snowdy is attached as **Exhibit 40**;¹⁶
- (b) An email sent January 20, 2016 from Marc Cohodes to Derrick Snowdy is attached as **Exhibit 41**;¹⁷
- (c) An email sent February 13, 2017 from Darryl Levitt to Marc Cohodes is attached as **Exhibit 42**;¹⁸
- (d) An email sent July 7, 2017 from Marc Cohodes to Bruce Langstaff, Adam Spears, Derrick Snowdy, and another individual, together with its attachment, is attached as **Exhibit 43**;¹⁹

¹⁶ CAT_C_00000860.

¹⁷ CAT_C_00000863.

¹⁸ CAT_C_00000632.

¹⁹ CAT_C_00000852.

26. In addition, a copy of an email sent April 16, 2018 from Newton Glassman to an individual named “jeff” (whose name is otherwise redacted) and which mentions Mr. Cohodes is attached as **Exhibit 44**.²⁰

(iv) Category 4: Documents Relating to the “Vincent Hanna Email”

27. A copy of an article published in the *Wall Street Journal* on August 9, 2017 is attached as **Exhibit 45**.²¹

28. A copy of an email sent by Vincent Hanna (from a runbox.com email address) to Newton Glassman on August 11, 2017 (the “**Vincent Hanna Email**”) is attached as **Exhibit 46**.²²

29. A copy of a letter Catalyst sent to its investors on August 14, 2017 is attached as **Exhibit 47**.

30. Excerpts of various Affidavits of James Riley containing his evidence concerning Vincent Hanna and the Vincent Hanna Email are attached as **Exhibits 48, 49, and 50**.

31. A copy of IMDB’s webpage about the movie “Heat” showing that Al Pacino played a character named Vincent Hanna in that movie is attached as **Exhibit 51**.

32. A copy of the “Why Runbox” page of the runbox.com website is attached as **Exhibit 52**.

²⁰ CAT_C_00000930.

²¹ WF002177.

²² CAT_LANG00000001_0001.

33. A copy of a letter from West Face's counsel, Matthew Milne-Smith, to Danny Guy (c/o John Kingman Phillips) dated January 14, 2020 is attached as **Exhibit 53**.

34. A copy of an email thread of emails exchanged between Mr. Milne-Smith and Danny Guy dated January 15 and 16, 2020 is attached as **Exhibit 54**.

(v) Category 5: Documents Relating to the Dalton Report

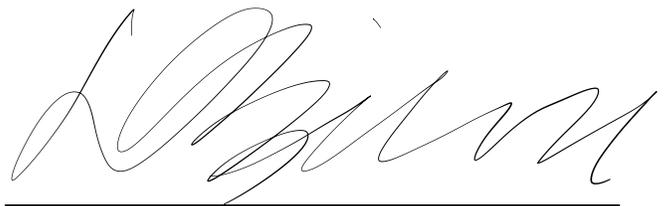
35. An excerpt of Callidus's Management's Discussions and Analysis for the year ended December 31, 2018 is attached as **Exhibit 55**.

36. A copy of the OSC's Refilings and Errors list is attached as **Exhibit 56**.²³

AFFIRMED REMOTELY BY DEBRA
BILIOUS stated as being located in the City
of Toronto, in the Province of Ontario, before
me in the City of Toronto, in the Province of
Ontario, this 17th day of November, 2020, in
accordance with *O. Reg 431/20*,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



DEBRA BILIOUS

This is **Exhibit "1"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to be 'Maura O'Sullivan', written over a horizontal line.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

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 Bluberi" and of his conversation with the principal of Blueberi, "Gerrard" (Duhamel), about steps that Duhamel had taken or was about to take to disparage Catalyst and Callidus;

- (d) On March 30, 2017, Langstaff told Levitt that according to a “friend” of Langstaff (referring to Boland), an internal Callidus loan officer could be contacted to obtain allegations and or information thought to be harmful to the Plaintiff;
- (e) On April 12, 2017, Langstaff told Levitt that Callidus’ growth was “severely negative”;
- (f) On April 21, 2017, Langstaff was told by Levitt that a District Court Judge in Texas had “found instances of fraud” by Callidus in relation to Esco Marine and the guarantor actions against Levy and Jaross;
- (g) On April 25, 2017, Langstaff contacted Levy of Esco Marine and advised that “Greg Boland is a friend of mine”; he was “helping West Face” and was looking for “details”;
- (h) On April 30, 2017, Langstaff was told by Levitt that he was “Dropping off evidence binders tonight to police HQ. We can supplement with other new info” and that Nathan [Anderson] is coming tomorrow and Tuesday”;
- (i) On May 2, 2017, Langstaff and Levitt shared copies of questions which they and their co-conspirators had provided to the media and to analysts including a supposedly independent analyst at Canaccord Genuity covering Callidus, for the purpose of eliciting answers from Callidus which they hoped would be used to generate disparaging reports harmful to the Plaintiffs;
- (j) On May 3, 2017, Langstaff told Levitt that Callidus’ numbers were “horrific” and that “now is the time to go after Glassman”;

- (k) On May 3, 2017, Langstaff represented to Levitt that “Glassman had violated TSX rules”; that with “one good swat at [Glassman]” the conspirators “might get [Glassman] to lose control and that he was “trying” to make this happen;
 - (l) On May 12, 2017, Langstaff received from Levitt numerous documents including materials which the Guarantor Conspirators delivered to JSOT, to be used and distributed by Langstaff to “get some media traction” in furtherance of the Conspiracy;
 - (m) On May 15, 2017, Langstaff told Levitt that he suspects that Hilco, a well-known and independent appraiser retained by Callidus to value Esco Marine and Bluberi, was “on the take from Callidus” to enable Callidus to “call in the loan[s]”; and
 - (n) On June 3, 2017, Langstaff was told by Levitt that he supposedly had “evidence of ... money laundering” by Callidus and that “Reuters [was] working hard now”.
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, 2017th
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

This is **Exhibit "2"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to be 'MS', with a long horizontal flourish extending to the right.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

AMENDED THIS Oct 1, 2019 PURSUANT TO
 MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26 02 (A)

THE ORDER OF
 L'ORDONNANCE DU

DATED / FAIT LE _____

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

Devitz
 REGISTRAR
 SUPERIOR COURT OF JUSTICE

"A. Stanojevic"
 GREFFIER
 COUR SUPÉRIEURE DE JUSTICE

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
 CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
 C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
 FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
 CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
 ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
 ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
 ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
 BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
 MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
 BRUCE LIVESEY and JOHN DOES #4-10

Defendants

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
 CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
 RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
 LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK
 CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

**FOURTH FRESH AS AMENDED
 STATEMENT OF DEFENCE AND COUNTERCLAIM
 OF WEST FACE CAPITAL INC. AND GREGORY BOLAND**

TO THE DEFENDANT(S) TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this Court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a Defence to Counterclaim in Form 27C prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff by counterclaim's lawyer or, where the Plaintiff by counterclaim does not have a lawyer, serve it on the Plaintiff by counterclaim, and file it, with proof of service, in this Court, WITHIN TWENTY DAYS after this Statement of Defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a Defence to Counterclaim, 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 defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, 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.

Date December 29, 2019 Issued by "N. BROWN"
B. Local Registrar

Address of court office: Superior Court of Justice
 393 University Avenue, 10th Floor
 Toronto ON M5G 1E6

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SECOND FRESH AS AMENDED STATEMENT OF DEFENCE

1. The Defendants West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") deny all of the allegations in the Fresh as Amended Statement of Claim dated July 18, 2019 (the "**Amended Claim**") and put the Plaintiffs to the strict proof thereof.

A. OVERVIEW

2. This is yet another abusive and vexatious action that the Plaintiffs, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), have brought in bad faith. They have done so for at least three purposes:

- (a) First, to punish, embarrass and harass West Face for its business and litigation successes at the expense of Catalyst and Callidus, by unfairly and maliciously impugning the integrity and conduct of West Face and its principals;
- (b) Second, to distract attention from the deteriorating financial performance, overvalued assets, material non-disclosures, and misrepresentations to investors of Catalyst and Callidus, highlighted by the fall in the Callidus share price from a high of \$24.01 in August 2014 to below \$0.50 before the announcement on August 15, 2019 of a "going private" transaction at \$0.75 per share; and
- (c) Third, to intimidate West Face, Boland, other capital market participants, regulators, and members of the media, in an effort to dissuade or discourage them from scrutinizing, discussing, criticizing or commenting

- 3 -

publicly on the deteriorating financial performance, overvalued assets, material non-disclosures, and misrepresentations of Catalyst and Callidus.

3. This is the fourth action that Catalyst and/or Callidus have brought against West Face in a four year period. The first, the “**Moyse Action**”, was dismissed by Justice Newbould after a full trial in June 2016. Justice Newbould found that Catalyst’s claims and allegations against West Face were wholly lacking in merit, and made findings of credibility against all of Catalyst’s principals. Justice Newbould also awarded costs of \$1.2 million in favour of West Face, on a substantial indemnity basis. Justice Newbould’s trial judgment and costs award were upheld by the Court of Appeal in February and March 2018, in the manner described below. The second of the Plaintiffs’ actions against West Face, the “**Veritas Action**”, has not been advanced by the Plaintiffs in any material respect even though it was commenced years ago, in June 2015.¹ The third, the “**VimpelCom Action**”, was commenced on the eve of trial in the Moyse Action and was dismissed by Justice Hailey in April 2018. Justice Hailey determined that Catalyst’s claim in the VimpelCom Action was barred as against various Defendants, including West Face, pursuant to the doctrines of *res judicata*, and barred as against all Defendants as an abuse of process. Justice Hailey’s decision was unanimously upheld by the Court of Appeal in May 2019.

4. With respect to the Plaintiffs’ claims in this proceeding, West Face and Boland have not conspired with any of the other Defendants; they never retained Bruce

¹ West Face’s motion to strike a portion of the claim in the Veritas Action was successful at first instance, but was ultimately dismissed by the Court of Appeal on February 1, 2017. The Plaintiffs have taken no steps to advance the Veritas Action since that time. The parties are only now proceeding to documentary discovery at West Face’s insistence.

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Livesey or anyone to write about Callidus or Catalyst; they never encouraged any of the Defendants to “short” Callidus’s shares; they did not participate in any “whistleblower” complaint to the Ontario Securities Commission (the “OSC”) or any other regulatory or criminal authority as detailed in the *Wall Street Journal* article of August 9, 2017 that Catalyst alleges was a key element of the alleged conspiracy; and they have, in fact, not been “short” Callidus’s shares since April 2015, more than two years prior to the alleged events of August 9, 2017.

5. Catalyst’s and Callidus’s claims, including in the current proceeding, have not been advanced in good faith, but instead because of West Face’s business successes at Catalyst’s and Callidus’s expense:

- (a) West Face hired Brandon Moyse, a junior analyst, away from Catalyst in June 2014 after Moyse grew tired of Catalyst’s abusive work environment and flagging deal pipeline;
- (b) Investment funds advised by West Face participated successfully in a consortium that acquired Canadian wireless telecommunications company WIND Mobile (“WIND”) in September 2014 at an enterprise value of \$300 million, after Catalyst had failed to acquire WIND during a period of exclusive negotiations with the vendor in July and August 2014. West Face’s consortium sold WIND a year and a half later at a \$1.6 billion valuation; and
- (c) West Face successfully identified Callidus as an overvalued public company in the Fall of 2014, when Callidus’s shares were trading between

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\$20 and \$25, and investment funds advised by West Face sold Callidus's shares "short". When Callidus's share price fell in early 2015, funds advised by West Face realized profits from their short positions. Callidus itself has now conceded that its inability to achieve superior value for its shareholders than \$0.75 per share was caused not by any misconduct of West Face or Boland, but by: (i) a decline in Callidus's operating and financial performance; (ii) non-performing loans made by Callidus; (iii) negative operating performance of its non-core subsidiaries; (iv) senior personnel issues; and (v) an increasing inability to retain personnel despite retention programs.

6. Catalyst's founder, CEO and Managing Partner, Newton Glassman ("**Glassman**"), reacted petulantly to all of the matters referred to immediately above. He could not tolerate being bested by West Face or Boland. As explained below, Glassman and his partners at Catalyst, including James Riley ("**Riley**") and Gabriel De Alba ("**De Alba**"), therefore decided to retaliate maliciously, including by orchestrating and participating in a systematic and vicious campaign of defamation against West Face and Boland over the Internet, and by shrouding West Face and Boland in contention and controversy through the repeated commencement and pursuit of abusive, bad faith litigation.

7. This action has been brought by Catalyst and Callidus for the purposes of: (i) limiting unduly and improperly expression on matters of public interest; (ii) harassing and oppressing the Defendants; and (iii) assaulting the integrity of West Face, Boland, and the administration of justice in Ontario. It should be dismissed under section 137.1

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of the *Courts of Justice Act* (the “**Anti SLAPP Legislation**”), and stayed under section 140 of the *Courts of Justice Act* on the basis that Catalyst and Callidus are vexatious litigants.

8. Contrary to paragraph 58 of the Amended Claim, Catalyst’s and Callidus’s persistent, vexatious litigation did not motivate the Defendants to participate in the pleaded conspiracy. On the contrary, Catalyst and Callidus had by 2017 succeeded in “chilling” West Face and Boland from discussing Catalyst or Callidus publicly, and from shorting Callidus’s stock, in spite of believing at all material times that the Callidus business was built on inaccurate financial disclosure and doomed to fail.

B. The Parties to the Claim

9. Catalyst is a Toronto-based private equity investment firm. Its three principals at all relevant times were Glassman, De Alba, and Riley. De Alba was a Managing Director and Partner of Catalyst. Riley was a Managing Director and Chief Operating Officer of Catalyst.

10. Callidus is a publicly-traded company that lends money to distressed borrowers that are generally unable to access traditional lending sources. Glassman is the Executive Chairman and during the relevant periods was CEO of Callidus. Riley was Callidus’s Secretary. Both are also Directors of Callidus.

11. West Face is a Toronto-based investment management firm. It is led by its CEO, Boland.

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C. West Face and Boland Did Not Conspire to Harm Callidus or Catalyst

12. Contrary to the allegations throughout the Amended Claim, West Face and Boland did not participate in a conspiracy to cause the stock price of Callidus to drop, or to otherwise injure the Plaintiffs. The Plaintiffs' claims against West Face and Boland have been invented from whole cloth.

13. West Face closed its "short" position in respect of Callidus in April 2015. Contrary to allegations made throughout the Claim, West Face has not been "short" Callidus since that time. Nor did West Face or Boland communicate with any of the other Defendants for the purpose of causing Callidus's stock price to drop. Callidus's stock price has fallen because of Callidus's fundamentally flawed business model and disastrous financial performance, as West Face had correctly predicted in the Fall of 2014.

14. From time to time, West Face communicated with other parties that have also been sued by Catalyst or Callidus for the purpose of learning about: (a) the status of ongoing litigation commenced by Catalyst and Callidus; and (b) the businesses of Catalyst and Callidus. West Face had sold short the shares of Callidus during the period from October 2014 to April 2015, and Callidus had then sued West Face for defamation in June 2015. That litigation put squarely in issue the business model and financial performance of Callidus, and West Face has therefore continued to try to gather information about Callidus. This included:

- (a) In 2014 and 2015, when West Face was researching Callidus in connection with selling short its shares, Boland communicated separately

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with (i) the Defendant Kevin Baumann; (ii) the Defendant Jeffrey McFarlane; and (iii) Andrew Levy (another guarantor of Callidus' debts who has since settled with Callidus and provided his communications with the other Defendants to Callidus and Catalyst), about their experiences as borrowers from Callidus in order to better understand the business model and operations of Callidus;

- (b) Boland has for many years communicated regularly with the Defendant Bruce Langstaff, who had covered West Face as an equity salesperson at Canaccord Capital Corporation for many years before the events giving rise to the litigation between West Face and Catalyst, and was a personal friend of Boland;
- (c) Boland has communicated occasionally with Gerard Duhamel since West Face was contacted through an intermediary about potential financing for his company Bluberi Gaming in early 2014 prior to Catalyst commencing any legal proceedings against West Face;
- (d) Boland has from time to time communicated with the Defendant Nathan Anderson, who reached out to Boland unsolicited and advised that he was an investment analyst who was researching Catalyst and Callidus. Boland has never met Anderson in person or seen any work he may have produced about Catalyst or Callidus;
- (e) Boland has never met or communicated with either Rob Copeland or Craig Boyer.

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- (f) Before the Plaintiffs commenced this action, Boland had never communicated with Wes Voorheis about Callidus, and had had no communications with Voorheis on any subject since before 2014.

15. West Face and Boland did not conspire to disseminate negative information about Callidus through any “Bay Street rumour mill”; did not take “short” positions in Callidus during the period complained of in this proceeding; and did not participate in any “whistleblower” complaints about Callidus. In fact, Boland never spoke to more than one of the Defendants at any one time. Nor were West Face or Boland sources for the article about those complaints that was published in the *Wall Street Journal* on August 9, 2017 (the “**Article**”). Although West Face was asked about possible “whistleblower” investigations by a *Wall Street Journal* reporter, it had no information to provide. West Face was at all material times aware of the litigious nature of Catalyst and Callidus, and avoided making any potentially defamatory comments in response to perfectly proper and legitimate questions of the reporter.

16. West Face and Boland specifically deny the allegation in paragraph 92 of the Amended Claim that the conduct alleged had “been honed through repetition in other situations”. That allegation has also been invented from whole cloth. West Face and Boland have never conspired with any of the other Defendants with respect to Catalyst, Callidus or any other subject matter.

17. Contrary to the allegations in paragraphs 44 and 57 of the Amended Claim, at no time did West Face or Boland offer to fund, or in fact fund, any of the

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Guarantors (as defined in the Claim) in their respective defences of claims brought against them by Callidus.

18. Contrary to the allegations in paragraphs 48 and 104(a) of the Amended Claim, West Face and Boland did not, either directly or through external counsel, introduce Levitt or any other Defendants to U.S. counsel for purpose of filing a RICO complaint against Catalyst and Callidus. In March 2016, Levitt had contacted West Face's external counsel Matthew Milne-Smith about potentially retaining him for a claim against Callidus, but ultimately chose to retain different counsel. Subsequently, in November 2016, at Levitt's request Milne-Smith referred him to a U.S. lawyer willing to act on contingency. West Face and Boland had no involvement in any of these interactions.

D. West Face and Boland Did Not Participate in a "Wolfpack Conspiracy"

19. Contrary to the allegations in paragraphs 62 to 63, 83 and 98 to 156 of the Amended Claim, West Face and Boland never retained or conspired with any of Bruce Livesey, Reuters, the *Wall Street Journal* or any other entity to write articles about Catalyst, Callidus or Glassman, or to support Callidus guarantors. Mr. Livesey is a freelance journalist who pursued independently an article concerning Glassman, Catalyst and Callidus. From time to time, Mr. Livesey contacted Boland with questions about Catalyst and Callidus and their litigation against West Face. Boland provided only publicly available information. He was fully entitled to do so.

20. West Face did not cause or precipitate the publication by the *Wall Street Journal* of the Article complained of in the Claim concerning investigations by the OSC

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and Toronto Police Services pertaining to alleged financial misconduct by Callidus, and indeed had no knowledge that such investigations were ongoing.

21. West Face and Boland specifically deny that they had any communications with Anson or the Individual Anson Defendants (both as defined in the Claim) about any of the matters alleged in the Amended Claim. West Face and Boland specifically deny the allegations in paragraphs 78 to 80 of the Amended Claim concerning Anson. At no time did West Face or Boland have any communications with Anson about Callidus, Catalyst or Glassman. Boland has never been a “business colleague” or “personal friend” of Kassam, and has in fact never met or even spoken to him. Anson and West Face have never collaborated in any investment.

22. West Face and Boland specifically deny the allegations in paragraph 81 of the Amended Claim regarding the Defendants Clarityspring and Anderson (both as defined in the Claim). At no time did West Face or Boland encourage Clarityspring, or anyone else, to participate in any “short attack” against or involving Callidus. As described above, Catalyst’s and Callidus’s persistent vexatious litigation had successfully chilled West Face and Boland from any conduct related to shorting Callidus’s shares even though West Face and Boland believed at all material times that Callidus’s share price was overvalued. Indeed, West Face and Boland were unaware of, and did not participate in, any such alleged attack, and have no knowledge of any trading activity by Clarityspring or any of the other Defendants in respect of Callidus.

23. West Face and Boland specifically deny the allegation at paragraph 84 of the Amended Claim that they were privy to or even aware of any alleged confidential

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information belonging to Callidus. As West Face has described in great detail in its Statement of Defence in the Veritas Action, and in affidavit materials filed in successful response to an injunction motion brought by Catalyst in the Moyse Action, West Face was able to discern the identity of certain Callidus borrowers from entirely public sources.

24. Contrary to paragraph 104(d) of the Amended Claim, Boland did not direct Milne-Smith to provide West Face's internal Callidus research to any Guarantor. West Face and Boland do not know whether or how any Guarantor may have obtained that research, which was publicly filed with the Ontario Superior Court of Justice in the injunction motion described above. To the best of West Face's and Boland's knowledge, Business News Network extracted West Face's research on Callidus from West Face's public court filing and uploaded it to the public website scribd.com shortly after it was publicly filed in March 2015, and it has remained publicly available there ever since.

25. Contrary to paragraph 103 of the Amended Claim, West Face did not give Levy or anyone else copies of its Statement of Defence in the Veritas Action so that it could be provided to the OSC and JSOT. Since October 2016, West Face has maintained a publicly-accessible website at catalystlitigation.com that contains, with few exceptions, all public court filings made by all parties, including Catalyst and Callidus, in the four cases Catalyst and Callidus have brought against West Face. West Face created this website in response to numerous inquiries from current and prospective investors, service providers and industry participants with which West Face interacts. West Face believed that it would be helpful to make all pleadings, court submissions and evidence by both sides available to the public. Because of the chilling effect of

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Catalyst's and Callidus's persistent and vexatious litigation, West Face has only excluded from the website certain materials it expected Catalyst and Callidus to perceive as particularly controversial (including West Face's research on Callidus described above), and certain materials that raised individual privacy concerns. However, given that the Ontario court has issued no sealing orders in these matters, even these materials not on West Face's website remain publicly available in the court file.

E. West Face and Boland Did Not Cause any Harm to Callidus or Catalyst

26. Even if any of the allegations made against West Face and Boland in the Amended Claim were true, which is denied, they did not cause any harm to Callidus or its principal shareholder, Catalyst. Rather, the harms pleaded by Callidus and Catalyst were exclusively caused by the mismanagement and failing financial performance of those companies.

27. On August 15, 2019, Callidus announced that it had entered into an arrangement agreement by which Braslyn Ltd. would acquire all of the common shares of Callidus not already held by insiders for consideration of \$0.75 per share. This followed almost three years after Callidus had announced in September 2016 that: (i) it would solicit privatization proposals; and (ii) the shares of Callidus had been valued at \$18 to \$22 per share. Callidus's share price had been over \$18 as recently as January 2017, but had fallen to approximately \$11 in August 2017 before the *Wall Street Journal* article complained of in the Amended Claim. The slide in share price continued and was below \$0.50 at the time the Braslyn transaction was announced.

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28. The valuation of Callidus's shares under the arrangement agreement was supported by: (i) a fairness opinion by Morrison Park Advisors Inc. which concluded that the \$0.75 per share available to minority shareholders under the arrangement is greater than the value that could be achieved by the minority shareholders under any other feasible alternative currently available to Callidus; and (ii) a valuation by Blair Franklin Capital Partners Inc. which concluded that absent the consideration to be provided to Braslyn pursuant to a shareholders' agreement with Catalyst, the value of Callidus shares was negative.

29. The precipitous decline in Callidus's share price was not caused by anything pleaded in the Amended Claim. Rather, it was caused by a number of factors entirely attributable to Catalyst and Callidus, including the fact that:

- (a) the operating and financial performance of Callidus declined significantly;
- (b) starting in the third quarter of 2016, ongoing operating losses and negative cash flows from operations resulted from non-performing loans made by Callidus and quarterly increases in its loan loss provisions;
- (c) negative operating performance of, and the extent of the capital required by, a number of the non-core subsidiaries of Callidus;
- (d) deterioration in the financial condition of Callidus, leading to an inability to obtain additional financing to invest in Callidus's existing business and to pursue new loan origination;

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- (e) a number of senior personnel issues, including the medical leave of Glassman; the resignation of Callidus's Interim Chief Executive Officer, Patrick Dalton, on March 11, 2019 following his appointment effective November 5, 2018; Callidus's inability to recruit a new Chief Executive Officer with appropriate experience; and in April 2019, the departure of Callidus's Chief Credit Officer, James Rogers;
- (f) the internal forecasts in place prior to the preparation of Callidus's 2018 financial statements did not anticipate the extent of the decline in Callidus's operating and financial performance; and
- (g) the need for any party interested in acquiring an equity interest in Callidus to negotiate a shareholders agreement with Catalyst was a barrier to certain parties that expressed initial interest in exploring a transaction.

30. None of the foregoing factors were caused by or attributable to West Face, Boland, or any of the other Defendants.

F. This Claim Is an Attempt to Limit Freedom of Expression on Matters of Public Interest

31. The management, conduct and performance of publicly traded companies such as Callidus are matters of significant public interest. Indeed, the management and performance of Catalyst and Callidus have been the subject of widespread media coverage for years, both in the Article and elsewhere. Catalyst and Callidus seek to generate media coverage, including by frequently issuing press releases and other public statements both with respect to their performance and concerning other matters.

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The Article relates to the management and performance of Callidus and, indirectly, Catalyst.

32. One of the purposes of this action is to deter the Defendants, the media, participants in the capital markets and the public at large from scrutinizing, criticizing or commenting on the performance and conduct of Callidus and Catalyst. By suing for conspiracy as well as defamation, Callidus and Catalyst have attempted to deter actual or potential critics from even discussing them in private lest they too be accused of participating in an unlawful "wolfpack conspiracy".

33. Catalyst's and Callidus's pattern of engaging in bad faith, vexatious and abusive litigation and other unlawful and offensive conduct aimed at suppressing free speech and criticism is further demonstrated by their conduct in respect of the Defendant Bruce Langstaff. Mr. Langstaff, formerly an equity salesperson at Canaccord Capital Corporation ("**Canaccord**"), investigated the financial performance of Callidus. He was fully entitled to do so. Nevertheless, the Catalyst Defendants retaliated against Langstaff by demanding that Canaccord fire Mr. Langstaff. They did so with a view to sending a clear and unmistakable message to Mr. Langstaff, Canaccord and other participants in the capital markets that none of Catalyst, Callidus, or their principals would tolerate investigations of this nature that might bring to light questionable, or improper conduct, that Catalyst or Callidus had engaged in. Canaccord acceded to the Catalyst Defendants' demand and fired Mr. Langstaff in order to placate Catalyst, Callidus, and their principals.

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34. West Face and Boland request that this action be dismissed against them with costs on a full indemnity or solicitor and his own client basis.

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SECOND FRESH AS AMENDED COUNTERCLAIM

35. The Plaintiffs by Counterclaim, West Face and Boland, counterclaim against the Defendants by Counterclaim, Catalyst, Callidus, Glassman, De Alba, Riley (collectively, the "**Catalyst Defendants**"), Virginia Jamieson ("**Jamieson**"), Emmanuel Rosen ("**Rosen**"), B.C. Strategy Ltd. and B.C. Strategy UK Ltd. (together with B.C. Strategy Ltd., "**Black Cube**"), Invop Ltd., doing business as Psy Group, ("**Psy Group**"), and John Does #1-10 (all of the Defendants by Counterclaim collectively, the "**Counterclaim Defendants**") for:

- (a) A declaration that the Counterclaim Defendants have defamed West Face and Boland;
- (b) General damages in the amount of \$450 million for West Face and \$50 million for Boland, for defamation, conspiracy, breach of confidence, inducing breach of confidence, inducing breach of contract, inducing breach of fiduciary duty, and the tort of unlawful means;
- (c) A declaration that Glassman, De Alba, and Riley are personally liable for their unlawful actions carried out by, through or in the name of Catalyst, Callidus, the other Counterclaim Defendants, and/or any other corporation, entity, representative or agent through which he or they participated or engaged in wrongdoing as pleaded in this Counterclaim;
- (d) A declaration that the Counterclaim Defendants are jointly and severally liable to West Face and Boland for all loss, harm or damage caused by or as a result of the conspiracy complained of herein;

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- (e) An Order requiring the Counterclaim Defendants to deliver up to West Face all originals and copies of all recordings, transcripts, notes, memoranda, emails, text messages or other physical or electronic documents in their possession, control or power (including, without limitation, in the possession of their counsel or other agents) that contain, summarize or reflect the contents of stings conducted by operatives of Black Cube or other investigative firms or agencies involving current or former employees of West Face, or Justice Newbould, and requiring them to certify under oath that they have done so;
- (f) A declaration under section 140 of the *Courts of Justice Act* that the Catalyst Defendants are vexatious litigants and an Order that: (i) no further proceeding may be instituted by the Catalyst Defendants or any subset of them in any court against West Face or its officers, directors, or employees; and that (ii) proceedings previously instituted by the Catalyst Defendants or any subset of them against West Face or its officers, directors, or employees may not be continued, except by leave of a judge of the Superior Court of Justice;
- (g) To the extent necessary, an Order permitting West Face and Boland to seek the declaration and relief referred to immediately above in this proceeding, rather than by way of separate Application;
- (h) In the alternative, requiring that any such Application that may be required, be heard and determined at the same time, in the same hearing and by

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the same Justice of this Court that presides at the trial of this Counterclaim;

- (i) Punitive damages in the amount of \$45 million for West Face and \$5 million in aggravated and punitive damages for Boland;
- (j) Compound pre-judgment and post-judgment interest, in amounts and at rates to be determined by the Court;
- (k) In the alternative, pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, as amended;
- (l) The costs of this proceeding on a full indemnity or solicitor and his own client basis; and
- (m) Such further and other relief as this Honourable Court may deem just.

A. OVERVIEW

36. This Counterclaim arises out of an insidious, co-ordinated, and systematic campaign of defamation and economic interference that the Counterclaim Defendants have pursued, and continue to pursue, against West Face and Boland in retaliation for at least two series of events that the Catalyst Defendants took umbrage with:

- (a) **The WIND Transaction:** In September 2014, investment funds managed by West Face participated in a consortium of investors that successfully acquired Canadian wireless telecommunications company WIND, after Catalyst failed in its attempts to do so. West Face's consortium sold WIND a year and a half later to Shaw Communications for more than five times

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what they paid to acquire it. Catalyst responded by suing West Face in the Moyse Action for more than \$500 million,² and in doing so alleged falsely that West Face had acted improperly and unlawfully by “scooping” the WIND deal from Catalyst through the misuse of confidential information of Catalyst that was purportedly obtained by West Face from a former junior analyst of Catalyst named Brandon Moyse. After a full trial on the merits, Justice Newbould of the Commercial List rejected completely all of Catalyst’s claims. Justice Newbould held that West Face did not receive from Moyse any of Catalyst’s confidential information concerning WIND. He also held that Catalyst had failed to acquire WIND because of its own intransigence, miscalculations and other failings, and that Catalyst’s strategy to acquire WIND could never have succeeded in any event. Justice Newbould made adverse findings of credibility against each of Glassman, De Alba, and Riley, criticized Catalyst for baselessly attacking the integrity of West Face and its principals, including Boland, and awarded West Face substantial indemnity costs in the amount of \$1.2 million. Catalyst’s appeal from Justice Newbould’s trial judgment in the Moyse Action was dismissed on its merits by the Ontario Court of Appeal on February 21, 2018, from the bench, without the need for oral submissions from West Face or Moyse. Catalyst’s motion for leave to appeal to the Court of Appeal in respect of the award of substantial indemnity costs made in favour of West Face by Justice Newbould was

² The Moyse Action claimed damages of \$500 million. The subsequent VimpelCom Action, which also claimed damages for West Face’s participation in the acquisition of WIND, claimed \$1.3 billion.

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dismissed by that Court in written reasons released on March 22, 2018. On March 28, 2019, the Supreme Court of Canada dismissed Catalyst's application for leave to appeal from the decision of the Ontario Court of Appeal, with costs; and

- (b) **The Callidus "Short"**: In the Fall of 2014, Callidus's shares were trading at over \$20 per share. West Face correctly identified Callidus as an overvalued company, sold Callidus's shares "short", and made a profit in the Spring of 2015 when Callidus's shares fell to under \$17 per share (at which time West Face closed out its "short" position). Approximately two-thirds of Callidus's shares were (and continue to be) held by funds managed by Catalyst. As a result, this decline in share price caused by Callidus's weak financial condition was harmful not only to Callidus, but also to Catalyst and its funds. Callidus's share price has continued to fall since that time as a result of Callidus's poor financial performance and the other reasons pled in the Statement of Defence. Callidus's shares currently trade at under \$1 per share.

37. The Catalyst Defendants, and in particular Glassman (who was the self-proclaimed "architect" of Catalyst's failed strategy to acquire WIND) refused to accept responsibility for these failures. Instead, Glassman and the other Catalyst Defendants blamed West Face and Boland for the woes suffered by Catalyst and Callidus, and decided to retaliate in an effort to shroud West Face and Boland in contention and controversy. They were well aware, and indeed intended, that doing so would deter investors and other participants in the capital markets from doing business with West

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Face and Boland, thereby causing them harm. That is precisely what has happened. The Catalyst Defendants and other Counterclaim Defendants acted with malice, and with contumelious disregard for the rights and interests of West Face and Boland, in orchestrating the campaign of defamation and harassment described below. They sought to inflict as much harm as possible on West Face and Boland by engaging in the conduct at issue in this Counterclaim, including by disseminating their false and defamatory statements concerning West Face and Boland not only to investors in or with Callidus and Catalyst, but also to current and potential investors with West Face and Boland. The Catalyst Defendants and other Counterclaim Defendants conspired together and with one another to defame and interfere with the economic interests of West Face and Boland in order to punish, embarrass, discredit and harm them, and to deter them and others from crossing the Catalyst Defendants.

38. This conspiracy was also intended to divert the attention of investors, and the financial community at large, from the Catalyst Defendants' own failures, as well as from allegations of misconduct and "whistleblower" complaints made against Callidus and other Catalyst Defendants (including Glassman and Riley) by parties unrelated to West Face.

39. The conspiracy was hatched in or about August 2017 in response to a series of setbacks for the Catalyst Defendants. First, Catalyst had lost the Moyse Action at trial, as described above. Catalyst's appeal from Justice Newbould's trial decision in the Moyse Action was scheduled to be heard by the Court of Appeal on September 26 and 27, 2017, and Catalyst and its principals were well aware that Catalyst had no reasonable possibility of success on appeal.

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40. Second, in the period from August 16 to 18, 2017, the parties to the VimpelCom Action argued before Justice Hainey motions brought by the Defendants to strike out, stay or dismiss that Action, on the basis that it was precluded by the doctrines of *res judicata* and abuse of process. Catalyst's claims against West Face and other Defendants in the VimpelCom Action overlapped substantially with claims asserted by Catalyst against West Face in the Moyse Action, and concerned the acquisition by West Face and other investors of WIND in September 2014. The motions of the Defendants to stay or dismiss the VimpelCom Action were based, in part, on issues that had been determined and findings of fact that had been made by Justice Newbould at trial in the Moyse Action. At Catalyst's request, Justice Hainey reserved releasing his decision concerning those motions until after the Court of Appeal had heard and decided Catalyst's appeal in the Moyse Action, on the basis that findings made by Justice Newbould at trial in the Moyse Action might be disturbed on appeal. Catalyst and its principals were well aware that if Catalyst's appeal in the Moyse Action failed and key findings made against it by Justice Newbould in the Moyse Action were not interfered with by the Court of Appeal, it had no reasonable prospect of surviving the Defendants' motions to stay or dismiss the VimpelCom Action.

41. In short, as of August 2017, Catalyst's litigation strategies with respect to its claims concerning the WIND transaction were rapidly failing. Catalyst, however, had represented to its investors (including in presentation materials distributed in connection with its Annual Meeting of Limited Partners in the Spring of 2017) that its claims in the Moyse Action and the VimpelCom Action were worth at least \$450 million. In late

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August 2017, Catalyst faced the likelihood of both of these Actions being stayed or dismissed in the very near future.

42. Third, on August 9, 2017, the *Wall Street Journal* published the Article that forms the basis of Catalyst's Claim in this Action, describing in detail various "whistleblower" complaints that had been made against Callidus and other Catalyst Defendants, including to the OSC.

43. In response to these developments, in or about August 2017, the Catalyst Defendants decided that, having been unable to succeed in business or litigation against West Face, they would seek to punish, embarrass and discredit West Face and Boland as West Face's principal, in an effort to shroud them in contention and controversy. In order to carry out this plan, they conspired together with the other Counterclaim Defendants to harm the reputations and business interests of West Face and Boland, including by discrediting Justice Newbould and undermining the validity of the Decision he had rendered in favour of West Face in the Moyse Action and launching a fourth claim against West Face (the case at bar) without a good faith intention to actually pursue the litigation. The goal in all cases was to embroil West Face and Boland in controversy.

44. West Face and Boland were the ultimate targets of the deplorable attack that the Counterclaim Defendants waged against Justice Newbould, as described hereafter. Among other things, the Catalyst Defendants hoped to be able to use "evidence" concerning Justice Newbould that had been or was about to be obtained improperly, unethically and illegally by the other Counterclaim Defendants to undermine

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the position of West Face in Catalyst's appeal to the Court of Appeal in the Moyse Action, as well as West Face's position in the motions pending in the VimpelCom Action. They also intended to use that "evidence" to attack West Face and Boland in their communications with investors, with other participants in the financial markets, and with members of the media, all with the purpose and effect of causing harm to the business and reputations of West Face and Boland. Justice Newbould was an innocent victim in their pernicious scheme.

45. The conspiracy of the Counterclaim Defendants against West Face and Boland fell into two broad categories:

- (a) **The Black Cube Campaign:** The Catalyst Defendants retained or caused to be retained Black Cube, a private investigative firm staffed with former Mossad and Israeli Defence Force intelligence operatives, to conduct a series of "stings" against current and former West Face employees, and against Justice Newbould. The purpose and effect of these stings was to elicit by unlawful means confidential and privileged information of West Face, to attack unfairly the honour, integrity and conduct of Justice Newbould, and to discredit and embarrass West Face, Boland, and other enemies of Catalyst, Callidus and their principals, either real or perceived. The stings were carried out by Aharon Almog-Assoulin, Stella Sharon Penn, Dan Lieberman, and other operatives, the identities of which are known to the Counterclaim Defendants. The Catalyst Defendants and other Counterclaim Defendants also conspired to use the fruits of the

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Black Cube Campaign for the express and predominant purpose of harming and embarrassing both West Face and Boland; and

(b) **The Defamation Campaign:** The Counterclaim Defendants conspired to defame West Face and Boland in three principal respects:

- (i) **The WIND Defamation:** They repeatedly and falsely accused West Face and its principals, including Boland, of acquiring West Face's interest in WIND by unlawful means, including by misusing confidential information of Catalyst obtained improperly by West Face;
- (ii) **The Wolfpack Defamation:** They repeatedly and falsely accused West Face and its principals, including Boland, of engaging in improper conduct including by conspiring with others as part of a "wolfpack" of conspirators, to manipulate illegally the share price of Callidus and other companies related to Catalyst; and
- (iii) **The Performance Defamation:** They repeatedly defamed, and continue to defame, West Face and its principals, including Boland, by impugning unfairly the performance of West Face's funds and alleging falsely that West Face and its principals, including Boland, have engaged in misconduct, including the improper manipulation of investors and regulators.

46. As part of the Defamation Campaign, the Catalyst Defendants retained or caused to be retained not only Gagnier Communications Inc. ("**Gagnier**"), a conventional public relations firm, but also Psy Group, another private firm staffed by former members of the Israeli intelligence establishment which specialized in altering public perception through "proprietary influence techniques" and "narrative warfare". Psy Group's business motto is (or was) "Shape Reality". Psy Group took on the retainer from the Catalyst Defendants and referred internally to the Defamation Campaign against West Face and Boland as "**Project Maple Tree**". The primary objective of Project Maple Tree was to destroy West Face and Boland by engaging in the

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Defamation Campaign targeting West Face and Boland, primarily through the publication of false and defamatory materials on websites, blogs, and through social media platforms (such as Twitter). Psy Group carried out the Defamation Campaign at the direction of the Catalyst Defendants, and using materials unlawfully collected by Black Cube and others.

47. The unlawful conspiracy of the Counterclaim Defendants has been carried out in at least seven ways:

- (a) By the Catalyst Defendants and Gagnier (who acted at all times at the direction of the Catalyst Defendants) issuing or disseminating false and defamatory press releases and other statements about West Face and its principals, including Boland, to the public at large;
- (b) By the Catalyst Defendants and Gagnier making false and defamatory statements about West Face and its principals, including Boland, to various members of the financial community, including to current and potential investors with West Face, and encouraging parties not to invest in, or to withdraw monies from, funds managed by West Face;
- (c) By the Catalyst Defendants and Gagnier making false and defamatory statements about West Face and Boland to the media, including the *Globe and Mail*, *Bloomberg*, *Reuters*, the *Associated Press* and others regarding the fund performance of West Face and alleged unlawful market manipulation;

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- (d) By the Catalyst Defendants making false and defamatory statements about West Face and its principals, including Boland, through communications to Catalyst's funds, limited partners, and/or investors. Given that Catalyst and West Face are competitors, all of Catalyst's investors are potential investors in funds managed by West Face;
- (e) By the Catalyst Defendants harassing and intimidating, or retaining third parties, (including Yossi Tanuri, Mr. Tanuri's security firm Tamara Global, Black Cube and Psy Group), to harass and intimidate both Boland and West Face, by: (i) attempting to solicit unlawfully confidential and privileged information about West Face and Boland from current and former employees of West Face, in breach of their professional and contractual obligations; and (ii) attempting to attack the honour, integrity and conduct of Justice Newbould because of his Decision against Catalyst in the Moyse Action and with the goal of fabricating supposed "fresh evidence" that could be used against West Face both during Catalyst's appeal to the Court of Appeal from that Decision and in the VimpelCom Action. Meetings and discussions between Black Cube, current and former employees of West Face and Justice Newbould were arranged, orchestrated and conducted through the use of false pretences, deceit and false promises of employment, engagement or investment;
- (f) By the Catalyst Defendants, Jamieson, Rosen, Psy Group and Gagnier providing edited or altered transcripts of surreptitiously recorded meetings between operatives of Black Cube and their targets to various journalists,

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including at Bloomberg News and the Associated Press, in an attempt to cause the publication of false and defamatory articles concerning West Face and its principals, including Boland; and

- (g) By Psy Group, Rosen and Jamieson obtaining and utilizing information gathered or manufactured by Black Cube and others retained or engaged by or on behalf of them to publish and disseminate as broadly as possible a series of vicious, false and defamatory statements about West Face and Boland, including over the Internet, using fictional or misleading usernames (including "Judge Frank Newbould") and by employing various other techniques to conceal who was actually responsible for the dissemination of these statements.

48. All of the foregoing activities were carried out in bad faith, and with the intent of retaliating against and punishing, embarrassing, discrediting and harming West Face and Boland, and not for any valid or proper purpose. The predominant purpose of the Catalyst Defendants and their co-conspirators was to injure West Face and Boland, and they succeeded in achieving their objective. The conspirators also utilized unlawful means in carrying out their agreed-upon campaign of vilification, defamation and harassment, as described below, in circumstances where they were well aware that West Face and Boland would suffer harm as a direct result of their improper conduct. Harm did, in fact, result both to West Face and to Boland as described below.

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B. The Parties to the Counterclaim

49. The parties to the Counterclaim include the Plaintiffs by Counterclaim, West Face and Boland, as well as the Catalyst Defendants: Catalyst, Callidus, Glassman, De Alba, and Riley. These parties are described above in the Statement of Defence of West Face and Boland.

50. Glassman, Riley, and De Alba participated personally in the acts of misconduct pleaded and relied upon by West Face and Boland. Their conduct was itself tortious, and went well beyond the scope of any duties that may properly have been owed by them to Catalyst or Callidus. Indeed, these individuals acted throughout in a spiteful, vindictive, and abusive fashion that no responsible public company, or any company charged with the important responsibility of managing and investing the funds of others, could properly have authorized, sanctioned, or tolerated. They are personally liable to West Face and Boland for their misconduct.

51. Glassman, Riley, and De Alba used the names, positions and resources of Catalyst and Callidus in engaging in the misconduct complained of herein. In the circumstances, Catalyst and Callidus are also liable to West Face and Boland for this misconduct.

52. In addition to the Catalyst Defendants, the Counterclaim Defendants include the Defendants described below.

53. Jamieson is an individual residing in Brooklyn, New York. Jamieson is a communications professional with broad experience in public relations, technology and social media. She was engaged indirectly by the Catalyst Defendants, through Rosen,

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and conspired with the Counterclaim Defendants to write, publish, and/or cause the publication and dissemination of false and defamatory statements concerning West Face, Boland and Justice Newbould. Her role in the conspiracy referred to herein included a failed attempt to induce Christie Blatchford ("**Blatchford**"), a prominent, highly respected and widely read journalist at the *National Post*, to publish false and defamatory articles about West Face, Boland and Justice Newbould, including both before and after Catalyst's appeal to the Court of Appeal from the Decision of Justice Newbould in the Moyse Action was originally scheduled to be heard on September 26 and 27, 2017. Jamieson also retained or caused to be retained other third parties located around the globe, to write, publish and disseminate false and defamatory statements about West Face, Boland and Justice Newbould, while using false aliases and usernames to keep her real identity and involvement secret.

54. As stated above, Black Cube is an investigative firm comprised of former members of the Israeli Defence Force and the Mossad, Israel's national intelligence agency. Black Cube was engaged indirectly by the Catalyst Defendants through a chain of parties meant to: (a) shroud Black Cube's engagement, operations, and conduct, in the guise of being litigation privileged; and (b) allow the Catalyst Defendants to falsely deny awareness of, or responsibility for, Black Cube's misconduct. Specifically, the Catalyst Defendants retained Brian Greenspan, a prominent criminal defence lawyer, and instructed him to retain Tamara Global as "security consultants". The Catalyst Defendants did this with the intention and understanding that Tanuri and Tamara would in turn retain Black Cube to carry out the Black Cube Campaign through various Black

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Cube operatives, including Almog-Assoulin, Penn, Lieberman, and others whose identities are unknown to West Face and Boland.

55. Black Cube was retained to elicit confidential and privileged information of West Face from its current and former employees, business contacts and their family members, as well as to obtain information that could be used to discredit Justice Newbould and his Decision in favour of West Face in the Moyse Action. The ultimate targets of all of the activities undertaken by Black Cube in respect of this matter were West Face and Boland. Black Cube has offices in Tel-Aviv, London and Paris. Black Cube operates through various corporate entities, including B.C. Strategy Ltd., an Israel-based company, with company number 514587591, and B.C. Strategy UK Ltd., an UK-based company. Neither Black Cube entity nor any of Black Cube's individual operatives were licensed private investigators in Ontario during the relevant period in which Black Cube perpetrated the various "sting" operations described below in furtherance of the conspiracy. Black Cube's operatives include the following:

- (a) Aharon Almog-Assoulin is a retired security official. Almog-Assoulin was engaged directly or indirectly by the Catalyst Defendants, through Tanuri, Tamara, or Black Cube, to elicit confidential and privileged information of West Face from its current and former employees, business contacts and their family members, as well as to obtain information that could be used to discredit Justice Newbould and his Decision in favour of West Face in the Moyse Action. In particular, Almog-Assoulin met with West Face's former general counsel Alex Singh and intentionally made false representations to him with the purpose and effect of causing Mr. Singh to

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rely on those representations to meet with further Black Cube operatives and divulge to them confidential and privileged information, including information belonging to West Face.

- (b) Stella Sharon Penn is a retired intelligence operative. Penn was engaged directly or indirectly by the Catalyst Defendants, through Tanuri, Tamara, or Black Cube, to elicit confidential and privileged information of West Face from its current and former employees, business contacts and their family members, as well as to obtain information that could be used to discredit Justice Newbould and his Decision in favour of West Face in the Moyse Action. In particular, Penn met with West Face's former analyst Brandon Moyse and his wife, as well as multiple current and former West Face employees, and intentionally made false representations to them in an effort to cause them to rely on those representations and meet with further Black Cube operatives and divulge to them confidential and privileged information, including information belonging to West Face.
- (c) Dan Lieberman was engaged directly or indirectly by the Catalyst Defendants, through Tanuri, Tamara, or Black Cube, to elicit confidential and privileged information of West Face from its current and former employees, business contacts and their family members, as well as to obtain information that could be used to discredit Justice Newbould and his Decision in favour of West Face in the Moyse Action. In particular, Lieberman met with West Face's former analyst Brandon Moyse and his wife, as well as multiple current and former West Face employees, and

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intentionally made false representations to them in an effort to cause them to rely on those representations and meet with further Black Cube operatives and divulge to them confidential and privileged information, including information belonging to West Face.

56. Rosen is an individual residing in Israel. His personal identification number in Israel is 56548456. Rosen is a former TV journalist and documentary filmmaker. Like Jamieson, Rosen was engaged by the Catalyst Defendants, through Psy Group, to write, publish and/or cause the publication and dissemination of false and defamatory statements about West Face, Boland and Justice Newbould. He was also directly involved in the failed attempt to induce Blatchford to publish false and defamatory articles about West Face, Boland, and Justice Newbould. Rosen was part of an inner circle of Psy Group operatives directly involved in orchestrating the Defamation Campaign or otherwise engaged on Project Maple Tree.

57. Psy Group is an intelligence services company based in Limassol, Cyprus, with numerous operatives working out of Petah Tikva, in the metropolitan area of Tel Aviv. Psy Group is the operating name of both Invop Ltd., whose company number in Israel is 51-517203-9, and its parent company, IOCO Limited, whose company number in Cyprus is HE336810. Psy Group was retained by or on behalf of the Catalyst Defendants, directly or indirectly, to assist the Catalyst Defendants in orchestrating and implementing their systematic Defamation Campaign against West Face and Boland. Psy Group is currently in insolvency proceedings in Israel. The principals or operatives of Psy Group include but are not limited to the following:

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- (a) Royi Burstien is an individual who resides in Israel. His personal identification number in Israel is 24561383. He is or was the Chief Executive Officer of Psy Group and was part of an inner circle of Psy Group operatives involved in orchestrating the Defamation Campaign or otherwise engaged on Project Maple Tree.
- (b) Judith Helfgott is an individual residing in Israel. Her personal identification number in Israel is 302041793. She is married to Burstien. She is or was an executive of Psy Group and was also part of the inner circle at Psy Group operatives involved in orchestrating the Defamation Campaign or otherwise engaged on Project Maple Tree. She was also directly involved in the failed attempt to induce Blatchford to publish false and defamatory articles about West Face, Boland, and Justice Newbould.
- (c) Sharon Kisluk is an individual residing in Israel. Her personal identification number in Israel is 204478382. She was part of the inner circle of Psy Group operatives involved in orchestrating the Defamation Campaign or otherwise engaged on Project Maple Tree. She was also directly involved in the failed attempt to induce Blatchford to publish false and defamatory articles about West Face, Boland, and Justice Newbould.

58. In addition to the foregoing defendants, certain other individuals or corporations were directly involved in the events described in the Counterclaim.

59. Yossi Tanuri is an individual residing in Israel. Tanuri's personal identification number in Israel is 28541431. Tanuri is a former commander of an elite

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unit of the Israeli Defence Force and the owner and proprietor of Tamara Global. Tanuri and Tamara Global acted as an intermediary between the Catalyst Defendants and the remaining Counterclaim Defendants. Tamara Global retained Black Cube and Psy Group to assist in and execute the Catalyst Defendants' retaliatory campaigns to harm West Face and Boland. At the Catalyst Defendants' direction, Tanuri and Tamara Global authored a comprehensive and detailed plan to destroy West Face, Boland, and Justice Newbould.

60. Dan Gagnier is an individual residing in New York City. He is the founder of Gagnier Communications, a strategic communications and public relations agency based in New York City. Mr. Gagnier began his career in Toronto, and he and Gagnier Communications are Catalyst's primary conventional public relations representatives. Mr. Gagnier and Gagnier Communications have at all material times been involved in implementing the Catalyst Defendants' systematic campaign of defamation against West Face and Boland. In particular, they provided reporters, news agencies and others with edited, distorted or otherwise falsified recordings and/or transcripts of meetings between operatives of Black Cube and their targets, including current and former employees of West Face as well as Justice Newbould, in an unsuccessful attempt to cause these various news agencies to publish negative false and defamatory articles about West Face, Boland and Justice Newbould. Gagnier also made and continues to make, at the behest of the Catalyst Defendants, false and defamatory statements about Boland and West Face to reporters, news agencies, and others, the particulars of which are within the knowledge of Gagnier.

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C. Background to the WIND Defamation: Catalyst's Failure to Acquire WIND

61. To understand why statements and allegations made and published by or on behalf of the Counterclaim Defendants about West Face and Boland relating to WIND are false and defamatory to West Face and Boland, as well as why and how the Counterclaim Defendants acted with malice in making, disseminating or causing to be made or disseminated the statements and allegations in question, it is necessary to understand why and how Catalyst actually failed to acquire WIND. This sequence of events is one of the principal reasons why the Catalyst Defendants initiated, orchestrated and implemented their unlawful conspiracy, as described herein, and acted with malice in doing so.

62. The question of why Catalyst failed to acquire WIND was decided by Justice Newbould in his Reasons for Judgment dated August 18, 2016 in the Moyse Action. All appeals from that decision have now been dismissed.

63. In January 2014, Moyse contacted West Face to seek employment. Moyse had applied for a job at West Face two years earlier, but decided at that time to work at Catalyst. After a series of interviews, in May 2014 West Face extended a job offer to Moyse, who was at that time working at Catalyst as a junior analyst. Moyse accepted West Face's offer of employment, and tendered his resignation to Catalyst.

64. In June 2014, Catalyst commenced the Moyse Action against Moyse and West Face, alleging that Moyse had breached the confidentiality and non-competition provisions in his employment contract with Catalyst. In its initial Statement of Claim,

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Catalyst did not specify what confidential information Moyse had allegedly communicated to West Face.

65. In September 2014, a consortium of investors that included West Face acquired WIND after Catalyst failed to do so. Shortly thereafter, in October 2014, Catalyst amended its Claim in the Moyse Action to assert that West Face had acquired WIND by misusing confidential information belonging to Catalyst that West Face had allegedly solicited and obtained from Moyse. Those allegations were demonstrably false.

66. The trial of the Moyse Action was heard by Justice Newbould over seven extended days of hearings in June 2016. Multiple witnesses testified that Moyse did not convey to West Face at any time confidential information of Catalyst concerning WIND. Catalyst failed utterly in its efforts to adduce evidence to the contrary. On August 18, 2016, Justice Newbould released his Reasons for Judgment dismissing Catalyst's claims against West Face and Moyse in their entirety. West Face relies on the doctrines of *res judicata* and abuse of process with respect to the following facts found by Justice Newbould.

67. Due to regulatory restrictions on foreign ownership of Canadian telecommunications companies that existed at the time, Globalive Capital, a Canadian entity, held two-thirds of the voting shares of WIND but only one-third of the total equity. VimpelCom, a Dutch-headquartered but Russian-controlled company, held one-third of the voting shares and two-thirds of the total equity.

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68. Over time, VimpelCom had become frustrated by the regulatory hurdles it faced in Canada. This frustration drove its decision to divest its ownership of WIND. VimpelCom's desire to sell its interest in WIND was well-publicized in 2014. VimpelCom made widely known that it was seeking to sell its interests in WIND based on an enterprise value of only \$300 million, which was substantially less than the amount VimpelCom had invested in WIND.

69. West Face and Catalyst both carried on discussions and negotiations with VimpelCom and its advisors in the first half of 2014. During this period, VimpelCom made clear to interested bidders that speed and certainty of closing were its highest priorities. Bidders were not competing on price, which was non-negotiable and had been fixed and made widely known by VimpelCom.

70. Ultimately, VimpelCom entered into an exclusivity agreement with Catalyst on July 23, 2014. As a result, VimpelCom was forbidden from negotiating with West Face or any other bidder during the term of the exclusivity agreement. While the term of VimpelCom's exclusivity agreement with Catalyst was extended several times, ultimately it expired on August 18, 2014.

71. During this period of exclusivity, Catalyst came close to concluding an agreement with VimpelCom to acquire WIND, but failed to do so because of its own flawed assessment of WIND's business as well as its intransigent bargaining position.

72. Specifically, Catalyst believed that WIND would not be a viable business without an express guarantee, in the form of a significant "regulatory concession", from the Government of Canada that would have permitted Catalyst to sell or transfer WIND

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or its wireless spectrum to one of Canada's incumbent wireless carriers (Rogers, Bell and Telus) after five years. For this reason, and as noted by Justice Newbould in his Reasons for Judgment, "Catalyst had no intention of closing a deal with VimpelCom if it could not obtain the concessions it was looking for from the Government".

73. Unfortunately for Catalyst, the Government of Canada's well established regulatory policy was to encourage the growth and development of a fourth national wireless carrier. Indeed, that had been the Government's explicitly stated policy for years, dating back to at least 2008. As a result, WIND was expressly forbidden by the Government from selling its wireless spectrum to an incumbent. Despite Catalyst's repeated efforts throughout the Spring and Summer of 2014, the Government of Canada steadfastly refused to grant regulatory concessions to Catalyst that would have guaranteed Catalyst the ability to sell or transfer WIND or its spectrum to an incumbent after five years. Indeed, the Government was unequivocal that no such concession would be granted to Catalyst.

74. Catalyst hoped that if it was able to complete and execute an agreement to acquire WIND from VimpelCom and Globalive Capital, the Government of Canada would yield to Catalyst's demands rather than risk the negative publicity that might have arisen if Catalyst's efforts to acquire WIND were terminated.

75. VimpelCom, however, was unwilling to permit Catalyst to even speak with the Government concerning potential regulatory concessions in the interim period between entering into an agreement for the sale of WIND and the closing of the sale transaction. VimpelCom was concerned that any such discussions could delay or

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jeopardize the grant by the Government of regulatory approval for the transaction, which was required before any transfer of voting control of WIND could be completed. In its negotiations with Catalyst (and West Face) throughout 2014, VimpelCom had emphasized its desire for a “clean exit” from WIND with minimal regulatory risk.

76. VimpelCom therefore negotiated for and obtained an agreed-upon clause in its proposed agreement with Catalyst that expressly precluded Catalyst from discussing the regulatory concession referred to above with the Government of Canada in the interim period between signing and closing. This meant that for Catalyst to carry out its intended strategy of seeking regulatory concessions about the sale of WIND or its spectrum to an incumbent once it signed its proposed agreement with VimpelCom, Catalyst would have had to breach the very agreement it had just signed. This was a fatal flaw that lay at the heart of Catalyst’s seriously flawed acquisition strategy, and had nothing to do with West Face.

77. In early August 2014, the chief negotiators for Catalyst and VimpelCom agreed on a draft form of Share Purchase Agreement. However, VimpelCom’s Board of Directors had to approve the transaction before it could proceed. VimpelCom’s Board was dissatisfied that the proposed form of Share Purchase Agreement offered VimpelCom inadequate protection in respect of amounts VimpelCom anticipated having to spend to fund the operations of WIND in the interim period between signing and closing. Closing could not occur until the necessary regulatory approvals had been obtained.

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78. To address this concern, in mid-August 2014, VimpelCom asked Catalyst to agree to pay a break fee of between \$5 and \$20 million in the event that the Government of Canada did not approve the sale of WIND to Catalyst within two months. The amount of the break fee was intended to represent funding that VimpelCom would have to provide to WIND during the interim period between signing and closing.

79. Catalyst refused to accede to, or even to discuss, VimpelCom's request for a break fee. Believing incorrectly that VimpelCom had no other viable options, on or about August 15, 2014, Catalyst terminated its discussions and negotiations with VimpelCom, let its period of exclusivity expire, and encouraged VimpelCom to consider its alternatives.

80. Catalyst's belief was misplaced. VimpelCom did, in fact, have other options. On August 6, 2014, a consortium that included West Face had submitted an unsolicited offer for WIND to VimpelCom that did not require regulatory concessions, and was structured in such a way as to avoid entirely the need for regulatory approval before VimpelCom's interest in WIND could be conveyed. Unlike Catalyst, the consortium was willing to acquire initially only VimpelCom's interest in WIND, leaving Globalive's voting control in place. The acquisition of VimpelCom's interest in WIND did not constitute a change of control of WIND. Absent a change of control, no regulatory approval was necessary to complete the sale of VimpelCom's interest.

81. While VimpelCom conducted no negotiations with West Face or other members of its consortium during Catalyst's period of exclusivity, once Catalyst's right to exclusivity expired, VimpelCom was permitted to and did in fact engage in

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negotiations with members of the consortium. Those negotiations concluded successfully with the consortium's acquisition of VimpelCom's interest in WIND on September 16, 2014.

82. As found by Justice Newbould, the consortium's unsolicited offer of August 6, 2014 did not cause Catalyst's failure to acquire WIND. Rather, Catalyst failed to complete its proposed Agreement with VimpelCom for two reasons. First, because of its intransigence in refusing to agree to, or even to discuss, VimpelCom's request for a modest break fee of only \$5 to \$20 million. Second, Catalyst could never have successfully completed its proposed acquisition of WIND because it was unable to obtain regulatory concessions from the Government of Canada permitting it to sell WIND or its spectrum to an incumbent after five years, which Catalyst believed to be a necessary pre-condition to the completion of the proposed acquisition.

83. As described below, the WIND Defamation was rooted in: (i) the refusal of the Catalyst Defendants to accept these facts as described above and found by Justice Newbould; and (ii) the insistence of the Catalyst Defendants in relying upon their entirely false claim that West Face had instead "scooped" or stolen WIND by misusing confidential information of Catalyst concerning WIND that was allegedly conveyed to West Face by Moyse.

D. Background to the Callidus Defamation: Callidus Was Overvalued

84. To understand why the various statements and allegations of the Counterclaim Defendants relating to Callidus are false and defamatory to West Face and Boland, as well as why and how the Counterclaim Defendants acted with malice in

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making, disseminating, or causing to be made or disseminated the statements and allegations in question, it is necessary to understand what the Catalyst Defendants allege West Face has done. This sequence of events is another principal reason why the Catalyst Defendants initiated, orchestrated and implemented their unlawful conspiracy, as described herein, and acted with malice in doing so.

85. Callidus holds itself out as an alternative business lender. Callidus makes business loans with limited or no financial covenants, purports to secure its loans against the most liquid assets of its borrowers, and claims to charge extraordinary interest rates in the range of 18 to 20%. Callidus can properly be described as a “lender of last resort”, as its borrowers would not pay the high interest rates and fees charged by Callidus if more traditional (and less expensive) forms of debt financing were available to them. As a result, Callidus’s borrowers are often in, or on the verge of, some form of financial distress or difficulty.

86. Callidus was wholly-owned by funds managed by Catalyst until April 2014, when Callidus conducted an initial public offering (“IPO”) of a portion of its shares. The IPO resulted in the ownership interest held by Catalyst’s funds being reduced from 100% to approximately 66%.

87. Callidus offered a portion of its shares to the public in its IPO at \$14 per share. However, almost immediately after its IPO, Callidus’s share price began to rise. By mid-August 2014, its shares were trading at over \$20 per share—a significant premium to their IPO price and an even greater premium to their book value based on the assets and liabilities reported in Callidus’s public disclosure.

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88. West Face monitored Callidus's share price in the period since its IPO. By October 2014, West Face believed that the significant premium of Callidus's share price over its book value was unwarranted. It appeared to West Face that the gap between Callidus's book value and the trading price of its shares indicated that the market perceived significant intangible value in Callidus's continuing ability to generate an ever-expanding portfolio of high yield loans that would not default or otherwise suffer from an impairment of their value. West Face believed that this was unsustainable for a number of reasons.³

89. Accordingly, in late October 2014, West Face made a reasoned and entirely appropriate investment decision to begin short-selling Callidus's shares. Around the same time, West Face began conducting more detailed research into the underlying business carried on by Callidus. West Face began summarizing this research and analysis in a proprietary, internal working document.

90. West Face's research into Callidus was conducted on its own account, and for its own internal purposes. In conducting its research, West Face used public sources, such as law firm websites; accounting firm websites (particularly of firms acting as the Monitor or Trustee of insolvent Callidus borrowers); the website of the Office of the Superintendent of Bankruptcy in Canada; case dockets of ongoing bankruptcy proceedings; and public registries of security interest registrations maintained by various government agencies in Canada and the United States, and investment research prepared by investment banks.

³ West Face's reasons for believing that Callidus's share price was overvalued are set out in detail in West Face's Statement of Defence in the Veritas Action.

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91. West Face's research revealed significant issues with a number of the loans Callidus had made to troubled borrowers, and validated West Face's thesis that Callidus's share price was overvalued. Among other things, West Face determined by December 2014 that:

- (a) Callidus's loan portfolio was highly concentrated, in that it contained a relatively small number of outstanding loans;
- (b) A number of borrowers of these outstanding loans were in restructuring, bankruptcy or other court proceedings, with little obvious means of repaying sums owed to Callidus, and where collateral valuations would be tested;
- (c) Callidus's portfolio of outstanding loans also included a number of specific problem loans that had undisclosed indicators of material impairment;
- (d) The valuations Callidus had attached to collateral supporting these loans were overstated;
- (e) There was unexplained dramatic growth in the gross book value Callidus had reported in respect of several problem loans, suggesting that additional credit had been extended to borrowers to keep loans from defaulting;
- (f) Callidus had made loans to borrowers without conducting sufficient due diligence as to the strength of the loan collateral when loans were made;

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- (g) Contrary to Callidus's assertions that it only made loans against its borrowers' most liquid assets, Callidus had made loans that were secured against illiquid collateral, such as undeveloped resource property; and
- (h) Callidus appeared to be unable to expand its loan portfolio to the degree necessary to justify the premium investors had attached to its publicly traded shares without incurring additional loan losses, or charging lower rates of interest.

92. West Face identified these significant concerns despite the fact that, as of November 2014, Callidus had represented publicly that every single one of its loans was current in all interest and principal obligations, that its loans were more than 100% collateralized, and that Callidus had suffered no realized loan losses in spite of lending exclusively to financially troubled borrowers that could not access traditional sources of lending.

93. In sum, West Face had good reason to continue accumulating a "short" position in Callidus throughout the Fall of 2014. West Face ceased accumulating this "short" position in Callidus on December 24, 2014. By that time, Callidus's share price had dropped to approximately \$18 per share (which was still well above the book value per share).

94. West Face closed out its "short" position in Callidus in the Spring of 2015, when Callidus's shares were trading at approximately \$13 to \$17 per share. As set out in West Face's Statement of Defence, West Face has not "shorted" Callidus's shares in the period since, for approximately four years, and had no involvement in any alleged

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“short attack” of August 9, 2017, which is complained of in the Claim of Catalyst and Callidus.

95. In June 2015, Catalyst commenced the Veritas Action against West Face. In the Veritas Action, Catalyst and Callidus accused West Face and Veritas Investment Research Corporation (“**Veritas**”) of engaging in a conspiracy to defame Catalyst and Callidus so that West Face could profit from a short-selling strategy in Callidus’s shares. As described above, West Face did, in fact, short-sell Callidus’s shares in the Fall of 2014. However, West Face did so because it determined that Callidus’s shares were overvalued at the time. Moreover, West Face did not engage in a conspiracy with Veritas to publish false or defamatory statements about Callidus.

96. Events since the Fall of 2014 have only served to validate the concerns that West Face identified with Callidus when it took its “short” position at that time. For example, Callidus’s loans to Xchange Technology, the Arthon Group, Leader Energy, North American Tungsten, Esco Marine, Deepak International, Harvey Industries (now Wabash Industries), Bluberi Gaming Technologies, Groupe Arsenault, Alken Basin Drilling, Gray Aqua, C&C Wood Products, Otto Industries, Fortress Resources, Binder Machinery, Midwest Asphalt Corporation and Horizontal Well Drillers (to name a few), totalling over \$950 million in principal, interest and fees owing, have all developed material indicators of significant impairment or have been subject to insolvency proceedings.

97. Xchange Technology is one of the more significant problematic Callidus loans identified by West Face in 2014. Callidus advanced a one year loan of \$22 million

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to Xchange Technology in October 2012. In February and May 2013, before maturity of the loan, Xchange Technology ran two separate capital raising processes in an attempt to refinance the Callidus loan. Both processes failed. In October 2013, Callidus commenced a successful receivership application appointing Duff & Phelps as receiver and approving a “stalking horse” sales process for the sale of substantially all of Xchange Technology’s business and assets. Callidus served as the stalking horse and “credit bid” on Xchange Technology in November 2013. At the time, Callidus was owed approximately \$38 million.

98. The credit bid did not close until November 2015 and by December 31, 2015, Callidus’s financial statements listed the acquired business as an asset held for sale with a value of \$66.8 million. In a decision issued on May 31, 2016, in proceedings between Callidus and the defendant Jeffrey McFarlane, the former President and CEO of Xchange Technology, Justice Newbould held that the basis for the \$66.8 million figure in Callidus’s financial statements was “not at all clear”.

99. Ultimately, in or around the first quarter of 2016, funds managed by Catalyst purchased Xchange Technology from Callidus for \$101.3 million, which Callidus indicated was the “total outstanding principal plus accrued and unpaid interest”. Callidus primarily used the proceeds it received from funds managed by Catalyst to repay a portion of the balance outstanding to Catalyst from Callidus under a subordinated bridge facility. No funds were recovered from an independent third party. Catalyst now carries Xchange Technology’s assets at only 20% of cost.

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100. As a result of these and other issues, since 2015, Callidus has incurred significant loan loss provisions, negatively affecting its financial condition. Similarly, Callidus's financial difficulties have inhibited its ability to initiate new loans, leading to a material overall reduction of its loan book. This reduction in the size of Callidus's loan book has reduced the company's book value and put downward pressure on its share price valuation. Finally, by shifting Callidus's balance sheet away from debt positions to equity positions in former borrowers, the risk profile of the company has deteriorated, further undermining its financial condition. In May 2017, Callidus announced that the OSC also had required Callidus to make a material change in the manner in which it presented its financial statements. In March 2019, Callidus published its 2018 Annual Financial Statements, which disclosed negative that shareholder equity at the end of 2018. This meant that under accounting rules, the company's liabilities exceeded the value of its assets.

101. In response to continuing weakness in Callidus's share price, and in an effort to harm short-sellers (which Catalyst and Callidus believed incorrectly included West Face), Callidus has engaged in a prolonged and aggressive campaign to prop up its share price:

- (a) First, in March 2016, when Callidus's shares were trading at less than \$10 per share, Callidus announced a substantial issuer bid ("**SIB**") for up to \$50 million at \$14 per share. The purpose and effect of the SIB was to inflate artificially Callidus's share price, because investors knew that they could buy Callidus shares and tender to the SIB for \$14. The SIB was

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extended several times and the price of that Bid was eventually increased by Callidus to \$16.50;

- (b) Second, in late September 2016, when Callidus's shares were trading at less than \$17 per share, it announced a proposed initiative to take Callidus private. Callidus later indicated a target completion date of June 2017. No such transaction was concluded at that time, however, because after having conducted diligence into the company, no arm's length third party has been willing to pay what Callidus had indicated was the target price of \$18 to \$22 per share for Callidus's shares;
- (c) Third, at approximately the same time as it announced its proposed privatization transaction in October 2016, Callidus increased its monthly dividend; and
- (d) Fourth, in January 2017, Callidus commenced a normal course issuer bid ("**NCIB**") for up to 5% of its total issued and outstanding shares. The purpose and effect of the NCIB was to support the Callidus share price.

102. None of these measures had any appreciable long-term, lasting effect on Callidus's share price, because none of them improved Callidus's underlying business or financial performance.

103. As of the date of this amended pleading, Callidus's shares are trading at a price of less than \$1 per share. Moreover, in its most recently released annual financial statements (for year-end 2018), Callidus disclosed a net loss of \$183.6 million for 2018

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and negative shareholder's equity of \$5.4 million. Most of the erosion in shareholders' equity was caused by Callidus acquiring its borrowers and writing down the value of loans and of its acquired businesses. In its second quarter 2019 results, it disclosed a net loss of \$104.4 million year-to-date, and a net loss of \$79.7 million for the second quarter of 2019. As pleaded above in the Statement of Defence, Catalyst has since announced an arrangement agreement by which Braslyn Ltd. would acquire all outstanding minority shares of Callidus at a price of \$0.75 per share.

E. The Conspiracy

104. The events relating to WIND and Callidus described above were intolerable to the Catalyst Defendants and led directly to the formation and implementation of the conspiracy referred to herein. The Catalyst Defendants risked a loss of investor confidence and an inability to raise investor funds in the future if it became known that:

- (i) Callidus was failing, such that funds administered by Catalyst would not be able to exit their significant investments in Callidus without suffering significant losses;
- (ii) Catalyst had failed to acquire WIND because of its own failed strategies, intransigence, and mismanagement of negotiations with the seller of WIND rather than because of conduct engaged in by West Face; and
- (iii) there was no proper basis for the enormous valuations Catalyst had placed on its contingent claims relating to WIND in its representations to its investors.

105. The Catalyst Defendants therefore decided in August 2017 to engage in a two-pronged campaign to discredit West Face and Boland. These two prongs were the Black Cube Campaign and the Defamation Campaign, as particularized below. The

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Catalyst Defendants enlisted the assistance of the other Counterclaim Defendants in implementing both of these Campaigns, and all of the acts in furtherance of the conspiracy as described herein were done at the behest of, and for the benefit of the Catalyst Defendants. The Catalyst Defendants were at all times aware of and approved of the actions done in furtherance of the conspiracy as described herein. All of the Counterclaim Defendants were active participants in the conspiracy described herein.

F. The Black Cube Campaign

106. In the period from August 2017 through at least December 2017, the Counterclaim Defendants conspired with each other, and with other co-conspirators who are known to the Counterclaim Defendants but presently unknown to West Face, to unlawfully harass, intimidate and deceive persons who are or were employed by or connected to West Face or played important roles in the litigation described above between West Face and Catalyst. The purpose and effect of the Black Cube Campaign was to harm West Face and Boland. The Black Cube Campaign was carried out by the Counterclaim Defendants using a series of deceitful, fraudulent and otherwise unlawful means.

107. Remarkably, one of the targets of the Black Cube Campaign was Justice Newbould, who, as stated above, rendered the trial judgment in favour of West Face in the Moyse Action in August 2016. One of the central goals of the “sting” perpetrated against Justice Newbould was to entrap him into making anti-Semitic comments, thus insinuating that Justice Newbould decided the Moyse Action in the way that he did because he was biased against Glassman, who is Jewish. The Counterclaim Defendants intended to use the results of the sting against Justice Newbould to attack

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and discredit him and his Decision in favour of West Face in the Moyse Action, both in Catalyst's appeal to the Court of Appeal for Ontario from the Decision of Justice Newbould dismissing Catalyst's claims against West Face in the Moyse Action and in the VimpelCom Action. The ultimate targets of this orchestrated attack on Justice Newbould were West Face and Boland. While Black Cube's effort to elicit anti-Semitic remarks from Justice Newbould failed, the purpose and effect of this and other elements of the Black Cube Campaign was to delay the hearing of Catalyst's appeal in the Court of Appeal in the Moyse Action, to delay the outcome of the Defendants' motions to strike in the VimpelCom Action, to cast a cloud of doubt and uncertainty over West Face's victory in the Moyse Action, and to shroud West Face and Boland in contention and controversy.

108. West Face only uncovered the Black Cube Campaign as a result of widespread media coverage in the United States and globally concerning Black Cube because of its involvement in two United States matters where Black Cube is alleged to have engaged with individuals under false pretenses.

109. West Face only learned of the conduct of Black Cube complained of in this proceeding in November 2017 when this media coverage resulted in West Face employees, who had been targeted by operatives of Black Cube, recognizing Penn as one of the individuals who had solicited and met with them under what turned out to be false pretences. Widespread media coverage pertaining to the prominent role played by Black Cube in the United States matters led directly to the discovery by West Face and Boland of the Black Cube Campaign against them.

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110. Black Cube's conduct was undertaken for and on behalf of the Catalyst Defendants as part of the conspiracy described above, and was unethical, improper and unlawful in a number of respects. First, private security and investigative services are legally regulated in Ontario by the Ministry of Community Safety and Correctional Services. In particular, private investigators are subject to the *Private Security and Investigative Services Act, 2005*, S.O. 2005, c. 34 ("**PSISA**") and the regulations made under it. The *PSISA* prohibits carrying on business as a private investigator in Ontario without being licensed under that statute. Neither Black Cube nor any of its individual operatives were licensed private investigators in Ontario during the period in question.

111. Second, Black Cube operatives did, in fact, contact and meet in Toronto – under false pretenses – with a number of West Face's current and former employees, their family members, and others, as well as with Justice Newbould, using lies and systematic deception. Black Cube operatives secretly recorded these meetings, created transcripts of what occurred, and conveyed these transcripts, recordings and related documents and information to the Catalyst Defendants, either directly or indirectly through intermediaries (the "**Black Cube Evidence**"). Heavily edited and distorted versions of those transcripts and recordings were then used by the Counterclaim Defendants to implement their ongoing campaign of harassment and defamation against West Face and Boland, including in false and misleading statements made to members of the media referred to above, as well as to investors of Catalyst and Callidus and to current and potential investors of West Face.

112. Third, Black Cube's conduct included: (i) making deceitful and false offers of employment to several current and former employees of West Face; (ii) making

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deceitful and false expressions of interest in making investments with a former employee of West Face; (iii) making deceitful and false statements to Justice Newbould concerning his potential involvement in a non-existent arbitration proceeding; (iv) inviting their targets to meetings, lunches or dinners under false pretenses, and encouraging their targets to drink alcohol liberally; (v) flying certain targets to London, England for further meetings where they were taken to further fraudulent interviews when jet lagged and tired; and (vi) ultimately attempting to entice their targets into disclosing privileged and/or confidential information of West Face or making prejudicial statements that could be used against the targets, West Face or Boland. In the case of current and former employees of West Face, operatives of Black Cube enticed their targets to disclose confidential (and in at least one case privileged) information of West Face in breach of their contractual and/or professional obligations to West Face.

113. The conduct of the Counterclaim Defendants in orchestrating and carrying out the Black Cube Campaign has harmed West Face and Boland in a number of respects. First, it has sown the seeds of distrust and suspicion among West Face and its current and former employees by subjecting them to deceitful and invasive intrusions into their privacy, and the risk of false and harmful media attention and coverage.

114. Second, it has harmed West Face's ability to attract and retain talented employees, knowing that they too may be subjected to deceitful and invasive retaliatory measures like those engaged in by Black Cube for or on behalf of the Catalyst Defendants.

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115. Third, it has resulted in the unlawful disclosure of West Face's confidential, and in at least one case privileged, information to operatives of Black Cube and ultimately to the Counterclaim Defendants, including to all of the Catalyst Defendants. The disclosure of West Face's confidential and/or privileged information, in violation of confidentiality obligations in employment agreements and professional obligations, to both a competitor in business and an opponent in multiple lawsuits is inherently harmful.

116. Fourth, the conduct of the Counterclaim Defendants in engaging or taking advantage of and utilizing the Black Cube Evidence to plant false and misleading media coverage concerning West Face and Boland was calculated to shroud West Face and Boland in controversy and scandal, and to tarnish and undermine their reputations and their business by deterring investors and other market participants from doing business with West Face and Boland.

117. Fifth, the conduct of the Counterclaim Defendants in causing, orchestrating, taking advantage of or utilizing Black Cube Evidence concerning its highly improper "sting" against Justice Newbould is particularly egregious, and was intended to prejudice to the greatest extent possible the positions of West Face both publicly, with investors and potential investors, and in defending and responding to Catalyst's appeal in the Court of Appeal for Ontario from the trial decision of Justice Newbould in the Moyse Action and in pursuing its own motion to stay or dismiss Catalyst's claim in the VimpelCom Action.

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118. On the instructions of the Catalyst Defendants, operatives of Black Cube met with Justice Newbould twice under false pretences on September 18, 2017, in his office and at dinner. They lied to and deceived Justice Newbould and attempted repeatedly to entrap him into making anti-Semitic comments that could then be used by Catalyst: (i) to attack Justice Newbould's honesty, integrity, conduct and character, including through highly negative and pre-arranged media coverage on the eve of the hearing of the appeal in the Moyse Action; and (ii) as "fresh evidence" in the Court of Appeal for Ontario, to allege that Justice Newbould acted improperly, with actual bias, in deciding the Moyse Action against Catalyst because Glassman is Jewish.

119. Even though operatives of Black Cube failed in their efforts to entrap Justice Newbould into making anti-Semitic comments, they and the Counterclaim Defendants (including specifically Glassman, Riley, Jamieson, Rosen and Psy Group), along with Burstien, Helfgott, Kisluk, and Gagnier persisted in their efforts to plant highly negative media coverage concerning Justice Newbould. Their objective in doing so was to call into question the validity of the judgement West Face had obtained at trial in the Moyse Action, and to further shroud West Face and Boland in controversy and scandal. Efforts to plant stories concerning the sting on Justice Newbould were made by or on behalf of the Catalyst Defendants both in the period immediately preceding the hearing of the appeal in the Moyse Action, which was originally scheduled to be argued on September 26 and 27, 2017, and in the period after the Catalyst Defendants engineered an adjournment of the appeal during an attendance before Justice Rouleau of the Court of Appeal on the afternoon of September 25, 2017.

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120. In particular, on Sunday, September 17, 2017 (the day before Black Cube's failed sting operation against Justice Newbould), at the direction of the Catalyst Defendants and Rosen, Jamieson contacted Blatchford, a prominent business journalist at the *National Post*, as set out above, promising an exclusive story concerning Justice Newbould. At the direction of the Catalyst Defendants, Jamieson provided Blatchford with an inaccurate and incomplete summary of the Moyse Action; falsely claimed that in deciding that action, Justice Newbould had ignored the destruction of relevant evidence; and alleged that West Face was involved in a "wolfpack" of companies that was unlawfully conspiring to harm various public market participants. Jamieson also offered to connect Blatchford to a spokesperson from Catalyst.

121. Three days after operatives of Black Cube met with Justice Newbould, at Rosen's direction, Jamieson met with Blatchford using lies and deception, on Thursday, September 21, 2017 at a café in midtown Toronto. At that meeting, Jamieson gave Blatchford a USB flash drive that had been provided to her by Riley. The USB flash drive contained photos, edited audio recordings and edited transcripts of two meetings between Justice Newbould and a Black Cube operative at Justice Newbould's office and at dinner.

122. All of Jamieson's actions described above were orchestrated and directed by the Catalyst Defendants and Rosen, directly or indirectly, as part of the conspiracy. Their purpose in doing so was to induce Blatchford to write and publish a false and defamatory article concerning West Face, Boland and Justice Newbould immediately before the appeal of the Moyse Action was heard on September 26 and 27, 2017.

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123. The co-conspirators failed in their efforts to do so, and no article was, in fact, published by Blatchford in respect of this matter in the period before Catalyst's appeal was first scheduled to be argued.

124. On the afternoon of September 25, 2017, Greenspan, who had not previously publicly acted for Catalyst in any of the litigation involving West Face, requested an adjournment of the appeal in the Moyse Action. He appeared before Justice Rouleau in open court and advised that the existing counsel for Catalyst from the Lax O'Sullivan law firm had withdrawn from the appeal because of an irreconcilable conflict that had only very recently arisen with Catalyst, and that he had been retained to pursue a potential motion for leave to adduce fresh evidence in the appeal. Greenspan declined to reveal what the proposed fresh evidence was, or how or when Catalyst had obtained it. The hearing of the appeal was adjourned by Justice Rouleau to February 20 and 21, 2018 over the objections of West Face.

125. Following the adjournment of the appeal, the Counterclaim Defendants' efforts to manufacture stories defaming West Face and Boland continued. This included not only defamation in respect of Justice Newbould and the Moyse trial, but also defamation relating to this action that Catalyst and Callidus would ultimately launch on November 7, 2017. On October 17, 2017, Rosen met Glassman in New York City to update him on Jamieson's efforts to plant "wolfpack" related stories in the media. On October 20, Rosen met Blatchford at the Broadview Hotel in Toronto and falsely alleged that Aboriginal groups, not Catalyst, were behind the attack on Justice Newbould. He then arranged for Blatchford to meet "Jessie from the operational team", who was in fact Helfgott. Helfgott met Blatchford on October 31, 2017 at the Mercatto in the Eaton's

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Centre in a further attempt on behalf of the Catalyst Defendants and Psy Group to encourage Blatchford to write an article defamatory of Justice Newbould, West Face and Boland. Both Rosen and Helfgott met with Blatchford in an attempt to persuade her, using lies and deception, to publish false and defamatory articles repeating the WIND Defamation (as described herein) about Justice Newbould, West Face, and Boland.

126. Ultimately, Catalyst made the decision in late November 2017 not to proceed with its proposed motion to adduce fresh evidence in its appeal in the Moyses Action. Catalyst made that choice:

- (a) after the failed sting operation against Justice Newbould was disclosed by Blatchford in an article published in the *National Post* on November 24, 2017 titled “The Judge, the Sting, Black Cube and Me”; and
- (b) almost immediately after West Face brought a motion before Justice Rouleau for an Order compelling Catalyst to disclose the “fresh evidence” that it and its counsel had in their possession when the adjournment of the hearing of the appeal in the Moyses Action was sought and obtained on September 25.

127. In the period following November 24, 2017, the Catalyst Defendants, Psy Group, Jamieson, Rosen and Gagnier as well as others working with and for the Counterclaim Defendants as part of the conspiracy described herein, persisted in their efforts to plant highly negative media coverage using edited and distorted versions of the Black Cube Evidence that they intended to damage, and knew would be damaging to, West Face and Boland (including by undermining the legitimacy of Justice

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Newbould's dismissal of Catalyst's Claim against West Face in the Moyse Action). The efforts of the Counterclaim Defendants, and others on their behalf, were ongoing in this regard until at least as recently as April 2018.

G. The Defamation Campaign

128. The Counterclaim Defendants' campaign of defamation against West Face and Boland was systematic, multifaceted and persistent. It was at all times carried out with malice and in bad faith, for the reasons described above. It included as its principal elements the dissemination by or on behalf of the Counterclaim Defendants of a series of false and defamatory press releases, communications to Catalyst investors and other capital market participants, Internet postings, and communications to members of the media, including the *National Post*, Bloomberg News and the Associated Press. The campaign of defamation was carried out as part of the conspiracy entered into by the Counterclaim Defendants, described herein, to discredit and harm West Face and Boland.

(i) False and Defamatory Press Releases and Statements Following the Issuance of Justice Newbould's Trial Reasons

129. On August 18, 2016, Justice Newbould released his Reasons for Judgment dismissing Catalyst's claims and allegations in the Moyse Action in their entirety. The very next day, Catalyst issued a statement containing the following defamatory words, which were reprinted in the *National Post* and various other publications (the "**Post-Judgment Comments**"):

Additional evidence [had] come out since the Moyse litigation that [supported] the new case that alleges conspiracy and breach of contract.

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We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbold *[sic]*. We believe that he did not give fair consideration to all of the evidence presented, ignored contradictory statements made by the defendants that are part of the court record and delivered a judgement containing clear misstatements of fact.

130. All of the Catalyst Defendants and Gagnier played an active role in preparing, approving and disseminating these Post-Judgment Comments. The plain and obvious meaning of Catalyst's Post-Judgment Comments was that in acquiring WIND, West Face and its principals, including Boland, had engaged in an unlawful conspiracy and breach of contract, and that Catalyst's allegations of breach of confidence made against West Face and its principals in the Moyse Action were, in fact, true, even though they had been dismissed the day before by Justice Newbould.

131. The Post-Judgment Comments were false. No "additional evidence" supporting any of Catalyst's claims and allegations in the new litigation had "come out" since the trial of the Moyse Action had concluded, only two months earlier. Nor was there any proper or good faith basis for Catalyst to assert, as it did, that the only reason its claims against West Face were dismissed by Justice Newbould was that Justice Newbould had misconducted himself and acted with actual bias in presiding at trial in the Moyse Action. Catalyst made these statements in bad faith and with malice for the reasons described above, and for the purpose and with the effect of embarrassing West Face, Boland and Justice Newbould. Catalyst sought to further shroud West Face and Boland in contention and controversy while presenting the illusion to current and potential investors, participants in the capital markets and others, that it could

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substantiate the truth of the WIND Defamation, and of the entirely false allegations that Catalyst had made against West Face in the Moyse Action.

132. On October 13, 2016, Catalyst issued a press release concerning West Face and Boland through the Business Wire news service containing the following defamatory statements (the “**October 2016 Press Release**”):

It is exactly because of this culture at Catalyst, as compared to how others behave, that we have chosen to be incredibly tough and demanding when our rights are trampled or counterparties act unethically. Because ultimately, it is our LPs and investors that are impacted.

...

Catalyst has put its faith in the judiciary and expect that our claims and appeals will be heard fairly and that judgment will expose the truth of West Face’s actions, character and values.

133. All of the Catalyst Defendants and Gagnier played an active role in preparing, approving and disseminating the October 2016 Press Release. The plain and ordinary meaning of the October 2016 Press Release was that:

- (a) West Face and its principals, including Boland, trampled unlawfully on Catalyst’s rights, and acted unethically and unlawfully in respect of WIND and Callidus; and
- (b) West Face’s actions, and the character and values of West Face and its principals, including Boland, are consistent with having engaged in questionable and unlawful actions with respect to WIND and Callidus.

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134. Each of these meanings is demonstrably false. The October 2016 Press Release was published with malice, as part of a systematic, orchestrated and unlawful campaign of defamation against West Face and Boland for the express purpose of embarrassing and injuring Boland and West Face as well as its officers, employees and directors as well as poisoning the relationship between West Face and its current and potential investors.

135. The purpose and effect of Catalyst's October 2016 Press Release was to disseminate its false and defamatory allegations against West Face and Boland as widely as possible, including among investors, other participants in the capital markets and other members of the business community. The Catalyst Defendants sought to continue to shroud West Face and Boland in contention and controversy, and succeeded in achieving their objective.

136. In addition, in or about the same period from August to October 2016, Glassman and Gagnier repeated the defamatory words contained in the Post-Judgment Comments and the October 2016 Press Release in a variety of conversations and discussions with industry analysts, potential and current investors of both Catalyst and West Face, professional and business contacts of Boland, media representatives, and other market participants, the identities of whom are known to the Catalyst Defendants and not to West Face (the "**Glassman Defamation**"). On these same occasions, by repeating words contained in the Post-Judgment Comments and October 2016 Press Release, Glassman impugned the conduct, business integrity and ethics of Boland and his partners and colleagues at West Face.

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137. Among other things, in disseminating the Glassman Defamation, Glassman and Gagnier represented falsely that West Face and its principals, including Boland, had acted improperly, dishonestly and unlawfully in acquiring WIND, including by misusing confidential information of Catalyst that they had obtained from Moyse. Glassman also told investors and others that the trial decision of Justice Newbould contained numerous errors and would be overturned on appeal.

138. The Glassman Defamation was false. As described above, and as found by Justice Newbould following a full trial of the Moyse Action, West Face and its principals acted in an entirely reasonable, proper and lawful manner in participating in the acquisition and subsequent sale of WIND.

(ii) False and Defamatory Allegations to Catalyst Investors

139. On or about August 14, 2017, in a letter disseminated to all of Catalyst's investors, Catalyst made the following false and defamatory statements concerning West Face (the "**First Investor Letter**"):

As a brief update on the West Face and Wind litigation, new facts helpful to the case have been discovered. These relate not only to their stand-alone behaviour but also to possible market manipulation involving West Face and others in Callidus.

140. Public information sources disclose that Catalyst's investors include the endowments of Harvard University, the University of Michigan, McGill University, the Missouri State Employees' Retirement System, the New Jersey Division of Investments, the Ohio Public Employees' Retirement System, and the Rockefeller Foundation. The identities of additional investors who received the First Investor Letter are known to the

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Catalyst Defendants, rather than to West Face or Boland. Moreover, given that West Face and Catalyst compete as managers of investment funds, each of Catalyst's investors who received the First Investor Letter is a potential investor in funds managed by West Face.

141. All of the Catalyst Defendants played an active role in preparing, approving and disseminating the First Investor Letter to Catalyst's investors. The words contained in this First Investor Letter are defamatory in their natural and ordinary meaning. The words were meant and understood to mean that West Face and its principals, including Boland, either directly or through its employees, officers and directors:

- (a) engaged in improper conduct intended to manipulate the market price for the shares of Callidus;
- (b) engaged in conspiracies with other people or entities intended to manipulate the market price for the shares of Callidus;
- (c) made misrepresentations to the public concerning Callidus; and
- (d) manipulated improperly other public market participants.

142. Each of these meanings is false and defamatory. The First Investor Letter was published with malice, as part of systematic and unlawful campaign of defamation against West Face and Boland, for the express purpose of embarrassing and injuring Boland and West Face, as well as its other officers, employees and directors.

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143. Moreover, the First Investor Letter was false and misleading. As of the date the First Investor Letter was disseminated by Catalyst, no “new facts helpful to [Catalyst’s] case” had been discovered. That statement was made to investors by Catalyst for the purpose, and with the effect, of presenting the illusion that Catalyst would finally be able to prove the truth of its allegations and claims against West Face and its principals in the Moyses Action, and to continue to shroud West Face and Boland in contention and controversy. As stated above, however, Catalyst’s claims and allegations against West Face and its principals, including Boland, are now, and have always been, demonstrably false.

144. West Face and its principals acted at all times in an entirely appropriate, lawful and responsible manner with respect to both WIND and Callidus. As described above, West Face determined in October 2014 that Callidus’s shares were overvalued, and decided to short-sell its stock, based entirely on its analysis of publicly available information. Moreover, as explained in greater detail above, West Face’s assessment of Callidus has been borne out by subsequent events. In the period since West Face first determined that Callidus was overvalued in October 2014, when the shares of Callidus were trading at over \$20 per share, the share price of Callidus has fallen dramatically, and is currently trading below \$1 per share. Moreover, Callidus has experienced significant loan losses, has been required by the OSC to restructure its financial reporting, and has experienced a dramatic reduction in the size of its loan book.

145. The Catalyst Defendants published the First Investor Letter in furtherance of the conspiracy pleaded herein. The false and defamatory allegations of “market manipulation” in the First Investor Letter were specifically intended to tie into entirely

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false allegations of the Catalyst Defendants concerning the supposed participation of West Face and Boland in the “wolfpack” behaviour described below, and to distract attention from the *Wall Street Journal's* August 9, 2017 Article describing “whistleblower” filings made against Catalyst and Callidus.

(iii) False and Defamatory “Internet Postings” of “Wolf Pack” Behaviour

146. On or about September 19, 2017, one week before the scheduled hearing of Catalyst’s appeal in the Moyse Action, a series of false and defamatory Internet postings (the “**Internet Postings**”) about West Face and Boland began to appear in a variety of locations on the Internet. These Internet Postings were posted under pseudonyms, but were orchestrated, directed and paid for, directly or indirectly, by the Catalyst Defendants, Rosen and Psy Group as part of Project Maple Tree. Indeed, as described above, Jamieson adverted to the “Wolf Pack” defamation in her meeting with Blatchford on September 17, 2017.

147. The first such Internet Posting uncovered by West Face (the “**Boland Post**”) was titled “West Face Capital CEO Gregory Boland has made a fortune “shorting” companies, laying off thousands, then sells stocks high”. In addition to the false and defamatory title, the Boland Post contained the following false and defamatory words concerning West Face and Boland:

West Face Capital has used an aggressive strategy to take control of companies. It requires months, sometimes years of patience, before gutting the asset and selling off what is left of it for profit. Gregory Boland has used this tactic to great effect in conjunction with several partners.

Boland typically targets weak companies to take advantage of cheap stock. But where no such stock exists, West Face and partners are now looking to create it. This pack of

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aggressive investors have taken to opening a shorts *[sic]* against target companies, before strong-arming boards of directors and restructuring companies. They then sell off assets for profit.

In 2010, West Face surprised the board of Maple Leaf Foods after wresting away a third Ontario Teachers *[sic]* Pension Plan's 36-percent stake. What resulted was a third-year *[sic]* war between Boland and Maple Leaf CEO Michael McCain. Boland will often speak of the board's "independence" to cleanse of it of people *[sic]* who have long-standing business ties. The result is often conveniently removing multiple directors at once, handing West Face greater proportional control.

"Corporate governance, and specifically director independence, became the focal point of Boland's attack, the lever by which he hoped to wrest power away from the McCains and make the company more responsive to the concerns of smaller investors such as—but not limited to—West Face," *Listed Magazine* wrote in spring 2011. He used similar strong-arming in 2008 to gut the entire board of Air Canada parent, ACE Aviation.

The "independence" arguments makes sense *[sic]* to most people trying to make managerial decision-making more efficient. Yet, it relies on pointing to inevitably strong working relationships between managers and directors as problematic, meaning true independence erodes over time. It makes for a great talking point for new players to weaken experienced directors for their own gain.

These tactics are not strictly illegal, but Boland has not exactly stayed out of the courtroom either. He has been accused of industrial espionage to one-up competitors, specifically regarding the acquisition of Wind Mobile in 2014. Alfred Balm sued Boland during another takeover, claiming the latter reneged on \$10 million in stock sales after said stock dipped below the agreed sales price.

At Maple Leaf Foods, West Face and Boland eventually took a backseat in 2014 after years of infighting. Boland doubled his investment, with \$300 million, even though the company posted losses in five of the last six quarters before the sale. He also left Maple Leaf with a \$1 billion restructuring plan unfinished. Boland retained a spot on the board, but eventually gave that up in 2016.

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The company's stock has risen, but the quest for profitability is still a ways off. The company laid off 400 workers, mainly in Mississauga [sic], in 2015. When Boland departed a year later, they announced 400 more dismissals and the close of a factory in Thamesford, Ontario.

In an environment where distressed companies are easy prey, it seems West Face Capital has figured out a way to squeeze companies for its [sic] last few drops of life. Their tactics should be a lesson for anyone who thinks "independent" management and board "restructuring" are more than buzzwords. They are pretexts used by predatory investors.

148. The Boland Post was published repeatedly over the Internet by or at the request of the Counterclaim Defendants, directly or indirectly, including:

- (a) On a website found at <http://greg-boland.blog/>. This website bore the defamatory heading "Greg Boland and West Face Scam", and contained a link to the Boland Post at <http://greg-boland.blog/2017/09/19/west-face-strategy-loveem-and-leaveem>. The "author" of the Boland Post on this site is listed as "Anonymous", which provided a link to a page at <http://greg-boland.blog/author/judgefranknewbould>. While there was no additional content at the "author" page, the URL falsely suggests that Justice Newbould was somehow associated with the Boland Post. The purpose of associating Justice Newbould with the Boland Post was to attack his conduct and integrity, as well as to undermine the validity and reliability of his Judgment against Catalyst in the Moyse Action. As explained herein, this was not the only attempt of the Catalyst Defendants to attack Justice Newbould in an effort to harm West Face and Boland;

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- (b) On a website found at <http://u.wn.com>, which bears the heading “West Face strategy: love'em and leave'em”, and contained a link to the Boland Post at http://article.wn.com/view/2017/09/18/West_Face_strategy_love_em_and_leave_em/; and
- (c) By numerous Twitter accounts that provided links to the articles referred to above stating “To read more about corruption in the Canadian Stock Exchange *[sic]* click here”, including but not limited to @joshccros, @Hiru3035Hirusha, @PearsallApril, @iamblessed2006, @AngelicaXoXoz, and @tox_icity. These Twitter accounts were established and managed, directly or indirectly, for, by or on behalf of the Counterclaim Defendants.

149. The plain and ordinary meaning of the Boland Post is that:

- (a) West Face and Boland are predatory investors who intentionally harm companies and their employees for West Face and Boland’s own private profit;
- (b) West Face and Boland were engaged in a “scam” and other unethical and improper, corrupt practices;
- (c) West Face and Boland conspired with unnamed third parties to make false and misleading statements about public companies in order to artificially manipulate and suppress their stock prices in support of an improper and unlawful short-selling strategy;

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- (d) West Face and Boland engaged in "industrial espionage" with respect to West Face's participation in the acquisition of WIND in 2014;
- (e) West Face and Boland caused Maple Leaf Foods to suffer losses in five of six quarters, caused significant job losses, and failed to successfully complete a billion dollar restructuring; and
- (f) West Face and Boland drive companies into bankruptcy for their own private profit.

150. Each of these meanings is false and defamatory. The Boland Post was published by or on behalf of the Counterclaim Defendants with malice, as part of their systemic and unlawful campaign of defamation against West Face and Boland and in furtherance of the conspiracy described herein, for the express purpose of embarrassing and injuring Boland and West Face as well as its officers, employees and directors.

151. The purpose, intent and effect of the Boland Post was to poison the relationship between Boland, West Face, and their current or potential investors, including by continuing to shroud West Face and Boland in controversy and scandal.

152. The Boland Post was (and is) entirely and deliberately false. West Face and Boland have never "gutted" an asset and then sold off "what is left of it for profit". Nor have they engaged in unlawful stock manipulation, either alone or in conjunction with others. West Face and Boland have never "strong-arm[ed]" the Board of any company. Nor did they "sell off" the assets of any company for the private benefit of

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West Face or Boland. At all times, West Face and Boland have shared in the profit or loss of companies in which they have invested in the same manner as other investors in comparable securities.

153. The Boland Post states, or in the alternative alleges by innuendo, that West Face's investment in Maple Leaf Foods was detrimental to Maple Leaf Foods. That statement or innuendo is also false. West Face and Boland's involvement with Maple Leaf Foods was entirely positive. When West Face acquired an interest in the company in 2010, its stock price was trading at less than \$10 per share. As a result of a restructuring of the business of Maple Leaf carried out with the support of Boland and West Face, by the time West Face ended its involvement with Maple Leaf in 2016, the stock price was well over \$25 and the company had returned to profitability.

154. The purpose and effect of the Boland Post was to disparage the reputations of West Face and Boland, and to discourage improperly investors and other market participants from doing business with them.

155. The second defamatory Internet Posting (the "**Wolf Pack Video**") was first posted on YouTube on or about September 19, 2017, and was titled "Judicial and Economical Corruption in Canada". The Wolf Pack Video was published by or on behalf of the Counterclaim Defendants using the online pseudonym "Wolf Pack". The defamatory text displayed on the Wolf Pack Video was as follows:

BILLION-DOLLAR TORONTO "WOLF PACK" IS TRAPPING
COMPANIES INTO STOCK SHORTS

In June 2016, K2 & Associates took a short position in
Asanko Mining...

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the miner had 90% downside potential; and soon Muddy Waters LLC took notice.

UPON THE RELEASE OF THE MUDDY WATER *[sic]* RESEARCH, ASANKO'S STOCK BEGAIN *[sic]* TO TANK...

K2 & ASSOC. IS WORKING WITH OTHER COMPANIES TO CREATE DISCOUNT STOCK BUYOUTS

K2 & Assoc., Anson Funds, WestFace Cap., & MMCAP Fund Inc., are working together

They are forming a "Wolf Pack" designed to target companies and bring them down.

156. In addition, the description of the Wolf Pack Video on its YouTube page contained the following defamatory words:

There is a new beast on the scene in Canada - The Wolfpack. Made up of a group of at least eight nefarious companies and their CEO's *[sic]*, The WolfPack has been operating for several years to take out their competitors using 'short' tactics. By manipulating the stock market these companies guarantee that any business they target will fall into their hands. Spreading lies, committing purgery *[sic]*, even laundering money- The Wolfpack will stop at nothing to accomplish their goals.

With connections across Canada and into the United States, WestFace, Anson Partners, K2 Partners, along with several private investors like Mark Cohedes *[sic]*, and Alex Speers are operating largely undercover to carry out *[sic]* their short schemes. The list of WolfPack Members goes on and their reach is extensive, the Canadian credit market is in the midst of a major crisis.

Our mission is to expose these companies and the men behind them for what they really are and prevent further economic repercussions. There are at least four businesses that we can confirm have been affected by inducement actions carried out by the group, including: Badger Day lighting, EIF, Valeant Pharmaceuticals, and Concordia International. Each companies *[sic]* has had its shares depleted by the Wolf Pack's market manipulation to the point of declaring bankruptcy. The time has come to put an end to

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the manipulation and racketeering of these men and reinstate the public's trust in the financial system.

157. The Wolf Pack Video was published repeatedly by or on behalf of the Counterclaim Defendants, directly or indirectly, including:

- (a) On YouTube at http://www.youtube.com/watch?v=o0K_L9OFUDc;
- (b) On Twitter by numerous Twitter accounts that provided links to the video stated "Judicial and Economical Corruption in Canada", including but not limited to @dfrancis153, @webmaker_bd, @SaraMariohot82, @Arman_Arif44, @SunlightCity, @cool_coolm80, @rdmoot, @CassyxLove, @penslinger81, @happysnappy16, @nadia_neeka, @lordrose61, emlove2015, @WolflyHearted, @brandonn1768, @hasithamalinga2, @majharul521, @Nawamya148, @admschaaf, @rainoforanges, @Emily_Grier001, @ManojAbey, @asansaranga1998, ThusithaDilana, @erangasperera1, @iamblessed2006, and @tox_icity. These Twitter accounts were managed, directly or indirectly, for, by or on behalf of the Counterclaim Defendants; and
- (c) To other parties, the identities of whom are known to the Counterclaim Defendants.

158. The plain and ordinary meaning of the Wolf Pack Video is that:

- (a) West Face and Boland conspired unlawfully and improperly with other market participants to engage in corrupt conduct intended to harm, and ultimately cause the bankruptcy of, Asanko Mining, Badger Daylighting,

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Exchange Income Fund, Valeant Pharmaceuticals, Concordia International and other companies in order to profit from an unethical and illegal short-selling strategy;

- (b) West Face and Boland committed perjury, racketeering and money-laundering; and
- (c) West Face and Boland have engaged in illegal stock manipulation.

159. Each of these meanings is false and defamatory. The Wolf Pack Video was published by or on behalf of the Counterclaim Defendants with malice, as part of a systematic and unlawful campaign of defamation, and as part of the conspiracy described herein, for the express purpose of embarrassing and injuring West Face and Boland as well as West Face's officers, employees and directors.

160. The statements in the Wolf Pack Video mirror closely the entirely false allegations of misconduct made by Catalyst and Callidus against West Face and Boland in their Claim in this proceeding and are entirely and deliberately false. West Face has never acted in conjunction with any of the other named entities, has never invested in the securities of Asanko Mining or any of the other named companies, has never engaged in corrupt behaviour, and has never worked with other parties "to target companies and bring them down". Those allegations were invented from whole cloth by the Counterclaim Defendants for the purposes of punishing and embarrassing West Face and Boland, attracting the unwarranted attention of law enforcement and securities regulators, and further shrouding them in controversy and scandal.

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161. The purpose and effect of the Wolf Pack Video was to disparage the reputations of Boland and West Face, and to discourage improperly investors and other market participants from doing business with West Face and Boland.

162. The third defamatory Internet Posting (the “**Esco Post**”) was first posted on or about September 19, 2017 by or on behalf of the Counterclaim Defendants, directly or indirectly, using the pseudonym “julesljones”. This post contained the following defamatory words:

The Buyout That Wasn't

The Truth Behind the Esco Marine Purchase and K2 & Associates

At the center of a large scale investigation sit several private Hedgefund companies, who through manipulation and insider information are quietly cornering the market. The group, although on the outside appear unconnected *[sic]* are in fact undeniably linked.

Although the entire group is worthy of in depth analysis and probing, the topic of this brief expose is the connection between Anson Funds Corporation, K2 & Associates *[sic]*, Westface *[sic]* Capital and Esco Marine Inc.

Connecting The Dots

In June 2014, Callidus Capital provided Esco Marine with a loan of just over US \$20 million, as part of an agreement of up to US \$34 million, to assist in financing its ongoing operations. Falling behind, Esco was forced to cease all operations and filed for bankruptcy protection from creditors on March 7 after their lender, Callidus Capital Corp, owned by Newton Glassman, called in a \$31.4 million loan. Struggling to turn their scrap business around, ESCO Marine, Inc. filed for bankruptcy protection, or more accurately, had an involuntary bankruptcy petition filed against it, on March 7, 2015 . When Esco announced to investors that they couldn't pay, thereby declaring they were in default, a suit was filed against them by Callidus Capital.

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The claim was filed with assistance from Greg Boland, the CEO of West face [sic] Capital. Boland, [sic] just happens to be close associate [sic] of Shawn Kimel, so close that the two hold office space for their respective companies in the same building in Toronto's financial district. Westface [sic] has a significant interest in acquiring control of Esco, the reason being that one of the major shareholders in the company is a well-known rival.

The Big Game

Getting back to the heart of the matter, Westface [sic] and Anson acted in cooperation with each other to bring the stock of the Texan Marine company down enough to crash their public tender and force them into selling. This tactic, commonly known as a 'short' isn't technically illegal...unless you are a company working in collusion with another vested interested [sic].

Anson Funds are a collection of privately-held and pooled investment vehicles which dedicate funds primarily to publicly-traded equity and debt securities. Anson likes the risk, they target companies in the midst of financial turmoil and hope to turn a profit off of the investment they make that most banks refuse to give. Their two main offices are in Dallas and Toronto, which works quite well to transfer assets from Esco to Canadian investors. And now here is where it gets confusing...

Anson and West face share common stock and West face [sic] and K2 share office space, the proximity of these businesses to each other can't be ignored. Furthermore, Greg Boland (WestFace) and Shawn Kimel (K2&Associates) both make donations to the Princess Margaret Cancer Foundation, making it likely that the pair are if nothing else associated with each other publicly. Barington/Hilco signed off on the acquisition of Esco Marine Inc, and guess who has strong interest invested in Hilco- Shawn Kimel of K2& Associates.

How Hilco Connects

Hilco Redevelopment Partners was one of the parties set to acquire, restart, and operate Esco Marine Inc. Hilco was in agreement with Callidus Capital to turn the business around. The plan was to have Hilco providing the industrial asset monetization and Callidus providing a loan facility. Hilco

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used one of its subsidiaries, HRP Brownsville for operations and as part of the agreement made with Callidus, HRP would receive \$35 million USD. Callidus was set to retain and realize on all of Esco Marine Assets.

Upon the acquisition of ESCO by Hilco, a great deal of stock and any potential returns was lost to Callidus and directly sent to K2&Associates, AKA Shawn Kimel. Knowing what we know about the closeness of Kimel and Boland, it seems likely that the two were in contact with one another.

In Conclusion

Despite the fact that the story is still developing and a strong conclusion can't be drawn just yet, the evidence speaks for itself. There is cooperation between these groups, cooperation to bring down stock and purchase floundering companies at bottom prices. Their *[sic]* was a concentrated effort to target Esco and hurt the business of Callidus and the parties behind it aren't trying to hide their identities.

163. The Esco Post was published repeatedly by or on behalf of the Counterclaim Defendants, directly or indirectly, including:

- (a) On a website found at <http://www.buzzfeed.com/julesljones/the-buyout-that-wasn't>;
- (b) On a website found at http://www.huffingtonpost.com/entry/the-buyout-that-wasnt-the-truth-behind-the-esco-marine_us; and
- (c) By numerous Twitter accounts that provided links to the articles above stating "The Truth Behind the Esco Marine Purchase and K2 & Associates", including but not limited to @tox_icity, @AngelicaXoXoz, and @warunad99. These Twitter accounts were managed, directly or indirectly, for, by or on behalf of the Counterclaim Defendants.

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164. The plain and ordinary meaning of the Esco Post is that:
- (a) West Face and its principals, including Boland, conspired with others to manipulate unlawfully the stock price of Esco Marine (“Esco”), thereby forcing Callidus to sell its investment and lose money;
 - (b) West Face and its principals, including Boland, engaged illegally in insider trading;
 - (c) West Face and its principals, including Boland, acted unlawfully and improperly in acquiring control of Esco, a failing company; and
 - (d) West Face and its principals, including Boland, conspired with others to prevent Callidus from turning Esco’s fortunes around.

165. Each of these meanings is false and defamatory. The Esco Post was published by the Counterclaim Defendants with malice, as part of a systemic and unlawful campaign of defamation, and as part of the conspiracy described herein, for the express purpose of injuring Boland and West Face as well as the officers, employees and directors of West Face.

166. The Esco Post was (and is) entirely and deliberately false. Esco was at all times a private company to which Callidus extended a \$34 million credit facility in June 2014. In March 2015, after Esco defaulted on its obligations under the credit facility, Callidus appointed a receiver over the assets of Esco. Callidus ultimately acquired Esco by bidding its debt in the insolvency proceeding, and then sued Esco's founders on their

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personal guarantees. That litigation has since settled on a confidential basis, the terms of which are unknown to West Face.

167. As a private company, it is impossible to “short” the shares of Esco, which are not publicly traded. West Face has never had an investment in Esco, the business of which failed as a result of the actions of Callidus and not because of anything done by West Face.

168. The purpose and effect of the Esco Post was to disparage improperly and unlawfully the reputations of West Face and Boland, to further shroud them in controversy and scandal, and to discourage improperly investors and other market participants from doing business with West Face and Boland.

169. The fourth defamatory Internet Posting (the “**Face the Music Post**”) was first posted on or about October 24, 2017 by or on behalf of the Counterclaim Defendants, directly or indirectly. This post contained the following defamatory words:

West Face Capital – Time to Face the Music

West Face Capital (WF) appears to be losing face following a streak of dismal returns. The Toronto-based hedge fund, managed by activist investor Gregory Boland and considered a formidable player in its field with over \$2 billion in assets under management, continues to deliver very weak results for its investors. The weakness of WF’s financial results, which are low and unsatisfactory by any standard, is magnified even more when accounting for red-hot equity markets and their returns to every asset class. By their own account, WF is underperforming significantly compared to the S&P 500, the S&P/TSX composite, the Event Driven Distressed Hedge Fund Index, the Event Driven Activist Index and basically any other relevant index.

So what exactly is going on at WF? Have Boland and his team simply hit a bump in the road? Or is there a deeper

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story at play? It's difficult to tell from a simple analysis of WF's reports since the level of detail (rather, the lack thereof) makes it hard for even financial experts to understand what is hindering their numbers. Suffice to say that in an industry with loose regulation and oversight, to begin with, WF's near total lack of transparency and oversight compared to its peers stands out. It raises serious concerns.

Now consider that lacking transparency with the abovementioned, consistent underperformance. Taken together those concerns constitute alarm bells that cause any self-respecting investor with a bit of logic to take a step back and a very serious look at whether this is the place or people they want managing their money.

Lack of Compliance

WF appears to have lied or misrepresented facts on its Form ADV reports, claiming it qualifies for exemption from registration since it acts solely as an advisor to private funds and has less than \$150M in assets under management in the US. In reality, WF did not report assets under management for several US incorporated funds on its FORM ADV, including the West Face Long Term Opportunities (USA) L.P. which reportedly sold \$849.46M in securities. Instead, WF reported this fund as a "feeder" to its Cayman Islands-based West Face Long Term Opportunities Global Master L.P., a fund that reports less gross assets.

WF's Form D and Form ADV simply do not match. Based on SEC filings, WF's estimated AUM exceeds \$2.4 billion. The reduced reporting requirements WF has enjoyed since 2012 allows the firm to skate SEC scrutiny along with reduced reporting requirements. Similar SEC investigations into similar PE firms and hedge funds during the same period resulted in a significant enforcement action for undisclosed fees and expenses, failure to disclose conflicts of interest, misleading claims, and valuations, unauthorized shifting, allocation of expenses and more.

Finally, WF has been the subject of injunctions from several Canadian provincial authorities. The Alberta Securities Commission has heard four cases against them, the Ontario Securities Commission three. WF insiders have also failed to promptly report on SEDI (Canada's Electronic System for Disclosure by Insiders).

Profit through management fees, no returns

One of the main problems with funds like WF is their short-term gain approach. The appeal of making huge money through its performance fees often causes the fund's managers to take very big and very unnecessary risks.

In a recent interview, Greg Boland openly declared his true nature as a gambler and a thrill seeker, stating that "Being a contrarian and buying at the nadir of investor confidence has always appealed to me psychologically, I don't know why. The result is you often get some bumpy rides at the beginning. If you're trying to catch a falling knife, you can get a few nicks on the way down."

With the fund's performance so weak, well below its high watermark, Boland and his team will need to provide some very strong returns very fast if they want to continue enjoying the sweet, addictive taste of success fees. Combine these two factors together and add the lack of transparency or reporting requirements and you get a surefire recipe for some very risky and problematic deals in WF's near future.

In the meantime, WF's investors should take a very good, in-depth look at their investor and consider how lucky they really feel with the boat sailing through turbulent waters and a thrill-seeking, risk-taking captain at the helm, especially when it comes to OPM (Other People's Money).

170. The Face the Music Post was published repeatedly by or on behalf of the Counterclaim Defendants, directly or indirectly, on the website u.wn.com.

171. The plain and ordinary meaning of the Face the Music Post is that:

- (a) West Face and its principals, including Boland, carry on business improperly in secret, and with a "near total lack of transparency";
- (b) No "self-respecting investor" would invest funds with West Face or its principals, including Boland;

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- (c) West Face and its principals, including Boland, have failed to comply with laws and regulations;
- (d) West Face and its principals, including Boland, have actively lied and misrepresented facts to regulators and investors;
- (e) West Face, under the leadership of Boland, is similar to other private equity firms and hedge funds that have been the subject of enforcement actions for undisclosed fees and expenses, failure to disclose conflicts of interest, misleading claims, and valuations, unauthorized shifting, allocation of expenses and more;
- (f) West Face has been the subject of a number of injunctions issued against it by Canadian provincial securities regulators, including the Alberta Securities Commission and the OSC; and
- (g) West Face and its principals, including Boland, take extraordinary and unnecessary risks at the expense of West Face's investors.

172. Each of these meanings is false and defamatory. The Face the Music Post was published by the Counterclaim Defendants with malice, as part of an unlawful campaign of defamation, and as part of the conspiracy described herein, for the express purpose of embarrassing and injuring West Face and Boland, as well as the officers, employees and directors of West Face.

173. The Face the Music Post is entirely and deliberately false. At no point has West Face failed to comply with all applicable laws and regulations. It has never lied or

misrepresented facts to regulators. It has also never been the defendant or respondent in an enforcement or injunction proceeding brought against it by any Canadian provincial securities regulator.

174. The purpose and effect of the Face the Music Post was to disparage unfairly and unlawfully the reputation of West Face and Boland, to further shroud them in controversy and scandal, and to discourage improperly investors and other market participants from doing business with West Face and Boland.

175. The fifth defamatory Internet Posting was published for, by or on behalf of the Counterclaim Defendants, directly or indirectly, on or about October 30, 2017 (the “**Wolfpack Corruption Post**”). The Counterclaim Defendants, or others acting for them or on their behalf, created and posted a website, www.wolfpackcorruption.com, that is entirely dedicated to defaming West Face, Boland and other parties. This website was posted in conjunction with a YouTube video and with two Twitter accounts, @WolfPackCorrupt and @WolfPackScam, all of which directed viewers to visit that same website. The Wolfpack Corruption Post and the @WolfPackCorrupt and @WolfPackScam Twitter feeds all used consistent graphics and logos.

176. The Wolfpack Corruption Post contained the following defamatory words:

The Wolfpack’s Corruption

A wolf stalks its pray from the shadows, waiting for the right moment to pounce.

When hunting as a pack, their pray is under attack from all sides.

The Wolfpack chews up its targets and spits them out. Like Little Red Riding Hood without the happy ending, publicly

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traded companies are hit hard by an avalanche of false charges. A blizzard of lies collects momentum, snowballing down the mountain on unsuspecting companies who can't compete with the Wolfpack's ability to destroy target company reputations with little insinuation.

With an allusion to a cooked book or a hint to a conflict of interest, the Wolfpack is a shadowy cabal of short sellers that distort company reputations to drive stock prices down. They prey on investor tendency to jump at rumors, creating a cascade of rumor to profit off stocks they decide to short.

This is the story of an unsuspecting company, delivering its products to customers down the long and winding path in the forest that is Bay Street. But the path is not a safe one despite the scenic Canadian wood and tweets of the birds in the trees. Those woods hide predatory speculators and market manipulators.

Those tweets, hit pieces and speculative reports carry rumors that turn investors against your company, marking your fresh red hood not as a respected brand but a target. Not as a worthy investment, but a stock about to nosedive.

Those rumors are simple to spread. The wolves in the forest are the likes of Anson Funds, K2 & Associates, West Face Capital, MM Asset Management and the American short seller Mark Cohodes. The Riding Hoods? A growing list of victims like Nobilis, Home Capital Group, Concordia and Equitable Group are in the trenches against the Wolfpack's financial war machine.

The Wolfpack develops stories about their targets based on minutia of evidence, amplifying mild foibles to twist them into death knells for these companies. Few victims have survived their wrath. Some have defeated negative projections handedly. Others have successfully gone to war in court. The inept judges know their game. The weak courts know their pattern. The hamstrung regulators have seen it, too.

Now you have a chance to catch these wolves in action and save your investments. Learn here how Toronto's Wolfpack shorts and distorts target companies to make quick money.

177. The plain and ordinary meaning of the Wolfpack Corruption Post is that:

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- (a) West Face and its principals, including Boland, are part of a group of co-conspirators (*i.e.*, a “wolfpack” or “shadowy cabal” of companies) engaged in stock manipulation of public companies;
- (b) West Face and its principals, including Boland, have conspired with others to launch a campaign of deception and misinformation (using “an avalanche of false charges”, a “blizzard of lies”, and “cascade of rumour”) to “destroy” improperly and unlawfully the reputations of public companies and manipulate their stock prices; and
- (c) Any legal successes enjoyed by West Face or its co-conspirators have been the result of an “inept judge” or “weak courts”, as opposed to merit.

178. Each of these meanings is false and defamatory. The Wolfpack Corruption Post was published for, by or on behalf of the Catalyst Defendants with malice, as part of a systematic and unlawful campaign of defamation, and as part of the conspiracy described herein, for the express purpose of injuring Boland and West Face as well as its officers, employees and directors, and attracting the unwarranted attention of law enforcement and securities regulators, and further shrouding them in controversy and scandal.

179. The Wolfpack Corruption Post is deliberately false and defamatory. As set out repeatedly above, West Face and Boland have never conspired with any of the above-noted companies to short-sell any stocks.

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180. The purpose and effect of the Wolfpack Corruption Post was to embarrass and disparage the reputations of Boland and West Face, to further shroud West Face and Boland in controversy and scandal, and to discourage improperly investors and companies from doing business with West Face and Boland.

181. Indeed, as touched on above, on the same day that the Counterclaim Defendants published the Wolfpack Corruption Post (October 30, 2017), they also published, or caused to be published, either directly or indirectly, a YouTube video titled "Market Manipulation in Canada". The YouTube video took the form of a short "Breaking News" segment about how the Canadian financial markets had been "rocked by allegations of insider trading, market manipulation, and interference by a well-known group of short-sellers". While the YouTube video did not expressly refer to West Face by name, scrolling across the bottom of the YouTube video were the words: "Visit: wolfpackcorruption.com for more information". The purpose and effect of the YouTube video was to ensure that as many Internet users as possible would visit the Wolfpack Corruption Post to maximize the damage to the reputations of Boland and West Face. The YouTube video was also defamatory of West Face and Boland.

182. In addition, the Counterclaim Defendants republished the Wolfpack Corruption Post by tweeting or causing to be tweeted links to it from the @WolfpackCorruption Twitter feed, which has since had all of its tweets deleted.

183. The sixth false and defamatory Internet Posting (the "**WestFace.net Post**") was posted on or about November 6, 2017 for, by or on behalf of the Counterclaim Defendants, directly or indirectly. This was yet another website created by

the Counterclaim Defendants for the purposes of embarrassing and defaming West Face, Boland and their alleged co-conspirators. This post contained the following defamatory words:

A Company Desperate to Maintain a False Image

In the world of hedge funds and money managers, there are those you can trust to make accurate and timely investments, and those who take what prove to be unnecessary risks with a hope of return that is never met. West Face Capital, a Toronto-based hedge fund, has come under intensive scrutiny as of late for several discrepancies in their reports, which have led financial market experts to raise red flags.

According to the S&P 500, a widely-regarded and entrusted gauge for determining the profitability and reliability of large-cap U.S. equities, West Face Capital is falling short in almost every performance index. Data, which includes backdated reports on five year, three year and one year revenues, highlight the shockingly meager account with which the investors have been presented. As the business operates in both Canadian and American markets, there are also detailed reports available on the TSX index that corroborate West Face's poor returns.

While the hedge fund claims one thing, the visible results as of June 2017 show that the S&P 500 has gone up 19.9% over the last year and West Face's index went up only 2.8%.

This means that by choosing to invest in the S&P or in other top American stocks, you would have yielded 539% more revenue than if you were to invest in West Face. Their credibility is on rocky terrain, as they continue to vehemently deny any trouble in their portfolio. The TSX reports yield a similar conclusion, with an increase of 11% over the past year, 292% better than West Face. An investor who would willingly purchase options through West Face in this market, or consult their money managers in this state, is putting their money in the trust of a company with zero idea of how to read the current market.

Riddled with Manipulation and Falsified Reports

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What should trouble investors is the lack of transparency in West Face's financial reports and in their communications with their clients. Canadian-based hedge funds tend to enjoy more lax regulation than their American neighbors, and West Face Capital is taking full advantage of this. The company employs no outside auditors. This means that investors are letting the fund manage their capital and compile their reports with virtually no outside scrutiny. It does not take a financial expert to recognize the potential for misconduct in this situation.

In light of this, and with all the accompanying suspicion, it is truly a wonder that West Face Capital, run by CEO Greg Boland, manages to maintain a client base at all. The reason lies in a sophisticated web of manipulation that has lulled investors into a false sense of security. These investors are not dumb –far from it – but West Face Capital has perfected a scheme of manipulating funds and revealing just enough information to keep their clients and business partners in the dark about their actual worth. They consistently report gains when the harsh reality reflects a string of near-crippling losses.

Activist Investing to Suit Their Own Needs

West Face, under the direction of Greg Boland, utilizes an activist investor approach that is not well received. Activist investors focus more on securing their own interests rather than promoting the needs of their clients: Rather than improving the companies they work with, activist investors position their own people within existing company structures in order to push their agenda forward. Several companies in the past few years have issued major complaints against West Face after falling victim to activist techniques. West Face's rearrangement did little to improve their portfolios, and instead shook up existing business structures with no benefit.

It would be remiss not to mention one of the largest issues with West Face Capital; an issue that may confirm claims of misconduct and market manipulation more than any other. A private firm found evidence that West Face Capital has not been reporting assets under management for several US incorporated funds on its Form ADV since 2012. In addition, the most recent Form ADV reports that West Face Capital qualifies "for the exemption from registration" because it acts

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as the sole adviser to private funds and has assets under management of less than \$150 million.

Wise Investors Should Look Elsewhere

This, however, is a blatant lie. This exemption has permitted West Face to escape SEC examination and allowed for reduced reporting. The form D and Form ADV for West Face do not match, and based on SEC filings, the investment management firm's AUM is estimated to be more than \$2.4 billion. Suspicion of non-compliance with SEC regulations is high, and their relation to the OEC is largely thought to be the same. Coupled with the fact that West Face has been late in filing with SEDI over 16 times, this is a factor that cannot be ignored. West Face Capital is desperately trying to maintain their image amidst obvious inequities, and their behavior is deplorable. Any sound-minded individual who hopes to preserve their portfolio's worth would be wise to think twice before putting their money into the hands of this company.

184. The WestFace.net Post was published for, by or on behalf of the Counterclaim Defendants, directly or indirectly, on a newly-created website titled "WestFace.net". This website was registered by or on behalf of the Counterclaim Defendants on October 24, 2017 under the pseudonym "Jordan Brown". On that same day, "Jordan Brown" also registered GregBoland.net, though that website has not yet become active. The clear and malicious intent of the Counterclaim Defendants in posting or causing this defamatory statement to be posted was to ensure that the website would appear prominently in any search results for West Face or Boland.

185. The plain and ordinary meaning of the WestFace.net Post is that:

- (a) West Face and its principals, including Boland, have maintained a "false image" and cannot be trusted by investors;

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- (b) West Face and its principals, including Boland, take unnecessary and imprudent risks with its investors' funds;
- (c) West Face and Boland are incompetent in that they have "zero idea of how to read the current market";
- (d) West Face and Boland have engaged in a "sophisticated web of manipulation" of West Face's investors;
- (e) West Face and Boland have acted unlawfully and improperly, and not in the best interests of West Face's investors;
- (f) West Face and its principals, including Boland, have engaged in misconduct and manipulation;
- (g) West Face and its principals, including Boland, have "blatantly lied" to regulators, investors and others, and have otherwise failed to comply with regulatory requirements; and
- (h) "Sound-minded" and "wise" investors should not invest their funds with West Face or Boland because they cannot be trusted, take unnecessary risks, are incompetent, have engaged in misconduct and the improper manipulation of investors, and have failed repeatedly to comply with applicable laws and regulations.

186. Each of these meanings is false and defamatory. The WestFace.net Post was published for, by or on behalf of the Counterclaim Defendants with malice, as part

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of a systematic and unlawful campaign of defamation, and as part of the conspiracy described herein, for the express purpose of embarrassing and injuring Boland and West Face as well as its officers, employees and directors.

187. The WestFace.net Post is deliberately false and defamatory and was calculated to undermine and destroy West Face, Boland and their reputations. It strikes at the very heart of West Face's business by asserting expressly that investors should not invest their funds with West Face. At no point have West Face or its principals "manipulated" its investors. They have never lied or misrepresented facts to regulators.

188. The purpose and effect of the WestFace.net Post was to disparage the reputations of Boland and West Face, to further shroud them in controversy and scandal, and to discourage improperly and unlawfully investors and other participants in the capital market from doing business with West Face and Boland.

189. The Counterclaim Defendants and others working for or with them engaged in a number of techniques to make it extremely difficult for West Face and Boland to determine that they were responsible for and played a role in the creation and dissemination of the Internet Postings referred above. For example:

- (a) prepaid credit cards were used to pay for a number of the services and fees involved in posting the Internet Postings to the Internet, thereby concealing the identities of those paying for these services;
- (b) this unlawful and systematic campaign of defamation was carried out by or on behalf of the Counterclaim Defendants using a chain of non-party agents and representatives located around the globe, including in Israel,

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Montreal, Vancouver, India, and Bangladesh, such that the actual posters of the Internet Postings are out of the jurisdiction and did not know who they were working for or why;

- (c) the scheme involved the use of a number of fake identities, usernames and pseudonyms, including the illegal misappropriation and misuse of the identities of actual people, including “Judge Frank Newbould”;
- (d) services were employed by or on behalf of the Counterclaim Defendants to optimize the dissemination of the Internet Postings in Internet search engines, such as Google, so that the Internet Postings would reach the widest possible audience; and
- (e) the scheme involved using multiple layers of intermediary Internet servers, making tracing the IP addresses of those responsible for the Internet Postings difficult to determine. However, ultimately the IP addresses responsible belong directly or indirectly to the Counterclaim Defendants.

190. The Counterclaim Defendants all conspired to carry out the campaign of defamation described above, as they had agreed in or about August 2017. Among other things, they created, orchestrated and caused the dissemination of the various false and defamatory statements referred to above contained in the Internet Postings; drafted the text of the various defamatory Internet Postings; retained unnamed co-conspirators to draft and/or post and promote the various defamatory Internet Postings; and took steps to use false identities such as “Samantha Beth”, “Alex Walker”, “Jordan Brown” and “Judge Frank Newbould” in order to conceal their involvement. For example:

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- (a) On or about August 13, 2017, one or more of the Counterclaim Defendants or an unknown person or persons retained by them (falsely using the username “Alex Walker”), posted a message on Freelancer.com (a website that provides its users with an online marketplace through which employers can hire independent contractors – freelancers – to perform work) in which he stated that he was “looking for someone who can help me publish my website on tier 1 magazines in the U.S.”. The person or persons posing as “Alex Walker” ultimately awarded this project to Amin Razvi (“**Razvi**”), an individual residing in India. The website in question was outlawbds.com, which is not itself a part of the defamation campaign against West Face and Boland;
- (b) On or around September 10, 2017, “Alex Walker” and Razvi began engaging in an instant messaging chat over Skype (a software application that allows its users to communicate in various ways over the Internet, including video and voice calling, screen-sharing, and instant messaging);
- (c) On September 18, 2017, “Alex Walker” stated that he had sent Razvi’s Skype contact information to a colleague of his, who “Alex Walker” indicated would contact Razvi soon. “Alex Walker” referred to this person as his “boss”, and stated that her name was “Samantha Beth”. Like “Alex Walker”, “Samantha Beth” was in fact one of the Counterclaim Defendants, or acted on their behalf;

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- (d) On or about September 18, 2017, "Samantha Beth" retained and directed Razvi to publish and disseminate the Boland Post. "Samantha Beth" sent Razvi an email containing the text of the Boland Post. Razvi published the Boland Post on WN.com (as set out above), after being directed and paid to do so by "Samantha Beth";
- (e) Similarly, on September 18, 2017, "Samantha Beth" sent Razvi an email containing the text of the Esco Post. Razvi published the Esco Post on the Huffington Post (as set out above), after being directed and paid to do so by "Samantha Beth";
- (f) In discussions with Razvi in or around September 18, 2017, "Samantha Beth" made it clear to Razvi that "her" priorities were for Razvi to publish the false and defamatory Internet Postings as quickly as possible, on as many websites as possible, and on websites that had the highest possible profiles. The Counterclaim Defendants played an active role in orchestrating and directing this conduct, and in doing so sought to maximize to the greatest degree possible the harm that the dissemination of these false and defamatory Internet Postings could and would inflict on West Face and Boland. Acting in furtherance of the conspiracy described herein, "Samantha Beth" took all necessary steps to ensure that a number of the false and defamatory Internet Postings were disseminated as broadly as possible on the eve of the originally scheduled hearing in the Court of Appeal for Ontario of Catalyst's appeal in the Moyse Action. As stated above, that appeal was first scheduled to be argued on September

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26 and 27, 2017, until Catalyst engineered an adjournment of the appeal on the afternoon of September 25, 2017;

- (g) Similarly, as set out above, the Boland Post was also published at <http://greg-boland.blog/>. The “author” of the Boland Post on this site is listed as “Anonymous”, yet provides a link to a page at <http://greg-boland.blog/author/judgefranknewbould>. This blog was created on September 19, 2017, and while the username of the user that created this blog was “judgefranknewbould”, the user’s email was “sambeth381@gmail.com”, and the user’s address was 326 Bay Street, Toronto – a fictitious address that does not exist. In short, it was the Counterclaim Defendants who created this blog post, using the fictitious “Samantha Beth” persona, and they did so in such a way as to deliberately conceal and mislead its readers as to their involvement; and
- (h) Finally, on September 18, 2017, the Counterclaim Defendants used the same fictitious “Samantha Beth” persona, from the very same IP address as the user of the “sambeth381@gmail.com” account who had created the Boland Post, to create a second blog site at <http://judgefranknewbould.wordpress.com> and to purchase the judgefranknewbould.ca domain name. Notably, this was the day after Jamieson first emailed Blatchford with the “exclusive” story offer about Justice Newbould and West Face, and the very day of the failed sting conducted by operatives of Black Cube against Justice Newbould. The Counterclaim Defendants had drafted and intended to publish a false and

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defamatory article about Justice Newbould's "corruption" to this blog post, and would have done so had Black Cube's sting operation against Justice Newbould been remotely successful. The proposed title of this unpublished blog post was "A corrupt system or just a bad apple: how Justice Frank Newbould is destroying our faith in the Canadian judicial system". Rosen delivered a draft of the blog post to Jamieson, who unsuccessfully tried to have it published in a variety of mainstream media outlets, including the Globe and Mail. The ultimate goal of this planned but unlaunched attack on Justice Newbould was to cast a cloud of doubt and uncertainty over West Face's victory in the Moyse Action and to shroud West Face and Boland in contention and controversy.

191. The Counterclaim Defendants conspired in a similar manner to publish the other Internet Postings. Further particulars of their conduct are known to the Counterclaim Defendants rather than to West Face and Boland.

(iv) False and Defamatory Communications with Reporters Regarding Black Cube Operations

192. In furtherance of the conspiracy detailed herein, upon receiving the Black Cube Evidence, the Counterclaim Defendants, including Black Cube, Psy Group, Jamieson, Rosen, Glassman and Riley, either directly or through Gagnier, provided reporters, news agencies (including the *National Post*, Bloomberg News and the Associated Press), as well as others, with edited, distorted or otherwise falsified recordings and/or transcripts of meetings between operatives of Black Cube and their targets, including current and former employees of West Face as well as Justice

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Newbould (the “**Misleading Transcripts**”). The Counterclaim Defendants and Gagnier disseminated the Misleading Transcripts to members of the media repeatedly during at least the period from September to December 2017, in an unsuccessful attempt to cause these various news agencies to publish negative false and defamatory articles about West Face, Boland and Justice Newbould. Among other things, the Counterclaim Defendants provided transcripts to members of the media that had been edited or altered to provide the false impression that:

- (a) West Face and its principals, including Boland, had unlawfully received from Moyse confidential information belonging to Catalyst about WIND, and had used that information to their advantage;
- (b) West Face and its principals, including Boland, had concealed unlawfully the identity of West Face’s investors; and
- (c) West Face and its principals, including Boland, had obtained unlawfully and misused confidential information regarding a wireless spectrum auction held in February 2015.

193. Moreover, from August 2016 (following release of the Moyse Trial Reasons) to the present, at the direction of the Catalyst Defendants, Gagnier has consistently made false and defamatory statements alleging that:

- (a) West Face was on the verge of financial collapse;
- (b) West Face had acquired WIND by unlawful means; and

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- (c) West Face was engaged in an unlawful short-selling conspiracy with a “wolfpack” of co-conspirators against Callidus and other public companies.

194. All of these accusations were false and defamatory of West Face and Boland, and were published to the *National Post*, Bloomberg News and the Associated Press with malice, for the purpose of embarrassing and injuring West Face and Boland.

(v) Further False and Defamatory Communications to Catalyst Investors

195. In furtherance of the conspiracy detailed herein, upon receiving the Black Cube Evidence, the Catalyst Defendants prepared a further letter to Catalyst investors that included portions of the Misleading Transcripts (the “**March Investor Letter**”). The March Investor Letter was disseminated by the Catalyst Defendants to Catalyst investors on or about March 19, 2018. Each of Catalyst’s investors who received the March Investor Letter is a current or potential investor in funds managed by West Face. Moreover, the Catalyst Defendants were well aware when they disseminated the March Investor Letter to numerous investors that the natural, ordinary and probable consequence of doing so was that one or more of those investors would likely further disseminate the March Investor Letter to others, including to members of the media. That is precisely what happened.

196. The Catalyst Defendants disseminated the March Investor Letter to Catalyst investors for the purpose and with the effect of harming West Face and Boland and further shrouding them in controversy and scandal. Among other things, the March Investor Letter deliberately mischaracterized and concealed the involvement and deceitful conduct of operatives of Black Cube in allegedly “interviewing” former

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employees of West Face. Moreover, the March Investment Letter contained extracts from heavily edited and distorted transcripts of secretly recorded meetings involving operatives of Black Cube and those former employees. Those meetings were arranged and conducted by operatives of Black Cube for, on behalf of or at the direction of the Catalyst Defendants under false pretences through the use of lies and deception. None of this was disclosed by the Catalyst Defendants in the March Investor Letter. It stated, among other things, the following:

The interviews [*sic*; the “interviews” were in fact secretly recorded transcripts of Black Cube stings] in Catalyst’s possession include statements made by a former West Face employee, who has extensive experience as a portfolio manager. This former employee has repeatedly indicated in his interview that inside information about the WIND negotiations was improperly leaked to West Face.

This former employee expressed his belief that the West Face consortium had received inside information about the WIND negotiations as a result of which West Face was able to buy WIND by making a different bid with fewer conditions than Catalyst. Consequently, this employee stated that “I didn’t work on the deal because I thought it was polluted.”

197. The March Investor Letter was defamatory. The plain and ordinary meaning of the March Investor Letter was that West Face and its principals, including Boland, had only been able to participate successfully in the acquisition of WIND by using dishonourable and unlawful means, including by using “inside information” about Catalyst’s negotiations with VimpelCom.

198. The March Investor Letter was false. As described above, West Face used no inside information of Catalyst in acquiring WIND. Rather, Catalyst failed in its bid to acquire WIND because of its poor choices, flawed negotiating strategy, intransigence, and unreasonable, unrealistic and unachievable demands made by Catalyst of the Government of Canada concerning significant regulatory concessions.

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The quotation from a former West Face employee in the March Investor Letter was distorted and taken out of context, and did not pertain to the improper use by West Face of confidential information of Catalyst's, which never occurred.

199. As the Catalyst Defendants anticipated and intended, the March Investor Letter was provided by one or more of its investors to members of the mainstream media. On April 17, 2018, the Globe and Mail published an article titled "In Investor Letter, Catalyst Claims It Can Still Win Wind Mobile Suit", which repeated publicly the salient contents of the March Investor Letter. The publication of that article further shrouded Boland and West Face in contention and controversy, as Catalyst hoped and intended would occur.

H. Conspiracy

200. As pleaded above, the Counterclaim Defendants have engaged in both predominant purpose and unlawful means conspiracy in their efforts to inflict harm upon Boland and West Face.

201. The Counterclaim Defendants entered into an agreement in or about August 2017 to act in concert, by agreement, and with the common design to:

- (a) punish, embarrass, discredit and harm West Face and Boland by disseminating false and defamatory statements about them that attacked their honesty, integrity, business ethics and conduct. The statements in question are referred to above, and include the Post-Judgment Comments, the October 2016 Press Release, the Glassman Defamation,

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the First Investor Letter, the Internet Postings, the Misleading Transcripts and the March Investor Letter; and

- (b) carry out the Black Cube Campaign.

202. These various activities were all part of a co-ordinated strategy engaged in by the Counterclaim Defendants in furtherance of their conspiracy. They sought throughout to maximize the harm they inflicted on West Face and Boland, and used improper, unethical and unlawful conduct engaged in by operatives of Black Cube to do so. All of the Counterclaim Defendants were aware of and agreed to the overall strategy, and they all played an active role in implementing that strategy. Specifically:

- (a) The Catalyst Defendants were the original architects of the plan to destroy the businesses, careers, and reputations of West Face and Boland. Their objectives in doing so were to: (i) punish, humiliate and discredit West Face and Boland, including by shrouding them in controversy and scandal, with a view to deterring investors from entrusting them with their funds or resources; (ii) deflect attention from their own significant failings, including in respect of their failure to complete Catalyst's intended acquisition of WIND; and (iii) blame others, including West Face, Boland, and Justice Newbould, for their catastrophic losses in the business world and litigation;
- (b) The Catalyst Defendants enlisted the aid of and worked together with the other Counterclaim Defendants to punish, discredit and harm West Face and Boland, as described herein;

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- (c) Rosen, Black Cube, Psy Group, Tanuri, Tamara and Gagnier all actively collaborated with the Catalyst Defendants to develop, orchestrate and implement the specific plan to conduct the Black Cube Campaign and the Defamation Campaign;
- (d) The Counterclaim Defendants, Burstein, Helfgott, and Kisluk all participated actively in the Black Cube Campaign and the subsequent attempts of the Counterclaim Defendants to exploit, utilize and publicize the fruits of that Campaign;
- (e) The Counterclaim Defendants, directly or indirectly, published the Post-Judgment Comments, the October 2016 Press Release, the Glassman Defamation, the First Investor Letter, the Internet Postings, the Misleading Transcripts and the March Investor Letter, and acted with malice in doing so;
- (f) The Catalyst Defendants, Rosen, Black Cube, Psy Group, Tanuri, Tamara, and Gagnier retained persons known to the Counterclaim Defendants but unknown to West Face and Boland to write and disseminate the Internet Postings; and
- (g) The Catalyst Defendants, Rosen, Black Cube, Psy Group, and Gagnier provided the Misleading Transcripts to journalists and to others, as described above.

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203. The conduct of the Counterclaim Defendants was directed at and intended to punish, discredit and harm West Face and Boland. As described above, the purpose and effect of the Counterclaim Defendants' activities was to damage the reputations of West Face and Boland, to undermine and destroy the business of West Face, and otherwise cause harm to West Face and Boland in retaliation for West Face's recent success at Catalyst's expense as described above.

204. The Counterclaim Defendants knew that harm was likely to result to West Face and Boland from their conduct, and such harm has in fact occurred. By deceiving market participants and investors into believing that West Face and Boland are dishonest, untrustworthy, incompetent and unethical, the Counterclaim Defendants deliberately tarnished and harmed their reputations in the financial and investing communities. This, in turn, has made it more difficult for West Face to raise and retain invested capital, attract and retain employees, and to make investments in other companies. Black Cube's activities also caused harm to West Face and Boland as described above.

I. Unlawful Means Tort

205. The Counterclaim Defendants carried out their conspiracy through unlawful means, including their systematic and orchestrated campaign of defamation, their use of unlicensed private investigators, deceit, unlawful means tort, inducing breach of contract and confidence, invasions of privacy and inducing breach of fiduciary duty.

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206. As pleaded above, the Counterclaim Defendants' campaign of defamation had the purpose and effect of deceiving third-party market participants and investors into believing that West Face and Boland are dishonest, untrustworthy, incompetent and unethical. The Counterclaim Defendants made or caused to be made the false and defamatory statements described above with malice, while knowing that they were utterly false.

207. The Black Cube Campaign, carried out by, for or at the direction of the Counterclaim Defendants, also constitutes actionable wrongs against the targets of those activities, the full identities of whom are known to the Counterclaim Defendants. Among other things:

- (a) Almog-Assoulin, Penn, Lieberman, and/or other operatives of Black Cube intentionally and fraudulently induced a number of the targets of the Counterclaim Defendants, including Justice Newbould, West Face's former general counsel Alex Singh, and a number of other current and former employees of West Face, to invest time and money, and even (in some cases) to fly to London, England, in pursuit of employment, professional engagements or investment opportunities that never existed. Operatives of Black Cube intentionally made false representations to the targets with the purpose and effect of causing them to rely on those representations to meet with Black Cube operatives and divulge to them confidential and privileged information, including information belonging to West Face;

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- (b) Almog-Assoulin, Penn, Lieberman, and/or other operatives of Black Cube induced current and former employees of West Face to breach duties of confidence owed to West Face pursuant to employment contracts and at law by offering them lucrative employment or investment opportunities provided the targets would disclose confidential information belonging to West Face;
- (c) Almog-Assoulin, Penn, Lieberman, and/or other operatives of Black Cube induced West Face's former General Counsel Alex Singh to breach his fiduciary duties owed to West Face by falsely offering to him a potentially lucrative employment opportunity provided that he would disclose privileged communications that Mr. Singh participated in with his client (West Face) concerning the hiring and employment of Brandon Moyse. They did so by lying repeatedly to and deceiving Mr. Singh, flying him to London, England and then "interviewing" him at a high-end restaurant in London while he was jet lagged, consuming alcohol and being surreptitiously recorded; and
- (d) Almog-Assoulin, Penn, Lieberman, and/or other operatives of Black Cube attempted repeatedly to induce or entice Justice Newbould into making anti-Semitic remarks during meetings at his office and at a restaurant in Toronto for the express purpose of enabling the Catalyst Defendants to utilize surreptitious and illicit recordings of Justice Newbould in multiple ways, including: (i) as "fresh evidence" in the Ontario Court of Appeal, in their efforts to rob West Face of the judgment it had obtained fairly at trial

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in the Moyse Action; (ii) in resisting motions to stay, dismiss or strike Catalyst's Claim that had been brought by West Face and other Defendants in the VimpelCom Action; and (iii) in false and defamatory statements that the Catalyst Defendants and other Counterclaim Defendants intended to disseminate and publish, including over the Internet, in their efforts to discredit, embarrass and punish Justice Newbould and cast doubt upon the legitimacy of the judgment West Face had obtained at trial in the Moyse Action. In doing so, the Counterclaim Defendants hoped and intended to further shroud West Face and Boland in controversy and scandal.

208. This conduct constituted the tort of deceit against the targets of Black Cube's campaign, and caused damage to West Face and Boland as described herein.

J. Inducing Breach of Confidence and Fiduciary Duty

209. As described above, one aspect of the conspiracy engaged in by the Counterclaim Defendants was the Black Cube Campaign against Alex Singh.

210. The Counterclaim Defendants, including specifically Black Cube, were aware that as the former General Counsel of West Face, Mr. Singh owed West Face duties of confidence and fiduciary duties. Notwithstanding that awareness, the Counterclaim Defendants knowingly conspired to have Almog-Assoulin intentionally elicit from Mr. Singh, and to surreptitiously record, privileged and confidential information (including information concerning legal advice conveyed by Mr. Singh to West Face) pertaining to the hiring and employment of Moyse.

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211. After having obtained privileged and confidential information from Mr. Singh, including concerning his legal advice to West Face pertaining to the hiring and employment of Moyse, and with knowledge of the nature of that information, operatives of Black Cube promptly shared it with the Catalyst Defendants. The Catalyst Defendants received and utilized the contents of Mr. Singh's privileged and confidential communication with full knowledge of its privileged and confidential nature, thereby participating in the breach of confidence and breach of fiduciary duty committed thereby.

K. Damages

212. West Face and Boland have suffered significant damages as a result of the conduct of the Counterclaim Defendants pleaded above, including the Black Cube Campaign, the WIND Defamation, the Wolfpack Defamation and the Performance Defamation. Among other things, the negative publicity surrounding the Black Cube Campaign and the various Defamations has:

- (a) associated West Face with unsavoury events and allegations in the eyes of current and potential investors;
- (b) created the impression that anyone associated with West Face could potentially be the subject of "sting" operations or defamation, thereby deterring individuals from investing or associating with West Face;
- (c) scared away potential employees who could have helped grow and develop West Face's business, as a result of the risk that all West Face

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employees are potential targets of “sting” activities by sophisticated international intelligence operatives like Black Cube;

- (d) resulted in West Face employees resigning in order to remove themselves from the controversy associated with West Face and Boland;
- (e) caused West Face investors to redeem their investments and withdraw the proceeds in question from West Face’s investment funds, thereby reducing the management fees that West Face can earn;
- (f) deterred potential investors from investing with West Face, thereby further reducing the management fees that West Face can earn;
- (g) forced West Face to delay distributing all of the legitimate proceeds from the sale of WIND to investors in West Face managed investment funds; and
- (h) forced West Face to incur hundreds of thousands of dollars in expenses associated with the retention of legal, investigative and technical advisors in order to determine who played a role in and is responsible for the conduct pleaded above.

213. Boland has also suffered severe reputational harm as a result of the Black Cube Campaign and campaign of defamation described in more detail above. His conduct, ethics and character have been severely and repeatedly impugned, which has harmed his ability to raise capital for business ventures at West Face and elsewhere and has otherwise limited his ability to pursue his professional activities. Moreover,

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Boland is personally registered with various securities regulators across Canada and subject to the jurisdiction of U.S. regulators, and the conduct of the Counterclaim Defendants has improperly endangered his standing and reputation with those regulators.

214. In the extraordinary circumstances of this case, very substantial awards of aggravated and punitive damages are appropriate, having regard to the high-handed, willful, wanton, reckless, contemptuous and contumelious conduct of the Counterclaim Defendants. Their conduct, and the conduct of others acting for them or on their behalf, has been truly deplorable and should shock the conscience of the Court. The sting on Justice Newbould described above, and the efforts of the Catalyst Defendants to take full advantage of that sting, amount to a full frontal assault on the administration of justice.

L. The Catalyst Defendants Are Vexatious Litigants

215. The Catalyst Defendants should be declared vexatious litigants under section 140 of the *Courts of Justice Act*. Boland and West Face repeat and rely upon the Fresh as Amended Statement of Defence and on all of the allegations in this Fresh as Amended Counterclaim relating to the sting operation against Justice Newbould. Catalyst and Callidus, under the direction of Glassman, De Alba, and Riley, have commenced multiple, repetitive, vexatious and abusive proceedings against West Face and now Boland. These proceedings are manifestly without merit and have been brought for improper and collateral purposes, including to embarrass and harass West Face and Boland. Once commenced, the Catalyst Defendants have either allowed these meritless claims to lay dormant or have actively engaged in abusive litigation

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tactics to stall or delay the proper and final determination of their purported claims. Finally, the Catalyst Defendants' attempted "sting" on Justice Newbould constitutes an outright and highly improper attack on the proper administration of justice.

216. Remarkably, before the Supreme Court of Canada dismissed Catalyst's application for leave to appeal, Catalyst had stated publicly that it was considering bringing a motion under Rule 59.06 to amend, set aside or vary Justice Newbould's Judgment in the *Moyse* Action, despite already having lost its appeal of that Judgment in the Court of Appeal, and despite having abandoned its threatened motion for leave to introduce fresh evidence on that appeal. The Catalyst Defendants will continue to engage in vexatious and abusive litigation unless and until they are restrained from doing so by this Honourable Court.

M. Service Outside Ontario

217. The Counterclaim Defendants may, without a court order, be served outside of Ontario pursuant to Rules 17.02(g) and (q), because the Counterclaim against the Counterclaim Defendants consists of claims in respect of a tort or torts committed in Ontario, and because the claims made in the Counterclaim are properly the subject matter of a counterclaim under the *Rules*.

218. West Face proposes that this action be tried at Toronto.

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~~September 30, 2019~~ AB.

December 29, 2017

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

KENT THOMSON (LSUC# 24264J)

Tel.: 416.863.5566

Email: kthomson@dwpv.com

MATTHEW MILNE-SMITH (LSUC# 44266P)

Tel.: 416.863.5595

Email: mmilne-smith@dwpv.com

ANDREW CARLSON (LSUC# 58850N)

Tel.: 416.367.7437

Email: acarlson@dwpv.com

Tel.: 416.863.0900

Fax: 416.863.0871

Lawyers for the Defendants/Plaintiffs by
Counterclaim, West Face Capital Inc. and
Gregory Boland

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TO: SERVICE LIST

THE CATALYST CAPITAL GROUP INC. et al
Plaintiff

-and-

West Face Capital Inc. et al.
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

FOURTH FRESH AS AMENDED STATEMENT OF
DEFENCE AND COUNTERCLAIM OF WEST FACE
CAPITAL INC. AND GREGORY BOLAND

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent Thomson (LSUC #24264J)
Tel: 416.863.5566
Email: kentthomson@dwpv.com

Matthew Milne-Smith (LSUC #44266P)
Tel: 416.863.5595
Email: mmilne-smith@dwpv.com

Andrew Carlson (LSUC #58850N)
Tel: 416.367.7437
Email: acarlson@dwpv.com

Tel.: 416.863.0900
Fax: 416.863.0871

Lawyers for the Defendants/Plaintiffs by Counterclaim,
West Face Capital Inc. and Gregory Boland

This is **Exhibit "3"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to read 'MS', followed by a long horizontal flourish.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP 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, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- and -

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION
NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON,
EMMANUEL ROSE, B.C. STRATEGY LTD. d/b/a BLACK CUBE, B.C. STRATEGY UK
LTD. d/b/a BLACK CUBE, and PSY GROUP INC.

Defendants by Counterclaim

**AMENDED REPLY AND DEFENCE TO COUNTERCLAIM OF WEST
FACE CAPITAL INC. AND GREGORY BOLAND**

1. The defendants to the counterclaim, The Catalyst Capital Group Inc. ("**Catalyst**"), Callidus Capital Corporation ("**Callidus**"), Newton Glassman ("**Glassman**"), Gabriel De Alba ("**De Alba**") and James Riley ("**Riley**") (collectively, the "**Catalyst Defendants**"), deny all of the allegations contained in the Fourth Fresh as Amended Statement of Defence and Counterclaim (the "**Counterclaim**") of West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") dated October 1, 2019, save and except those allegations expressly admitted herein.

Overview

2. West Face and Boland have advanced this Counterclaim as a tactical move in response to the Statement of Claim (the "**Claim**") with the intent of avoiding and obfuscating the issues raised in the Claim. The Claim addresses serious allegations of market distortion and the use of short-selling to wreak havoc on the capital markets in particular in relation to Callidus.
3. The Counterclaim is nothing more than a smokescreen: it is an improper attempt by West Face and Boland to distract the market from West Face's poor fund management and deteriorating financial performance, to divert attention from the merits of Catalyst's and Callidus's claim, to shield West Face's and Boland's improper conduct from scrutiny by the courts, and to unduly limit the Catalyst Defendants from expressing themselves on matters of public interest.
4. The Catalyst Defendants have neither defamed nor conspired to defame West Face or Boland, nor have they participated in any systematic "Campaign" to harm West Face and Boland, as alleged. Indeed, most of the statements complained of

by West Face and Boland were neither made nor published by the Catalyst Defendants.

5. The Catalyst Defendants plead and rely upon the defences of fair comment, qualified privilege, public interest responsible communication, and as regards to certain statements complained about, the defence of justification.
6. West Face and Boland have not suffered any harm or damages as a result of any alleged wrongful conduct on the part of the Catalyst Defendants. Any loss of investments or investor confidence, any inability to attract investors or raise investment funds, or any failure to retain or hire employees that West Face and Boland complain of in the Counterclaim, are directly attributable to West Face's own past and continued underperforming Fund investments, as well as West Face's poor investment decisions, lack of due diligence and incompetent management. Indeed, West Face's performance has been abysmal for the better part of 5 years, and has resulted in an exodus of investors from its funds. This has nothing to do with the Catalyst Defendants, but rather West Face's own poor management and ineptitude.
7. The Catalyst Defendants are not vexatious litigants, as alleged. This allegation is also entirely tactical. West Face and Boland seek to avoid a determination of the merits of the allegations in the Claim that they have participated in an improper and unlawful short-selling campaign.

8. There is simply no foundation for the damages and other relief sought by West Face and Boland. The Counterclaim should be dismissed with substantial indemnity costs to the Catalyst Defendants.

The Catalyst Defendants

9. Catalyst is a Canadian private equity firm that specializes in investments in distressed and undervalued situations (i.e., investments in companies that are under-managed, under-valued or poorly capitalized). Catalyst has statutory and common law obligations to keep its investors and the public informed of matters concerning the management, conduct and performance of Catalyst, its affiliates and investment funds, and of any other matter material to the company.
10. Callidus is a publicly traded asset-based lender that operates in the growth and recovery market in Canada and the U.S. Callidus provides capital to meet the financing requirements of companies that cannot access traditional lending sources. Callidus has statutory and common law obligations to keep its investors and the public informed of matters concerning the management, conduct and performance of Callidus and of any other matter material to the company.
11. Glassman is the Managing Partner of Catalyst, and the Executive Chairman and a Director of Callidus. Riley is a Managing Director and the COO of Catalyst, and the Secretary and a Director of Callidus. De Alba is a Managing Director and Partner of Catalyst and has no role at Callidus.
12. As officers and/or directors of Catalyst and/or Callidus, Glassman, Riley and De Alba have statutory and regulatory obligations to keep Catalyst's and Callidus's

investors and the public, as the case may be, informed of matters concerning the management, conduct and performance of Catalyst, Callidus, their affiliates and investment funds, and of any other matter material to the operation of the companies.

13. At all material times, Glassman, Riley and De Alba were solely acting in their capacity as officers and/or directors of Catalyst and/or Callidus. Glassman, Riley and De Alba deny that they are personally liable for any alleged defamation, conspiracy, breach of confidence or any of the other alleged acts complained of by West Face and Boland.

West Face and Its Poor Financial Performance

14. West Face is an investment management firm that manages a number of hedge funds and investment portfolios in Canada, the United States and the Cayman Islands. These include:
 - (a) **The West Face Long Term Opportunities Fund (the “Long Term Opportunity Fund”)** - closed to new investors in 2007 with a cap of \$700 million, this group of funds consists of the West Face Long Term Opportunities Limited Partnership (the “**Canadian Fund**”), the West Face Long Term Opportunities (USA) Limited Partnership (the “**US Fund**”) and the West Face Long Term Opportunities Master Fund L.P. (the “**Cayman Master Fund**”). The Canadian Fund, the US Fund and the Cayman Master Fund together invest in the West Face Long Term Opportunities Global Master Fund L.P. The West Face Long Term Opportunities Fund Ltd. (the

“**Cayman Fund**”) invests in the Cayman Master Fund. West Face is the investment advisor to each of the Canadian Fund, the US Fund and the Cayman Master Fund; and

- (b) **The West Face Alternative Credit Fund (the “Alternative Credit Fund”)** – closed to new investors in September 2014 with a cap of \$600 million, this group of funds consists of the West Face Credit Opportunities Master I L.P. which is managed by the WFCOF Cayman Inc., the West Face Alternative Credit Master L.P., which is managed by West Face ACF Cayman GP Inc. and WF ACF KI I L.P., which is managed by the WF ACF KY I GP Inc. The focus of the West Face Alternative Credit Fund is on high risk investments in second-lien debt, unsecured debt, mezzanine financing, acquisition financing and bridge loans,

(collectively, the “**West Face Funds**”).

15. The founding principal of West Face is Boland, who serves as CEO and Co-Chief Investment Officer. The other principals of West Face are Peter Fraser, Anthony Griffin and Thomas Dea. West Face’s investment strategies are directed by its four principals. Unlike other hedge fund firms, West Face has refused to subscribe or conform to reporting requirements of independent data and market research firms, such as Preqin, upon which institutional investors rely to perform due diligence and keep track of hedge fund managers and hedge fund performance.
16. A significant part of West Face’s investment strategy is to take short positions in companies and try to take advantage of sharp declines in a company’s stock price.

West Face has taken short positions in companies such as Home Trust Company, SunOpta Inc., Hain Celestial Group, Inc., Air Methods Corporation and Callidus.

17. Since 2011, the West Face Funds have consistently suffered from poor financial performance. For example, the Long Term Opportunity Fund has, for more than 5 years, repeatedly underperformed relative to other indices, including the S&P/TSX Composite Total Return Index and the S&P 500. The Long Term Opportunity Fund consistently failed to achieve double digit returns and in some years incurred negative returns.
18. As of June 30, 2017, prior to the alleged publication of the “Internet Postings” complained of, the cumulative returns earned in the Long Term Opportunity Fund were significantly below the cumulative returns of the S&P/TSX Composite Total Return Index and the S&P 500. As shown below, the three-year cumulative return on the Long Term Opportunity Fund as of June 30, 2017 was -2.5%. In contrast, the three-year cumulative return for the S&P/TSX Composite Total Return Index and the S&P 500 for the same period were 9.5% and 31.7%, respectively. From the perspective of a five-year cumulative return, the Long Term Opportunity Fund’s performance lagged even further behind the comparative indices:

	West Face Long Term Opportunity Fund	S&P/TSX Composite Total Return Index	S&P 500
1-Year Cumulative	2.8%	11.0%	17.9%
3-Year Cumulative	-2.5%	9.5%	31.7%
5-Year Cumulative	16.9%	52.1%	97.9%

19. The Long Term Opportunity Fund has consistently underperformed for many reasons, including:
 - (a) negative investment returns from high investment exposure in oil and gas companies like PHI Inc. and Gran Tierra Energy Inc., following the collapse of the oil and gas market in 2014-2015;
 - (b) “unexpected outcomes” in West Face’s investments in Entravision Communications Corporation and Air Methods Corporation;
 - (c) investing in a company that was charged criminally for bribery and corruption;
 - (d) investments that failed to meet West Face’s forecast;
 - (e) failed short positions; and
 - (f) over-attribution of illiquid investments.
20. For example, in a public SEC 13F Filing, West Face disclosed that it suffered a negative US\$204.1 million return over a three-year period ending February 20, 2018 (equating to a -47.5% aggregate annual return and a -18% internal rate of return) in the following investments: PHI Inc., Entravision Communications Corp., Gran Tierra Energy Inc., Hudson Technologies Inc., SunOpta Inc. and Suncoke Energy Inc.
21. West Face’s poor investment performance meant that it never achieved the high water mark or preferred return on its funds.

22. As a consequence of West Face's poor performance as a fund manager, its investors lost confidence in the firm and elected to redeploy their investment elsewhere. Thus, the total value of assets under West Face's management ("**AUM**") suffered a precipitous decline.
23. West Face's AUM declined from a high of approximately \$2.8 billion to approximately \$1.7 billion by March 2016. By September 2017, well before the publication of the alleged defamatory statements, West Face's AUM had further declined to only approximately \$1 billion as its investors rushed to redeem their investments.
24. West Face was subject to significant redemptions from its investors well before the publication of any of the alleged defamatory statements. Contrary to West Face's and Boland's allegations, any loss of investments or investor confidence, or any inability to attract investors or raise investment funds, were a result of West Face's poor financial performance and management. The Catalyst Defendants deny that West Face has suffered any loss or damages as a result any the actions by the Catalyst Defendants.
25. The Catalyst Defendants further deny that West Face has encountered any difficulty in retaining or recruiting employees as a result of the actions of the Catalyst Defendants. If West Face has suffered such difficulties, then it is a result of employees who became seriously disillusioned with West Face's financial struggles, extensive fund redemptions and future prospects and sought opportunity for advancement and growth elsewhere. Simply put, any inability to

retain or recruit employees is due to West Face's dismal performance and rapidly declining AUM, and not attributable to the Catalyst Defendants.

26. Moreover, the reputational damage suffered by West Face due to its exceedingly poor performance was further compounded when it announced:
- (a) in September 2017, the decision to suspend withdrawals and redemptions in the Long Term Opportunity Fund (known in the business as "gating"). As a result of this extreme decision, investors in the Long Term Opportunity Fund were prohibited from withdrawing any of their investment from the Long Term Opportunity Fund. This decision, made out of necessity given the accelerated pace of redemption requests, created strong negative sentiment amongst West Face's investors and the marketplace, and damaged West Face's business prospects; and
 - (b) in December 2017, the decision to discontinue offering both the US Fund and the Cayman Fund. As a result, investors in the US Fund and the Cayman Fund only received a return of capital on a pro rata basis upon redemption and not on an expected "first come-first out" basis. In effect, West Face could not meet investors' demands for redemption and decided to wind up the US Fund and the Cayman Fund.
27. Indeed, in December 2017, West Face acknowledged that its investment strategies were ill-suited to a hedge fund structure. West Face conceded that, over the last several years, the quarterly liquidity requirements for its hedge funds and the lack of available capital to allocate to private investments, have restricted West

Face's ability to successfully participate in higher value opportunities, thereby resulting in losses.

28. West Face's losses and lack of "business success" have nothing to do with the Catalyst Defendants. They are solely attributable to West Face's own mismanagement and ineptitude, which led its hedge funds to fail.
29. West Face, itself, conceded this mismanagement. In 2018, West Face abandoned its flawed investment strategy that had failed its investors and attempted to create a new private equity fund, the "West Face Distressed Fund". Unlike West Face's other funds, the primary focus of the "West Face Distressed Fund" was intended to be on investments in distressed and undervalued situations - the same investment focus as Catalyst.
30. West Face sought to raise \$1 billion for its new fund, notwithstanding that it had no prior performance record of managing and creating value from a private equity fund focussed on distressed and undervalued investments. The size of the raise was excessive for a first time private equity fund by a manager with no private equity track record.
31. In an attempt to raise the new fund, West Face held "road show" sales presentations to potential investors. These sales pitches presented a "cherry-picked" list of specific investments that showed positive returns, while ignoring many of West Face's investments that yielded negative or poor returns. This approach is not consistent with SEC rules.

32. Given the poor financial performance of the West Face Funds, the lack of any prior record of private equity fund performance of distressed and undervalued investments, West Face's history of gating and prohibiting its investors from withdrawing their investments, West Face's refusal to report to independent data and market research firms, and the selective and improper investment illustrations used to attempt to raise \$1 billion from potential investors, West Face failed to raise the West Face Distressed Fund as would be expected. West Face's failure to raise new funds had nothing to do with the Catalyst Defendants.
33. Consequently, any loss that West Face and Boland have allegedly suffered or any lack of success on the part of West Face and Boland to attract investors for the new proposed private equity fund were entirely attributable to their own decisions and actions in marketing the proposed fund, and West Face's growing reputation as a poor fund manager.

The West Face Court Actions

34. West Face and Boland improperly seek to have the Catalyst Defendants declared vexatious litigants in order to shield their own actions and wrongful conduct from scrutiny of the court. There is no basis for this extraordinary relief. The court actions that West Face and Boland complain of in the Counterclaim are neither abusive nor vexatious, as alleged.

(i) The Moyse Action

35. On June 25, 2014, an action was commenced against West Face and Brandon Moyse, a former employee of Catalyst who resigned to join West Face. The action

was commenced in order to enforce Moyse's non-competition obligation pursuant to his Employment Agreement with Catalyst (the "**Moyse Action**").

36. Before his resignation, Moyse was on Catalyst's internal "telecom" deal team working on Catalyst's acquisition of Wind Mobile Inc. ("**Wind**").
37. Wind is a Canadian telecommunications provider that was formerly owned by VimpelCom Ltd. ("**VimpelCom**") and Globalive Capital Inc. ("**Globalive**").
38. In late 2013, Catalyst and VimpelCom had entered into negotiations for the sale of VimpelCom's interest in Wind. In the spring of 2014, Catalyst and VimpelCom entered into a confidentiality agreement to keep confidential the negotiations regarding Catalyst's potential purchase of VimpelCom's interest in Wind (the "**Confidentiality Agreement**"). In July 2014, Catalyst and VimpelCom also entered into an Exclusivity Agreement pursuant to which VimpelCom, its affiliates, and its advisor, UBS Securities Canada Inc. ("**UBS**"), were prohibited from soliciting or encouraging any offers, or participating in any negotiation or discussions with any other party regarding the sale of Wind (the "**Exclusivity Agreement**").
39. At that time, West Face was not considered by VimpelCom to be a serious player in the negotiations for Wind. VimpelCom had rejected earlier offers by West Face for the acquisition of Wind.
40. By May 6, 2014, Catalyst and VimpelCom had agreed to a \$300 million purchase price for Wind and were working to complete a formal Share Purchase Agreement.

41. On May 24, 2014, Moyse resigned from Catalyst effective June 22, 2014 to join West Face.
42. The Moyse Action was therefore commenced on June 25, 2014 to enforce the non-competition clause in Moyse's Employment Agreement.
43. As described further below, Moyse was subsequently enjoined, pursuant to an order of Justice Lederer of the Ontario Superior Court of Justice, from using, misusing or disclosing any and all confidential and/or proprietary information of Catalyst, and from engaging in activities competitive to Catalyst in order to be in compliance with the non-competition clause. Justice Lederer also ordered that Moyse's personal computer and other electronic devices be forensically imaged and reviewed by an independent supervising solicitor.
44. By August 3, 2014, a Share Purchase Agreement between Catalyst and VimpelCom was "substantially completed" for the sale of Wind to Catalyst.
45. On August 11, 2014, VimpelCom and Catalyst informed Industry Canada that the deal "was done".
46. On August 15, 2014, VimpelCom demanded a \$5 - \$20 million break fee from Catalyst, which had been previously requested and abandoned by VimpelCom early in the negotiations. This demand for a break fee, made 10 days after VimpelCom told Catalyst that the Share Purchase Agreement was "substantially settled" and 4 days after Catalyst and VimpelCom informed Industry Canada that the deal was "done", was rejected.

47. On September 15, 2014, it was announced that a consortium that included West Face (the "**Consortium**"), entered into an agreement with VimpelCom to purchase Wind for the same price as Catalyst had negotiated.
48. On October 9, 2014, Catalyst amended its statement of claim against Moyse and West Face, alleging that West Face used confidential information it received from Moyse to successfully pursue the acquisition of Wind.
49. The Moyse Action was tried on June 6-13, 2016 before Justice Newbould. The action was dismissed and costs were awarded against Catalyst. The decision and costs award were appealed and upheld by the Court of Appeal.
50. Although it was unsuccessful, the Moyse Action was neither abusive nor vexatious.
51. Before commencing the Moyse Action, Catalyst wrote to West Face and Moyse about the implications of the departure of Moyse and his acceptance of employment with West Face.
52. In response, West Face and Moyse took the position that the non-competition and non-solicitation clauses of Moyse's Employment Agreement were both unenforceable. West Face and Boland offered an "ineffectual assurance" that Moyse had no intention of revealing any information which could reasonably be considered confidential or proprietary in nature. Their response proposed that either Catalyst simply accept their assurance or go to court. As West Face and Moyse "volunteered nothing", Catalyst commenced an action and sought an injunction.

53. The injunction, as further particularized below, was granted by Justice Lederer of the Ontario Superior Court of Justice. During the course of the injunction proceeding, it was discovered that despite their assurances, Moyses had indeed provided West Face with Catalyst memos marked “Confidential” and “For Internal Discussion Purposes Only” (“**Catalyst Confidential Memos**”). It was learned that Moyses provided Catalyst Confidential Memos to Thomas Dea of West Face who then circulated them to the other partners and a Vice-President at West Face. West Face and Moyses said nothing about the sharing of Catalyst Confidential Memos when they gave their assurances to Catalyst that that they had no intention of revealing or improperly using any information that was confidential to Catalyst. West Face and Moyses waited until Catalyst discovered that the Catalyst Confidential Memos had been delivered, before acknowledging that the transmission took place. As Justice Lederer found, West Face and Moyses provided an “ineffectual assurance”. In the face of the ineffectual assurance that West Face and Moyses did not have or would not improperly use Catalyst confidential information, it was reasonable and not vexatious of Catalyst to pursue the Moyses Action.
54. On November 14, 2014, Justice Lederer issued an order enjoining Moyses from using, misusing or disclosing any and all confidential and/or proprietary information of Catalyst. To ensure that Moyses did not communicate confidential information to West Face, the court also enjoined Moyses from engaging in activities competitive to Catalyst, in compliance with the non-competition clause.

55. Justice Lederer held that there was a strong *prima facie* case that Moyse had breached the confidentiality clause of his Employment Agreement. The Court found that Moyse took and delivered to West Face confidential information which could demonstrate strategies Catalyst used in a competitive business. West Face understood the Catalyst Confidential Memos received were confidential. Notwithstanding its confidential nature, West Face distributed the Catalyst Confidential Memos to each of its partners and a Vice-President.
56. Moreover, Justice Lederer ordered an Independent Supervising Solicitor (“ISS”) to review the forensic images of Moyse’s personal electronic devices to identify if any material confidential to Catalyst remained in Moyse’s possession. The order was necessary as it was discovered during the course of the injunction proceeding that Moyse had deleted emails evidencing the transmission of Catalyst Confidential Memos to West Face. Moyse opposed the order and asserted that he should be left to review and determine what must be produced. Justice Lederer rejected Moyse’s assertion.
57. It was later discovered by the ISS, that on the very day that the court had ordered Moyse’s personal devices to be forensically imaged, Moyse downloaded military-grade deletion software to his personal computer and deleted material from his computer the night before his computer was turned over for imaging.
58. Contrary to West Face’s and Boland’s allegations, the Moyse Action was neither abusive nor vexatious. Indeed, the Court of Appeal for Ontario noted that Moyse’s

decision to delete material from his computer was a “serious breach of the court order”.

(ii) The VimpelCom Action

59. On May 31, 2016, a week before the trial of the Moyse Action, a claim was commenced against VimpelCom, its advisor UBS, and members of the Consortium, including West Face, for inducing breach of contract, conspiracy and breach of confidence relating to the Consortium’s acquisition of Wind (the “**VimpelCom Action**”).
60. Contrary to West Face’s and Boland’s allegations, West Face did not act in an entirely appropriate manner with respect to the acquisition of Wind. Catalyst discovered, long after the commencement of the Moyse Action, that during the period of confidentiality and exclusivity with Catalyst:
- (a) confidential information was obtained by members of the Consortium about the dates of Catalyst’s exclusivity rights and the status of Catalyst’s negotiations and dealings with VimpelCom and its Board;
 - (b) the Consortium had discussed and negotiated the purchase of Wind with VimpelCom and its advisors;
 - (c) VimpelCom’s advisor, UBS, participated in and encouraged the Consortium’s competing proposals; and
 - (d) the timing and content of the Consortium’s competing bid were designed for the specific purpose of providing VimpelCom with an alternative option to

Catalyst's offer at the same time as VimpelCom was scheduled to consider the agreement with Catalyst.

61. For example:

- (a) on or about July 18, 2014, West Face and the Tennenbaum Group requested, and later obtained, VimpelCom's consent to share information and work together to develop a proposal for the acquisition of Wind;
- (b) on July 21, Tennenbaum Group's principal, Michael Leitner ("**Leitner**"), wrote to West Face's principal, Boland, stating that he "heard [C]atalyst is seeking exclusivity this week";
- (c) on July 22, Leitner told Boland that "I spoke to Felix [Saratovsky of VimpelCom]...Catalyst may have this in exclusivity by the end of the week";
- (d) on July 23, Leitner and Boland were advised that "[Jonathan] Herbst [of UBS] called me to say that the company has entered into exclusivity at the reserve price - \$150 million";
- (e) by August 1, West Face, Tennenbaum Group and other members of the Consortium reconciled their financial models. The Consortium received comments "over the phone" from VimpelCom about the Consortium's Share Purchase Agreement and received some "feedback on price levels";
- (f) on August 1, the Consortium was advised when the Share Purchase Agreement with Catalyst was going to be submitted to the VimpelCom board; and

- (g) on August 6-7, the Consortium, with the benefit of inside information, deliberately delivered its own “superior” proposal to pre-empt VimpelCom’s approval of Catalyst’s Share Purchase Agreement. At that time, the Consortium was also provided with additional confidential information about the internal processes and timetable of VimpelCom, including a revised board schedule. The Consortium was told by UBS “not to burn their file”.
62. Contrary to West Face’s and Boland’s allegations, VimpelCom’s board was not genuinely dissatisfied with the offer from Catalyst. Rather, with information it improperly obtained in breach of the Confidentiality Agreement and the Exclusivity Agreement, West Face and the other members of the Consortium made a proposal they believed to be “superior” to Catalyst’s. Shortly thereafter, the Consortium’s proposal was deliberately provided during the period of the Exclusivity Agreement so that the VimpelCom board had, as stated by Leitner, “2 birds in hand” when it came to approve the Share Purchase Agreement with Catalyst. Providing the proposal before the VimpelCom board approved Catalyst’s Share Purchase Agreement was the Consortium’s “only play”.
63. To the knowledge of West Face and Boland:
- (a) Catalyst was not aware at the time of any of the communications and the sharing of information that occurred amongst VimpelCom, Globalive, UBS and members of the Consortium;
 - (b) the communications and the sharing of information that occurred among VimpelCom, Globalive, UBS and the Consortium were in violation of the

Confidentiality Agreement and the Exclusivity Agreement that Catalyst and VimpelCom had entered into; and

- (c) the conduct of the Consortium, VimpelCom, Globalive and UBS was intended to frustrate and impair Catalyst's contractual rights and to provide West Face and the other members of the Consortium with an improper advantage, and in fact their conduct led to these effects.

- 64. Upon discovering these new facts, Catalyst commenced the VimpelCom Action against VimpelCom, Globalive, UBS and members of the Consortium. The breach of and interference with Catalyst's Confidentiality Agreement and Exclusivity Agreement by VimpelCom, Globalive, UBS, and members of the Consortium were not known to Catalyst at the time the Moyse Action was commenced. At issue in the VimpelCom Action are the breaches of contract and confidence alleged against VimpelCom, Globalive and UBS, contrary to Catalyst's Confidentiality and Exclusivity Agreement, and the misuse of confidential information by the Consortium to conspire and induce VimpelCom to breach its agreements with Catalyst.
- 65. The claim against VimpelCom, UBS and members of the Consortium is neither abusive nor vexatious.
- 66. Indeed, Catalyst's belief that confidential information about the Wind negotiations and transactions was improperly obtained by the Consortium in breach of Catalyst's confidentiality and exclusivity rights has subsequently been confirmed by former West Face employees.

67. According to a former West Face employee with extensive experience as a portfolio manager, inside information about the Wind negotiations was obtained by members of the Consortium. As a result, the Consortium was able to purchase Wind by making a different bid with fewer conditions than Catalyst. This employee stated that he thought the deal was “polluted” and that the Consortium had benefited from inside information about Catalyst’s confidential bid:

Former WF employee But one of them in particular was – they were like ‘we can’t provide you with that’. And somehow that news made its way into our shop. And so they [**the West Face consortium**] made a bid with no conditions—

Interviewer That’s crazy—

Former WF employee --and the board took it.

Interviewer --this is why – it’s crazy, isn’t it? I mean –

Former WF employee It is, unless someone on the Wind board told you what the right answer was, but said they couldn’t put it on paper.

Interviewer So they had inside information from Wind or from Catalyst? Or from both, you think?

Former WF employee They had information about Catalyst’s bid, and they had information about why Wind wasn’t taking it. And so they gave a bid that was lower but a little bit different that the board would accept.

68. Further, this same former West Face employee stated that Catalyst was correct in believing that West Face had indeed received confidential information about the Wind transaction that it was not supposed to have:

Interviewer Who has the right answer?

Former WF employee Catalyst. It’s – I believe they’re correct that West Face had information they weren’t supposed to.

Interviewer Ah, okay.

Former WF employee It just didn't come to West Face's hands the way--

Interviewer So what's the right path? Where did it go, I mean it's --

Former WF employee The board.

Interviewer A board member? Of Wind, you think a board member of Wind gave them the--

Former WF employee Yeah."

69. A second former West Face employee with extensive investment industry experience stated that the Consortium's winning bid was made as a result of collusion:

Former WF employee [Catalyst] actually had a bid that was higher than ours. They bid something, something over 300 million, I don't know what. Our belief that it was higher than ours. Umm, so they kind of forgot about, they kind of forgot about, umm... If you remember what, umm, VimpelCom told UBS, the three key--.

Interviewer Conditions.

Former WF employee Umm, yeah. Umm, items they were looking for in the bidding process was, umm, expediency of close, whoever can close the fastest; certainty of close; and number three was price. But price wasn't the most important factor. So, we put our bid in, and we said, "See, no conditions to close, we can close--." And the big thing was regulatory, because you need a regulatory approval to take ownership of the asset, and they had to put in a, a regulatory approval.

Interviewer And you had that approval?

Former WF employee We didn't, but what we did differently from Catalyst Capital is we went to Tony Lacavera and we said, "Tony, umm, technically speaking, you already control this asset. You own 51% of the votes, so why don't we team up with you, we'll give you the money, and then you pay VimpelCom?"

Interviewer Is that, isn't that conflict of interest?

Former WF employee No, no. There's no conflict of interest.

Interviewer He was selling to himself?

Former WF employee He, well, he--. He only owned 5% of the business, remember? But he owned 51% of the votes.

Interviewer Yeah.

Former WF employee So we said to him, "Why don't we give you 285 million dollars, and then you use that to pay VimpelCom 285 million--."

Interviewer To buy their--.

Former WF employee "-to buy out their shares."

Interviewer -95%?

Former WF employee Correct. And then, at some point later, we will restructure the company such that we own 90% and you own 10%. So, we teamed up with Tony Lacavera, and he was first, was willing to do that because he would essentially be gifted a certain percentage of the company for free."

70. To date, no court has made any determination as to whether the actions of VimpelCom, UBS, Globalive or members of the Consortium had breached any of Catalyst's confidentiality and exclusivity rights. Contrary to West Face's and Boland's allegations, these issues were not determined by Justice Newbould in the Moyse Action. VimpelCom and other defendants in that action were not parties to nor subject to any documentary or oral discovery in the Moyse Action. No court has heard from VimpelCom or UBS regarding the circumstances surrounding the sale of VimpelCom's shares of Wind. No explanation has been given by VimpelCom about why it made its demand for a break fee after having already settled the terms of a Share Purchase Agreement with Catalyst and announcing that a deal with Catalyst was done. There has been no explanation by UBS for the numerous conversations it had with the Consortium throughout the period of

Catalyst's Exclusivity Agreement. The propriety of VimpelCom's, UBS's and Globalive's conduct that led to the Consortium's bid has yet to be adjudicated upon.

71. Given the foregoing, there is no basis whatsoever to have the Catalyst Defendants declared as vexatious litigants.

(iii) The Veritas Action – 2014 Short-Selling Attack

72. On June 18, 2015, an action against Veritas Investment Research Corporation ("**Veritas**") and West Face was commenced for defamation, conspiracy and intentional interference with economic relations relating to a short-selling scheme orchestrated against Catalyst and Callidus (the "**Veritas Action**").
73. The short-selling scheme involved the publication and dissemination of reports by West Face and Veritas that contained false and defamatory statements impugning the financial viability and conduct of both Catalyst and Callidus. The scheme was designed to deceive market participants into believing that Callidus was a poor investment, and thus to drive the price of Callidus stock downward.
74. At a meeting between West Face and Veritas representatives in December 2014, Boland disclosed details of an unfavourable report that West Face had prepared regarding Callidus (the "**West Face Report**"). Boland "arranged" for the report to be shared with Veritas so that Veritas would produce a second unfavourable report on Callidus (the "**Veritas Report**"), creating the false impression that West Face and Veritas had independently and separately issued negative reports. This had the effect of deceiving the market place into believing that a negative consensus

was building against Callidus, and driving the price of Callidus stock downward which, in turn, bolstered West Face's admitted short-selling campaign.

75. Catalyst and Callidus claim that the Veritas Report and West Face Report contained false and defamatory statements impugning the financial viability and conduct of both Callidus and Catalyst designed to cause shareholders to sell Callidus stock. The Veritas Action is not abusive or vexatious, as alleged.
76. Indeed, West Face had previously sought to strike Catalyst's and Callidus's claim in its entirety on the basis that it disclosed no reasonable cause of action. West Face's motion to strike, however, was dismissed by the Ontario Superior Court of Justice.
77. On appeal, the Court of Appeal of Ontario confirmed that Catalyst and Callidus have "made out a *prima facie* cause of action in defamation against both West Face and Veritas" and are "proceeding in good faith".
78. There is no basis for this second attempt by West Face to prematurely halt the Veritas Action and have the Catalyst Defendants declared as vexatious litigants.

(iv) The Conspiracy Action – 2017 Short-Selling Attack

79. This action by Catalyst and Callidus against West Face, Greg Boland, Anson Group Canada and others, relates to a subsequent short-selling attack that began on August 9, 2017 when the Wall Street Journal published an article regarding false whistleblower complaints filed with the OSC against Callidus and Catalyst.

80. The Catalyst Defendants repeat and rely on their assertions contained in the Statement of Claim.
81. The Counterclaim is an attempt by West Face and Boland to avoid a court adjudication on West Face's and Boland's conduct in this case and to conceal its behaviour in communicating with the whistleblowers and short-selling Callidus stock. The within action is neither abusive nor vexatious, as alleged.

The Litigation and Investigations

82. Following the short-selling attack in August 2017, Catalyst, through its counsel, retained Tamara Global Holdings Ltd. ("**Tamara Global**") to provide personal and corporate security and to provide litigation support in respect of ongoing and contemplated litigation.
83. Tamara Global was authorized to retain subcontractors and additional consultants pursuant to its retainer.
84. Tamara Global retained B.C Strategy UK Ltd. ("**B.C. Strategy**") for the purpose of litigation, including litigation between Catalyst and West Face. B.C. Strategy was to execute its retainer in accordance with its best professional judgment.
85. The Catalyst Defendants deny that it engaged B.C. Strategy for any improper purpose, as alleged. The Catalyst Defendants did not direct or have any involvement in the alleged activities described by West Face in the Counterclaim. The Catalyst Defendants did not conspire with B.C. Strategy or with any of the other defendants to engage in any unlawful activity.

86. B.C. Strategy was to conduct itself at all times in a lawful manner. Insofar as the Catalyst Defendants are aware, all interviews and meetings were conducted and all information was gathered by B.C. Strategy, lawfully.
87. The interviews and meetings were conducted for the purpose of litigation between Catalyst and West Face. The interviews and meetings and any information that exists therefrom are therefore privileged, unless that privilege is expressly waived.
88. The Catalyst Defendants did not induce West Face employees to breach any duties of confidence or fiduciary duties, as alleged. Specifically, none of the information obtained by B.C. Strategy, including any purported information from Alex Singh related to the hiring and employment of Moyse, is privileged. If any information was privileged then any such privilege has been waived by West Face. This occurred when Alex Singh delivered an affidavit in the Moyse Action and was cross-examined thereon in relation to Moyse's hiring, including advice and direction he gave to Moyse and West Face about these and other related matters. Singh's affidavit and cross-examination transcript and additional evidence in relation to these matters were filed and relied upon by West Face at the trial of the Moyse Action.
89. In any event, West Face and Boland have suffered no damages whatsoever as a result of the employee interviews. No actionable wrong has been committed against West Face or Boland.
90. With respect to B.C. Strategy's meeting with Mr. Newbould, the Catalyst Defendants had no prior knowledge of the meeting with Mr. Newbould. The

Catalyst Defendants were only informed of the meeting with Mr. Newbould after the meeting had occurred.

91. The Moyse Appeal was to commence on September 25, 2018. Upon learning of the meeting with Mr. Newbould, a brief adjournment of the appeal was sought to consider a possible motion to introduce fresh evidence.
92. Upon further consideration of B.C. Strategy's meeting with Mr. Newbould and its implications, Catalyst abandoned any motion to introduce fresh evidence on the appeal.
93. Catalyst also sought to strike the allegations regarding Mr. Newbould from the Counterclaim. West Face and Boland, however, opposed Catalyst's request to strike. They did so, in part, to deflect attention away from their own improper activities and the merits of Catalyst's and Callidus's claim against them.
94. West Face and Boland have also engaged with the media to keep this litigation in the public eye, including matters surrounding Mr. Newbould.
95. West Face and Boland have not suffered any damages as a result of the meeting with Mr. Newbould, nor does it constitute any actionable wrong against them.

The Alleged Defamation Campaign

96. Contrary to West Face's and Boland's allegations, the Catalyst Defendants did not make any defamatory statements to the media or the financial community, nor did they issue any false and defamatory press releases, investor communications or internet postings regarding West Face or Boland. Further, the Catalyst Defendants

did not authorize B.C. Strategy, PSY Group Inc., Emmanuel Rosen, Virginia Jamieson, or any other party to make or post any defamatory statements, through aliases or otherwise, concerning West Face or Boland, as alleged.

97. The Catalyst Defendants did not on their own (or in concert with the other defendants by counterclaim) engage in any of the activities described as the alleged "Defamation Campaign".
98. The Catalyst Defendants state that the words complained of by West Face and Boland in the Counterclaim are incapable of bearing any of the meanings pleaded, do not bear the meanings pleaded, and are not defamatory. Further, the Catalyst Defendants plead and rely upon the fair comment defence, the qualified privilege defence, the public interest responsible communication defence, and with respect to certain statements set out below, the defence of justification.
99. The Catalyst Defendants acted in good faith and deny all allegations that they acted maliciously towards West Face and Boland.
100. The statements complained of by West Face and Boland are expressions relating to matters of public interest. The Counterclaim is merely an attempt by West Face and Boland to chill off the Catalyst Defendants from expressing themselves on matters that are of public interest.
101. Further particulars of the Catalyst Defendants' defence regarding the statements complained about in Catalyst's press releases, Catalyst's investor letters, and the internet postings are pleaded below.

(i) Catalyst Press Releases

102. West Face and Boland complain of two press releases issued on August 18, 2016 (the “**August 18 Press Release**”) and October 13, 2016 (the “**October 13 Press Release**”) (collectively, the “**Press Releases**”). The Press Releases were issued following the release of Justice Newbould’s decision in the Moyse Action and his decision on costs.
103. The outcome of the Moyse Action and the costs decision are information material to the company.
104. Pursuant to its statutory and common law obligations, Catalyst had a duty to disclose such material information to the public. The statements in the Press Releases that West Face and Boland complain about were not made with malice or with the intent to injure West Face or Boland. Rather, the statements that West Face and Boland complain about were made by Catalyst in the course of discharging its duty to keep the public informed of material information concerning the company and are protected by the defence of qualified privilege.
105. The statements made in the Press Releases that West Face and Boland complain about are also protected by public interest responsible communication defence.
106. The statements made in the Press Releases that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.
107. In addition, with respect to the August 18 Press Release, the statement complained about that “Additional evidence has come out since the Moyse

litigation that supports the new case that alleges conspiracy and breach of contract” is true. Since the commencement of the Moyses Action, additional evidence was discovered that members of the Consortium, including West Face, were kept apprised of Catalyst’s negotiations for Wind, and had discussed and negotiated the purchase of Wind during the period of Catalyst’s Confidentiality and Exclusivity Agreement with VimpelCom. The truth about the Consortium’s above-noted conduct is unassailable.

108. With respect to the statements complained about in the October 13 Press Release, the actions of West Face and Moyses in receiving and circulating Catalyst documents marked “Confidential”; the deletion of data and information from Moyses’s personal devices following a court order intended to preserve such information, and West Face’s and Moyses’s failure to be forthcoming about their conduct, are fairly characterized as “unethical”.
109. The Catalyst Defendants deny that the Press Releases caused West Face or Boland any damages whatsoever as a result of their publication. Further, the Catalyst Defendants by Counterclaim were never served with a Notice of Libel pursuant to section 5 of the *Libel and Slander Act* with respect to the National Post/Financial Post article published on August 19, 2016 (referred to in paragraph 129 of the Fourth Fresh as Amended Statement of Defence and Counterclaim of the Plaintiffs by Counterclaim).

(ii) Catalyst Investor Letters

110. West Face and Boland complain of statements made in letters sent by Catalyst to its investors on August 14, 2017 (the “**August 14 Investor Letter**”) and March 19, 2018 (the “**March 19 Investor Letter**”) (collectively, the “**Investor Letters**”).
111. Specifically, the statements complained about in the August 14 Investor Letter addressed the short-selling attack against Callidus. It had been the subject of a short-selling attack that had a significant and material impact on its share price. Catalyst received information that Callidus and Glassman were targeted by a group, including Boland of West Face, acting in concert to short-sell Callidus stock and spread false rumours in the marketplace.
112. Pursuant to its obligations, Catalyst is required to inform its investors of material information concerning the short-selling attack. The statements contained in the August 14 Investor Letter were not made with malice with the intent to injure West Face or Boland. Rather, these statements were made in the course of discharging Catalyst’s duty to keep its investors informed of material information concerning the company and are protected by the defence of qualified privilege.
113. The statements made in the August 14 Investor Letter that West Face and Boland complain about are also protected by the public interest responsible communication defence.
114. The statements made in the August 14 Investor Letter that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.

115. The matters addressed in the March 19 Investor Letter concern both the Moyse Action and the VimpelCom Action, and the information discovered from former West Face employees that are material to those Actions.
116. The March 19 Investor Letter accurately set out the information obtained from West Face former employees, including information that:
- (a) inside information about the Wind negotiations was improperly communicated to members of the Consortium during the period of Catalyst's exclusivity and confidentiality;
 - (b) West Face had indeed received confidential information about the Wind transaction that it was not entitled to have; and
 - (c) the deal with the Consortium was "polluted" and that the Consortium had benefited from inside information about Catalyst's confidential bid.
117. The statements contained in the March 19 Investor Letter that West Face and Boland complain about are protected by the defence of qualified privilege.
118. The statements contained in the March 19 Investor Letter that West Face and Boland complain about are also protected by the public interest responsible communication defence.
119. The statements made in the March 19 Investor Letter that are opinion constitute fair comment, made in good faith and without malice, on matters of public interest.

120. The Catalyst Defendants deny that the Investor Letters caused West Face or Boland any damages whatsoever as a result of their publication. Further, the Catalyst Defendants by Counterclaim were never served with a Notice of Libel pursuant to section 5 of the *Libel and Slander Act* with respect to the Globe and Mail article published on April 17, 2018 (referred to in paragraphs 195 and 199 of the Fourth Fresh as Amended Statement of Defence and Counterclaim of the Plaintiffs by Counterclaim).

(iii) "Internet Postings"

121. The Catalyst Defendants deny that they authored, created, published, directed or instructed any party to draft, create or publish the internet postings complained about by West Face and Boland.

122. The Catalyst Defendants did not create or use, or direct any party to create or use false identities or aliases to post statements that were false or otherwise, as alleged. The Catalyst Defendants have no knowledge of the authors of the internet postings complained of by West Face and Boland.

123. Specifically:

(a) **Boland Post:** the Catalyst Defendants did not author or direct any party to author the alleged post that West Face and Boland have defined in the Counterclaim as the "Boland Post", nor did they create or direct any party to create any of the websites and Twitter accounts through which the post was allegedly posted. Until being notified by West Face's counsel, the Catalyst Defendants had no knowledge of the alleged websites and Twitter

accounts. Indeed, these websites and Twitter accounts are largely unknown to the public with little to no visitors or followers. The post and the alleged websites and Twitter accounts are largely unknown. Contrary to West Face's and Boland's allegations, the post was not widely read or disseminated. Moreover, most, if not all, of the information contained in the post is derived from past publications from recognized news media for which West Face and Boland made no complaint;

- (b) **Wolfpack Video:** the Catalyst Defendants did not create or direct any party to create the video that West Face and Boland have labelled in the Counterclaim as the "Wolf Pack Video", nor did they create or direct any party to create Twitter accounts through which the video was allegedly posted. The Catalyst Defendants had no knowledge of the video or the Twitter accounts through which the video was allegedly posted until it was brought to their attention by West Face's counsel. The video and the alleged Twitter accounts are largely unknown. There is no evidence that the video was widely disseminated or viewed so as to attract any negative attention to West Face or Boland;
- (c) **Esco Post:** the Catalyst Defendants did not author or direct any party to author the post that West Face and Boland have defined in the Counterclaim as the "Esco Post", nor did they create or direct any party to create any of the alleged websites and Twitter accounts through which the post was allegedly posted. The Catalyst Defendants did not direct or indirectly use the pseudonym "julesljones", as alleged. Until the post was

brought to their attention by West Face's counsel, the Catalyst Defendants had no knowledge of the post. Indeed, the post contains statements regarding Callidus that are inaccurate. The alleged post and Twitter account are not widely known to the public. The post was not broadly disseminated or read so as to attract any negative attention to West Face and Boland;

- (d) **Face the Music Post:** the Catalyst Defendants did not author or direct any party to author the post that West Face and Boland have defined in the Counterclaim as the "Face the Music Post", nor post directly or indirectly on the website that the post was allegedly posted. The Catalyst Defendants had no knowledge of the alleged post or the website upon which the post was posted, until it was brought to their attention by West Face's counsel. The post and the website are widely unknown to the public. The alleged post and Twitter account are not widely known to the public. The post was not broadly disseminated or read so as to attract any negative attention to West Face and Boland;
- (e) **Wolfpack Corruption Post:** the Catalyst Defendants did not author or publish, nor direct any party author or publish the post that West Face and Boland have defined in the Counterclaim as the "Wolfpack Corruption Post". Further, they did not create nor cause anyone to create the website upon which the post was allegedly posted. Moreover, they did not create nor direct any party to create the Twitter accounts through which the post was allegedly posted. Until the post was brought to their attention, the Catalyst Defendants had no knowledge of the alleged post or the website and the

Twitter accounts through which the post was allegedly posted. The alleged post and website are not widely known to the public. The post was not broadly read or disseminated so as to attract any negative attention to West Face and Boland; and

- (f) **Westface.net Post:** the Catalyst Defendants did not publish, create, make directly or indirectly the statements complained of in the post that West Face and Boland have defined in the Counterclaim as the “Westface.net Post”. Further, they did not use any pseudonym nor cause any pseudonym to be registered, as alleged. Moreover, they did not create or register the website, as alleged. The alleged post and website are not widely known to the public. The post was not broadly disseminated or viewed so as to attract any negative attention to West Face and Boland.

124. Contrary to West Face and Boland’s allegations, the Catalyst Defendants did not conspire to harm West Face or Boland by disseminating false or defamatory statements through any “Defamation Campaign”. The Catalyst Defendants did not engage in any unlawful or wrongful activity, as alleged.
125. In any event, West Face and Boland have not suffered any loss or damages as a result of the publication, circulation or posting of the Press Releases, Investor Letters and Internet Postings. Well before the publication of any of the defamatory statements complained of, West Face suffered a precipitous decline in its AUM as a result of its poor financial performance and mismanagement. For the better part of 5 years, West Face consistently underperformed relative to other indices, often

incurring negative or minimal returns. The loss and damages alleged to have been suffered by West Face and Boland are a result of West Face's and Boland's own failed investment decisions and mismanagement, and not as a result of any actions of the Catalyst Defendants.

Conclusion

126. There is no merit to the Counterclaim and it ought to be dismissed. The Counterclaim is a bald attempt by West Face and Boland to distract the market from West Face's poor fund management and deteriorating financial performance, to divert attention from the merits of Catalyst's and Callidus's claim, to shield West Face's and Boland's improper conduct from scrutiny by the courts, and to chill off the Catalyst Defendants from expressing themselves on matters of public interest.
127. West Face and Boland have not suffered any damages whatsoever as a result of any conduct by the Catalyst Defendants.
128. In any event, the damages claimed are excessive and too remote to be recoverable at law. West Face and Boland have failed to mitigate their damages.
129. The Catalyst Defendants did not act in a reckless, high-handed, malicious, oppressive or reprehensible manner that would warrant an award of aggravated or punitive damages.
130. The Catalyst Defendants therefore request that the Counterclaim be dismissed with costs on a substantial indemnity basis.

~~September 25, 2018~~
November 29, 2019

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

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

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

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

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

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

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

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

Lawyers for the Defendants by
Counterclaim, The Catalyst Capital Group
Inc., Callidus Capital Corporation, Newton
Glassman, Gabriel De Alba and James
Riley

TO: **SERVICE LIST**

THE CATALYST CAPITAL GROUP INC. et al
Plaintiffs

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

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

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

REPLY AND DEFENCE TO COUNTERCLAIM

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

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 Defendants to the Counterclaim, The Catalyst
Capital Group Inc., Callidus Capital Corporation, Newton
Glassman, Gabriel De Alba and James Riley

This is **Exhibit "4"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to be 'MS', written over a horizontal line.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

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

Court File No. CV-17-586096

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C.
STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD.
D/B/A BLACK CUBE and INVOP LTD. d/b/a PSY GROUP INC.

Defendants to the Counterclaim

STATEMENT OF DEFENCE TO COUNTERCLAIM

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1. The Defendants to the Counterclaim, B.C. Strategy Ltd. d/b/a Black Cube and B.C. Strategy UK Ltd. d/b/a BLACK CUBE, deny all of the allegations contained in the Counterclaim.

The Black Cube Entities

2. B.C. Strategy Ltd. is an Israeli company that provides intelligence, litigation support, and similar services to its clients. B.C. Strategy U.K. Ltd. is a separate company that also provides the same services to its clients. The two B.C. Strategy companies occasionally provide services to one another's clients through subcontract arrangements.

3. The two B.C. Strategy companies operate under the trade name (and will be referred to herein as) "Black Cube", which is a registered trademark in approximately 50 jurisdictions including Canada. Black Cube operates in dozens of countries, has dozens of employees, and is engaged by, among others, top-tier law firms around the world to provide litigation support and similar services.

The Catalyst/ West Face Litigation

4. The Catalyst Capital Group Inc. ("Catalyst") and Callidus Capital Corporation ("Callidus") are and have for several years been involved in a series of lawsuits against West Face Capital Inc. ("West Face"). The various proceedings have expanded to involve directors, officers, and principals of the corporations, as well as related or affiliated corporations, and third parties.

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5. The proceedings all involve different groups of parties and different specific claims, but they are all related proceedings in that the principal litigants are Catalyst and Callidus on one side, and West Face on the other, and because there are some key factual issues that are common to several proceedings.

Black Cube Retainer

6. Black Cube was retained on or about September 11, 2017 for the purpose of supporting Catalyst and Callidus in their litigation against West Face, and related proceedings. The terms of and communications about Black Cube's retainer are protected by litigation privilege, upon which the Black Cube defendants rely.

Black Cube's Involvement

7. Black Cube's engagement, operations and communications with respect to the Catalyst/ West Face dispute were at all times undertaken for the sole purpose of providing litigation support, and are therefore privileged. Black Cube does not by this pleading waive any aspect of the litigation privilege or any other applicable privilege that applies to its work, files, conduct, work product, and the like.

8. Black Cube acknowledges and it is a matter of public record that its agents or employees met with various individuals in an attempt to obtain information that may be helpful to Catalyst and Callidus in their litigation with West Face. There is no legal prohibition against, or unlawful purpose behind, Black Cube's conduct in doing so.

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9. Black Cube denies that any conspiracy as alleged in the Counterclaim (or otherwise) exists between the defendants by Counterclaim.

10. Black Cube did not participate in making or approving any statement alleged in the Counterclaim to be defamatory.

11. Black Cube denies committing any unlawful act or intentional tort. Black Cube did not owe any legal duty to West Face or the persons with whom Black Cube met.

No Damages

12. The Black Cube defendants in any event plead that the plaintiffs by counterclaim suffered no damages whatsoever as a result of the conduct complained of in the Counterclaim.

13. Black Cube's conduct does not meet the test for the imposition of punitive damages. There was no independent actionable wrong. While the individuals Black Cube met with are unique, the act of conducting the investigations undertaken by Black Cube in order to obtain information for use in litigation is not. Black Cube cannot be punished with an award of punitive damages simply because the persons with whom it met had previously held any particular status or position in Ontario.

14. The Defendant to the Counterclaim, B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd. d/b/a BLACK CUBE, asks that the Counterclaim be dismissed, with costs.

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August 15, 2018

ADAIR GOLDBLATT BIEBER LLP95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

John J. Adair (52169V)

Tel: 416.941.5858
jadair@agblfp.com

Gordon McGuire (58364S)

Tel: 416.941.5860
gmcguire@agblfp.com

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Defendants to the
Counterclaim,
B.C. Strategy Ltd. d/b/a Black Cube, B.C.
Strategy UK Ltd. d/b/a BLACK CUBE

TO:

TORYS LLPBarristers and Solicitors
79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto ON M5K 1N2

Linda Plumpton

Tel: 416.865.8193
lplumpton@torys.com

Andrew Bernstein

Tel: 416.865.7678
abernstein@torys.com

Tel: 416-865-0040

Fax: 416-865-7380

Lawyers for the Defendants,
M5V Advisors Inc. C.O.B. ANSON GROUP CANADA, ADMIRALTY
ADVISORS LLC., Frigate Ventures LP, Anson Investments LP, Anson
Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst
Master Fund LP, ACF GP, Moez Kassam, Adam Spears and Sunny Puri

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AND TO: **LERNERS LLP**
Barristers and Solicitors
130 Adelaide Street West
Suite 2400
Toronto ON M5H 3P5

Brian N. Radnoff
bradnoff@lerners.ca
Tel: 416.601.2387
Fax: 416-867-9192

Lawyers for the Defendants,
Clarityspring Inc. and Nathan Anderson

AND TO: **MILBURN & ASSOCIATES**
Barristers & Solicitors
20 Toronto Street
Suite 860
Toronto ON M5C 2B8

A. Jane Milburn
Tel: 647.728.8081
Fax: 647.689.2983
jmilburn@milburnlaw.ca
Devin M. Jarcaig
Tel: 647.728.8083
Fax: 647.689.2983
djarcaig@milburnlaw.ca

Tel: 416-238-7865
Fax: 647-689-2983

Lawyers for the Defendant,
Bruce Langstaff

-7-

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

M. Philip Tunley

Tel: 647.245.8282

Fax: 647.245.8285

phil.tunley@stlbarristers.ca

Alexi N. Wood

Tel: 647.245.8283

Fax: 647.245.8285

alexi.wood@stlbarristers.ca

Jennifer P Saville

Tel: 647.245.2222

Fax: 647.245.8285

jennifer.saville@stlbarristers.ca

Tel: 647-245-8284

Fax: 647-245-8285

Lawyers for the Defendant,
Rob Copeland

-8-

AND TO: **HUNT PARTNERS LLP**
21 Balmuto Street
Suite 1404
Toronto ON M4Y 1W4

Andrew Burns
aburns@huntlegal.caom
Tel: 416.350.2934
Fax: 416.943.1484

Lawyers for the Defendant,
Kevin Baumann

SCOTT VENTURO RUDAKOFF LLP
Lawyers
1500, 222 3rd Avenue SW
Calgary AB T2P 0B4

Eugene J. Bodnar
Tel: 403.261.9043
gbodnar@svrlawyers.com
Breanne Campbell
Tel: 403.261.9043
b.campbell@svrlawyers.com

Tel: 403-261-9043
Fax: 403-265-4632

Co-Counsel with Hunt Partners LLP,
Lawyers for the Defendant,
Kevin Baumann

AND TO: **JEFFREY MCFARLANE**

Defendant

-9-

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

Symon Zucker
sz@bondlaw.net
Tel: 416-863-9955
Fax: 416-863-4896

Lawyers for the Defendant,
Darryl Levitt

AND TO: **SOLMON ROTHBART GOODMAN LLP**
Barristers and Solicitors
375 University Avenue
Suite 701
Toronto ON M5G 2J5

Melvyn L. Solmon
msolmon@srglegal.com
Tel: 416.947.1093 Ext. 333
Fax: 416-947-0079

Lawyers for the Defendant,
Richard Molyneux

AND TO: **JOHN DOES #1-10**

Defendant

-10-

AND TO: **MOORE BARRISTERS**
393 University Avenue
Suite 1600
Toronto ON M5G 1E6

David C. Moore (16996U)

Tel: 416.581.1818 Ext. 222

Fax: 416.581.1279

david@moorebarristers.ca

Kenneth G.G. Jones (29918I)

Tel: 416.581.1818 Ext. 224

Fax: 416.581.1279

kenjones@moorebarristers.ca

Tel: 416.581.1818

Fax: 416.581.1279

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
155 Wellington Street West
37th Floor
Toronto ON M5V 3J7

Kent Thomson (24264J)

Tel: 416.863.5566

kthomson@dwpv.com

Matthew Milne-Smith (44266P)

Tel: 416.863.5595

mmilne-smith@dwpv.com

Andrew Carlson (58850N)

Tel: 416.367.7437

acarlson@dwpv.com

Tel: 416-863-0900

Fax: 416-863-0871

Lawyers for the Defendants (Plaintiffs by Counterclaim)

-11-

AND TO: **MACKENZIE BARRISTERS**
120 Adelaide Street West
Suite 2100
Toronto ON M5H 1T1

Gavin MacKenzie
gavin@mackenziebarristers.com
Tel: 416.304.9293
Fax: 416-304-9296

Lawyers for the Defendant to the Counterclaim,
Virginia Jamieson

AND TO: **EMMANUEL ROSEN**
ID No. 56548456
26 Shaar Ha'amakim Street
Hod Hasaron Merkus 45000

Defendant to the Counterclaim

AND TO: **PSY GROUP INC.**
No. 51-517203-9
25 Basel Street
Petah Tikva 49000

Defendant to the Counterclaim

RCP-E 18A (July 1, 2007)

THE CATALYST CAPITAL GROUP INC. et al.
 Plaintiffs
 GREGORY BOLAND et al.
 Plaintiffs by Counterclaim

M5V ADVISORS INC. C.O.B. ANSON GROUP CANADA et al.
 Defendants
 THE CATALYST CAPITAL GROUP INC. et al.
 Defendants to the Counterclaim
 Court File No. CV-17-587463-00CL/Court File No. CV-17-586096

-and-

-and-

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

PROCEEDING COMMENCED AT
 TORONTO

STATEMENT OF DEFENCE TO COUNTERCLAIM

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
 Suite 1830, P.O. Box 14
 Toronto ON M5J 2N7
 John J. Adair (52169V)
 jadair@agblp.com
 Tel: 416.941.5858

Gordon McGuire (58364S)

gmcguire@agblp.com
 Tel: 416.941.5860

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Defendants to the Counterclaim,
 B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd.
 d/b/a BLACK CUBE

This is **Exhibit "5"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to be 'MS', with a long horizontal flourish extending to the right.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

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

Defendants

A N D B E T W E E N :

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- and -

**THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION,
NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA
JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE, B.C.
STRATEGY UK LTD. d/b/a BLACK CUBE, and INVOP LTD. d/b/a PSY GROUP INC.**

Defendants by Counterclaim

**STATEMENT OF DEFENCE TO COUNTERCLAIM
OF VIRGINIA JAMIESON**

1. The Defendant, Virginia Jamieson (“**Jamieson**”), admits the allegations contained in the first two sentences of paragraph 40 of the Amended Amended Fresh as

Amended Statement of Defence and Counterclaim (“**Counterclaim**”) of West Face Capital Inc. and Gregory Boland.

2. Jamieson has no or insufficient knowledge in respect of the allegations contained in paragraphs 1-25, 26-32, 33(a), 35, 39, 41-99, 102, 107-109, 111-172, 177-181, and 187-200 of the Counterclaim. To the extent any of the allegations in these paragraphs referring generally to the “Counterclaim Defendants” are made against Jamieson, they are denied.

3. Except as hereinafter expressly admitted, Jamieson denies the balance of the allegations in the Counterclaim. Jamieson specifically denies the allegations contained in paragraphs 25, 33(b), 34, 40 (excluding the first two sentences, which are admitted), 100, 101, 103-106, 110, 173-176, and 182-186 of the Counterclaim.

4. For greater clarity and without limiting the generality of the foregoing, Jamieson specifically denies the allegations that:

- (a) Jamieson knowingly planted false or misleading media coverage concerning the Plaintiffs by Counterclaim or Justice Newbould, or engaged in conduct calculated to prejudice or harm the Plaintiffs by Counterclaim’s interests in any way;
- (b) Jamieson intended to induce Christie Blatchford or any other journalist to write and publish a false and defamatory article concerning the Plaintiffs by Counterclaim or Justice Newbould;
- (c) Jamieson used the alias or username “Samantha Beth”—or any other alias, username, or pseudonym—to write, publish, or disseminate false

and defamatory statements (or any statements whatsoever) about the Plaintiffs by Counterclaim or Justice Newbould or to do anything relating to the matters at issue in the Counterclaim;

- (d) Jamieson entered into an agreement or otherwise conspired with the Catalyst Defendants, other Counterclaim Defendants, or anyone to publish defamatory comments, carry out the “Black Cube Campaign” or “Defamation Campaign” alleged in the Counterclaim, or to harm the Plaintiffs by Counterclaim in any way whatsoever;
- (e) Jamieson authored, created, published, or administered any of the postings that formed part of the “Defamation Campaign” alleged in the Counterclaim, or retained, directed, or paid anyone to do so, directly or indirectly;
- (f) Any of the IP addresses used or involved in the “Defamation Campaign” alleged in the Counterclaim belong to or are in any way associated with Jamieson, directly or indirectly;

and puts the Plaintiffs by Counterclaim to the strict proof thereof.

5. Jamieson acted honestly and in good faith throughout. She did not agree or conspire with the Catalyst Defendants, Counterclaim Defendants, or anyone to publish or cause to be published any false, misleading, or defamatory stories about the Plaintiffs by Counterclaim. Jamieson did not intend for her conduct to harm or prejudice the Plaintiffs by Counterclaim’s interests in any way.

6. Jamieson further denies that the Plaintiffs by Counterclaim suffered the damages claimed or any compensable damages whatsoever as a result of her actions, and puts them to the strict proof thereof.

7. In the alternative, if the Plaintiffs by Counterclaim did suffer the damage alleged in the Counterclaim, any damage they may be found to have suffered were not caused in whole or in part by any actionable act or omission by Jamieson. In any event, the damages claimed are excessive and too remote to be recoverable at law, and the Plaintiffs by Counterclaim have failed to mitigate their damage.

8. Jamieson acted in good faith throughout and not in a reckless, highhanded, malicious, oppressive, or reprehensible manner that would offend common standards of decency or warrant an award of aggravated, exemplary, or punitive damages.

9. Jamieson asks that the counterclaim against her be dismissed with costs.

August 17, 2018

MACKENZIE BARRISTERS P.C.
120 Adelaide Street West
Suite 2100
Toronto, ON M5H 1T1

Gavin MacKenzie (LSO#: 16941B)
Tel: 416.304.9293
gavin@mackenziebarristers.com

Brooke MacKenzie (LSO#: 64135P)
Tel: 416.304.9294
brooke@mackenziebarristers.com

Fax: 416.304.9296

Lawyers for the Defendant by
Counterclaim, Virginia Jamieson

TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
155 Wellington Street West, 40th Floor
Toronto ON M5V 3J7

Kent Thomson (LSO #24264J)
Tel: 416.863.5566
kthomson@dwpv.com

Matthew Milne-Smith (LSO #44266P)
Tel: 416.863.5595
mmilne-smith@dwpv.com

Andrew Carlson (LSO #58850N)
Tel: 416.367.7437
acarlson@dwpv.com

Fax: 416.863.0871

Lawyers for the Defendants/Plaintiffs by
Counterclaim, West Face Capital Inc. and
Gregory Boland

AND TO: **MOORE BARRISTERS**
393 University Avenue, Suite 1600
Toronto ON M5G 1E6

David C. Moore (LSO #16996)
Tel: 416.581.1818 Ext.222
david@moorebarristers.ca

Kenneth Jones (LSO #299181)
Tel: 416.581.1818 Ext.224
kenneth@moorebarristers.ca

Fax: 416.581.1279

Lawyers for the Plaintiffs/Defendants by
Counterclaim, The Catalyst Capital Group Inc.,
and Callidus Capital Corporation

AND TO: **ADAIR GOLDBLATT BIEBER LLP**
95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto, ON M5J 2N7

John J. Adair (LSO # 52169V)
Tel: 416.941.5858
jadair@agbllp.com

Gordon McGuire (LSO # 58364S)
Tel: 416.941.5860
gmcguire@agbllp.com

Tel: 416.499.9940
Fax: 647.689.2059

Lawyers for the Defendants by Counterclaim,
B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy
UK Ltd. d/b/a Black Cube

The Catalyst Capital Group Inc., et al v. West Face Capital Inc., et al
Plaintiffs (Defendants by Counterclaim) Defendants (Plaintiffs by Counterclaim)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE TO
COUNTERCLAIM OF VIRGINIA
JAMIESON**

MACKENZIE BARRISTERS P.C.
120 Adelaide Street West
Suite 2100
Toronto, ON M5H 1T1

Gavin MacKenzie (LSO#: 16941B)
Tel: 416.304.9293
gavin@mackenziebarristers.com

Brooke MacKenzie (LSO#: 64135P)
Tel: 416.304.9294
brooke@mackenziebarristers.com

Fax: 416.304.9296

Lawyers for the Defendant by Counterclaim,
Virginia Jamieson

THE CATALYST CAPITAL GROUP INC.
et al.

Plaintiffs

WEST FACE CAPITAL INC. et al.

Plaintiffs by Counterclaim

-and-

WEST FACE CAPITAL INC. et al.

Defendants

THE CATALYST CAPITAL GROUP INC.
et al.

Defendants to the Counterclaim

-and-

CANACCORD GENUITY CORP.

Third Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE DEFENDANTS,
WEST FACE CAPITAL INC. AND
GREGORY BOLAND – Volume 1 of 4**

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)

Email: kentthomson@dwpv.com

Tel: 416.863.5566

Matthew Milne-Smith (LSO #44266P)

Email: mmilne-smith@dwpv.com

Tel: 416.863.5595

Andrew Carlson (LSO #58850N)

Email: acarlson@dwpv.com

Tel: 416.367.7437

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by Counterclaim),
West Face Capital Inc. and Gregory Boland