

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP et al.

Plaintiffs

- and -

WEST FACE CAPITAL INC, et al.

Defendants

A N D B E T W E E N:

WEST FACE CAPITAL INC., et al.

Plaintiffs by Counterclaim

- and –

THE CATALYST CAPITAL GROUP INC., et al.

Defendants by Counterclaim

Court File No. CV-18-593156-00CL

A N D B E T W E E N:

THE CATALYST CAPITAL GROUP et al.

Plaintiffs

- and -

DOW JONES AND COMPANY, et al.

Defendants

**SUPPLEMENTAL COMPENDIUM
OF THE CATALYST DEFENDANTS**
(Anti-SLAPP Motion Pursuant to s. 137.1 Courts of Justice Act)

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TAB 1

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

Defendants

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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

**NOTICE OF MOTION
(THE CATALYST DEFENDANTS BY 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 by Counterclaim”), will make motion to a Judge presiding over the Commercial List, on a date and time to be set by the Court, at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: the motion is to be heard orally.

THE MOTION IS FOR:

- a) an Order dismissing the proceeding brought by the Plaintiffs by Counterclaim as against Catalyst Defendants by Counterclaim, in accordance with section 137.1(3) of the *Courts of Justice Act*;
- b) the costs of this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*;
- c) damages as against West Face Capital Inc. (“West Face”) and Gregory Boland (“Boland”) on the basis that the Counterclaim was brought against the Catalyst Defendants by Counterclaim in bad faith or for an improper purpose, pursuant to subsection 137.1 (9) of the Courts of Justice Act; and
- d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**a) The Parties**

1. 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 duties to keep its investors 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.
2. Callidus is a publicly traded asset-based lender that operates in the growth and recovery market in Canada and the United States. 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 market generally informed of matters concerning the management, conduct and performance of Callidus and of any other matter material to the company.
3. Glassman is the Managing Partner of Catalyst, and the Executive Chairman and a Director of Callidus.
4. Riley is a Managing Director and the Chief Operations Officer of Catalyst, and the Secretary and a Director of Callidus.
5. De Alba is a Managing Director and Partner of Catalyst and has no role at Callidus.

6. As officers and/or directors of Catalyst and/or Callidus, Glassman, Riley and De Alba have duties to keep Catalyst's and Callidus' investors 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.

b) The Main Action

7. Catalyst and Callidus commenced this claim against 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, Adam Spears, Sunny Puri, ClaritySpring Inc., Nathan Anderson, Bruce Langstaff, Darryl Levitt, Richard Molyneux, Kevin Baumann, Jeffrey McFarlane, Rob Copeland, Gerald Duhamel, George Voorheis, Bruce Livesey, and John Does #4-10, among others, claiming damages of \$450 million and punitive damages of \$5 million for defamation, injurious falsehood, the tort of unlawful means, and civil conspiracy.
8. The Fresh as Amended Statement of Claim pleads, *inter alia*, that the defendants entered into a conspiracy to harm Catalyst and Callidus through the following actions:
 - (i) spreading false information by rumours through the Bay Street rumour mill;
 - (ii) filing false "whistleblower" complaints against Callidus with the Ontario Securities Commission and the United States Securities and Exchange

Commission by certain of the Guarantor Conspirators to “confirm” the rumours;

- (iii) leaking the existence and substance of the allegations contained in the whistleblower complaints to the media and providing information to the police to generate media interest;
 - (iv) taking short positions, directly or indirectly, in the common shares of Callidus (the “Callidus Shares”);
 - (v) publishing a false and defamatory article in the Wall Street Journal on August 9, 2017 (the “*WSJ* Article”), released near the end of the trading day, in order to cause a rapid decline in the price of the Callidus Shares; and
 - (vi) closing out of their naked short positions at the expense of the market value of Callidus.
9. Short selling is an investment strategy through which investors sell shares into the market that they do not own at the time of the sale but which the investors are obligated to buy back from the market. A short seller effectively bets that the stock value will decline. Profits are made if the share value declines between the time of the sell and the later buy and, conversely, losses (potentially catastrophic losses) are sustained if the value increases between the time of the sell and the later buy.
10. On August 9, 2017, at 3:29pm, the *WSJ* Article was published online, authored by Rob Copeland and Jacquie McNish.

11. In the approximately 30 minutes following the release of the *WSJ* Article and the close of the market, very large volume sell-side pressure took the share price from \$14.92 to \$12.06 – a drop in share price of 19.2%, reflecting a loss of market capitalization for Callidus of over \$144 million.
12. In the days that followed, Callidus' share price further declined to \$10.48, reflecting a market capitalization loss of \$246,440,000 in less than four trading days.
13. Following the short and distort attack, Catalyst and Callidus commenced this action alleging West Face and the other defendants are liable for acts and omissions relating to the short selling shares in Callidus, spreading negative rumors, and involvement in the publication of the *WSJ* Article in a co-ordinated effort to harm the Catalyst and Callidus.
14. West Face and the other defendants who are alleged to have participated in the conspiracy have defended the Main Action. Some of the conspirators have denied participating in the spreading of negative rumours, filing of whistleblower complaints, the publication of the *WSJ* Article, or participating in the short and distort attack. Other defendants have admitted that they participated in these activities, including with other defendants who have denied taking any role in the same activities.

c) The Defamation Counterclaim Against The Catalyst Defendants

15. West Face and Boland have issued a counterclaim seeking *inter alia* a Declaration that the Catalyst Defendants have defamed West Face and Boland. The

Counterclaim seeks general damages of \$450 million for West Face and \$50 million for Boland.

16. The West Face/Boland Counterclaim pleads defamation against the Catalyst Defendants by Counterclaim relating to the following publications:
 - (i) a Written Statement by Catalyst issued on August 19, 2016
 - (ii) a Press Release by Catalyst issued on October 13, 2016
 - (iii) The First Investor Letter (August 14, 2017)
 - (iv) The March Investor Letter (March 19, 2018)
 - (v) Communications with the media, and
 - (vi) Internet Postings concerning West Face and the other alleged conspirators engaged in the short and distort attack against Catalyst and Callidus that are the subject of the Main Action .
17. The West Face/Boland Counterclaim also alleges that Newton Glassman slandered West Face and Boland.
18. The West Face/Boland Counterclaim is an attempt by West Face and Boland to avoid a court adjudication on West Face's and Boland's conduct as alleged in this action and to conceal its behaviour in communicating with the whistleblowers and short-selling Callidus stock. The within action is neither abusive nor vexatious.

19. The statements complained of by West Face and Boland that are attributable to the Catalyst Defendants by Counterclaim 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 by Counterclaim from expressing themselves on matters that are of public interest.

d) **Catalyst's Written Statement (August 19, 2016)**

20. The West Face/Boland Counterclaim alleges that a Written Statement by Catalyst reprinted in the National Post and various other publications after Justice Newbould released his Reasons for Judgment (August 18, 2016) in an action commenced by Catalyst against a former employee named Brandon Moyses (the *Moyse Action*) were defamatory.

21. The Moyses Action involved a claim brought by Catalyst against Moyses alleging he obtained Catalyst confidential information and provided it to West Face in furtherance of its efforts to acquire shares of a telecom company called WIND Mobile Corp. ("Wind") from VimpelCom Ltd. ("VimpelCom"), in competition to Catalyst.

22. The *Financial Post* published an article on August 19, 2016 written by Emily Jackson headlined "Catalyst Capital Group Inc. to appeal after Judge dismisses WIND Mobile lawsuit" and sub-headlined: "The appeal continues Capital's extensive legal battle for a share of the Wireless start-up now owned by Shaw Communications".

23. The Catalyst August 19, 2016 Written Statement says:

“We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbould. We believe that he did not give fair consideration to all 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. Among other things , we are particularly concerned that the decision selectively ignores or discounts key testimony as it relates to the critical issue of possible destruction of evidence”.

24. West Face also issued a News Release about Justice Newbould’s decision in the *Moyse Action* that the *Financial Post* reports as stating:

“WestFace is grateful for the vindication the judge provided, according to a news release that highlighted the judge’s conclusions about the witnesses”.

25. West Face’s CEO Greg Boland was quoted in the *Financial Post* article as saying:

“The reasons for the complete dismissal of the case make clear the lawsuit launched by Catalyst was without merit. We are confident that Catalyst’s other lawsuits against West Face and various other parties face similar obstacles, CEO Greg Boland said in a statement”.

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26. The August 19, 2016 Written Statement issued by Catalyst expressed its commentary about a judicial decision and the status of its ongoing litigation with West Face. West Face’s news release and the statement from its CEO Greg Boland did the same. The statements made by Catalyst relate to a matter of public interest.

- e) The October 13, 2016 Catalyst Press Release

27. The West Face/Boland Counterclaim alleges that the following statements in the October 13, 2016 Press Release are defamatory:

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.

28. The October 13, 2016 Press Release is entitled "Catalyst Capital Group Comments on West Face Statements" and was released at 21:36 ET on October 13, 2016. The lead paragraph states: "The Catalyst Capital Group Inc. ("Catalyst"), Canada's second-largest independent private equity firm, today commented on recent statements by West Face Capital Inc. regarding ongoing litigation related to its acquisition of WIND Mobile Corp. and the short attack at Callidus Capital Corporation".

29. The October 13, 2016 Press Release continues:

"We can understand the increasing pressure that West Face has experienced due to its questionable and potentially unlawful actions around its acquisition of WIND and activities regarding Callidus Capital that has resulted in numerous inquiries from current and prospective investors, service providers and industry participants.

In regards to our litigation against West Face and other parties, there are very few firms out there that take the role of fiduciary as seriously as we do. Our commitment to LPs and to the minority shareholders in Callidus Capital is the primary consideration in all decisions we make.

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.

It should be highly concerning to numerous stakeholders that West Face has determined to litigate through the public at large. In full knowledge of

an upcoming jury trial regarding the WIND acquisition, and the fact that the Brandon Moyse/West Face decision is being appealed. The appeal is on the basis of a denial of procedural fairness, errors of law in determining the spoliation claim and errors of fact and mixed fact and law in determining the claims of spoliation and the misuse of Catalyst's confidential information. The award by Justice Newbould on a substantial indemnity basis ignores finding by Justice Lederer, among other things, and is a continuation of the basis for our appeal.

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

30. The October 13, 2016 Press Release was a reply to statements made by West Face earlier in the day. West Face sent out a Press Release at 16:48 ET headlined "Court awards over \$1.5 million..." that states in part :

"West Face Capital Inc. announced today that Justice Newbould of the Superior Court of Justice in Ontario has awarded costs of \$1.2 million to West Face, on a substantial indemnity basis...

Justice Newbould's cost endorsement noted that the lawsuit was driven by Catalyst CEO Newton Glassman, who "was not able to accept that he lost his chance to acquire Wind by being outsmarted by someone else." Justice Newbould also found that Mr. Glassman "was certainly playing hardball attacking the reputation and honesty of West Face. However, in spite of the best efforts of Catalyst's very able and skilled lawyers, he utterly failed."

...

West Face believes that the Catalyst and Callidus claims in each of these proceedings are without merit and is vigorously defending each of these proceedings."

New Website

West Face also announces the launch of a new website at www.catalystlitigation.com. Due to the large volume of documents, and in response of numerous inquiries from current and prospective investors, service providers and industry participants that we interact with, West Face has assembled the public court materials from the various lawsuits launched by Catalyst against West Face in the archive hosted on this website, including materials filed in court by each of Catalyst and West Face.

West Face believes that the Catalyst and Callidus claims in each of these proceedings are without merit and is vigorously defending each of these proceedings.”

31. The statements in the October 13, 2016 Press Release are a reply to West Face’s Press Release, issued earlier that day. The October 13, 2016 Press Release expresses Catalyst’s opinion about its ongoing litigation with West Face and its concerns related to its investors and Limited Partners as well as other stakeholders. These are matters of public interest.

f) The First Investor Letter (August 14, 2017)

32. The West Face/Boland Counterclaim alleges that statements in a letter sent by Newton Glassman to the Catalyst Fund Limited Partnership II and II-PP Investors were defamatory.

33. The letter to the Investors states:

“Dear Catalyst Fund Limited Partnership II and II-PP (the “Fund” or “Fund II and II-PP”) Investor:

Catalyst continues to be excited about the existing Canadian distressed opportunity set and believes all of the work undertaken on behalf of its LPs will be rewarded handsomely.

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 behavior but also to possible interference and market manipulation involving West Face and others in Callidus.

We are very concerned about materials from the Funds (Quarterly Letters and Annual General Meeting presentations) appearing in social media / other public media sources and becoming manipulated against the interests of the LPs. This is now more relevant as we are trying to monetize the investments in the Fund. Therefore, we are reminding LPs to remember their confidentiality obligations as part of the LP Agreements (please refer to the confidentiality provision on the following page).

Please feel free to contact the undersigned with any questions you may have, and thank you, once again, for your continued support. We remain committed to the Guiding Principles attached hereto as our commitment to you, our investors.

Newton Glassman”

34. The statements complained about in the August 14, 2018 Investor Letter addressed the short and distort attack against Callidus described above. Callidus had been the subject of a short and distort attack that had a significant and material impact on its share price immediately following the publication of the WSJ Article. 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 rumors in the marketplace.
35. Catalyst was obligated to report to its investors information concerning the short and distort attack. The statements contained in the August 14, 2017 Investor Letter were made in accordance with Catalyst’s obligation to keep its investors informed of information of concern to the company.
36. The statements in the First Investor letter about the West Face and Moyse Action related to a matter of public interest.

g) The March Investor Letter (March 19, 2018)

37. The West Face/Boland Counterclaim alleges that statements in a March 19, 2018 letter to investors that included portions of the misleading transcripts of recordings of conversations with former and current West Face employees were defamatory.

38. The March Investor letter is a document entitled “Privileged and Confidential Update – WIND Litigation”.
39. The matters addressed in the March 19, 2018 Investor Letter concern both the Moyse Action and a subsequent action commenced against West Face and the consortium of Investors that ultimately acquired the shares in Wind (the “VimpelCom Action”), and the information learned from former West Face employees that are material to those Actions.
40. The March 19, 2018 Investor Letter set out information obtained from West Face former employees, including information that:
 - (i) inside information about the Wind negotiations was improperly communicated to members of the Consortium during the period of Catalyst’s exclusivity and confidentiality;
 - (ii) West Face had received confidential information about the Wind transaction that it was not entitled to have; and
 - (iii) the deal with the Consortium was “polluted” and that the Consortium had benefited from inside information about Catalyst’s confidential bid.
41. The statements contained in the March 19, 2018 Investor Letter were made in accordance with Catalyst’s obligation to report to its investors information of concern to the company.

42. The March 19, 2018 Investor Letter is an expression by Catalyst relating to a matters of public interest, including the improper use of insider information, and breaches of Exclusivity and Confidentiality Agreements.

h) The Glassman Slander

43. The West Face/Boland Counterclaim alleges in paragraph 136 that Newton Glassman repeated the defamatory words in the August 2016 Written Statement 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”.

44. This pleading on its face demonstrates that the Counterclaim against Mr. Glassman is a SLAPP in that West Face does not even know to whom Mr. Glassman spoke the alleged slanderous words.

i) The West Face/Boland Counterclaim is a Strategic Lawsuit Against Public Participation (SLAPP)

45. The West Face/ Boland Counterclaim against the Catalyst Defendants is a strategic lawsuit against public participation.

46. The West Face/ Boland Counterclaim arises from expressions made by the Catalyst Defendants that relate to matters of public interest, made in good faith and without malice.

47. The West Face/ Boland Counterclaim is designed and intended primarily to discourage and chill off the Catalyst Defendants from communicating about matters of public interest.
48. The West Face/Boland Counterclaim does not have substantial merit.
49. The Catalyst Defendants have valid defenses to the West Face/Boland Counterclaim.
50. The statements attributable to the Catalyst Defendants by Counterclaim did not cause West Face or Boland any damages.
51. The harm likely to be suffered or that has been suffered by West Face and Boland (Plaintiffs by Counterclaim) as a result of the Catalyst Defendants' expressions is not sufficiently serious that the public interest in permitting the Counterclaim to continue outweighs the public interest in protecting the expressions of the Catalyst Defendants.
52. Sections 137.1 and 137.2 of the *Courts of Justice Act*, R.S.O. 1990, C.C43.
53. 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:

- a) the affidavit of James Riley to be sworn.

b) such further and other evidence as counsel may advise and this Honourable Court may permit.

November 8, 2019

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
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 (LSO#29106K)

Tel: 416-369-6693
Fax: 416-862-7661
john.callaghan@gowlingwlg.com

Benjamin Na (LSO#409580)

Tel: 416-862-4455
Fax: 416-863-3455
benjamin.na@gowlingwlg.com

Richard G. Dearden (LSO#19087H)

Tel: 613-786-0135
Fax: 613-788-3430
richard.dearden@gowlingwlg.com

Matthew Karabus (LSO#61892D)

Tel: 416-369-6181
Fax: 416-862-7661
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 Catalyst Defendants by
Counterclaim

TO: **SERVICE LIST**

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THE CATALYST CAPITAL GROUP et al.

- and - WEST FACE CAPITAL INC. et al.

Plaintiffs

Defendants

**ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

John E. Callaghan (LSO#29106K)

Tel: 416-369-6693
Fax: 416-862-7661
john.callaghan@gowlingwlg.com

Benjamin Na (LSO#409580)

Tel: 416-862-4455
Fax: 416-863-3455
benjamin.na@gowlingwlg.com

Richard G. Dearden (LSO#19087H)

Tel: 613-786-0135
Fax: 613-788-3430
richard.dearden@gowlingwlg.com

Matthew Karabus (LSO#61892D)

Tel: 416-369-6181
Fax: 416-862-7661
matthew.karabus@gowlingwlg.com

Lawyers for Catalyst Defendants by Counterclaim

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

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TAB 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 and CALLIDUS CAPITAL
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Plaintiffs

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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

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A N D B E T W E E N:

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Plaintiffs by Counterclaim

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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

**PRIVATE AFFIDAVIT OF JAMES A. RILEY
SWORN ON DECEMBER 5, 2019**

(Section 137.1(3) *Courts of Justice Act* Motion to Dismiss by the Catalyst Defendants by
Counterclaim)

I, James A. Riley, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

A. INTRODUCTION

1. I am a Managing Director of The Catalyst Capital Group Inc. ("Catalyst") and semi-retired. Prior to my semi-retirement, I was the Chief Operating Officer of Catalyst. Prior to the privatization of Callidus Capital Corporation ("Callidus") in 2019, I was an officer and director of Callidus.
2. This affidavit is sworn in support of a motion brought by Catalyst, Callidus, me, Newton Glassman ("Glassman") and Gabriel De Alba ("De Alba") (the "Catalyst Defendants by Counterclaim") pursuant to section 137.1 (3) of the *Courts of Justice Act* to dismiss the Counterclaim in the Fourth Fresh as Amended Statement of Defence and Counterclaim of West Face Capital Inc. ("West Face") and Gregory Boland ("Boland") issued on October 1, 2019 (the "West Face/Boland Counterclaim") against the Catalyst Defendants by Counterclaim. A copy of the West Face/Boland Counterclaim is attached as **Exhibit 1**. A copy of the Reply and Defence to Counterclaim is attached as **Exhibit 2**.
3. I have personal knowledge of the matters to which I hereinafter depose, save and except where I have stated that I have received my information from other sources and in such cases I believe that information to be true.

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4. Prior to joining Catalyst in 2011, I was a Partner and Co-Chair of the Banking and Finance Law Group at Goodmans LLP where my practice focused on corporate finance and restructuring, including such areas of expertise as project finance, banking and insolvency and financial intermediary regulation. I was lead counsel in connection with the largest Canadian restructuring to date, the *Companies' Creditors Arrangement Act* filing and reorganization of the Canadian asset backed commercial paper market (a \$34 billion reorganization).
5. I have decades of experience in distressed and undervalued situations, including Olympia and York, Cadillac Fairview, Dome Petroleum, Hollinger, AT&T and Algoma Steel.
6. In 1996, I founded the Toronto office of Ogilvy Renault (now Norton Rose Fulbright Canada LLP) and prior to that, I was a Partner at Stikeman Elliott LLP.
7. I hold an LL.M. from Harvard University, and an LL.B. (J.D. equivalent) from the Faculty of Law, University of Toronto. I have acted as chairperson, panelist and speaker at numerous conferences on the reform of financial intermediaries, banking regulation and practice and public and private derivative products.

B. THE CATALYST DEFENDANTS BY COUNTERCLAIM**(a) The Catalyst Capital Group Inc.**

8. Catalyst is a Canadian private equity investment management firm founded in 2002 by Glassman and De Alba. Catalyst specializes in investments in distressed and undervalued situations (i.e., investments in companies that are under-managed, under-valued or poorly capitalized).
9. Since 2002, Catalyst has established five private equity Funds (plus two parallel Funds) comprising over US\$ 3 billion of capital.
10. The six Catalyst Guiding Principles attached as **Exhibit 3** are: Excellence; Superior Analytics; The Details; Intellectual Curiosity; Team; and Reputation. Our reputation for excellence drives our success.
11. Catalyst has duties, which includes a fiduciary duty, to keep investors 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.

(b) Callidus Capital Corporation

12. From April 2014 to November 2019, Callidus traded on the Toronto Stock Exchange under trade symbol CBL.TO. Callidus is privately owned today.

13. Callidus is a specialty asset-based lender, focused primarily on Canadian companies and U.S. companies that are unable to obtain adequate financing from traditional lenders.
14. Callidus addresses an important gap in the lending markets by providing financing to borrowers whose perceived credit risk is too high for the lending criteria of traditional lenders, and whose capital requirements are too small to access high-yield markets. Callidus also provides borrowers with access to capital to fund growth or acquisitions.
15. Additionally, Callidus can assist borrowers through challenging periods by working with operators and drawing on the extensive experience of the corporation's management team. Callidus seeks to work with borrowers that are likely to improve their financial stability and gain the ability to repay the funding Callidus has advanced through loan commitments from traditional lenders or otherwise.
16. Callidus takes an active approach to lending as it assesses and lends against collateral, typically accounts receivable, inventory, machinery and equipment, real estate, other term assets and enterprise values. Since 2006, Callidus has advanced 107 loans respecting total credit facilities of approximately \$2.6 billion, of which 90 loans have been fully paid or realized. The vast majority of loans were fully repaid in the normal course. From time to time, in order to protect its

collateral position, Callidus will become the owner of businesses, acquired through restructuring, at which point, the businesses will be consolidated and accounted for on this basis, until rehabilitated, marketed, and ultimately sold.

17. Callidus has obligations to keep its investors and the market informed of matters concerning the management, conduct and performance of Callidus and of any other matter material to the company. For instance, Callidus' Management's Discussion and Analysis reports on ongoing litigation and notes that the results of legal proceedings could have a material adverse effect on the Corporation. One of the legal actions reported in our Management's Discussion and Analysis is the West Face/ Boland Counterclaim seeking \$500 million in damages against Callidus, me, and others. Attached as **Exhibit 4** is page 29 of the Management's Discussion and Analysis dated December 31, 2017.

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(c) **Officers and Directors**

18. Glassman was a founder of Catalyst and is its Managing Partner. Glassman was also formerly the Executive Chairman and CEO of Callidus.
19. Prior to founding Catalyst, Glassman was a Managing Director at Cerberus Capital Management L.P. in New York City where his responsibilities included Canadian-based situations. Cerberus had over US \$12 billion under management when Glassman left the firm to found Catalyst. Glassman is also a lawyer (University of Toronto) and has a B.A. in economics from the University

of Toronto and an M.B.A. from the Wharton School of Business at the University of Pennsylvania.

20. De Alba is a Managing Director and Partner of Catalyst and has no role at Callidus.
21. Catalyst's and Callidus' officers and directors have obligations, including a fiduciary duty, to keep investors informed of matters concerning the management, conduct and performance of Catalyst, Callidus, the investment Funds, and of any other matter material to the operation of the companies. We are trusted advisors to our investors.

C. THE WEST FACE/BOLAND COUNTERCLAIM

22. The West Face/Boland Counterclaim pleads defamation against the Catalyst Defendants by Counterclaim relating to the following publications:
 - (a) a written statement by a Catalyst spokesperson sent by email on August 19, 2016 to a National Post reporter Emily Jackson;
 - (b) A Press Release by Catalyst issued on October 13, 2016 (the "October 2016 Press Release");
 - (c) A letter sent by Catalyst to certain Limited Partners to Funds managed by Catalyst dated August 14, 2017 (the "First Investor Letter");

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- (d) A letter sent by Catalyst on March 19, 2018 to certain Limited Partners to Funds managed by Catalyst (the “March Investor Letter”);
 - (e) Communications with the media, and
 - (f) Internet Postings concerning West Face and the other alleged conspirators engaged in the short and distort attack against Catalyst and Callidus that are the subject of the Main Action.
23. The West Face/Boland Counterclaim also alleges that Glassman slandered West Face and Boland (the “Glassman Slander”).
24. For the reasons I discuss below, I believe that the words complained of by West Face and Boland in the publications that are attributable to the Catalyst Defendants by Counterclaim are expressions relating to matters of public interest.

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D. OVERVIEW OF THE CONSPIRACY ACTION

(a) Introduction

25. On November 7, 2017, Catalyst and Callidus commenced this conspiracy action against 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, Adam Spears, Sunny Puri, ClaritySpring Inc., Nathan Anderson, Bruce

Langstaff, Darryl Levitt, Richard Molyneux, Kevin Baumann, Jeffrey McFarlane, Rob Copeland, and later amended to add Gerald Duhamel, George Voorheis, Bruce Livesey, and John Does #4-10. A copy of the Fresh as Amended Statement of Claim, issued on July 19, 2019, is attached as **Exhibit 5**.

26. The Fresh as Amended Statement of Claim pleads, *inter alia*, that the defendants entered into a conspiracy to harm Catalyst and Callidus through the following actions:
- (i) spreading false information by rumours through the Bay Street rumour mill;
 - (ii) filing false “whistleblower” complaints against Callidus with the Ontario Securities Commission and the United States Securities and Exchange Commission by some of the conspirators to “confirm” the rumours;
 - (iii) leaking the existence and substance of the allegations contained in the whistleblower complaints to the media and providing information to the police to generate media interest;
 - (iv) taking short positions, directly or indirectly, in the common shares of Callidus (the “Callidus Shares”);
 - (v) publishing a false and defamatory article in the *Wall Street Journal* Article on August 9, 2017 (the “WSJ Article”), released near the end of the trading day, in order to cause a rapid decline in the price of the Callidus Shares; and

- (vi) closing out of their short positions at the expense of the market value of Callidus and its business.

(b) Short Selling

27. As part of my experience in the securities industry, I am familiar with the activity of short selling shares.
28. “Short selling” is an investment strategy through which investors sell shares into the market that they do not own at the time of the sale. Generally, a short seller borrows shares in a publically traded corporation then sells those borrowed shares to a third party. The short seller then purchases shares in the market and returns those purchased shares to the party from whom the short seller originally borrowed the shares.
29. A short seller effectively bets that the stock value will decline. Profits are made if the share value declines between the time of selling the borrowed shares and the later buying of the shares. Conversely, losses (potentially catastrophic losses) are sustained if the share value increases between the time of selling the borrowed shares and the later buying of shares.
30. A short campaign is an investment strategy where an investor or group of investors takes a short position in a stock and releases negative but accurate information to the market in respect of the company to justify their short position and secure greater returns.

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31. A short and distort campaign is a short campaign which involves the release of false or misleading information to the market about the target company.
32. Naked short selling generally involves the short sale of shares where no arrangements have been made to borrow the shares required to settle that trade.
33. In 2015, West Face Capital Inc. shorted the shares of Callidus.

(c) **The Wall Street Journal Article Accuses Catalyst of Fraud**

34. A WSJ Article headlined “Canadian Private Equity Giant Accused By Whistleblowers of Fraud” was published online at 3:29 PM ET on August 9, 2017. This WSJ Article was authored by Rob Copeland and Jacquie McNish, a copy of which is attached as **Exhibit 6**. I also attach as **Exhibit 7** the updated version of the online WSJ Article published later in the day on August 9 and as **Exhibit 8** the print edition published in the *Wall Street Journal* the next day.
35. The WSJ Article was published behind a ‘pay wall’ that allowed only those who subscribed to the *Wall Street Journal* to have ready access to the full text of the WSJ Article. I understand that the only part of the *WSJ* Article visible to a non-subscriber of the *Wall Street Journal* was the headline: “Canadian Private-Equity Giant Accused by Whistleblowers of Fraud” and the first paragraph that read as follows:

TORONTO- At least four individuals have filed whistleblower complaints with the Canadian securities regulators alleging fraud at the 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*.

36. The fact that neither Catalyst nor Callidus are identified in the headline nor the first paragraph of the WSJ Article suggests to me that the short sellers who started selling off their Callidus shares immediately after the WSJ Article was published online knew in advance to sell as soon as they learned that the story was published .
37. As discussed in more detail below , despite light volume throughout the day, in the one minute (3:29:00 – 3:29:59) after the WSJ Article was posted online, there was a spike in volume of shares trading with 13,000, starting the depression of the share price from \$14.92 to \$14.73 (a drop of 1.3% that single minute). This is strongly suggestive of some parties were tipped about the WSJ Article and engaged in manipulative trading activity.
38. Beginning at or about 3:29pm on August 9, 2017, following very thin trading activity, very large volume sell-side pressure became apparent with volumes over that approximately 30-minute period in excess of 160,000 shares traded.
- (d) The Catalyst Response To The *Wall Street Journal* Article**
39. The full online WSJ Article (and the update online and print editions of the Article) behind the paywall identified Catalyst and Callidus specifically and accused them

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of fraud and the subject of several regulatory investigations. The Article reads, in part, as follows:

“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.

...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.”

...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.”

40. In response to the *WSJ* Article, a Press Release was issued by Catalyst on August 9, 2017, in an attempt to defend the reputations of Callidus and Catalyst that were seriously damaged by the false and defamatory statements published

by the *Wall Street Journal* (the “August 9, 2017 Press Release”). Attached as **Exhibit 9** is a copy of the Press Release.

41. In addition, I sent an email notification to Catalyst’s Limited Partners on August 9, 2017 at 7:18 PM (attached as **Confidential Exhibit 10**).
42. Given the timing of the publication of the WSJ Article (3:29 PM) we did not have enough time to release the August 9, 2017 Press Release and my email notification until after the close of trading on August 9, 2017.
43. My August 9, 2017 email notification to Catalyst’s Limited Partners stated:

“Dear Limited Partner,

You may be aware of a media story published today, by the Wall Street Journal, speculating about unsubstantiated activities on the part of Catalyst Capital Group and Callidus Capital. The allegations contained in the media report are false.

Specifically the Wall Street Journal makes reference to parties questioning the valuation process at Catalyst. As you are aware, the valuation of the assets in our funds is prepared internally, reviewed by PricewaterhouseCoopers and confirmed by KPMG. Indeed, these valuations have even proven conservative against recent exits we have transacted.

Based on the information provided by the Wall Street Journal, it is evident that the allegations are being driven by disgruntled guarantors for Callidus loans, some of whom have already had their allegations tested in court, and lost.

Attached for your information is the statement issued by Callidus Capital in response to the Wall Street Journal.

Catalyst will take the necessary steps to protect the interest of our limited partners and the reputation of the firm. We have already met with government authorities in light of what is clearly a misuse and abuse of

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their whistleblower program and are currently reviewing the legal remedies available to us.

In the meantime, should you have any questions please do not hesitate to contact Jim Riley at [416-945-3041 or jriley@catcapital.com]

Yours Truly,

Jim Riley Managing Director and COO
The Catalyst Capital Group Inc.”

44. I received numerous telephone calls and emails about the WSJ Article and Catalyst’s response the WSJ Article from Catalyst’s Limited Partners. Some examples are set out below.
45. [Greg Cotterman, Private Equity, Ohio Public Employees Retirement System located in Columbus, Ohio], emailed Glassman on August 9, 2017 at 4:49 PM (attaching the WSJ Article that accused Catalyst of fraud):

“I’m sure I’m not the first person to write, but in light of the article below, I was wondering if you have a few minutes for an update call tomorrow or Friday? I just want to make sure I can give my CIO and Sr. PM [Portfolio Manager] an update in case they receive a request for information from one of our Board members”

A copy of the email is attached as **Confidential Exhibit 11**.

46. I received another email from [Greg Cotterman of the Ohio Public Employees Retirement System] on September 15, 2017 at 9:00 AM ET requesting a brief update call “regarding last month’s news article” which was the *Wall Street Journal* Article. A copy of the email is attached as **Confidential Exhibit 12**.

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47. [Doug Coyle of the Rockefeller Foundation] sent me an email on August 14, 2017 at 11:05 AM ET as follows:

“Hi Jim. Just wanted to say a big THANK YOU for this email in advance of the article coming out. It helps immeasurably when I see the article, as well as when I receive questions from people in my office, compliance, legal, etc. to already have some color from Catalyst. You do both yourselves and your LPs a service putting this out in advance. Thanks again.

Good luck working though this time consuming stuff – hopefully it will be behind you soon.”

A copy of the email is attached as **Confidential Exhibit 13**.

48. I received an email from [Brendon Edmonds of Metric Point Capital, LLC in Chicago], sent August 25, 2017 at 3:24 PM ET re: LP updates. [Mr. Edmonds] was sending myself and others “a quick note to let you know I’ve has good discussions with [State of NJ, MOSERS, Summit, Texas A&M, SMU, Advocate, Covariance and Margaret Cargill Foundation] about the recent headlines to help manage the situation. We seem to be in good standing with all”. A copy of the email is attached as **Confidential Exhibit 14**. The “situation” [Mr. Edmonds] was referring to was the WSJ Article published online on August 9, 2017 and in print August 10, 2017.

49. I received an email reply from [Sid Goel, Vice President Strategic Partners, Blackstone in New York] on August 11, 2017 at 4:52 PM ET stating “I have a quick question for you regarding this. Can you please let me know when a good

time to speak would be?” A copy of the email is attached as **Confidential Exhibit 15**.

50. [Jonathan Shofet, the Managing Director, Private Equity, of Neuberger Berman in New York] sent me an email within minutes of my WSJ Article email notification on August 9, 2017 (7:32 PM ET) asking: “Can we please set up a call to discuss?” A copy of the email is attached as **Confidential Exhibit 16**.

51. [Christopher Rossi, Director of Private Equity and Real Estate, of Parkwood, located in Cleveland, Ohio] emailed me on August 11, 2017 at 8:38 AM ET to inform me:

“We received your response regarding the *WSJ* Article. We are getting questioned by our board and audit committee on this (they saw the article), so I think it would be helpful to have a call to go into this in more detail.”

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A copy of the email is attached as **Confidential Exhibit 17**.

52. [Gurjeet Dosanjh, the Director of Pavilion Alternatives located in El Dorado Hills, California] sent a reply to me on August 10, 2017 at 7:15 PM to inform me:

“Our client Providence Health is an investor in Catalyst Fund V and we were hoping to schedule a quick call to discuss this matter with you.”

A copy of the email is attached as **Confidential Exhibit 18**.

53. [Carlo Castro, Director, Covariance Capital Management located in Houston, Texas] replied to my email notification on August 10, 2017 at 2:45 PM in part as follows:

“Thank you for sending the response to the *WSJ* article referencing Callidus.

As you know, [Covariance] is a Limited Partner in Fund V. We have members of our own Operation Team meeting with your team this Tuesday the 15th. In anticipation of that meeting, we have drafted questions that would be helpful to our understanding of the allegations...”

A copy of the email is attached as **Confidential Exhibit 19**.

54. [Benoit Sansoucy, Director, Operational Due Diligence, University of Toronto,] sent an email on August 10, 2017 at 7:24 AM ET as follows:

“I work with [Leon at UTAM] but on the operational due diligence side. Would you have time either today or Friday for a call to go over the article that came out in the *WSJ*?”

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A copy of the email is attached as **Confidential Exhibit 20**.

55. [Josh Stern, Director, Private Investments, Robert Wood Johnson Foundation, Princeton, New Jersey] sent an email on August 10, 2017 at 10:15 AM ET informing us:

“We have seen yesterday’s article and wanted to chat briefly about it with you”

A copy of the email is attached as **Confidential Exhibit 21**.

56. [Brendan Cameron, Portfolio Manager, New York, J.P. Morgan, Asset Management located in New York,] emailed me on August 10, 2017 at 8:23 AM ET as follows:

“I am receiving questions around the article yesterday- is there a good time where we can discuss either today or tomorrow”

A copy of the email is attached as **Confidential Exhibit 22**.

57. [David Greenwald, of the John D. and Catherine T. MacArthur Foundation, located in Chicago, Illinois,] sent me an email on August 9, 2017 at 6:27 PM:

“With the news coming out today, we would like to schedule a call to get more information on the current situation”.

A copy of the email is attached as **Confidential Exhibit 23**.

(e) **The Dramatic Drop on Callidus’ Share Price Caused By The Wall Street Journal Article and the Short and Distort Campaign**

58. In the approximately 31 minutes following the release of the online WSJ Article and the close of the market, very large volume sell-side pressure took the Callidus share price from \$14.92 to \$12.06 – a drop in share price of 19.2%, reflecting a loss of market capitalization for Callidus of over \$144 million. There was no corporate specific information in the market place that would cause this dramatic share price decrease on August 9, 2017 other than the WSJ Article. Attached as **Exhibit 24** is an intra-day trading chart for Callidus for August 9,

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2017 taken from data obtained from Bloomberg demonstrating the 19.2% drop in share price.

E. THE WEST FACE/ BOLAND DEFAMATION COUNTERCLAIM AGAINST THE CATALYST DEFENDANTS BY COUNTERCLAIM

(a) Introduction

59. Following this short and distort attack, Catalyst and Callidus commenced an action claiming that West Face, Boland and the other defendants are liable for wrongful conduct relating to the short and distort campaign in a conspiracy to harm Catalyst and Callidus.
60. The West Face/Boland Counterclaim seeks *inter alia* a Declaration that the Catalyst Defendants by Counterclaim have defamed West Face and Boland. The Counterclaim seeks general damages of \$450 million for West Face and \$50 million for Boland.
61. This motion pursuant to section 137.1(3) of the *Courts of Justice Act* seeks to have the action dismissed regarding the following publications which are attributable to the Catalyst Defendants by Counterclaim:
- (a) a written statement by a Catalyst spokesperson sent by email on August 19, 2016 to *National Post* reporter Emily Jackson;
 - (b) the October 13, 2016 Press Release by Catalyst;

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(c) The First Investor Letter (August 14, 2017);

(d) The March Investor Letter (March 19, 2018);-

(b) Catalyst’s Written Statement (August 19, 2016)

62. The West Face/Boland Counterclaim alleges that the written statement by Catalyst “reprinted in the *National Post* and various other publications” after Justice Newbould released his Reasons for Judgment (August 18, 2016) in an action (the “Moyses Action”) commenced by Catalyst against a former employee named Brandon Moyses (“Moyses”). West Face/Boland complain about the following words:

“Additional evidence [had] come out since the Moyses Litigation that [supported] the new case that alleges conspiracy and breach of contract. We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbould. We believe that he did not give fair consideration to all 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.”

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63. The Moyses Action involved a claim brought by Catalyst against Moyses alleging he obtained Catalyst confidential information and provided it to West Face in furtherance of West Face’s efforts to acquire shares of a telecom company called WIND Mobile Corp. (“WIND”) from VimpelCom Ltd. (“VimpelCom”), in competition with Catalyst.

64. VimpelCom (along with its minority partner) sought to sell its shares in WIND. VimpelCom entered into a Confidentiality Agreement and an Exclusivity Agreement with Catalyst (attached as **Exhibit 25** and **Exhibit 26** respectively) in furtherance of Catalyst's bidding for VimpelCom's shares in WIND.
65. Catalyst was unsuccessful. Instead, a consortium involving West Face, Tennenbaum Capital Partners LLC ("Tennenbaum"), and others (the "West Face Consortium") submitted a bid at a time when Catalyst's transaction with VimpelCom was to be confidential and exclusive. The West Face Consortium was successful at acquiring VimpelCom's shares in WIND at essentially the same price as offered by Catalyst.
66. A separate action was brought against VimpelCom, UBS (VimpelCom's advisor regarding the sale of WIND) and the West Face Consortium regarding the bidding process and sale of the shares in WIND (the "VimpelCom Action"). Catalyst's Amended Amended Amended Statement of Claim in the VimpelCom Action is attached as **Exhibit 27**. The Statement of Defence filed by West Face is attached as **Exhibit 28**.

(c) **The National Post Article (August 19, 2016)**

67. The *National Post* published an article on August 19, 2016 written by Emily Jackson headlined "Catalyst Capital Group Inc. to appeal after Judge dismisses WIND Mobile lawsuit" and sub-headlined: "The appeal continues Capital's

extensive legal battle for a share of the Wireless start-up now owned by Shaw Communications”. The *National Post* article published on August 19, 2016 is attached as **Exhibit 29**.

68. The written statement by Catalyst referred to in the *National Post* article is an email sent by Catalyst spokesperson Dan Gagnier (“Gagnier”) to *National Post* reporter Emily Jackson (“Jackson”) on August 19, 2016 which states:

“Spokesperson for Catalyst Capital said:

We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbould. We believe that he did not give fair consideration to all 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. Among other things, we are particularly concerned that the decision selectively ignores or discounts key testimony as it relates to the critical issue of possible destruction of evidence. We are considering all options regarding an appeal”.

“Regardless of this questionable decision, after the Moyse litigation commenced, additional evidence came out that is supportive of our case against Globalive, West Face, VimpleCom and other parties.”

Attached as **Exhibit 30** is a copy of the email sent by Gagnier on August 19, 2016 at 1:15 PM to Jackson.

(d) No Notice of Libel Served By West Face/ Boland

69. I was not served with a Notice of Libel by West Face or Boland regarding the *National Post* article published on August 19, 2017. I have asked Glassman and De Alba whether they have been served with a Notice of Libel regarding the

August 19, 2016 *National Post* Article and I have been informed and verily believe that they were not served with a Notice of Libel.

70. To my knowledge, Catalyst and Callidus were never served with a Notice of Libel. Glassman and De Alba have informed me and I verily believe that to their knowledge Catalyst and Callidus were never served with a Notice of Libel regarding the August 19, 2016 *National Post* Article.
71. I am unaware of West Face or Boland serving a Notice of Libel on Postmedia (the publisher of the *National Post* or Emily Jackson) regarding the *Financial Post* Article. I am also unaware of any libel action commenced by West Face or Boland against Postmedia or Jackson.

(e) **The West Face Press Release**

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72. West Face also issued a News Release about Justice Newbould's decision in the Moyse Action that the *National Post* article reports as stating:

“WestFace is grateful for the vindication the judge provided, according to a news release that highlighted the judge's conclusions about the witnesses”.

73. Boland was quoted in the *National Post* article as saying:

“The reasons for the complete dismissal of the case make clear the lawsuit launched by Catalyst was without merit. We are confident that Catalyst's other lawsuits against West Face and various other parties face similar obstacles, CEO Greg Boland said in a statement”.

(f) **The Additional Evidence**

74. The August 19, 2016 email from the Catalyst spokesperson to the *National Post* reporter referred to “additional evidence” that had come to light that was supportive of our case against West Face, VimpelCom and other parties. This additional evidence was not known or disclosed to Catalyst prior to the Moyses Action.
75. This “additional evidence” revealed that VimpelCom and UBS had shared information relating to Catalyst’s bid for WIND in breach of the Confidentiality Agreement and had engaged in negotiations and/or solicited an offer from the West Face Consortium in breach of our Exclusivity Agreement.
76. Attached as **Exhibit 31** is an email chain that indicates that on July 21, 2014, Michael Leitner of Tennenbaum (“Leitner”) exchanged emails with Boland regarding Vimpelcom’s sale of WIND. Previously, Tennenbaum (and associated parties) and West Face had been competing bidders for WIND. As such, in order to obtain access to the relevant due diligence materials from VimpelCom, they had entered into Confidentiality Agreements which prevented them from cooperating with, or sharing information or analysis they had obtained or prepared during the due diligence period, with other bidders. This email chain contains the following message from Leitner to Boland:

“I heard catalyst is seeking exclusivity this week.”

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This was in response to an email in which Boland advised Leitner as follows:

“Felix was contacted Friday. He is likely granting permission today.”

“Felix” was referring to Felix Saratovsky, a senior executive at VimpelCom who was in charge of the sale of WIND.

77. Attached as **Exhibit 32** is a further email string containing an email dated July 21 from Tony Griffin of West Face to Leitner which makes it clear that the “permission” referred to in Exhibit 32 was a waiver of the prohibition provisions of the Confidentiality Agreements which had been signed by Tennenbaum and West Face:

“I just spoke with Felix Saratovsky at VC – he is willing to provide consent for us to speak with you and exchange information – he did want to connect with you today to discuss.”

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Exhibit 32 contains the following response from Leitner:

“I spoke with Felix. We are free to work together. We should try and speak today Catalyst may have this exclusivity by the end of the week.”

Exhibit 32 also indicates that Tennenbaum and West Face, were now authorized by VimpelCom to “work together”, took immediate steps to exchange information and prepare cash flows in support of a joint bid for WIND.

78. The context was that Catalyst was in the process of entering into a formal Exclusivity Agreement with VimpelCom. That agreement was signed on July 23,

2014 and contained a covenant that required VimpelCom to enforce the confidentiality obligations contained in the Confidentiality Agreements that other bidders had signed.

79. Catalyst did not know that VimpelCom had just provided a waiver to Tennebaum and West Face of the very confidentiality restriction covered by the above referenced covenant, that enabled Tennebaum and West Face to develop and submit a competing bid during Catalyst's exclusivity period. As the emails below make clear, that is what happened.
80. Attached as **Exhibit 33** is an email chain which begins with an email from a company (OakHill) then working with Tennebaum in its bid for WIND, which stated as follows:

"Herbst [Jonathan Herbst of UBS] called me to say that the company has entered into exclusivity at the reserve price - \$150 million. As always, he is skeptical that they will get there. Nonetheless, the company is tied up for 5 to 7 days."

81. Attached as **Exhibit 34** is an email string containing an August 1 email from Tennebaum to West Face advising as follows:

"Presuming we reconcile our models (which should be done today). My strong view is that we need to be in a position to send to VIP a letter summarizing our terms; work process and SPA before the end of their exclusivity. We may elect that we don't send for a variety of tactical reasons, but we should be in a position to do so. Summarizing our process and economic terms are straightforward, and we can hash out over a call amongst principals, but the SPA is not a short work process. We would need to start that today, which requires either MacMillan or

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Davies and the recognition by all that we're going to incur some additional costs. Absent an SPA that is close to the last round of VIP comments we received (over the phone), I think our offer is weak. Others should chime in and we can get on a call early today to discuss, but if we're to move on this, we need to get one of our SPAs in a position to be sent out. This requires the weekend to get this into shape and buy in from all 4 co-investors.

Peter and I can work out whose draft to use, but I wouldn't delay on this if we are to be credible."

82. This message generated several responses among the group that was working together, including the following from Tennenbaum to West Face:

"I just heard that Vimpelcom is taking the Catalyst SPA to the board this weekend. There has been no retrade as of yet, but parties are bracing for it. Suggest we get on a call to discuss. Have some feedback on price levels as well. I'll make myself free for today, but suggest we get a quick call earlier the better ... I can do 1pm pst (in 15 min) if others can."

83. Attached as **Exhibit 35** is an email string which includes an email dated August 6, 2014 from the West Face Consortium to VimpelCom and UBS. This email emphasized that the West Face Consortium was making a "superior" proposal to purchase WIND:

"Our Investor Group is pleased to provide you the outlines of a superior proposal to purchase WIND Canada that we will deliver to you and your Board of Directors for evaluation during your upcoming Board meeting. Over the course of the last month, we have further invested significant resources finalizing our technical and business diligence; and will be pleased to provide you binding commitments that contain no diligence outs.

...

- Our proposal will be superior to any other offer as our proposal will not require regulatory approval and our Investor Group will be able

to close and fund the transaction within 24-48 hours after signing. Our transaction will not be a change of control of the Company, and as a result requires no engagement with the regulatory authorities.

- With the benefits of an immediate sign and close, our proposal will be economically superior to any other proposal by significantly reducing the accruing interest on the Company's Vendor Loans that will only reduce Vimpelcom's net distributable proceeds. Vimpelcom's net proceeds are reduced by \$1.5M per month given the high default interest rates under Company's Vendor loans. Further, Vimpelcom will not face any further risk of funding working capital, or face any other adverse financial consequences, that may arise between signing and closing under a transaction that requires regulatory review.”

84. The emails conclude with the following email from Tennenbaum to WestFace:

“Tony is nervous with the risk he is bearing. He will push, but he’s doing so gently. He won’t push so the breaking point short of us backstopping his risks (which we won’t do). Our only play is getting executed debt/equity commitments to him tomorrow and the APA over to Vimpelcom. With hard docs in hand at least they should add this to their board agenda. They have meetings tomorrow and on Friday but at least this will be on the docket on Friday. The commitments have a few subject to on docs so there are a few other items that can be finished up once these get out the door. At least with this, VIP will have 2 birds in hand.”

85. Attached as **Exhibit 36** is a further email string that reflects ongoing communications between the West Face Consortium and VimpelCom and UBS about the status of Catalyst’s supposedly confidential exclusivity period and its dealings with VimpelCom during that period. Leitner wrote to the West Face Consortium on August 10, 2014 about his ongoing communications with UBS:

“It would be great to be able to send this tonight. I took the liberty of mentioning to UBS that this last leg of the commitments may come this evening.”

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86. Exhibit 36 continues on August 12, 2014 when Leitner provided the West Face Consortium with an update:

“I am happy to join a call, which should take place sooner rather than later. At this point, exclusivity was extended again, which isn’t a good sign, but its not over until signed.”

87. Exhibit 36 also contains a more detailed update from Leitner to the West Face Consortium on August 14:

“... The VIP board met last Thursday and Friday ostensibly to approve the bird in hand. It’s now been almost been one full weekend no announcement. Spoke with UBS yesterday asking what the latest update is. Their words: “don’t burn the file yet.’ Don’t have any insight as to what the holdup is or what the issues are, but certain-ly there are issues, otherwise this would have been an-nounced. Even VIP’s corporate approval process doesn’t take one week. I guess we will stay tuned on this, but no news is good news for us.”

88. Exhibit 36 also shows that on August 15, 2014, Boland and Leitner had the following exchange:

[From Boland to Leitner] “I think it would be easy and painless to put in a letter enforcing willingness to pro-vide equity financing. If the Catalyst deal gets wobbly the more heft we have in our syndicate the better. Is there any reason we can't do this asap to at leaf [sic] maximize our optionality?”

[From Leitner to Boland] “Agree this makes sense. Larry is going to call Michael Seruya.”

89. None of the above emails, communications and steps were known to Catalyst until the Moyses litigation, when West Face began (starting in January 2016) to produce the above documents.
90. Prior to the disclosure of the above documents, Catalyst was aware that a consortium led by West Face had successfully negotiated the purchase of WIND following the expiry of Catalyst's Exclusivity period, but was not previously aware of the facts and communications summarized above.
91. The above communications are what Catalyst was referring to as "additional evidence" in Catalyst's written statement of August 19, 2016.
92. I note that Justice Newbould, in his judgment in the Moyses Action, stated that the information about when the Catalyst Share Purchase Agreement was going to the VimpelCom board for approval "likely came ... from an advisor to Tennenbaum who may have obtained it from UBS". A copy of Justice Newbould's reasons for decision in the Moyses Action are attached as **Exhibit 37**.
93. Catalyst appealed Justice Newbould's decision on the grounds that, among other things :
- (a) different standards were applied by the trial Judge in assessing the evidence submitted by Catalyst and in assessing the evidence of Moyses and West Face;

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- (b) numerous errors were made by the trial judge in relation to the issue of spoliation; and
- (c) specific misapprehensions of the evidence were made germane to the breach of confidence claim.

A copy of Catalyst's Notice of Appeal (attached as **Exhibit 38**), Supplementary Notice of Appeal (attached as **Exhibit 39**), Second Supplementary Notice of Appeal (attached as **Exhibit 40**), and Factum (attached as **Exhibit 41**).

- 94. The August 19, 2016 statement by the spokesperson for Catalyst set out our good faith belief that the decision demonstrated a possible bias by Justice Newbould because he did not give fair consideration to our evidence and because of his treatment of the spoliation issue.
- 95. We believed that the legal dispute over the acquisition of WIND's shares involving the ownership of a fourth Canadian wireless provider and the users of publically regulated spectrum was a matter of public interest. We also believed that the August 19, 2016 statement's commentary about a judicial decision and the status of our ongoing litigation with West Face regarding the WIND acquisition was of significant interest to our investors and potential investors.

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(g) The October 13, 2016 Press Release

96. The West Face/Boland Counterclaim alleges that the following statements in an October 13, 2016 Press Release are defamatory:

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".

The October 13, 2016 Press Release is attached as **Exhibit 42**.

97. The October 13, 2016 Catalyst Press Release is entitled "Catalyst Capital Group Comments on West Face Statements" and was released at 21:36 ET on October 13, 2016. The lead paragraph states: "The Catalyst Capital Group Inc. ("Catalyst"), Canada's second-largest independent private equity firm, today commented on recent statements by West Face Capital Inc. regarding ongoing litigation related to its acquisition of WIND Mobile Corp. and the short attack at Callidus Capital Corporation".
98. The October 13, 2016 Catalyst Press Release continues:
- "We can understand the increasing pressure that West Face has experienced due to its questionable and potentially unlawful actions around its acquisition of WIND and activities regarding Callidus Capital

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that has resulted in numerous inquiries from current and prospective investors, service providers and industry participants.

In regards to our litigation against West Face and other parties, there are very few firms out there that take the role of fiduciary as seriously as we do. Our commitment to LPs and to the minority shareholders in Callidus Capital is the primary consideration in all decisions we make.

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.

It should be highly concerning to numerous stakeholders that West Face has determined to litigate through the public at large. In full knowledge of an upcoming jury trial regarding the WIND acquisition, and the fact that the Brandon Moyse/West Face decision is being appealed. The appeal is on the basis of a denial of procedural fairness, errors of law in determining the spoliation claim and errors of fact and mixed fact and law in determining the claims of spoliation and the misuse of Catalyst's confidential information. The award by Justice Newbould on a substantial indemnity basis ignores findings by Justice Lederer, among other things, and is a continuation of the basis for our appeal.

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

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99. The Catalyst October 13, 2016 Press Release was a reply to statements made by West Face earlier in the day about our ongoing litigation with West Face regarding the WIND acquisition. West Face sent out a Press Release at 16:48 ET on October 13, 2016 headlined "Court awards over \$1.5 million against Catalyst Capital in lawsuit with West Face and Brandon Moyse; West Face launches catalystitigation.com website". West Face's October 13, 2016 Press Release is attached as **Exhibit 43**.

100. The West Face Press Release states in part:

“West Face Capital Inc. announced today that Justice Newbould of the Superior Court of Justice in Ontario has awarded costs of \$1.2 million to West Face, on a substantial indemnity basis...

Justice Newbould's cost endorsement noted that the lawsuit was driven by Catalyst CEO Newton Glassman, who "was not able to accept that he lost his chance to acquire Wind by being outsmarted by someone else." Justice Newbould also found that Mr. Glassman "was certainly playing hardball attacking the reputation and honesty of West Face. However, in spite of the best efforts of Catalyst's very able and skilled lawyers, he utterly failed."

...

West Face believes that the Catalyst and Callidus claims in each of these proceedings are without merit and is vigorously defending each of these proceedings.”

New Website

West Face also announces the launch of a new website at www.catalystlitigation.com. Due to the large volume of documents, and in response to numerous inquiries from current and prospective investors, service providers and industry participants that we interact with, West Face has assembled the public court materials from the various lawsuits launched by Catalyst against West Face in the archive hosted on this website, including materials filed in court by each of Catalyst and West Face.

West Face believes that the Catalyst and Callidus claims in each of these proceedings are without merit and is vigorously defending each of these proceedings.”

101. The October 13, 2016 Catalyst Press Release is a reply to West Face's Press Release issued earlier in the day and expresses Catalyst's response to inquiries we were receiving regarding West Face's acquisition of WIND.

102. The West Face Press Release also announced that West Face launched a new website at www.catalystlitigation.com “in response to numerous inquiries from current and prospective investors, service providers and industry participants”. I discuss this West Face website in more detail below.

(h) The First Investor Letter (August 14, 2017)

103. The West Face/Boland Counterclaim alleges that the following statements in a letter sent by Glassman to the Catalyst Fund Limited Partnership II and II-PP Investors on August 14, 2017 were defamatory:

“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 behavior but also to possible interference and market manipulation involving West Face and others in Callidus.”

104. Newton Glassman’s letter to Catalyst’s Investors states:

“Dear Catalyst Fund Limited Partnership II and II-PP (the “Fund” or “Fund II and II-PP”) Investor:

Catalyst continues to be excited about the existing Canadian distressed opportunity set and believes all of the work undertaken on behalf of its LPs will be rewarded handsomely.

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 behavior but also to possible interference and market manipulation involving West Face and others in Callidus.

We are very concerned about materials from the Funds (Quarterly Letters and Annual General Meeting presentations) appearing in social media / other public media sources and becoming manipulated against the interests of the LPs. This is now more relevant as we are trying to monetize the investments in the Fund. Therefore, we are reminding LPs to

remember their confidentiality obligations as part of the LP Agreements (please refer to the confidentiality provision on the following page).

Please feel free to contact the undersigned with any questions you may have, and thank you, once again, for your continued support. We remain committed to the Guiding Principles attached hereto as our commitment to you, our investors.

Newton Glassman”

A copy of the First Investor Letter is attached as **Confidential Exhibit 44**.

105. As stated above, Catalyst is under an obligation to keep investors informed of matters concerning the management, conduct and performance of the investment Funds. Attached as **Confidential Exhibit 45** is a copy of Management Advisory Agreement dated April 21, 2006 between Catalyst and the Catalyst Fund Limited Partnership II.
106. The August 14, 2017 First Investor Letter addressed the short and distort attack against Callidus that began on August 9, 2017. As I explained above, the short and distort campaign had a significant and material impact on Callidus’ share price immediately following the publication of the online *WSJ* Article on August 9, 2017.
107. The August 14, 2017 Investor Letter informed our investors of new facts helpful to its litigation regarding the WIND acquisition and possible market manipulation involving West Face (and others) in Callidus’ shares. On August 11, 2017, Glassman received an email stating that Callidus and Glassman were targeted

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by a group of funds, including Boland of West Face, acting in concert, to short-sell Callidus stock and spread false rumors in the marketplace.

108. Two days after the publication of the online *WSJ* Article and one day after the publication of the print edition of the *WSJ* Article , Glassman received an email sent on August 11, 2017 by Vincent Hanna at 4:55pm (subject: Attacks on Callidus) that stated:

Dear Mr. Glassman.

This letter is to inform you that you have been targeted by a group of funds in Canada and abroad whose sole goal is to bring down your public vehicle Callidus and you personally. They are acting in concert to short your stock and to spread false rumors in the market place mostly through Bruce Langstaff at Canaccord but through any broker who will listen. The Wall Street Journal is a prime example of this coordinated effort. The “cabal” does have private investigators following you and most likely have Russians hackers attacking your office emails and servers/cloud. The RCMP and FBI are aware of this “cabal” from criminal investigation but that doesn’t help you in the short term. I am sure you are not surprised but the funds are:

Greg Boland – WestFace Capital.

Roland Keiper- Clearwater Capital.

Sunny Puri/ Moez Kassam – Anson Partners.

Principals – MMCAP

Marc Cohodes – US Short Seller and his huge global network.

I am disgusted that this acting in concert is going on and happening to you and other participants in the Canadian Capital Markets and I write this letter to inform you of such.

If I were you I would sue the above groups and from that you will garner access to all their trading records and communications between them. From this you will then be fed additional information. This will lead the perpetrators down a rabbit hole they will not escape from. But in the end that is up to you. You now have this information there will be more to come. Stay tuned.

The August 11, 2017 email from Vincent Hanna to Newton Glassman is attached as **Exhibit 46**. When Mr. Glassman received this email we felt obligated to inform our investors about this new development.

109. Catalyst has obligations to inform its investors of material information such as a short and distort campaign. The August 14, 2017 letter to Limited Partners in the Catalyst Funds, was of significant interest and importance to our investors. Shortly after the publication of the *Wall Street Journal* Article that devastated the value of Callidus' share price, the company was tipped off that it had been targeted by a group of funds who were acting in concert to short sell Callidus stock and spread false rumours in the marketplace to bring down Callidus, Catalyst, and Newton Glassman and that the *Wall Street Journal* was involved in this coordinated effort.

(i) **The March 19, 2018 Investor Letter**

110. The West Face/Boland Counterclaim alleges that statements in the March Investor Letter that included portions of transcripts of recordings of conversations with former and current West Face employees were defamatory. The Counterclaim alleges that the natural and probable consequence of disseminating the March 18, 2018 letter to investors was that "one or more of those investors would likely further disseminate the March Investor Letter to others, including the members of the media. That is precisely what happened"

(paragraph 195). The Counterclaim further alleges: “As the Catalyst Defendants anticipated and intended, the March Investor Letter was provided by one of more of its investors to members of the mainstream media. On April 18, 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 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”. (paragraph 199). A copy of the April 18, 2018 *Globe and Mail* article is attached as **Exhibit 47**.

111. I was not served a Notice of Libel regarding the April 18, 2018 *Globe and Mail* Article. I have been informed by and believe that Glassman and De Alba were not served with a Notice of Libel regarding the *Globe and Mail* Article published April 18, 2018. I am unaware of Catalyst or Callidus being served with a Notice of Libel regarding the *Globe and Mail* article. I have also been informed by and verily believe that Glassman and De Alba are unaware of Catalyst or Callidus being served with a Notice of Libel regarding the *Globe and Mail* Article. Nor am I aware of West Face or Boland commencing a libel action against the *Globe and Mail*.

112. The March 18, 2018 Investor letter is a document entitled “Privileged and Confidential Update – Wind Litigation”. The March Investor Letter was intended as a confidential and privileged update on the Moyse/ West Face litigation. It

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reports that Catalyst's appeal of Justice Newbould's decision was dismissed by the Court of Appeal. A copy of the March Investor Letter is attached as

Confidential Exhibit 48. I do not know how this communication came to be disseminated outside its intended audience.

113. The March Investor Letter informs our investors that a former employee of West Face said that inside information about the WIND negotiations was improperly leaked to the West Face Consortium and that Catalyst's exclusivity rights and other contractual rights were not respected.
114. The March investor letter informs investors that a former West Face employee said that West Face had benefitted from the leakage of inside information about Catalyst's confidential bid (paragraph 13) :

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.

A copy of the transcript of the conversation with the former West Face employee Peter Brimm is attached as **Exhibit 49**.

115. The March 2018 Investor Letter also informs investors that Mr. Brimm said 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, but the leakage did not come from Moyse (para 14):

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.”

116. The March 2018 Investor Letter also reports that a second former West Face employee, Yu-Jia Zhu, said that the West Face Consortium's winning bid was made as a result of collusion during the period Catalyst was contractually entitled to exclusivity:

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.

A copy of the transcript of the conversation with Mr. Zhu is attached as **Exhibit 50**.

117. The March 2018 Investor Letter also informed investors about emails and documents that reveal significant confidential information was leaked to members of the West Face Consortium during the Catalyst exclusivity period that had been formally agreed to by VimpelCom (paragraphs 9 -10, 19 – 27 of the March 19, 2018 Investor Letter).
118. The March 2018 Investor Letter concludes by informing investors that the improper disclosure of Catalyst’s confidential work “caused significant damages to Catalyst Fund investors” (paragraph 28) and “accordingly, Catalyst will use its best efforts to ensure that all relevant facts and documents come to light, and to pursue all available remedies to obtain redress for the benefit of the investors in the Funds” (paragraph 29). The March 2018 Investor Letter ended by stating, “...it is vital that you respect the confidentiality of this litigation update” (paragraph 30).
119. The matters addressed in the March 19, 2018 Investor Letter concern both the Moyse Action and the subsequent VimpelCom Action. The March 19, 2018 Investor Letter informed our investors that:

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- (a) information about the WIND negotiations was improperly communicated to members of the West Face Consortium during the period of Catalyst's exclusivity and confidentiality;
- (b) West Face had received confidential information about the WIND transaction that it was not entitled to have; and
- (c) the deal with the West Face Consortium was polluted and that the West Face Consortium had improperly benefited from information about Catalyst's confidential bid.

120. The March 19, 2018 Investor Letter addressed the improper use of insider information obtained in breach of the Confidentiality Agreement and the Exclusivity Agreement . These were matters of significant importance and interest to our investors. The March Investor Letter was sent to our investors to keep our Limited Partners apprised of matters material to our Funds.

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F. THE VEXATIOUS LITIGANTS ALLEGATIONS

121. The West Face/ Boland Counterclaim seeks a Declaration that the Catalyst Defendants are vexatious litigants. I adamantly disagree with this allegation. We only commenced three actions against West Face prior to this conspiracy action:

- (a) the Moyse Action,
- (b) the Veritas Action, and

(c) the Vimplecom Action.

Each of these actions were commenced for bona fide and legitimate business reasons that I discuss below.

(a) The Moyse Action

122. The Moyse Action was commenced on June 25, 2014. The action was commenced in order to enforce Moyse's non-competition obligation pursuant to his employment agreement with Catalyst.
123. Before his resignation, Moyse was on Catalyst's internal "telecom" deal team working on Catalyst's acquisition of WIND.
124. By May 6, 2014, after executing the Confidentiality Agreement and the Exclusivity Agreement, Catalyst and VimpelCom had agreed to a \$300 million purchase price for WIND and were working to complete a formal Share Purchase Agreement.
125. On May 24, 2014, Moyse resigned from Catalyst effective June 22, 2014 to join West Face. The Moyse Action was commenced on June 25, 2014 to enforce the non-competition clause in Moyse's employment agreement.
126. By August 3, 2014, a Share Purchase Agreement between Catalyst and VimpelCom was substantially completed for the sale of WIND to Catalyst. On August 11, 2014, VimpelCom and Catalyst informed Industry Canada that the deal "was done".

127. However on August 15, 2014, VimpelCom demanded a \$5 - \$20 million reverse break fee from Catalyst, a term that had been previously requested and abandoned by VimpelCom early in the negotiations.
128. On September 15, 2014, it was announced that the West Face Consortium, entered into an agreement with VimpelCom to purchase WIND for essentially the same price as Catalyst had negotiated (\$300 Million).
129. 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.
130. 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.
131. 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 went to court and also sought an injunction

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against Moyse. This was an appropriate step to take and the appropriate remedy to seek.

132. The injunction was granted by Justice Lederer of the Ontario Superior Court of Justice. During the course of the injunction proceedings, it was discovered that despite the assurances from West Face and Moyse, Moyse had provided West Face with Catalyst memos marked “Confidential” and “For Internal Discussion Purposes Only” (“the Catalyst Confidential Memos”). We also discovered that Moyse 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 Moyse were silent about the sharing of Catalyst Confidential Memorandum 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.

133. West Face and Moyse 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 Moyse provided an “ineffectual assurance”. In the face of the ineffectual assurance that West Face and Moyse did not have or would not improperly use Catalyst confidential information, it was more than reasonable for Catalyst to pursue the *Moyse Action*.

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134. On November 14, 2014, Justice Lederer issued an Order enjoining Moyse from using, misusing or disclosing any and all confidential and/or proprietary information of Catalyst. To ensure that Moyse did not communicate confidential information to West Face, Justice Lederer also enjoined Moyse from engaging in activities competitive to Catalyst, in compliance with the non-competition clause. Attached as **Exhibit 51** is a copy of Justice Lederer's Reasons for Decision.
135. Justice Lederer held that there was a strong *prima facie* case that Moyse had breached the confidentiality clause of his Employment Agreement. Justice Lederer 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.
136. Moreover, Justice Lederer also 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 proceedings 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 the one to review and determine what must be produced. Justice Lederer rejected Moyse's assertion.

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137. The Moyse Action was dismissed by Justice Frank Newbould following a six day trial on the basis that Moyse did not in fact pass on any Catalyst confidential information to West Face. A copy of Justice Newbould's costs decision dated October 7, 2016 is attached as **Exhibit 52**. As stated above, during the course of delivering his reasons in the Moyse Action, Justice Newbould stated that it appeared that information about when the Share Purchase Agreement proposed by Catalyst was being sent for consideration by the VimpelCom board likely came from an advisor to Tennenbaum who may have obtained it from VimpelCom's agent, UBS.
138. The Court of Appeal for Ontario dismissed the appeal of Justice Newbould's decision in the Moyse Action. The Court of Appeal noted that Moyse's decision to delete material from his computer was a "serious breach of the court order". Attached as **Exhibit 53** is a copy of the decision of the Court of Appeal. An Application for Leave to Appeal was denied by the Supreme Court of Canada.
139. Although the Moyse Action was dismissed by Justice Newbould, that dismissal does not change the fact that we legitimately and in good faith believed at the time that Moyse had breached his obligations in relation to his employment with Catalyst.

(b) **The Veritas Action – West Face’s 2014 Short-Selling Attack**

140. On June 18, 2015, an action against Veritas Investment Research Corporation (“Veritas”) and West Face was commenced by Catalyst and Callidus for defamation, conspiracy and intentional interference with economic relations relating to a short and distort campaign orchestrated against Catalyst and Callidus (the “Veritas Action”).
141. The short and distort campaign 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 short and distort campaign was designed to deceive market participants into believing that Callidus was a poor investment, which would drive the price of Callidus’ shares downward.
142. Catalyst and Callidus claim that the reports published by Veritas and West Face contained false and defamatory statements impugning the financial viability and conduct of both Callidus and Catalyst designed to cause shareholders to sell Callidus stock.
143. West Face attempted 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 was dismissed by Ontario Superior Court Justice Akhtar. Attached as **Exhibit 54** is a copy of the decision.

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144. The Court of Appeal for Ontario dismissed West Face’s appeal and confirmed that Catalyst and Callidus “made out a *prima facie* cause of action in defamation against both West Face and Veritas” and are “proceeding in good faith”. Attached as **Exhibit 55** is a copy of the Court of Appeal’s decision.

(c) The VimpelCom Action

145. The VimpelCom Action was commenced by Catalyst on On May 31, 2016; a week before the trial of the Moyse Action. VimpelCom, its advisor UBS, and members of the West Face Consortium were named as defendants alleged to be responsible for inducing breach of contract, conspiracy and breach of confidence relating to the West Face Consortium’s acquisition of WIND

146. As particularised in greater detail above, the VimpelCom Action was commenced on the basis of Catalyst discovering that during the period of confidentiality and exclusivity with Catalyst:

- (a) confidential information was obtained by members of the West Face 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 West Face Consortium had discussed and negotiated the purchase of WIND with VimpelCom and its advisors;

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- (c) VimpelCom's advisor, UBS, participated in and encouraged the West Face Consortium competing proposal.

147. Contrary to West Face's and Boland's allegations, I do not believe VimpelCom's board was 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 West Face Consortium made a proposal they believed to be "superior" to Catalyst's proposal, as I outlined in more detail above.

148. My knowledge and belief is that:

- (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 West Face Consortium;
- (b) the communications and the sharing of information that occurred among VimpelCom, Globalive, UBS and the West Face 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 West Face 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 West Face Consortium with an improper advantage, and in fact their conduct led to these effects.

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149. As a result, Catalyst commenced the VimpelCom Action against VimpelCom, Globalive, UBS and members of the West Face Consortium. The breach of and interference with Catalyst's Confidentiality Agreement and Exclusivity Agreement by VimpelCom, Globalive, UBS, and members of the West Face Consortium were not known to Catalyst at the time the Moyse Action was commenced. At issue in the VimpelCom Action were 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 West Face Consortium to conspire and induce VimpelCom to breach its agreements with Catalyst.
150. Catalyst's belief that confidential information about the WIND negotiations and transactions was improperly obtained by the West Face Consortium in breach of Catalyst's confidentiality and exclusivity rights was subsequently confirmed by former West Face employees as stated above.
151. The VimpelCom Action never decided whether the Exclusivity Agreement or Confidentiality Agreement were breached, because West Face succeeded in having the action dismissed on other grounds, relying on principles such as issue estoppel. Attached as **Exhibit 56** is a copy of the decision of Justice Hainey striking out the Statement of Claim. The Court of Appeal dismissed the appeal of the VimpelCom Action (attached as **Exhibit 57**) and the Application for leave to appeal to the Supreme Court of Canada was denied on November 8, 2019.

152. To date, no court has made any determination as to whether the actions of VimpelCom, UBS, or Globalive had breached any of Catalyst's confidentiality and exclusivity rights.
153. No explanation has been given by VimpelCom about why it made its demand for a reverse break fee after having already settled the terms of a Share Purchase Agreement with Catalyst and announcing to Industry Canada that a deal with Catalyst was done. Nor has there been an explanation by UBS about the numerous conversations it had with the West Face Consortium throughout the period of Catalyst's Exclusivity Agreement. As I mentioned above, Justice Newbould did state that UBS likely told a member of the Consortium when Catalyst's proposal for WIND was going before the VimpelCom board.
154. The propriety of VimpelCom's, UBS's and Globalive's conduct that led to the Consortium's bid has yet to be adjudicated upon. The action against VimpelCom and West Face was legitimate and commenced in good faith.

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G. THE WWW.CATALYSTLITIGATION.COM WEST FACE WEBSITE

155. I have reviewed West Face's website: www.catalystlitigation.com. Attached as **Exhibit 58** is a printout from the website www.catalystlitigation.com entitled "Litigating With Catalyst Capital". The first two paragraphs state:

West Face Capital is a defendant in several lawsuits commenced by The Catalyst Capital Group Inc. and/or Callidus Capital Corporation. Both

Catalyst Capital and Callidus Capital are managed by Mr. Newton Glassman, along with Gabriel De Alba (for Catalyst) and James Riley.

Due to the large volume of documents, and in response to numerous inquiries from current and prospective investors, service providers and industry participants that it interacts with, West Face has assembled the public court documents in the archive hosted on this website. We intend to add new court documents as they become available.

The last paragraph of “Litigating with Catalyst Capital” states:

Note that the documents hosted on this website are unofficial versions of the documents filed with the Ontario court and are not in all cases exact duplicates of the official documents filed with the Ontario court. Some documents have been redacted and/or have omissions, and some documents are entirely omitted. No representation is made as to the accuracy or completeness of the documents hosted on this website. For the official versions of documents filed with the court, please consult the court record in Toronto, Ontario.

156. West Face’s catalystitigation.com website provides the public with court documents in the Moyse Action, the Veritas Action, the VimpelCom Action, the Plan of Arrangement which approved the sale of WIND to a corporate vehicle controlled by the West Face Consortium, and this action (which is referred to as the “Whistleblower Litigation”). Members of the public are invited to sign up to be notified of the most recent additions to the site.
157. Recent additions to the site are the 7 anti-SLAPP Notices of Motions that have been brought by various defendants seeking to have this action dismissed pursuant to section 137.1 (3) of the *Courts of Justice Act*. West Face did not

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publish its own anti-SLAPP Notice of Motion on the www.catalystlitigation.com website.

158. On November 26, 2019 I downloaded all of the anti-SLAPP Notices of Motion published by West Face on its website which are attached as **Exhibits 59 to 65**. The 7 anti-SLAPP Notices of Motion that West Face has published on its website www.catalystlitigation.com were brought by:

- (a) Jeffrey McFarlane (“McFarlane”);
- (b) Rob Copeland;
- (c) Dow Jones and Company, Rob Copeland, Jacquie McNish;
- (d) Bruce Livesey;
- (e) Nathan Anderson (“Anderson”) and Clarity Spring Inc.;
- (f) Darryl Levitt (“Levitt”); and
- (g) Kevin Baumann (“Baumann”).

159. I am advised by counsel that none of these seven anti-SLAPP Notices of Motion were filed in the Court file as of the date I downloaded these documents. The Notices of Motion contain false and defamatory statements about Catalyst and Callidus. For instance, McFarlane’s Notice of Motion falsely states that Catalyst

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and Callidus were engaging in an unlawful and fraudulent scheme to inflate the earnings of Callidus.

160. Further examples of the false and defamatory statements made in these anti-SLAPP Notices of Motion are:
- (a) Levitt's Notice of Motion falsely alleges that Callidus acted in bad faith in connection with a loan to Fortress and its attempt to enforce its guarantee against him; loan misconduct; Callidus engaged in a scheme to artificially inflate the value of its assets;
 - (b) Anderson's Notice of Motion falsely alleges that Catalyst and Callidus were engaging in deceptive lending practices; Catalyst and Callidus were engaging in a scheme to artificially inflate the value of their assets; Catalyst and Callidus were engaged in fraudulent practices; and
 - (c) Baumann's Notice of Motion falsely alleges Callidus oppression; a Ponzi scheme; Callidus engaging in unlawful and fraudulent conduct.
161. There was no valid justification for West Face to publish these 7 SLAPP Notices of Motion on its website prior to these Notices of Motion being filed in the Court file. The sole purpose was to further damage the reputation of Catalyst and Callidus.

H. WEST FACE AND BOLAND'S DAMAGES ALLEGATIONS

162. The West Face/ Boland Counterclaim alleges that West Face and Boland have suffered significant damages as a result of the conduct of the Counterclaim Defendants. The publications in the Counterclaim that are attributable to the Catalyst Defendants did not cause damages to West Face and Boland.
163. 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”).
164. 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. To my knowledge, 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.
165. As indicated in the Long Term Opportunity Fund Q3 2016 Investor Letter, 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 Callidus and companies such as Home

Trust Company, SunOpta Inc., Hain Celestial Group, Inc., and Air Methods Corporation. A copy of the Long Term Opportunity Fund Q3 2016 Investor Letter, dated November 22, 2016, is attached as **Exhibit 66**.

166. 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.
167. In early 2016, West Face had experienced redemptions and lagging performance, along with many Americas-based hedge funds at the time. It was reported by Miles Kruppa in *Absolute Return* that as of July 1, 2016, well before the publication of the alleged defamatory statements in issue in the Counterclaim, West Face was experiencing an estimated 6 month change of – 7.32% and a 12 month change of –13.14%. A copy of the *Absolute Return* Article, dated September 29, 2016, is attached as **Exhibit 67**.
168. In September 2016, both Bloomberg and Reuters were reporting that WestFace was actively trying to raise a new Private Equity Fund focusing on control in distress situations. Copies of the Bloomberg and Reuters articles, both dated September 27, 2016, are attached as **Exhibit 68** and **Exhibit 69**.

169. The Long Term Opportunity Fund Q2 2017 Investor Letter reported that, as of June 30, 2017, cumulative returns earned in 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% |

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A copy of the Long Term Opportunity Fund Q2 2017 Investor Letter, dated September 5, 2017, is attached hereto as **Exhibit 70**.

170. The Long Term Opportunity Fund has consistently underperformed for many reasons. In its Q1 2017 investor letter the Long Term Opportunity Fund reported these reasons as 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) investments that failed to meet West Face’s forecast;
 - (d) failed short positions; and
 - (e) over-attribution of illiquid investments.

A copy of the The Long Term Opportunity Fund Q1 2017 investor letter, dated May 31, 2017, is attached as **Exhibit 71**.

171. For example, in its 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. A copy of the Long Term Opportunity Fund Form 13F is attached as **Exhibit 72**.

172. As a result of West Face's poor investment performance, it would appear that many investors lost confidence in the firm and elected to redeploy their investment capital elsewhere. Thus, the total value of assets under West Face's management ("AUM") suffered a precipitous decline.
173. As reflected in the Long Term Opportunity Fund Form 13F, West Face's AUM declined from a high of approximately \$2.8 billion to approximately \$1.7 billion by March 2016. By September 2017, West Face's AUM had further declined to only approximately \$1 billion as its investors redeemed their investments.
174. Any loss of investments or investor confidence, or any inability to attract investors or raise investment funds, was the result of West Face's poor financial performance and management, and had nothing to do with Catalyst or Callidus.
175. Moreover, any reputational damage suffered by West Face was not caused by the alleged defamatory statements in the publication attributable to the Catalyst Defendants by Counterclaim but by its exceedingly poor performance and 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

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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.

A copy of the West Face Long Term Opportunities L.P. and WFC Opportunities Trust Investor Letter dated December 8, 2017 is attached as **Exhibit 73**.

176. Indeed, in its December 8, 2017 Investor Letter, West Face acknowledged that its investment strategies were ill suited to a hedge fund structure. West Face acknowledged 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, had restricted West Face's ability to successfully participate in higher value opportunities, thereby resulting in losses.

177. West Face's alleged losses and lack of "business success" were not caused by the Catalyst Defendants by Counterclaim but by West Face's own mismanagement and ineptitude, which led its hedge funds to perform very poorly.
178. West Face, itself, conceded this mismanagement. In late 2017 or early 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.
179. 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. 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 appears to be contrary to SEC rules that prohibit advisers from including only profitable stock selections or recommendations in presentations or client presentations, without including the unprofitable selections. A copy of one of the road show presentations prepared by West Face is attached as **Exhibit 74**.

- 180. 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 by Counterclaim.

- 181. Consequently, any loss that West Face and Boland have allegedly suffered or any alleged 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.

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SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on December 5, 2019



 Commissioner for Taking Affidavits
M. KATYUSH 61892D

} 

JAMES A. RILEY

TAB 3

**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

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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 by Counterclaim

AFFIDAVIT OF JAMES A. RILEY

(SWORN AUGUST 20, 2020 – Reply to Gregory Boland’s affidavit sworn on May 29, 2020 – Catalyst Defendants by Counterclaim’ Anti-SLAPP Motion)

I, James A. Riley, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I swear this affidavit as one of my affidavits in reply to the affidavit sworn by Gregory Boland (“Boland”) on May 29, 2020 included in the Anti-SLAPP Motion Record of West Face Capital Inc. and Gregory Boland.
2. Boland has incorporated by reference the affidavit he swore on November 8, 2019 in support of the West Face/Boland Anti-SLAPP motion and recommends that this affidavit be read before his May 29, 2020 affidavit (paragraph 4, Boland Affidavit). I also incorporate by reference and rely upon the affidavits I swore on May 29, 2020 that responded to the West Face/Boland Anti-SLAPP motion.

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I. INTRODUCTION

3. Boland’s affidavit contains numerous opinions and arguments that provide sound bites for the media to further defame the Catalyst Defendants by Counterclaim in the “court of public opinion”.

4. The last paragraph of Boland's Affidavit sets out his belief that the Catalyst Defendants by Counterclaim:

“must now be held to account in a public and transparent judicial proceeding. The truth must be revealed for all the world to see”.

5. Firstly, the Catalyst Defendants to Counterclaim are well aware of the open court principle and have never advocated for these proceedings to be held *in camera*.
6. Secondly, one of the purposes of Boland's "litigation by sound bite" affidavit is to try to make Newton Glassman "feel the pain" (to quote the words of his lawyer Mathew Milne-Smith) and because Boland and West Face "are of the view that at least at this stage of this proceeding, the justice system has failed them." I attach as **Exhibit 1** an exchange of emails between Mathew Milne-Smith (the lawyer for Boland and West Face) and David Moore (the lawyer for the Catalyst Defendants by Counterclaim) as of June 15, 2020.
7. Boland's call-out for accountability and transparency rings hollow given the fact that West Face Capital Inc. has never subjected its Funds and returns to be scrutinized by private equity and hedge fund reporting services such as Preqin "for all the world to see".
8. Boland and West Face representatives did not merely "exchange public information with other parties Catalyst and Callidus had sued about the status of the litigation they and West Face were embroiled in", allegedly playing no role in connection with whistleblower complaints or the 2017 short-selling campaign as Boland claims

(paragraph 33, Boland Affidavit). As discussed below, they worked continuously since 2015 to assist whistleblower Jeffrey McFarlane and other co-conspirators to seriously harm the reputations and businesses of the Catalyst Defendants by Counterclaim.

9. Nor were Boland's interactions with journalists simply "responses to requests from journalists by providing public information about the litigation that West Face was embroiled in with Catalyst and Callidus" as Boland misleadingly says in his affidavit (paragraph 33, Boland Affidavit). As early as 2014 Boland was promoting a story to journalists about Xchange Technology Group LLC, a borrower of Callidus that was featured prominently in *The Wall Street Journal's* August, 2017 fraud articles. Set out below are examples of how Boland actively encouraged, assisted, and interacted with journalists to harm the Catalyst Defendants by Counterclaim.
10. Boland's conclusory statements about the harm allegedly caused by the Catalyst Defendants by Counterclaim fly in the face of representations he made to West Face's investors in Investor Letters which report the actual causes for the poor performance of the West Face funds (such as too much oil and gas exposure at a time when oil and gas prices plummeted; failed short positions; unexpected outcomes in portfolios that pulled the general portfolio down; missteps).
11. Managing a fund is a privilege, not a right. Hedge fund investors are not patient and move on when their returns fall below expectations. West Face's poor returns drove

its investors away, not any actions taken by the Catalyst Defendants by Counterclaim.

II. THE DAMAGES BOLAND ALLEGES WERE CAUSED BY THE CATALYST DEFENDANTS

(a) West Face's ability to manage the investments of its existing funds

12. Boland alleges that “the conduct engaged in by the Catalyst Defendants has directly and negatively impacted West Face's ability to manage its investments and to raise and invest capital” (paragraph 116, Boland Affidavit). From approximately July 2015, hedge funds generally were falling out of favour with institutional investors who could obtain better returns on their money elsewhere such as through the TSX or US stock exchanges. Boland admits this trend in the performance of hedge funds in general in paragraph 133 of his affidavit. The Catalyst Defendants were not the cause of industry wide trend away from hedge funds.
13. Boland's affidavit states that “West Face's traditional investment strategies have included a significant focus on less liquid, more concentrated, and longer-term investments” (paragraph 118, Boland Affidavit). This is tantamount to an admission that West Face chose the wrong structure as a hedge fund.
14. A hedge fund structure is appropriate for undertaking short-term trading strategies and provides liquidity through periodic redemption rights (usually quarterly). Accordingly, it is best suited to short term liquid investments that reflect liquidity needs. Private equity on the other hand, has a long term “buy and build” strategy in

which changes are made to management, capital structures, business strategy, and costs reductions to create greater value. A private equity structure supports long term strategies. Private equity funds typically have a five year investment period, a five year realization period, and two one-year extensions of the realization period for a possible term of 12 years.

15. There was a mismatch (known as a “term mismatch”) between West Face’s short term obligations to investors who could redeem on short notice and West Face’s long term investments. This is precisely why private equity funds require investors to commit their funds for a number of years and do not provide redemption rights.
16. Boland’s states that the term mismatch inherent in West Face’s flawed structure required West Face to “manage very carefully the balance between the assets and liabilities of the funds” (paragraph 119, Boland Affidavit). Boland also alleges that because of West Face’s “material exposure” due to the WIND-related litigation, West Face was required to “carefully balance the assets and liabilities of the investment funds [and to] adopt a significantly more conservative investment approach than it had followed historically (paragraph 120, Boland Affidavit). However, West Face’s records show that West Face maintained an unchanged holding of 26% of its net asset value in cash or cash equivalents from 2007 to 2017. This would appear to be held for redemption contingencies. A copy of the West Face Portfolio Track Record from October 1, 2007 to December 31, 2017, showing this cash reserve at page 8, is attached as **Exhibit 2**. It is to be noted that the overwhelming majority of West

Face's investments noted in Appendix A of its Portfolio Track Record resulted in immaterial gains or losses, and are thus marked as "NM".

17. Boland alleges that West Face held back and did not distribute "to investors 50% of the profits from the sale of WIND to protect against the risk of Catalyst succeeding in the litigation relating to WIND" and that the "West Face investment funds risked a potential 'run on the bank', which had the potential for significant prejudice to our investors generally" (paragraph 121, Boland Affidavit). If there really was a "run on the bank" problem, it was inherent in the hedge fund structure West Face chose.
18. However, Boland also states that West Face structured the WIND transaction as a "side pocket" investment (paragraph 144, Boland Affidavit). This contradicts his evidence that there was a "run on the bank" concern, as a side pocket structure does not permit investors to call for a redemption in respect of that side pocket investment. Indeed, it would be particularly problematic and unfair if West Face held back funds owed to side pocket investors to safeguard against redemption demands from other investors who did not invest in that side pocket.
19. Boland alleges that West Face had "successfully" managed its hedge fund structure from 2007 to 2014, contrary to paragraph 176 of my December 5, 2019 affidavit. Boland's portrayal of West Face's success contradicts West Face's 2017 Q1 Investor Letter (attached as **Exhibit 3**). Apart from the two recovery years following the 2008 global recession, West Face was posting poor returns. The returns for the primary

West Face fund for the period October 1, 2007 through March 31, 2017 were as follows:

| | West Face Long Term Opportunities Funds |
|-----------------------------|--|
| 2007 * | -1.5% |
| 2008 | -33.9% |
| 2009 | 54.1% |
| 2010 | 27.6% |
| 2011 | -1.1% |
| 2012 | 8.5% |
| 2013 | 6.8% |
| 2014 | 2.3% |
| 2015 | -4.9% |
| 2016 | 9.1% |
| YTD 2017 | -1.6% |
| Cumulative from inception * | 53.4% |

| | |
|------------------------------|-------|
| One Year Cumulative Return | 4.8% |
| Three Year Cumulative Return | 1.5% |
| Five Year Cumulative Return | 12.8% |

* Beginning October 1, 2007

20. West Face's quoted five year cumulative return of 12.8% represents an annual return of only 2.56%.
21. These returns highlight the extent of West Face's ineffectiveness as an investment manager given that they were recorded against the backdrop of one of the longest

bull markets in recorded history (attached as **Exhibit 4** is an article by James Chen, Director of Trading & Investing Content at Investopedia, titled “Market Milestones as the Bull Market Turns 10” discussing this phenomenon).

22. Boland alleges that West Face was forced to hold high cash balances to address exposure for the funds due to the actions of the Catalyst Defendants and, as a result, “could no longer pursue the kinds of longer term, less liquid investments (like WIND) that had long been a cornerstone of our success” (paragraph 122, Boland Affidavit). It appears that the actual reason West Face did not invest this cash was because as a hedge fund it had to retain the cash to pay redemptions, as is apparent by the fact that it maintained an average of 26% of its net asset value in cash. This is a very high percentage of West Face’s capital tied up in low yielding investments. This statement also ignores the fact that West Face structured the WIND deal as a side pocket investment and would therefore not be required to hold cash to provide for redemption calls from investors in that side pocket in relation to that investment.
23. Boland claims that it was unfair for me to benchmark West Face’s performance with the TSX or S&P 500 indexes (paragraph 124, Boland Affidavit). This criticism is unfounded and perplexing given that these are the same benchmarks that West Face used to benchmark its performance in its Investor Letters. For instance, in its Q2 2017 Investor Letter (attached as **Exhibit 5**), West Face addresses its own investors as follows:

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Dear Investor,

During Q2 2017, the West Face Long Term Opportunities Funds (the "Funds") were down 4.7% gross* in the General Portfolio and down 1.9% net total* for a Day One investor year to date through the end of the second quarter 2017.

Over the same period, the S&P/TSX Composite Total Return Index was up 0.7%, the S&P 500 Total Return Index was up 9.3%, while the Scotiabank Canadian Hedge Fund Indices were up 2.4% on an equal weighted basis and 1.2% on an asset weighted basis.

24. Reference to the TSX and S&P 500 indices is also appropriate because it illustrates another reason that West Face could not attract capital, namely, that investors had much better opportunities to invest in other than an underperforming hedge fund. The fact that investors had much better other opportunities to invest had nothing to do with the Catalyst Defendants.

(b) West Face's ability to raise additional investment capital for its existing Funds

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25. Boland alleges that West Face's ability to raise additional investment capital was a result of attacks on Boland's integrity and reputation by the Catalyst Defendants. We were not the cause of any failure by West Face to raise additional investment capital for its existing funds. And, it is my experience that whether an investment manager is generating poor or good returns is a far more important factor for a potential investor. Put differently, even an investment manager with a poor reputation will attract investors if their returns are good. As discussed above, West Face's performance in generating returns was historically terrible.

26. Boland alleges that I was unfair to criticise West Face’s decision to suspend its investors’ rights to redeem their investments (i.e. imposing a “gate” on redemptions) in the Fall of 2017 (paragraph 134, Boland Affidavit). He says that 12.5% per quarter redemption limit imposed by West Face meant that investors would ordinarily be required to wait two full years to be fully paid out on their investments and that West Face decided to return capital more quickly than the two years otherwise provided for under the fund documents. This statement is misleading in that West Face investors would ordinarily only be required to wait two years to be fully paid out on their investments if **all** investors sought to redeem their funds at the same time. There should always be a degree of liquidity in a hedge fund to deal with redemptions, and the 12.5% limit on withdrawals Boland is referring to is a “pool” that is available to accommodate investors who want to redeem their investments in the ordinary course. In addition, it is critical to understand that, when a hedge fund “gates”, they are effectively defeating the expectations of their investors, given that investors expect liquidity when they invest in hedge funds.

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(c) West Face’s ability to raise a new investment Fund

27. Boland alleges that West Face failed in its “efforts to raise capital from investors for a new private equity fund (the "**Distressed Fund**")” because of the conduct of the Catalyst Defendants (paragraphs 137-139, Boland Affidavit). The actual reasons West Face failed to place the USD \$1 billion Distressed Fund were:

(a) West Face had an abysmal investment track record as a hedge fund;

- (b) Investors did not want to invest with an investment manager with no track record running a private equity fund at the level proposed by West Face (\$1 billion). In contrast, Catalyst's first Fund raised USD \$185.601 million for an initial term of 5 years with two one-year options to extend (compared to West Face's 10 year term with two one-year options to extend);
 - (c) West Face was purporting to change its investment strategy from a hedge trading strategy to a private equity investment strategy. West Face also failed to clearly define and articulate what that investment strategy was - the "representative" investments were in a number of disparate investment classes: strategic asset purchases; negotiated financings; distressed for control; and, proactive distressed equity.
 - (d) West Face was marketing the off of a negative return of -1.6% in YTD March 31, 2017. Investors look for a strong performing track record, not negative returns.
28. The process of raising a private equity fund takes time (often in excess of 2 years), particularly for a new fund, and is multifaceted. There are a number of points at which an investor may choose not to proceed with a new placement. The elements of a new placement are substantially as follows:

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- (a) The offering firm prepares an offering document such as the Confidential Private Placement Memorandum prepared by West Face, attached as **Exhibit 6**;
 - (b) A due diligence questionnaire is prepared, anticipating the questions one might expect to receive from prospective investors;
 - (c) A data room containing relevant financial and other documents is set up for review by interested investors;
 - (d) A placement agent sets up meetings with investors with whom they have relationships;
 - (e) The firm meets and/or speaks with interested investors to answer questions about the firm's track record, experience, and future plan, as well as to get an impression of the character of the principals;
 - (f) The firm receives "soft" (informal) commitments, typically conditional on a lead order of a particular amount; and
 - (g) Investors complete their due diligence, do their formal investment committee decision, and make a "hard" (binding) commitment.
29. Boland claims that West Face has private equity experience because it invests in less liquid investments and engages in transactions which have comparable features

to distressed or other private equity investments, (paragraph 142, Boland Affidavit). This is not adequate experience to warrant a USD \$1 billion new Distressed Fund.

30. It is unclear to me what Boland is referring to with his cryptic remark regarding experience with “special purpose co-investment vehicles” (paragraph 145, Boland Affidavit), but I am doubtful that it would overcome his general lack of private equity experience.
31. Boland says that “West Face also manages the Alternative Credit Funds, a group of credit funds structured in the same manner as typical private equity funds” (paragraph 144, Boland Affidavit). West Face’s Alternative Credit Funds are in the business of lending, which is distinct from the role that a private equity investor plays. The fact that there is no connection is apparent in West Face’s own Private Placement Memorandum for the Distressed Fund in which the Alternative Credit Fund is not even mentioned as being relevant to West Face’s efforts to market the new fund.
32. At paragraph 146 of his affidavit, Boland takes issue with my characterisation of the hypothetical portfolio West Face used to advertise the Distressed Fund as “cherry picking”, yet this is precisely what it was. When one compares the investments West Face “selected” in its Private Placement Memorandum (previously attached as **Exhibit 6**) to market the Distressed Fund [extracts in Table 1 below] to the key investments made by West Face as reflected in the West Face Long Term Opportunities Fund Track Record (previously attached as **Exhibit 2**) [extracts in

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Table 2 below], it is apparent that West Face simply selected its better investments as being representative of its performance:

Table 1 – Extract from the West Face Private Placement Memorandum (Exhibit 6)

VII SELECTED TRANSACTION SUMMARIES

The following are descriptions of certain investments made by the LTOF, as supplemented by co-investments made by other funds and vehicles managed by West Face, including certain financial highlights, a description of the business and background of the investment, the manner in which the investment was sourced and structured, measures taken to enhance the value of the investment following acquisition and investment results. These summaries are illustrative examples of West Face’s influence-based investment strategy and were selected as representative examples of the investment strategies that West Face expects to follow when making investments on behalf of the Fund. A more complete representative sample of investments by the LTOF that may be applicable to the Fund, which include the investments described below, can be found in Section II – “*Investment Performance*”. The term “West Face” where used in this section refers to West Face Capital in its capacity as adviser to the LTOF and such other funds and vehicles.

Past performance may not be indicative of future performance and performance of any particular investment(s) may not be indicative of performance of any other investment(s) or the Fund.

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| Name of Investment | Investment Type | Page Number |
|-------------------------------------|-------------------------------|-------------|
| Arctic Glacier Income Fund | Negotiated Financing (Debt) | 29 |
| Bonanza Creek Energy Inc. | Strategic Asset Purchases | 32 |
| Canwest Media Inc. | Distressed / Control | 35 |
| Centaur Holdings, LLC | Distressed / Control | 38 |
| Hudson’s Bay Company | Negotiated Financing (Equity) | 41 |
| Maple Leaf Foods Inc. | Proactive Distressed Equity | 43 |
| SNC-Lavalin Group Inc. | Proactive Distressed Equity | 46 |
| Wind Mobile / Globalive Wireless LP | Strategic Asset Purchases | 48 |

All information in the tabular summaries below is presented as of December 31, 2017, unless otherwise indicated.

Table 2 – Extract from the West Face Long Term Opportunities Fund Track Record (Exhibit 2)

West Face Long Term Opportunities Funds

Amounts in USD \$millions

Portfolio Track Record

October 1, 2007 - December 31, 2017

| Portfolio Transactions / Primary Issuer | Sector | Country / Jurisdiction | Initial Investment Date | Realization Date | Invested Capital (NET) | Invested Capital (GROSS) | P&L | Gross IRR |
|---|----------------------------|---------------------------|-------------------------------|---------------------|------------------------------|--------------------------------|-----------------|------------|
| 1. High Conviction Constructed Portfolio I | | | | | | | | |
| Ace Aviation | Industrials | Canada | Oct-07 | Sep-13 | \$ 89.0 | \$ 89.0 | (\$ 24.7) | NM |
| Jazz Air | Industrials | Canada | Oct-07 | Feb-11 | 111.9 | 111.9 | (8.7) | NM |
| PHI, Inc | Industrials | United States | Oct-07 | Dec-17 | 116.4 | 116.4 | (19.2) | NM |
| New World Gaming | Consumer Discretionary | Canada | Feb-08 | Dec-10 | 34.5 | 34.5 | 0.7 | 1% |
| Petro-Canada | Energy | Canada | Apr-08 | Aug-10 | 101.0 | 101.0 | 2.7 | 3% |
| UTS Energy | Energy | Canada | Oct-08 | Aug-15 | 83.0 | 83.0 | 182.2 | 83% |
| Canwest Media | Consumer Discretionary | Canada | Apr-09 | Dec-10 | 69.1 | 69.1 | 34.9 | 123% |
| Vector Aerospace | Industrials | Canada | Oct-09 | Jul-11 | 53.9 | 53.9 | 58.4 | 53% |
| Master Asset Vehicle | Financials | Canada | Nov-09 | Nov-13 | 80.6 | 80.6 | 30.1 | 15% |
| Arctic Glacier | Consumer Staples | Canada | Feb-10 | Feb-14 | 65.1 | 65.1 | 24.4 | 20% |
| Technicolor | Consumer Discretionary | France | Apr-10 | Jul-13 | 68.9 | 68.9 | 15.8 | 0% |
| Mandalay Resources | Materials | United States | Aug-10 | Oct-16 | 39.0 | 39.0 | 107.1 | 34% |
| Maple Leaf Foods | Consumer Staples | Canada | Aug-10 | Dec-14 | 130.7 | 130.7 | 174.9 | 24% |
| Centaur Gaming | Consumer Discretionary | United States | Oct-10 | Dec-17 | 139.9 | 139.9 | 352.0 | 29% |
| Bonanza Creek Energy | Energy | United States | Dec-10 | Jun-13 | 63.0 | 63.0 | 80.3 | 46% |
| Meridian Holdings Co | Energy | United Kingdom | Feb-11 | Dec-17 | 68.0 | 68.0 | (44.1) | NM |
| Sunopta Inc | Consumer Staples | Canada | Jun-11 | Oct-17 | 69.9 | 69.9 | 38.3 | 18% |
| Connacher Oil & Gas | Energy | Canada | Aug-11 | Apr-15 | 81.9 | 81.9 | (18.0) | NM |
| 1. High Conviction Constructed Portfolio I Subtotal | | | | | \$ 1,465.9 | \$ 1,465.9 | \$ 987.2 | 20% |
| 2. High Conviction Constructed Portfolio II | | | | | | | | |
| Casa Energy Services | Energy | Canada | Mar-12 | Dec-17 | \$ 40.1 | \$ 40.1 | (\$ 25.7) | NM |
| Snc-Lavalin | Industrials | Canada | Apr-12 | Dec-16 | 254.0 | 254.0 | 69.0 | 9% |
| Talisman Energy | Energy | Canada | Apr-12 | Dec-13 | 176.8 | 176.8 | 23.5 | 22% |
| Safeway Inc | Consumer Staples | United States | Sep-12 | May-13 | 168.4 | 168.4 | 69.0 | >200% |
| Hudson'S Bay Company | Consumer Discretionary | Canada | Jul-13 | Dec-16 | 253.8 | 253.8 | 96.8 | 31% |
| Bunge Ltd | Consumer Staples | United States | Jun-14 | May-15 | 83.2 | 83.2 | (1.7) | NM |
| Suncoke Energy Inc | Materials | United States | Jul-14 | Feb-16 | 83.3 | 83.3 | (63.8) | NM |
| Globalive Wind (debt) | Telecommunication Services | Canada | Sep-14 | Dec-15 | 23.3 | 23.3 | 2.2 | 12% |
| Globalive Wind (equity) | Telecommunication Services | Canada | Sep-14 | Dec-17 | 100.0 | 100.0 | 283.2 | 95% |
| Gran Tierra Energy Inc | Energy | United States | Mar-15 | Dec-17 | 92.0 | 92.0 | (16.6) | NM |
| Manitoba Telecom | Telecommunication Services | Canada | Jul-15 | Feb-16 | 92.0 | 92.0 | 5.1 | 12% |
| Firstgroup Plc | Industrials | United Kingdom | Dec-16 | Dec-17 | 84.0 | 84.0 | 7.6 | 10% |
| 2. High Conviction Constructed Portfolio II Subtotal | | | | | \$ 1,451.0 | \$ 1,451.0 | \$ 448.6 | 21% |

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33. Boland's opinion that this obvious distortion of West Face's track record was somehow mitigated because interested investors could verify the results for themselves upon accessing the West Face data room is beside the point. It is not appropriate to "cherry pick" results to portray them as representative examples and

then tell an investor to conduct their own due diligence to find out the true state of affairs. I expect many investors would have been so turned off by this “cherry picking” that they never asked for access to the data room or otherwise pursued the opportunity.

III. WEST FACE’S INTERACTIONS WITH THE CO-CONSPIRATORS

34. Boland says that West Face freely admits “that from time to time West Face... (ii) exchanged public information with other parties Catalyst and Callidus had sued about the status of the litigation that they and West Face were embroiled in...This is not unlawful activity, and in any event was not connected to any whistleblower complaint or short-selling campaign in 2017 (in which West Face played no role)” (paragraph 33, Boland Affidavit).
35. This statement is patently false given the extensive interactions between Boland and West Face representatives with whistleblower complainant Jeffrey McFarlane and other co-conspirators that went far beyond an exchange of public information about the status of their litigation. They worked with and assisted whistleblowers and co-conspirators in an attempt to destroy Callidus and Catalyst.
36. Firstly, West Face and Boland have claimed they were in a common interest privilege relationship with some of the co-conspirators such as whistleblower Darrell Levitt and have shielded those communications from production. Asserting common interest privilege with co-conspirators demonstrates that their relationship was not merely one involving the “exchange of public information”.

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37. West Face/Boland list over 80 documents alleged to be subject to common interest privilege in Schedule “B” to their Affidavit of Documents (which we dispute). Common interest privilege has been asserted on communications between (i) West Face’s General Counsel Philip Panet and co-conspirator Darrell Levitt (Fortress Resources); Roger Simard (counsel for co-conspirator Gerald Duhamel of Bluberi); an Exchange Administrator Group (ii) West Face’s CEO Gregory Boland and: co-conspirator Darrell Levitt (Fortress Resources); Roger Simard (counsel for co-conspirator Gerald Duhamel of Bluberi); an Exchange Administrator Group. Attached as **Exhibit 7** is a copy of Schedule “B” to the Affidavit of Documents of West Face and Boland sworn on December 17, 2019 in which they claim common interest privilege.

38. Secondly, from at least 2015, Boland and other West Face representatives were communicating and exchanging information with some of the co-conspirators for the purpose of damaging the reputations and businesses of Callidus and Catalyst. Examples of these interactions are set out below.

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(a) West Face’s Interactions With Whistleblower Jeffrey McFarlane (XTG)

39. By 2014, Boland and West Face representatives were in communication with whistleblower and co-conspirator Jeffrey McFarlane, the former owner of Xchange Technology Group LLC (“**XTG**”). XTG was a borrower of Callidus and McFarlane a guarantor. Boland provided *Wall Street Journal* reporter Ben Dummett contact details for McFarlane on December 11, 2014 saying “call this guy” (see **Exhibit 49**).

40. On September 1, 2015, McFarlane emailed Tony Griffin, a partner of West Face Capital, “to get a sense if there’s still a possibility of getting a deal together with West Face...” McFarlane specifically asked whether West Face “would be interested in a deal structure with convertible debt – which I think you or Greg mentioned before.” The September 1, 2015 email is attached as **Exhibit 8**.
41. McFarlane’s September 1, 2015 email to Griffin also stated that West Face’s financing would also provide a “fringe benefit” of “beating Callidus”. The email continued: “Inside of two years the BS with Callidus should be behind us...” (emphasis added). Two years later, *The Wall Street Journal* published articles accusing Callidus and Catalyst of fraud.
42. McFarlane exchanged emails with Boland on March 4, 2016 “to catch up and compare notes” (attached as **Exhibit 9**).
43. McFarlane emailed Boland on March 31, 2016 (Subject: Analysis of Callidus 2015 earnings report, management discussion and earnings call) attached as **Exhibit 10**.

McFarlane’s email states in part:

“... if you happen to know the analyst from Canaccord who put the accrued interest to Glassman, I may reach out to him at some point...”

Glassman outright lied about this on the earnings call today when asked by a Canaccord Genuity analyst who asked how much of the purchase price was accrued interest and he responded “small, very small”.

Boland replied to this email by asking McFarlane to call him at 416-471-1851 (attached as **Exhibit 11**).

44. McFarlane wrote in March 2017 that he had a meeting with Langstaff “head of equities group at Canaccord Genuity-the firm that took Callidus public” (attached as **Exhibit 12**).
45. Early in December 2016, McFarlane wrote that whistleblower and professional short-seller Nathan Anderson should meet with West Face (attached as **Exhibit 13**).

(b) West Face’s Interactions With Andrew Levy (Esco Marine)

46. Boland was in communication with Andrew Levy, a Harvard-educated lawyer, who was a shareholder of Esco Marine, a borrower of Callidus.
47. Levy provided a sworn deposition arising out of a settlement of the enforcement proceeding against him that provides some particulars of Boland’s interactions with him (attached as **Exhibit 14** is a transcript of the deposition held on August 30, 2017).
48. Levy testified that Boland phoned him unexpectedly in 2015 seeking information about Callidus. Boland then had co-conspirators Bruce Livesey (the principal of Mosaic, a corporate intelligence consulting company) and Bruce Langstaff (Canaccord Genuity) reach out to Levy on his behalf. Levy testified that he told Boland “everything we were doing”.
49. Levy testified that:

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- (a) on April 17, 2015, Levy was first contacted by Bruce Livesey who wanted information about the Callidus and Esco Marine litigation. Livesey told Levy that he was hired by West Face, who was in litigation with Callidus.
 - (b) Levy contacted Matthew Milne-Smith, the lawyer for West Face, for a copy of the report that West Face had prepared about Callidus when West Face shorted Callidus in March 2015. Levy believes that he may have obtained Milne-Smith's name from Livesey;
 - (c) after obtaining a copy of West Face's report, Levy learned about XTG and contacted McFarlane, who was more than willing to assist Levy with his case;
 - (d) in or around August 2016, Boland contacted Levy to discuss their respective litigation with Callidus. Boland contacted Levy on two or three other occasions during which Levy told Boland "exactly what [the guarantors] were doing" and "gave everything [the guarantors] were doing";
 - (e) on April 25, 2017, Langstaff called Levy and informed him that he "worked for Canaccord" and was "helping West Face" and "his friend", Gregory Boland.
50. On December 3, 2016, Levy emailed the group, including short-seller Nathan Anderson, to report on his discussion with Boland. Levy reported that Boland said that Callidus and Catalyst were improperly moving loans between Funds. Levy wrote to Levitt: "Boland said they moved Xchange loan now about \$100M to fund #5 from an earlier fund". Levy then suggested Levitt should speak to Boland. Attached as

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Exhibit 15 are emails from of December 3, 2016 from Levy and Levitt reporting on their communications with Boland and Phillip Panet (West Face’s General Counsel).

51. West Face/Boland’s lawyer Matthew Milne-Smith “was more than happy to work” with the co-conspirators according to a memo drafted by Levy dated August 14, 2015 (attached as **Exhibit 16**):

“West Face has produced a 52 page memorandum stating why Callidus (now a public company) is a good short. We are also in touch with their lawyers. West Face’s lawyer, Matthew Milne-Smith of Davies Ward in Toronto (416-863-5595) is more than happy to work with us.”

Levy’s August 14, 2015 memorandum was produced by professional short-seller and whistleblower Nathan Anderson (Production Number AND0000763).

52. In the same memorandum Levy described West Face/Boland’s lawyer Matthew Milne-Smith as “a helpful fountain of information”.
53. On September 27, 2016 Boland called Levy and spoke to him for “over an hour”. Levy reported to some of the co-conspirators that Boland “had many interesting things to report”, including that some of Catalyst’s investors were from the US. This prompted Levitt to suggest that Catalyst was under the jurisdiction of the United States Securities and Exchange Commission. Levy agreed but advised that he would speak with Wes Voorheis (a co-conspirator) who was “much closer to striking” (**Exhibit 17**).

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54. West Face/Boland's lawyer Milne-Smith recommended that the guarantors contact Jesse Jensen of the law firm of Bernstein Litowitz to bring a RICO action. A copy of Matthew Milne-Smith's email dated November 30, 2016 is attached as **Exhibit 18**.
55. In Levy's memo (previously attached as **Exhibit 16**), Levy described Phillip Panet, the West Face's General Counsel, as a "fountain of information on Callidus."
56. On February 27, 2017, McFarlane contacted the other Guarantors to discuss a claim regarding a former employee of Callidus. Levy responded saying "Boland called me today on it". The next day Boland emailed Levy a copy of the claim. Levy responded, "Thanks Greg. This has energized a number of people to pile on" (attached as **Exhibit 19**).
57. On April 25, 2017, Boland emailed Levy "Hey- give me a call". Levy informed Boland that "there is a lot going on in our mutual matter" (attached as **Exhibit 20**).

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(c) West Face's Interactions With Co-Conspirator Darryl Levitt (Fortress Resources)

58. Panet contacted Levitt on November 22, 2016 re "RE: IMET - Integrated Market Enforcement Team". Common interest privilege has been asserted on this communication between Panet and Levitt.
59. On December 3, 2016, Panet emailed Levitt about the XTG loan and the loan being moved from Callidus to Catalyst. Panet also emailed Levitt about the "callidus catalyst fraud outline.docx-privileged", which appears to have included an

attachment. At that time Levitt was preparing to attend a meeting with the Ontario Securities Commission. Common interest privilege has been asserted on this email and attachment sent between Panet and Levitt (as listed in West Face's Schedule B, previously attached as **Exhibit 7**).

60. On January 20, 2017, Panet informed Livesey of a new borrower suing Callidus and forwarded a copy of the Statement of Claim (attached as **Exhibit 21**). The same day Levitt emailed some of the co-conspirators (including whistleblower and professional short-seller Nathan Anderson) forwarding Panet's email (attached as **Exhibit 22**).
61. On April 5, 2017, Panet provided a transcript of Callidus' 2015 financial year-end earnings call to Roger Simard, counsel for co-conspirator Gerald Duhamel (attached as **Exhibit 23**). Gerald Duhamel was the former CEO of Bluberi Gaming Technologies.
62. On April 23, 2017, Levitt was preparing a slide deck presentation for the Toronto Police Service. Levitt's slide deck is attached as **Exhibit 24**. Levitt wrote to Panet seeking West Face's input, saying, "we'll need to speak to you regarding the material". Panet sent an email to Levitt informing him that "I can talk later tonight" which Levitt forwards to short-seller Nathan Anderson with the message "if you don't connect tonight we'll be speaking in the morning" (attached as **Exhibit 25**).
63. On May 25, 2017, West Face/Boland's lawyer Matthew Milne-Smith provided Levitt's counsel a link to www.catalystlitigation.com website (attached as **Exhibit 26**). Levitt

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forwarded this email to Anderson. On May 26, 2017 Levitt emailed co-conspirator Kevin Baumann a copy of the “West Face Report” (attached as **Exhibit 27**). The West Face Report recommended taking a short position in Callidus and was critical of Callidus’ dealings with XTG.

(d) West Face’s Interactions With Co-Conspirator Kevin Baumann (Alken Basin Drilling)

64. On October 7, 2015, Baumann sent West Face employee Yu-Jia Zhu a link to a new website Baumann created called www.calliduscapital dangers.com (**Exhibit 28**). On October 12, 2015 Baumann sent Zhu an email saying “A few more firms came to my attention this week that Callidus totally operates. If Greg is participating in Glassman’s forum tomorrow best of luck, my request for attending as a shareholder was denied (see following) as they are fully booked”. The “following” was an email exchange between Baumann and Newton Glassman’s Executive Assistant, which Baumann copied to *Wall Street Journal* reporter Ben Dummett (attached as **Exhibit 29**).
65. On January 25, 2016, Baumann sent Zhu an email attaching Callidus’ Loan statements for the month of May 2014. Baumann’s email says his Executive Assistant received the Callidus Loan statements “for some reason which relates to most Callidus borrowers at the time, there is no disclaimer on the email although please delete it if you view the Callidus files, for Mr Boland’s info a sizeable oppression suit is being filed upon Glassman/Callidus shortly” (**Exhibit 30**). This list of borrowers and the corresponding loan information was material non-public

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information. On June 3, 2017, co-conspirator Bruce Langstaff provided these confidential Callidus' loan statements (that disclosed Callidus' borrowers) to his "undisclosed recipients" contact group; based upon the replies to Langstaff's email, apparently co-conspirators Nathan Anderson and Adam Spears are part of the "undisclosed recipients" contact group (attached as **Exhibit 31**).

(e) West Face's Interactions With Co-Conspirator Gerald Duhamel (Bluberi)

66. In late 2015, West Face representatives made contact with Roger Simard at Dentons (who were then acting for Bluberi), signed a Non-Disclosure Agreement on November 27, 2015, and obtained access to a Bluberi data room. Copies of emails between Simard and West Face in 2015 are attached as **Exhibit 32**).

67. On January 29, 2016, Simard emailed Panet copying Duhamel attaching the Order Approving a Sale Solicitation Process for Bluberi, and connecting Duhamel with Panet to arrange an in-person meeting (**Exhibit 33**).

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68. On March 9, 2016, Simard contacted Panet to provide an "update on the Bluberi sales process." He states that "Mr. Duhamel has plans for the future and would like to meet with Westface if you have an interest in a start-up in the gaming industry" (**Exhibit 34**).

69. On April 5, 2016, Panet contacted Simard and sent him an email titled "Call transcript from last week." The attachment to this email was Callidus Capital's 2015 Q4 Conference Call transcript. The email and attachment are attached as **Exhibit 35**.

70. On August 26, 2016, Panet sent emails to Simard with the subject line “RE: Westface vs Catalyst”. One of the emails appears to have contained three attachments which appear to be rough drafts of transcripts prepared by Neeson Court Reporting of the Moyse Action proceedings on June 6-8, 2016. West Face has claimed common interest privilege over these emails and attachments, and has listed them in its Schedule B (previously attached as **Exhibit 7**).
71. On the same day, Panet also sent Simard an email with the subject line “Our defamation case”, which appears to have included attachments. Simard replied to the email. West Face has claimed common interest privilege over these emails and attachments, and has listed them in its Schedule B.
72. On November 9, 2016, Simard sent an email to Panet with the subject line “Bluberi”. West Face has claimed common interest privilege over this email, and has listed it in its Schedule B.
73. On November 24, 2016, Simard sent Chantal Ballantyne of West Face a meeting invitation titled: “Acceptee: Lunch Meeting: Greg Boland (West Face Capital) & Roger Simard (Dentons)”. West Face has claimed common interest privilege over this calendar appointment, and has listed it in its Schedule B.
74. On November 24, 2016, Chantal Ballantyne of West Face sent an email to Simard with the subject line “Re: December 1 lunch”. West Face has claimed common interest privilege over this email, and has listed it in its Schedule B.

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75. On March 1, 2017, Simard sent Panet an email titled “Boyer vs Callidus”. West Face has claimed common interest privilege over this email, and has listed it in its Schedule B.
76. On May 8, 2017, Boland sent an email to Simard with the subject line “FYI”. West Face has claimed common interest privilege over this email, and has listed it in its Schedule B.
77. On May 29, 2017, Boland contacted Keith Andrews of Gateway Casinos as an investor asking for the planned time for deployment of 7000 Bluberi gaming machines, noting this was 2x the current installed base of 3100 machines (attached as **Exhibit 36**). Gateway is a company controlled by Catalyst. The sale of gaming machines by Bluberi to Gateway was a matter raised in the whistleblower complaints filed shortly after Boland’s enquiry.
78. On July 17, 2017, Boland requested a meeting with Gerald Duhamel to be held on July 26, 2017, just weeks before *The Wall Street Journal* published its fraud articles on August 9 and 10, 2017 (attached as **Exhibit 37**).
- (f) West Face’s Interactions With Co-Conspirator Bruce Langstaff (Canaccord Genuity)**
79. Bruce Langstaff of Canaccord Genuity was in communication with West Face representatives Boland, Griffin, and Panet regarding Callidus. Canaccord Genuity was Callidus’ financial advisor, and lead underwriter in connection with its public offering. Langstaff was under a fiduciary duty to work in our best interests.

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80. Starting in 2015, West Face representatives began supplying information about the loans guaranteed by some of the co-conspirators to Langstaff. By way of example:
- (a) On November 24, 2015, Griffin emailed Langstaff attaching the bankruptcy petition of Fortress Resources in Kentucky (**Exhibit 38**).
 - (b) On December 14, 2016, Boland sent an email to Langstaff with what appears to be a Dropbox link with court documents in the Esco Marine bankruptcy proceeding that was ongoing at the time (**Exhibit 39**).
 - (c) On March 16, 2017, Boland, Griffin and Langstaff exchanged emails regarding Pacific Exploration, a company with which Catalyst had entered into a restructuring transaction (**Exhibit 40**).
81. Langstaff provided periodic analysis and commentary on Callidus to an email contact group labelled "Undisclosed Recipients", each time blind copying West Face's Griffin or Panet, so as to keep West Face informed of the information that Langstaff was sharing with some of the co-conspirators, including short-seller Nathan Anderson. Attached as **Exhibit 41** are copies of emails between Langstaff and West Face.
82. Langstaff told Levy he was assisting Boland and West Face. Levy testified as follows:

"Q. You don't recall anything else about that
14 conversation?

15 A. No, I don't, but you can look him up. I
16 mean, they're involved somehow. That's all I can
17 say. The next guy I did speak to was a fellow on
18 your list there named Bruce Langstaff. I spoke to

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19 him on April 25th, 2017. He called me -- the guy
20 is from Canada; I said, you know, "What are you up
21 to? What is your dog in this hunt?", and he said
22 he worked for Canaccord Adams, but he was, you
23 know, helping Westface. So I said, "Well, do you
24 work for WestFace?" He says, "No. I work for
25 Canaccord Adams, but, you know, Greg Boland is a
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1 friend of mine," or something like that; and -- I
2 mean the conversation veered onto talking about
3 Newton Glassman and he was just getting married and
4 this and that, but it was really almost nothing
5 about the case. As I say, I have no idea why this
6 guy called.

7 Q. So, you know, this is --

8 A. I mean, apparently, he knew Newton Glassman
9 for years, this fellow Langstaff.

10 Q. So he calls you -- let's just -- I'm trying
11 to get some context here. So he calls you again,
12 another guy who calls you out of the blue; you
13 didn't initiate the phone call?

14 A. Right, did not.

15 Q. And he calls you up and he says, "Hi, I'm
16 Bruce Langstaff from Canaccord. I'm -- I work at
17 Canaccord, but I'm helping you out at WestFace"?

18 A. Yes, helping him out for some reason, a
19 friend of mine."

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83. Levy also testified:

19 A. That's why I found it odd, because he -- as I
20 had been speaking to his friend, Boland -- I gave Boland
21 everything we were doing, you know. So I don't know why
22 he called at all, quite frankly."

84. On July 21, 2017, Boland sent an email to Langstaff with the subject line “Cbl”, attaching an article about “companies pushing the reporting envelope” (attached as **Exhibit 42**).

85. Tony Griffin and Langstaff exchanged information regarding XTG and Bluberi. Attached as **Exhibit 43** are examples of email exchanges between Langstaff and Griffin regarding XTG and Bluberi.

(g) West Face’s Interactions with Co-Conspirator Bruce Livesey

86. Levy testified that Livesey contacted him in April 2015 and said he was hired by West Face:

13 Q. And how did that call conclude?

14 A. I don't know. I mean, he just got what he

15 wanted to do. I asked him whom he was working for; he

16 said he was hired by the WestFace Capital who was in

17 litigation with Callidus.

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87. According to Levy, West Face hired Livesey to obtain information on Callidus. Livesey contacted Levy on April 17, 2015. Livesey told Levy that he was calling on behalf of West Face and seeking information regarding Esco Marine’s litigation against Callidus. Livesey, at the time, advised Levy that he was with Mosaic (now i20 Research), a corporate intelligence consulting company.

88. On November 23 and 24, 2016, West Face’s General Counsel Panet provided Livesey with information relating to Newton Glassman’s father’s obituary, law reports dealing with Glassman’s parents’ divorce including a default proceeding brought by

Glassman and his sister against their father to recover support that was terminated by their father and in arrears, and information about Glassman and his wife (including court documents regarding the divorce from her former husband). Attached as **Exhibit 44** are copies of Panet's emails to Livesey attaching various court documents.

89. The above examples of the interactions between Boland and West Face representatives and the co-conspirators went far beyond "exchanges of public information with other parties Catalyst and Callidus had sued about the status of the litigation that they and West Face were embroiled in" as Boland claims. They worked with and assisted whistleblowers and other co-conspirators in an attempt to destroy our companies.

IV. BOLAND'S INTERACTIONS WITH JOURNALISTS

90. Boland says that West Face freely admits "that from time to time West Face (iii) responded to requests from journalists by providing public information about the litigation that West Face was embroiled in with Catalyst and Callidus. This is not unlawful activity and in any event was not connected to any whistleblower complaint or short-selling campaign in 2017 (in which West Face played no role)" (paragraph 33, Boland Affidavit).
91. This statement is patently false given the numerous interactions between Boland and journalists about Callidus and Catalyst since 2014. Boland's interactions with the

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media regarding Callidus and Catalyst went far beyond simply “providing them public information about the litigation”.

92. Boland states as a fact that “West Face did not hold a short position in Callidus at the time the [Wall Street Journal] Article was published” (paragraph 44(b), Boland Affidavit). Notwithstanding that Boland says that West Face did not hold a short position in Callidus at the time the *Wall Street Journal* fraud articles were published in August, 2017, he was communicating with and assisting Jeffrey McFarlane, one of the whistleblower complainants quoted in the *Wall Street Journal* fraud articles, to undermine and cause serious harm to the reputations and businesses of Callidus and Catalyst. A co-conspirator did not have to hold a short position in Callidus to be a participant in the conspiracy.

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(a) Boland’s Interactions With Wall Street Journal Reporter Jacquie McNish

93. Boland was communicating with Jacquie McNish as early as 2014, the co-author of the August 2017 *Wall Street Journal* articles that falsely accused Callidus and Catalyst of fraud.
94. There is no dispute that West Face engaged in a short selling campaign against Callidus in 2014-2015 based on a report it prepared for the purposes of short-selling Callidus (the “West Face Report”). Contrary to West Face’s claim that the West Face Report was prepared for internal purposes only, Boland sent a password protected

copy of the West Face Report to McNish by email on December 12, 2014 (attached as **Exhibit 45**). At the time, McNish was a reporter with *The Globe and Mail*.

95. Boland provided McNish with his password protected West Face Report (previously attached as **Exhibit 45**) which, among other things:

- (a) recommended taking a short position in Callidus;
- (b) criticized Callidus' disclosure to shareholders regarding its credit bid on XTG;
- (c) called into question why Callidus had delayed closing its purchase of XTG from receivership; and
- (d) disputed Callidus' reporting that XTG's loan was performing while in receivership and despite possible impairment.

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96. Boland sent an email to McNish on December 12, 2014 saying: "*Shorts are circling around this [i.e. Callidus] and the stock has come off sharply*" (previously attached as **Exhibits 45** is the email exchange between Boland and McNish December 12, 2014).

97. Although the West Face Report was allegedly prepared for internal purposes only, a December 3, 2014 email to Boland regarding the West Face Report asks how they can disseminate the West Face Report externally:

"What is the best way to disseminate this piece – some ideas would be i) anonymous on seeking alpha or harvest; ii) give it to someone like Hedgeye that would wrap it as their own research;

iii) Veritas could put out a piece on it using our work as a basis.”
(attached as **Exhibit 46**).

98. I do not know whether the West Face Report was disseminated to Seeking Alpha, Harvest or Hedgeye but I do know that they disseminated some of its contents to Veritas and to the *Globe and Mail*.

(b) Boland’s Interactions With Wall Street Journal Reporter Ben Dummett

99. Boland sent *Wall Street Journal* reporter Ben Dummett a “deck” he had prepared relating to Callidus’ loan to XTG (attached as **Exhibit 47** is a copy of Boland’s email to Dummett sent December 9, 2014). Boland also provided Dummett a report by Duff & Phelps (the XTG Receiver) and a link to the Duff & Phelps website containing other documents relating to the restructuring of XTG (previously attached as **Exhibit 47**).

100. In a further email exchange on December 10, 2014, Boland stated that Callidus was extending more capital to XTG to fund operating losses. Attached as **Exhibit 48** are copies of Boland’s emails to Dummett sent on December 10, 2014.

101. Boland also provided Dummett contact details for Jeffrey McFarlane, the CEO of XTG, saying to “call this guy”. This email is attached as **Exhibit 49**.

102. Attached as **Exhibit 50** is a copy of additional correspondence between Boland and Dummett from December 2014 through May 8, 2015.

103. The *Wall Street Journal* published an article co-authored by Dummett entitled “Manager Feels Heat on IPO: Catalyst Official Criticized Over Potential Conflicts”.

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The article was critical of the valuation of Callidus' shares and suggested that there were risks associated with Catalyst's guarantee of Callidus' loans, including XTG. The subjects of the Dummett Article were the same subjects discussed in the "deck" that Boland had provided Dummett. A copy of the Dummett Article of May 11, 2015 is attached as **Exhibit 51**.

104. On May 12, 2015, Dummett emailed Boland that the "story is out" (attached as **Exhibit 52**).
105. XTG and McFarlane's whistleblower complaint to the OSC was a prominent feature of *The Wall Street Journal's* August 2017 fraud articles.
106. The above examples of Boland's interactions with journalists and his fixation on XTG demonstrate that Boland was not merely responding "to requests from journalists by providing public information about the litigation West face was embroiled in with Catalyst and Callidus" as he claims. Boland actively encouraged and assisted journalists to harm our companies.

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V. CATALYST'S POST-JUDGMENT EXPRESSIONS FOLLOWING THE ISSUANCE OF JUSTICE NEWBOULD'S DECISION DISMISSING THE MOYSE ACTION

(a) The August 19, 2016 Statement

(i) Justice Newbould's Possible Bias

107. Several paragraphs of Boland's affidavit say that the Catalyst Defendants accused Justice Newbould of "actual bias" which is simply untrue. For instance, paragraph 16 of the Boland affidavit states in part:

"The very next day (August 19), in the Post-Judgment Comments, the Catalyst Defendants publicly accused Justice Newbould of actual bias".

108. The August 19, 2016 Statement provided to the *National Post* did not publicly accuse Justice Newbould of "actual bias". In fact, the August 19, 2016 Statement said the decision indicated "possible bias":

"We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbould."

109. Boland repeats his false statement that Catalyst alleged "actual bias" against Justice Newbould at paragraphs 8(d)(iv) and 25 of his Affidavit.

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110. Boland believes that I "know full well that deciding a case against a party does not demonstrate a possible bias" (paragraph 27, Boland Affidavit). I disagree. What I know full well is that the reasons for the decision of Justice Newbould demonstrated a "possible" bias to me when the August 19, 2016 Statement was provided to the *National Post*.

111. The basis for my belief of "possible bias" was not because Justice Newbould decided a case against us as alleged by Boland. My belief was founded on the reasons for the decision which were the polar opposite of Justice Lederer's decision that granted an interlocutory injunction against Branson Moyse.

112. Prior to the issuance of Justice Newbould's Reasons For Judgment, Justice Lederer issued an interlocutory injunction against Brandon Moyle in *Catalyst Capital Group Inc. v Moyle*, 2014 ONSC 6442. Justice Lederer concluded that "this was not a case where the actions of Brandon Moyle and West Face demonstrate that equity should balance in their favour" (paragraph 83).
113. Notably, Justice Lederer held that: "The fact that Brandon Moyle is young, and may be inexperienced, does not serve to decrease any responsibility or the liability for the harm that may attach to his actions" (paragraph 15). In stark contrast, it was our view that Justice Newbould did just that in excusing Moyle's destruction of evidence in violation of a Court Order.
114. In finding a serious issue to be tried, Justice Lederer found that Moyle took and delivered to West Face confidential information which may demonstrate strategies Catalyst used in a narrow and competitive business (paragraph 71). In finding irreparable harm, Justice Lederer found that among the documents accessed by Moyle were files relating to Wind Mobile (paragraph 76). These and other findings by Justice Lederer (e.g. paragraphs 13,19-22,45,50-51, 61,78,83) appeared to us to be the polar opposite of findings made by Justice Newbould in which he excused all of Moyle's "mistakes" but none of our mistakes.
115. I wish to be clear – I am not re-litigating the Moyle Action. I readily recognize that we lost our appeal in the Moyle Action. What I am doing is explaining the basis for

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our opinion in the August 19, 2016 Statement that there were “severe indications of possible bias displayed by Judge Newbould” in that decision.

(ii) **The Additional Evidence**

116. Boland’s affidavit (paragraphs 34-36) alleges that paragraphs 74-95 of my December 5, 2019 affidavit contain half-truths about the “additional evidence” referred to in the August 19, 2016 Statement. There were no half-truths.
117. The August 19, 2016 Statement said: “Additional evidence has come out since the Moyse litigation that supports the new case that alleges conspiracy and breach of contract” (emphasis added). The “new case” was an action we commenced against VimpelCom and West Face.
118. My affidavit stated at paragraph 91 that the “additional evidence” was the six emails I set out in paragraphs 76-88. I truthfully stated that we did not know about these emails prior to the Moyse action (paragraph 74). I truthfully stated that we did not know about these emails “until the Moyse litigation when West Face began (starting in January 2106) to produce the above documents” (paragraph 89).
119. I truthfully stated that this “additional evidence” revealed that VimpelCom and UBS had shared information relating to Catalyst’s bid for WIND in breach of the Confidentiality Agreement and had engaged in negotiations and/or solicited an offer from the West Face Consortium in breach of our Exclusivity Agreement (paragraphs 74- 75 of my affidavit). I did not omit “critical history and context” about the additional

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evidence as Boland falsely accuses me of doing in paragraph 37 of his affidavit. We learned of the additional evidence because of the Moyse litigation and that additional evidence supported our new case against VimpelCom and West Face.

(iii) **My Previous Testimony**

120. Boland falsely accused me of omitting “critical history and context” concerning the additional email evidence so that he could segue into a gratuitous and improper attack on my credibility by stating: “This is unfortunately consistent with two prior occasions on which Riley has been found by the Courts to be less than forthright under oath” (paragraph 37, Boland Affidavit). The two prior occasions are set out in footnote 14 of Boland’s affidavit and are discussed below.

121. This blatant attempt by Boland to try to taint the credibility of my evidence in this proceeding is exactly what Boland promised West Face’s investors he would do in his 2016 Third Quarter Investor Letter (attached as **Exhibit 53**) that said:

“...Importantly, Justice Newbould made serious findings of credibility against all three principals of Catalyst Capital [Jim Riley, Newton Glassman and Gabriel De Alba] in the course of this litigation. These findings underpinned his trial decision and will be useful in future litigation with Catalyst Capital.” (emphasis added)

122. Because Boland considers Justice Newbould’s findings about my credibility to be “useful in future litigation with Catalyst Capital”, I provide explanations about the two prior occasions that Boland refers to in paragraph 37 and footnote 14 of his Affidavit.

(i) Re: Mid-Bowline Group Corp., 2016 ONSC 669

123. In *Re: Mid-Bowline Group Corp.*, Justice Newbould held at paragraph 59 of his Reasons For Judgment:

“...Apart from the statement of Mr. Riley that the information was first learned in the material in this application, which was not true, no evidence has been given by Catalyst to explain why this new intended claim was not brought sooner”.

124. My “statement” that Justice Newbould refers to in paragraph 59 of his Reasons For Judgment is found in paragraph 21 of the affidavit I swore on January 25, 2016 (attached as **Exhibit 54**):

“Catalyst also believes it deserves the opportunity to have its claim heard and determined through a process that is fair and reasonable. That includes, at a minimum, the opportunity for proper documentary discovery, examinations and the ability to amend the claim to take into account information learned for the first time through the materials filed on this application.”

125. Justice Newbould acknowledged in paragraph 53 of his Reasons For Judgment that I did not state what information I learned for the first time through the materials filed on the Mid-Bowline application:

“Mr. Riley stated in his affidavit that the information giving rise to this new claim came from “information learned for the first time through materials filed on this application”. What information he was referring to was not stated. In argument it was stated that what he learned was that others were involved besides West Face in the unsolicited bid. However, it is quite clear that information regarding the unsolicited bid was known by Mr. Riley early in 2015. It was contained in Mr. Griffin’s affidavit sworn March 7, 2015 in response to Catalyst’s motion seeking interlocutory relief against West Face”.

126. The statement in paragraph 53 of the Reasons For Judgment that “what [I] learned was that others were involved besides West Face in the unsolicited bid” was not the “information learned for the first time through the materials filed in this application”

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referred to in paragraph 21 of my January 25, 2016 affidavit. When I swore my affidavit on January 25, 2016 I not only knew “that others were involved besides West Face in the unsolicited bid”, I expressly said so in paragraphs 3 and 5 of my affidavit.

127. Paragraph 3 of my January 25, 2016 affidavit spoke of “a consortium of investors led by West Face”:

“Catalyst is currently pursuing an action against West Face Capital Inc. (“West Face”), an indirect shareholder of Mid-Bowline, in relation to the manner in which a consortium of investors led by West Face was able to acquire Wind Mobile Corp. (“Wind”) in 2014 (the “Action”)...”.

128. Paragraph 5 of my January 25, 2016 affidavit spoke of “the consortium led by West Face (the “West Face Group”) ” and that “the West Face Group’s success was based on what has been described as the “unsolicited offer” to purchase Wind”:

“The relief set out above was added to the Action following the unusual circumstances in Summer 2014 pursuant to which the consortium led by West Face (the “West Face Group”) was able to successfully negotiate the purchase of Wind. The West Face Group’s success was based on what has been described as an “unsolicited” offer to purchase Wind that was delivered to VimpelCom Ltd. (“VimpelCom”), Wind’s parent company, during a period when VimpelCom and Catalyst were engaged in confidential negotiations under a contractual exclusive negotiation period”.

129. One of the documents that was “information learned for the first time through the materials filed on this [Mid-Bowline] application” was Exhibit 3 to the affidavit of Simon Lockie (Globalive) sworn on January 8, 2016. Exhibit 3 is an email from Russel Drew of Bennett Jones sent on August 3, 2014 to Simon Lockie and Brice Scheschuk, copies to Christian Gauthier and Tiffany Canzano with the subject line:

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“Project Turbine – SPA” (attached as **Exhibit 55**). The email says: “Attached is a copy of the substantially complete SPA [Share Purchase Agreement] that is going to be approved by VimpelCom’s board and a blackline of the previous draft you received.” I learned for the first time from the materials filed on the application that Tony Lacavera’s company, Globalive, had received a copy of Catalyst’s Share Purchase Agreement on August 3, 2014.

130. Another document that was “information learned for the first time through the materials filed on this [Mid-Bowline] application” was Exhibit 1 to the affidavit of Michael Leitner sworn on January 7, 2016 (attached as **Exhibit 56**) which is a copy of an August 7, 2014 email from Michael Leitner of Tennenbaum Capital to Felix Saratovsky of VimpelCom (cc’d to Greg Boland) with the Subject line: “Superior Proposal to purchase WIND Canada”. This Superior Proposal was for consideration by the VimpelCom Board at the very same time when that Board was to consider the pending share purchase agreement with Catalyst. This Superior Proposal was not disclosed to us prior to the service of the Mid-Bowline application materials.

131. The phrase “superior proposal” is a term of art and generally understood to mean a proposal which compares very favorably with and is materially more advantageous than another competing proposal. When I swore my affidavit on January 25, 2016 I knew that the West Face Group successfully negotiated the purchase of Wind. But until I received the materials filed in support of the Mid-Bowline application, I was not aware of the August 7, 2014 “Superior Proposal” document that supported our

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intended claim that West Face induced a breach of contract regarding Catalyst's exclusivity agreement with VimpelCom.

132. These two documents included in the Mid-Bowline application materials were not attached as Exhibits to Tony Griffin's March 7, 2015 affidavit that Justice Newbould refers to in paragraph 53 of the Reasons. We did not have this evidence supporting a claim for inducing a breach of contract until we were served with the application materials on December 31, 2015 and learned that the sale of the WIND asset was imminent.
133. The Mid-Bowline application was resolved through a Consent Order issued on February 3, 2016 (attached as **Exhibit 57**).
134. I stress that I am not re-litigating the *Mid-Bowline* decision. I am explaining why I did not make an untrue statement in paragraph 21 of my January 25, 2016 affidavit because Boland has unfairly attempted to taint my credibility in this proceeding through paragraph 59 of the *Mid-Bowline* decision.

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(ii) Catalyst Capital Group Inc. v Moyse, 2016 ONSC 5271

135. The second occasion that Boland refers to in footnote 14 to paragraph 37 of his affidavit is :

“During the Moyse action, while under cross-examination on an affidavit, Riley had provided an answer to an undertaking that falsely implied that VimpelCom had never requested a break fee from Catalyst. This was significant because that request for a break fee, rather than anything done by West Face, ultimately caused the negotiations between Catalyst and VimpelCom to fail.

In his decision in the Moyse Action, at paragraph 13, Justice Newbould noted that “prior affidavits of [Riley] were mistaken and speculative in some measure”.

136. Boland omitted to state the fact that Justice Newbould found that my “evidence was given in a straight forward manner” (paragraph 13) and “The evidence of Mr. Riley, who later joined Catalyst as a partner in 2011, is more telling and accords with common sense” (paragraph 38)
137. Further, Justice Newbould made no reference in paragraph 13 of his Reasons For Judgment to any answer I provided to an undertaking about a break fee. Paragraph 13 of the Reasons states:

“Mr. Riley’s evidence was given in a straightforward manner. It is clear, however, that prior affidavits of his were mistaken and speculative in some measure”.

138. And even if Justice Newbould was referring to an answer I provided to an undertaking about a break fee, Boland also omitted from his affidavit the fact that in a subsequent undertaking answer I explained the misunderstanding about my initial answer about the break fee question. I did so prior to the trial of the Moyse Action as follows (attached as **Exhibit 58**):

“Mr. Riley asked Zach Michaud however Mr. Riley recalls that he asked Mr. Michaud whether there was a break fee in the transaction (not whether VimpelCom *asked* for a break fee) and Mr. Michaud advised that there was not. Additionally, Mr. Riley answered the undertaking to the best of his recollection and did not recall that VimpelCom asked for a break fee. At the time that VimpelCom proposed the break fee, Mr. de Alba was principally negotiating for Catalyst”.

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(b) **The October 13, 2016 Press Release**

139. Boland alleges that Catalyst's October 13, 2016 Press Release made allegations that "were substantially the same as the unfounded allegations that Justice Newbould had rejected in the Moyse Action, and which His Honour had justified an extraordinary costs award on a substantial indemnity basis" (para 23). In fact, the October 23, 2016 Press Release comments on West Face's Press Release issued earlier that day regarding the ongoing litigation related to West Face's acquisition of WIND Mobile Corp. and our grounds for the appeal of Justice Newbould's decision in the Moyse Action. The October 2016 Press Release contained a Note to Editors that provided a detailed summary of Catalyst's Notice of Appeal of Justice Newbould's decision. The Note to Editors set out the Notice of Appeal's errors of fact and procedural fairness and the error of law in determining the spoliation issue involving Moyse's destruction of evidence in violation of a Court Order. The October 2016 Press Release also stated that the substantial indemnity costs award by Justice Newbould ignored findings by Justice Lederer who issued an interlocutory injunction against Brandon Moyse.

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VI. THE FIRST INVESTOR LETTER (AUGUST 14, 2017)

140. Boland opines that:

"Riley asserts in paragraph 35 of his Affidavit that the First Investor Letter was disseminated by Catalyst in furtherance of its fiduciary obligations to keep its investors informed of matters concerning Catalyst's funds. However, the

accusations of misconduct made by Catalyst against West Face in the First Investor Letter were entirely false... (para 43)”

141. Firstly, the confidential August 14, 2017 letter to our investors did not attach or publish the August 11, 2017 email from Vincent Hanna to Newton Glassman.
142. Secondly, although Boland opines that the allegations in the August 11, 2017 email are entirely false, no Court has yet to decide on the merits whether West Face and Boland participated in a conspiracy to harm Callidus. I have set out above examples of interactions between Boland and West Face representatives and the co-conspirators. Participation in this conspiracy does not require that a co-conspirator take out a short position in Callidus stock. One of the elements of this conspiracy was the “short and distort” campaign. “Short and distort campaigns” have recently been identified as an abusive practice in the *Capital Markets Modernization Task Force Consultations Report* (July 2020) attached as **Exhibit 59**.
143. Thirdly, the August 14, 2017 letter reminded our investors of their confidentiality obligations and went so far as to reproduce the confidentiality provision in the letter. The August 14, 2017 Investor Letter also provided our investors Callidus’ response to the false allegations published by *The Wall Street Journal* (pages 26-27).
144. Boland includes the following sound bite in his affidavit: “To state the obvious, it is entirely conceivable that the “Vincent Hanna email was sent to Glassman by some shadowy figure at his request, or even sent by Glassman himself” (paragraph 56, Boland Affidavit). There is nothing “obvious” in this false statement by Boland. The

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August 11, 2017 email from Vincent Hanna was unsolicited. Vincent Hanna was unknown to me and Newton Glassman at the time Vincent Hanna sent his August 11, 2017 email. I have since learned that Vincent Hanna's identity is Danny Guy. I note that in an affidavit sworn on May 29, 2020 by Gregory Boland he states that Danny Guy denied being Vincent Hanna which denial occurred after Danny Guy received a threatening letter dated January 14, 2020 from Mathew Milne-Smith of Davies (attached as Exhibit "S" to Gregory Boland's May 29, 2020 affidavit).

145. The unsolicited August 11, 2017 email correctly stated that we were targeted by short-sellers – the share price of Callidus plummeted 21.4 % in the 31 minutes remaining in the trading day on August 9, 2017 after the *Wall Street Journal* published its online fraud article. We were under attack by short-sellers such as co-conspirator Nathan Anderson.
146. There was a coordinated effort to bring down Callidus and Newton Glassman. West Face participated in the conspiracy and the related short and distort campaign as demonstrated above by the numerous interactions Boland and West Face representatives had with other co-conspirators.

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VII. THE MARCH 19, 2018 INVESTOR LETTER

147. Boland's affidavit regarding the March 2018 "Privileged and Confidential Update – Wind Litigation" letter to our investors states "...Catalyst can have had no reasonable expectation that a letter of this nature that was so widely circulated would, in fact,

have been maintained in strict confidence by every one of its recipients” (paragraph 88, Boland Affidavit).

148. Firstly, the “Privileged and Confidential Update – WIND Litigation” document was not disseminated to “hundreds of investors” – the letter was sent to about 100 of our investors.
149. Secondly, of course Catalyst expected confidentiality to be maintained – the Limited Partnership agreements contained a confidentiality provision and we fully expected that this legal obligation would be abided by. The document was titled as a confidential update. Paragraph 17 of the document stated that the interviews “should be treated as strictly confidential”. And finally, the last sentence of the document (paragraph 30) informed investors in bold type that **“it is vital that you respect the confidentiality of this litigation update”**. Our expectation that the March 2018 letter would be maintained in confidence was reasonable.

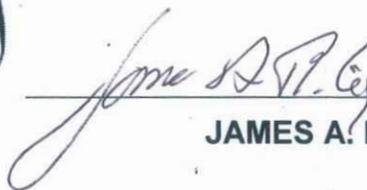
140

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario this
20th day of August, 2020



Commissioner for Taking Affidavits
(or as may be)

}



JAMES A. RILEY

TAB 4

Catalyst v West Face et al.

James Riley
on Tuesday, May 4, 2021



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77 King Street West, Suite 2020
Toronto, Ontario M5K 1A1

neesonsreporting.com | 416.413.7755

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

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4 COMMERCIAL LIST

5 B E T W E E N:

6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS
7 CAPITAL CORPORATION

8 Plaintiff

9 - and -

10 WEST FACE CAPITAL INC., GREGORY BOLAND,
11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,
12 ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP,
13 ANSON INVESTMENTS LP, ANSON CAPITAL LP,
14 ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
15 ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
16 ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC.,
17 NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND,
18 KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT,
19 RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY
20 VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10
21 Defendants

22 A N D B E T W E E N:

23 WEST FACE CAPITAL INC. and GREGORY BOLAND
24 Plaintiffs by Counterclaim

25 - and -

26 THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
27 CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA,
28 JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL
29 ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE,
30 B.C. STRATEGY UK LTD. d/b/a BLACK CUBE
31 and INVOP LTD. d/b/a PSY GROUP
32 Defendants to the Counterclaim

33 -----
34 --- This is Continued Cross-Examination of JAMES
35 RILEY, on his affidavits sworn December 5, 2019,
36 May 29, 2020 and August 20, 2020 respectively,
37 taken via Zoom Videoconferencing with all
38 participants attending remotely, on the 4th day of
39 May, 2021.
40 -----

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1 A P P E A R A N C E S :

2 DAVID C. MOORE, Esq., for the Plaintiffs,
3 & KEVIN JONES, Esq., (Defendants to the
4 Counterclaim), The
5 Catalyst Capital Group
6 Inc. and Callidus
7 Capital Corporation
8 and the Defendants to
9 the Counterclaim,
10 Gariel De Alba, James
11 Riley and Newton
12 Glassman

14 KENT THOMSON, Esq., for the Defendants
15 & MAURA O'SULLIVAN, Esq., (Plaintiffs by
16 Counterclaim), West
17 Face Capital Inc. and
18 Gregory Boland

20 REBECCA SHOOM, Esq., for the Defendants,
21 ClaritySpring Inc. and
22 Nathan Anderson

24 DEVIN JARCAIG, Esq., for the Defendant
25 (Plaintiff by

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1 Counterclaim), Bruce
2 Langstaff

3
4 Also Present: Philip Panet, General Counsel, West
5 Face Capital

6
7 REPORTED BY: Deana Santedicola, RPR, CRR, CSR
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13 **145**

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I N D E X

WITNESS: JAMES RILEY

PAGES

RE-EXAMINATION BY MR. MOORE.....1111 - 1113

**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: [None]

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INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
[None]

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and
appear on the following pages: [None]

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NO. DESCRIPTION

PAGE/LINE NO.

[No Exhibits Marked]

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1 -- Upon commencing at 5:45 p.m.

2

3 JAMES RILEY; UNDER PRIOR AFFIRMATION.

4 RE-EXAMINATION BY MR. MOORE:

5 3136 Q. So I have the right to re-examine
6 you at the end of your cross-examination, which is
7 what I am about to do. It is going to be very
8 brief.

9 Mr. Jones, if you can bring up those --
10 I think it is those three pages from Mr. Riley's
11 cross-examination. You will see it starts at page
12 1031, and you were being asked certain questions by
13 Mr. Milne-Smith.

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14 A. Yes, I see it.

15 3137 Q. And Mr. Milne-Smith, on page 1032,
16 question 2926, is asking -- you had indicated the
17 Court should be aware of certain facts, and
18 Mr. Milne-Smith asked the question:

19 "The way to make the Court
20 aware of the fact is to bring the
21 appropriate motion and proceeding;
22 correct?"

23 And you answer "Yes."

24 And Mr. Milne-Smith asked the question:

25 "The wrong way to do it is to

1 get stories into news articles and
2 hope that that will apply indirect
3 pressure on the Court to reach a
4 particular outcome. That is the
5 wrong way to do it; correct?"

6 And your answer is:

7 "This is a very tough issue for
8 me because what is on that tape I
9 find offensive, but I also respect
10 the judiciary, and having the
11 background -- some of my relatives
12 were judges in the Alberta court, so
13 I have always been torn between
14 respect for the judiciary and the
15 proper functioning and what is on
16 that tape."

17 Do you see that answer?

18 A. I do.

19 3138 Q. And do you know what tape or tapes
20 you are referring to there?

21 A. Yes.

22 3139 Q. And what -- I'm not going to ask
23 you about them in any detail, but what tape or
24 tapes are they?

25 A. That is the Newbould tape.

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1 3140 Q. All right. And to the best of
2 your knowledge, was Catalyst in the position of
3 having to make a decision whether or not to seek to
4 adduce those tapes or any part of them into
5 evidence or prospective evidence before the Court
6 of Appeal back in late 2017?

7 A. Yes, they did consider that.

8 3141 Q. And what decision was reached by
9 Catalyst?

10 A. The decision was to not tender
11 that as new evidence.

12 3142 Q. All right. And since that time
13 when that decision was made, has Catalyst taken --
14 has Catalyst published the tapes?

15 A. No.

16 MR. MOORE: All right. Those are my
17 questions, sir. Thank you very much.

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19 -- Adjourned at 5:43 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

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Dated this 4th day of May, 2021.



NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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TAB 5

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 and JOHN
DOES #1-10

Defendants

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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

**AFFIDAVIT OF NEWTON GLASSMAN
(Affirmed November 24, 2020)**

I, Newton Glassman, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

Introduction

1. I am the Managing Partner of Catalyst Capital Group Inc. ("**Catalyst**") and was formerly the Executive Chairman and Chief Executive Officer of Callidus Capital Corporation ("**Callidus**").

2. This affidavit has been prepared in response to a motion brought by West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") to:

- (a) obtain access to privileged documents, information and communications relating to B.C. Strategy Ltd. d/b/a Black Cube and B.C. Strategy UK Ltd. d/b/a Black Cube (collectively "**Black Cube**"), and,
- (b) to enable West Face and Boland to utilize information, documents and communications relating to Invop Ltd. d/b/a Psy Group ("**Psy**") that purport to be with Catalyst and Callidus.

3. In both instances, Black Cube and Psy were acting on behalf of the Catalyst Defendants by Counterclaim, for the dominant purpose of litigation support and to facilitate the provision of legal advice. In swearing this affidavit I do not intend to nor do I waive any solicitor-client or litigation privilege.

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Catalyst and Callidus

4. I am the founder of The Catalyst Capital Group Inc. (**‘Catalyst’**). Catalyst is a private equity management firm which over the years has established and manages seven private equity funds that specialize in “distressed for control,” comprising over US\$4 billion of initial Committed Capital (the **“Catalyst Funds”**).

5. One of the portfolio companies that in the aggregate are majority owned by a number of the Catalyst Funds is Callidus Capital Corporation (**“Callidus”**). Callidus is a Canadian company that specializes in providing financial solutions for companies unable to obtain adequate financing from conventional or other lenders, typically in the past due to their mismanagement and/or poor financial health. During the relevant period, Callidus was a publicly traded company listed on the TSX.

6. The retainers in issue on this motion arise as a result of a series of events involving a large number of parties, many of whom are already named as Defendants in this lawsuit. While I will attempt to address the salient issues in this affidavit, now shown to me and marked as **Exhibits A to D** are the affidavits of James Riley, sworn on December 5, 2019 (the **“First Riley Affidavit”**); two affidavits sworn on May 29, 2020 (the **“Second and Third Riley Affidavits”**); and a further affidavit sworn on August 20, 2020 (the **“Fourth Riley Affidavit”**) to provide further background.

Background to the Retainers

7. The key facts relating to the retainer of Black Cube are set out in an affidavit affirmed by Brian Greenspan dated November 10, 2018 (the **“Greenspan Affidavit”**), the

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contents of which I adopt for the purpose of this motion. Mr. Greenspan is a partner at the law firm Greenspan Humphrey Weinstein (“GHW”). The Greenspan Affidavit was prepared in response to a prior motion by West Face challenging the privileged nature of the information, documents and communications generated by Black Cube and is being filed in connection with West Face’s current motion. In particular I confirm that Black Cube’s retainer was limited to investigative work and inquiries which were to be used to obtain legal advice and for litigation support, and did not include providing security services nor any media or public relations advice.

8. As set out in the Greenspan Affidavit, and as described in the Riley affidavits, at the time of Black Cube’s retainer, Catalyst and/or Callidus were parties to the following litigation:

- (a) *The Catalyst Capital Group Inc. v. Moyse and West Face Capital Inc., Court File No. CV-16-11272-00CL (the “Moyse Action”)*: Catalyst commenced the Moyse Action on June 25, 2014 against West Face and Brandon Moyse, who was formerly a financial analyst employed by Catalyst. Catalyst alleged that Moyse had transmitted certain confidential information to West Face that he had obtained about Catalyst’s investment strategy to purchase WIND Mobile Corp. (“WIND”) in breach of his obligations as an employee of Catalyst. The trial had been completed, Mr. Newbould had dismissed this action, and an appeal was pending in the Court of Appeal which was initially scheduled to be heard on September 24, 2017.
- (b) *The Catalyst Capital Group Inc. et al. v. Veritas Investment Research Corporation et al., Court File No. CV-15-530726 (the “Veritas Action”)*: Catalyst and Callidus commenced the Veritas Action on June 18, 2015 against West Face and Veritas Investment Research Corporation alleging

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they each intentionally published negative and defamatory reports about Callidus to drive down its share price in support of a “short and distort” campaign carried out by West Face in 2015. In its defence to the Veritas Action, West Face admits to shorting Callidus’ stock, but falsely asserted that its internal research memoranda and deck had not been circulated to the media.

- (c) *The Catalyst Capital Group Inc. v. VimpelCom Ltd. et al.*, Court File No. CV-16-553800 (the “**VimpelCom Action**”): Catalyst commenced the VimpelCom Action on May 31, 2016 against a consortium of investors, including West Face, that ultimately purchased WIND (the “**West Face Consortium**”), for breach of confidence and breach of contract for transmitting the confidential information obtained during negotiations regarding the WIND transaction.

9. In addition, as of August 2017, active steps were underway with legal counsel regarding the within action and a second action against Dow Jones et al., which were then commenced on November 7, 2017.

10. Between late June 2017 and early September 2017, several things happened that caused me to conclude that I, my family, my partners and their families, and Catalyst and Callidus were under attack by persons who held very strong animus against me personally and who were intent on destroying Catalyst’s and Callidus’ businesses. These events raised serious safety concerns, including for me and my family, but equally regarding my two (then very young) children. These attacks were also detrimental to Catalyst and Callidus as well as to the interests of the Catalyst Fund investors to whom Catalyst then owed and continue to owe fiduciary duties.

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The Attacks

11. Through the spring and summer of 2017, there were a series of factually false tweets and other social media communication and media posts adverse to the Plaintiffs. These and other events made it clear that there were persons who were trying to improperly undermine the credibility of Callidus and Catalyst, to damage their businesses, and to attack me both personally and physically. Specific threats were made against me and my family. Events that occurred during the above period included the following:

- (a) In late June and early July 2017, Catalyst and Callidus were contacted by reporters at Thomson Reuters who advised that they were about to publish a story alleging that Callidus and Catalyst were the subject of active police investigations concerning alleged accounting fraud and other criminal offences. This attempted story later proved to be untrue.
- (b) It was (or later became, as the case may be) apparent that the sources of the Thomson Reuters allegations included one or more guarantors of Callidus loans who were in litigation with Callidus to avoid obligations under the guarantees, as well as Nathan Anderson, a now confessed “professional short seller,” who repeatedly premeditatedly “shorted” the stock based on his expectations of the impact of media reports which he himself generated, helped to generate, and/or attempted to generate.

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- (c) Catalyst and Callidus initially hired GHW and Lax O'Sullivan to investigate and respond to this threatened false story, which would have caused serious harm if published.
- (d) Attached as **Exhibit E** are copies of correspondence exchanged between Lax O'Sullivan (Rocco DiPucchio thereof) and counsel for Thomson Reuters regarding this threatened story. As indicated in this correspondence, the Thomson Reuters allegations that were to be the basis of the story about fraud investigations were completely false.
- (e) Catalyst's Annual General Meeting took place on or about June 29, 2017. While I was on my way to this meeting, I received a call indicating that Thomson Reuters intended to publish a false story at approximately noon that day about active fraud investigations into Callidus. Over the next two or so hours, it became clear that there was a strategy of attempting to "plant" individuals at the AGM to ask damaging questions based on these false allegations so as to enable media reporting on such questions. In fact, immediately after our presentation at the AGM, two individuals indicated they wanted to ask questions, and objected when they were informed there would be no "Q&A" at that time. One of those individuals took a photo of me without my consent that was later published in March 2018 as part of a different inaccurate article attempting to disparage the monetization of a number of Catalyst and Callidus' portfolio investments that were in process at the time.

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- (f) On August 9, 2017, Dow Jones published an article referring to, among other things, alleged fraudulent accounting practices, whistleblower complaints and alleged police investigations (the “**WSJ False Fraud Article**”). The WSJ False Fraud Article was published under a lurid headline about alleged fraud and was accompanied by a photograph of a Toronto Police Service patrol car, believed to be in front of the TPS headquarters. Attached hereto and marked as **Exhibit F** is a true copy of this version of the WSJ False Fraud Article.
- (g) The WSJ False Fraud Article caused great concern to Catalyst, Callidus and to numerous limited partners of the funds managed by Catalyst. Paragraphs 39 to 57 of the First Riley Affidavit detail some of the concerns and questions received in the immediate aftermath of this story.
- (h) The August 9, 2017 WSJ False Fraud Article also caused the Callidus share price to drop precipitously. The damaging and widely circulated nature of the attack by a publication with the then reputation of the Wall Street Journal required a public response to address the falsity of the WSJ False Fraud Article as well as the damages caused to Callidus and Catalyst. Attached hereto and marked as **Exhibit G** is a copy of the Press Release issued by Catalyst and Callidus at that time.
- (i) In addition, it was clear that Catalyst and Callidus would need assistance and legal advice about these matters and that the situation was escalating

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given the attacks and threats (detailed herein). This included assistance and advice with respect to the commencement of litigation on account of the WSJ False Fraud Article and obviously improper activity by others related thereto and what appeared to be a sophisticated and coordinated conspiracy against the Plaintiffs.

- (j) As a result, after publication of the WSJ False Fraud Article, Catalyst and Callidus instructed Lax O'Sullivan to prepare and deliver a notice under the *Libel and Slander Act*, a copy of which is attached as **Exhibit H** hereto. In addition, Lax O'Sullivan was instructed to begin drafting Statements of Claim to be issued on account of the WSJ False Fraud Article and to seek remedies against the wrongful parties conspiring for an improper purpose to damage, amongst others, Catalyst and Callidus.
- (k) On August 11, 2017, I received an email from a person purporting to be "Vincent Hanna," referring to a "cabal" of conspirators who had caused the publication of the WSJ False Fraud Article. The Vincent Hanna email is attached as **Exhibit I**, and reads as follows:

Dear Mr. Glassman.

This letter is to inform you that you have been targeted by a group of funds in Canada and abroad whose sole goal is to bring down your public vehicle Callidus and you personally. They are acting in concert to short your stock and to spread false rumors in the market place mostly through Bruce Langstaff at Canaccord but through any broker who will listen. The Wall Street Journal is a prime example of this coordinated effort. The "cabal" does have private investigators following you and most likely have Russians [sic] hackers attacking your office emails and servers/cloud. The RCMP and FBI are aware

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of this “cabal” from a criminal investigation but that doesn’t help you in the short term. I am sure you are not surprised but the funds are:

Greg Boland – WestFace Capital.

Roland Keiper – Clearwater Capital.

Sunny Puri/Moez Kassam – Anson Partners.

Shawn Kimmel – K2 Partners

Principals – MMCAP

Marc Cohodes – US Short Seller and his huge global network.

I am disgusted that this acting in concert is going on and happening to you and other participants in the Canadian Capital Markets and I write this letter to inform you of such.

If I were you I would sue the above groups and from that you will garner access to all their trading records and communications between them. From this you will then be fed additional information. This will lead the perpetrators down a rabbit hole they will not escape from. But in the end that is up to you. You now have this information. There will be more to come. Stay tuned. [Underlining added.]

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- (l) I did not know who “Vincent Hanna” was (but I later came to understand he was Danny Guy), but the contents of this email seemed credible in light of the events which had just occurred. As discussed below, such included cyber-attacks containing Cyrillic characters (not then knowingly published), the prior attempts to cause the publication of a false article by Reuters in June 2017, and the publication of the WSJ False Fraud Article.
- (m) As a result of what I believed to be an attack on Catalyst and Callidus, I expanded the retainer of GHW to assist in addressing the threats as well as the outstanding litigation and to assist in determining who was involved in

the short attack(s) so that we might obtain legal and other advice on our options and to assist in the preparation of litigation.

12. Concurrent with or shortly after the above events, several things happened which caused me to fear for my safety, and for the safety of my family, my partners (Gabriel de Alba and James Riley) and their families, and the employees of Catalyst and Callidus:

- (a) On or about July 22, 2017, Callidus' computer system was subjected to a sophisticated cyber attack by unknown persons, which included infecting the system with a ransomware virus. This attack appeared to originate in Russia, based on the Cyrillic coding used to create the virus. Callidus had never previously experienced any such cyber attack, and had no known involvement with anything or anyone Russian in nature.
- (b) In about mid-August, I was told by our lake house maintenance person that he had caught and chased off a person rummaging through the garbage containers at our Muskoka property, who we were told was apparently looking for documents. These containers are located on our private property accessible only via private (lengthy) road, and could only have been accessed by trespassers, without any legitimate purpose or right to be present on our property, without invitation or notice but to cause us some kind of harm.
- (c) In early September 2017, it was discovered that the generator at our Toronto home, which provides back up power to, among other things, our

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home security system, had been allegedly compromised. Consequently, our home security system was left without any power during an extended power outage that occurred over Labour Day weekend of September 2017. Security consultants I hired believed and informed us that this was an attempt to either access or sabotage our home security system.

- (d) In addition, further investigation of my home security revealed that someone had allegedly manipulated the system to enable the control panels found throughout our house, including the master bedroom, to be tuned into audio and video recording devices for potential surreptitious surveillance / spying.
- (e) In or about September 2017, I was subjected to the first of two “brush pass” verbal threats. This happened while I was walking along the south sidewalk on Wellington St. just east of Bay Street in Toronto. A man walking toward me threatened that I and my then 2+ year old son (whom the passerby referred to by name) would be “gotten to” shortly. I took this to mean, at worst, murdered. A similar brush pass threat that specifically named my son was made to me a month or so later by a different person, while I was walking north on the east side of Bay, just north of the Bay/Wellington intersection.

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13. The above facts and events were unlike anything I had ever experienced. In combination, these unique circumstances caused me to conclude that a more serious defensive approach was needed to ensure that I, my partners, our families and Catalyst

and Callidus could obtain assistance and especially legal advice necessary to address and respond to these matters appropriately. In order to obtain, and for our legal advisors to formulate, a legal strategy and litigation plan on a fully informed and effective basis, I believed that it was essential to obtain and understand the best information possible, to conduct a thorough legal investigation, and to understand the impact of these matters and strategies necessary to deal with the existing and potential litigation.

14. At all times I intended and understood that the retention of Tamara Global and any subcontractors engaged by said Tamara Global (as described below) pursuant to its retainer would be part of an integrated team and would be confidential and subject to privilege. From my and the Plaintiffs' perspective, external and internal legal counsel could not properly advise me, Catalyst, or Callidus, or develop an appropriate and effective litigation plan, without input from Tamara Global and the results of the services undertaken by any subcontractors they engaged.

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Tamara Global

15. I reached out to Yossi Tanuri. I had known Mr. Tanuri for many years, during which he and I had visited each other and had become friends. In particular, Mr. Tanuri had assisted me and my charitable foundation in numerous philanthropic activities, including the development of a PTSD specific hospital in Jerusalem in honour of my (by then) deceased father. The hospital always intended to assist all suffering from PTSD. I was also of the belief that Mr. Tanuri had apparently been a member of an elite commando unit in the Israeli Defence Forces known as "Matka". I was also made aware that

amongst Mr. Tanuri's business interests, he operated an investigation and security company. I believed Mr. Tanuri was the ideal person to assist in responding to our various concerns, in large part due to the trust between us developed over the years.

16. Consequently, Mr. Tanuri flew to Toronto on an urgent basis in late August of 2017. He did so, accompanied by Mr. Gadi Ben Efraim, whom Mr. Tanuri introduced to me as a soon to be former agent in one of the Israeli intelligence services.

17. The resulting retainer arrangements and communications, both with Tamara Global and with the subcontractors engaged by Tamara Global, are the subject of the privilege issues which are in dispute herein. Accordingly, I refrain from detailing the facts relating to these matters in this affidavit, except to state that as a result of my meetings with Mr. Tanuri and Mr. Ben Efraim in late August 2017, I was of the view that in particular the inclusion of media advice and assistance was an integral part of any litigation plan and any legal advice going forward. This is due to the fact that both social and traditional media were being improperly weaponized against us and being used to disseminate false stories.

18. It was apparent that the totally untrue social media and traditional media attacks were designed to harm me, Callidus and Catalyst. These attacks not only caused damage to Callidus but also were intended to improperly destroy the reputations of myself, my partners, Callidus and Catalyst. I decided that combatting these attacks required strategic litigation advice and planning, but especially an immediate need to be responsive to the negative and false media about Callidus and Catalyst in order to protect

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the best interests of our investors in as timely a manner as possible so as to mitigate the resulting damage.

19. It was my view that any litigation plan had to include and be coordinated with a positive media strategy to counteract and mitigate the immediate and short term effects of the numerous false social media attacks, as well as the WSJ False Fraud Article, and to inform and set the record straight with the public (including Catalyst's LPs) about the businesses of Catalyst and Callidus, about the falsity of the WSJ False Fraud Article, and about the attacks against Catalyst and Callidus by persons adverse to their interests. This was believed to be particularly important given the time litigation takes combined with the immediacy of the damage being inflicted, and attempted at that time.

20. I intended that all of the work, services and communications provided by Tamara Global and anyone retained by them would be conducted on a strictly confidential basis and would be subject to privilege in light of the intended purpose of such work, services and communications. This was and remains my belief: neither I nor anyone with authority at Catalyst or Callidus ever authorized Tamara Global or anyone retained by them to depart from these principles or to waive any privilege. Nor were Tamara Global or any other sub-contractors ever engaged to—or with the expectation that they would—violate the law. Indeed, it was known and I understood that their engagements to support litigation could be undermined by intentionally improper conduct.

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Black Cube

21. At Mr. Tanuri's insistence, I attended a meeting in London, England on September 6, 2017 to meet with what was prior to such described to me as a team of investigators Tamara Global had chosen to provide litigation support. I came to learn at that meeting that these persons were employees of Black Cube.

22. Under the Tamara Global retainer, I believed then and now that Tamara Global hired sub-contractors (like Black Cube) to gather evidence both in relation to pending litigation Catalyst had against West Face and also in litigation I anticipated would be commenced against those responsible for some or all of the attacks referred to above.

23. As indicated in the Greenspan Affidavit, Black Cube was required to undertake its investigative work in its best professional judgment and in compliance with local laws. I now am told and understand that Black Cube's activities in Canada were carried out under the supervision of licensed Ontario private investigators.

24. On or about September 18, 2017, I was contacted again by Mr. Tanuri. Mr. Tanuri said that it was important that I immediately travel to London, England, on or about September 19, 2017, to be briefed on the work undertaken by up to that point. Prior to that meeting, I did not know what the investigators had done, either in connection with Mr. Frank Newbould or any of the other investigative activities which later came to light. I was very reluctant to drop everything and go to London as this was essentially on the eve of an important Jewish holiday. Mr. Tanuri urged me to attend and stated that it was important

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for me to hear what steps had been undertaken and what evidence had been obtained by the investigators.

25. Upon arrival in London, I met with Mr. Ben Ephraim and representatives of the investigators. I was presented with the results of a recorded “meeting” between a Black Cube operative and Mr. Newbould, who had, as the former Chief Justice of the Ontario Commercial List, presided over the trial of the Moyse Action (and dismissed Catalyst’s claim). A Black Cube operative had apparently posed as an individual requiring the services of an arbitrator and approached Mr. Newbould, who had by then retired early from the bench.

26. I did not know before the fact that Black Cube had phoned or met with Mr. Newbould or record any meetings with him. As reported and actually heard by me, what Newbould said during the meeting was very troubling, particularly given his prior role as a judge, and his then new quasi-judicial role as an arbitrator.

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27. Immediately after the above attendance in London, Catalyst obtained copies of draft extracts from the Newbould tapes (but not the full transcripts). I was shocked by what I read and believed that the statements they revealed were relevant and important for two reasons, but I was concerned about how they were obtained.

28. First, regardless of how the evidence had been obtained, I believed that the extracts provided potential support for an enlargement of the existing grounds of appeal in the pending Moyse appeal and that the Court should be aware of these materials for the purpose of that appeal (material “new evidence”).

29. Second, I believed that there was a substantial public interest in a broader publication of the comments made by Mr. Newbould which in my view were (and are) relevant to the administration of justice. I believe that this public interest is more important today having regard to appropriate recent societal developments demanding more transparency and accountability with respect to the administration of Justice, the allegations of systemic racism and the need for confidence in our judiciary. In holding these views or actions taken by Tamara, I never intended that there would be any waiver of any privilege associated with Tamara Global, Black Cube, or any other persons or parties.

30. I have read the affidavit of Mr. Elwood. I do not recall Mr. Elwood but I recall attending a meeting at the request of Mr. Tanuri in New York. I do not recall being told that the people were from Psy, but I understood they were assisting with executing the retainer of Tamara Global as was Black Cube.

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31. To the best of my recollection, I do not recall having heard of PSY prior to such time and certainly do not believe was ever involved in their being retained, other than being told by Mr. Tanuri and Mr. Ben Ephraim that due to the litigation time constraints more than one firm may be needed. I was never provided a retainer involving Psy. Assuming there is a retainer, I do not see how it could have been effected but through Tamara Global.

32. I understood and believed that, in addition to personal security services, Tamara Global was providing and/or arranging for a wide array of services with respect to litigation and related media relations. I do not recall a great deal of detail about that meeting in New

York, but I do recall matters relating to litigation support, investigative work, and media relations were the primary subjects discussed.

33. Given the privilege asserted by Catalyst and Callidus with respect to the work and services performed by Psy, I will not provide further comment in this affidavit about the meeting deposed to by Mr. Elwood, except to say that:

- (a) I do not agree with the details he recalls about the meeting;
- (b) I understood the meeting to be private and confidential, for the purposes described herein;
- (c) I never waived or authorized any waiver of privilege by Psy or Mr. Elwood or anyone else, and,
- (d) I understood the meeting in New York to be part of, and integral, to the overall litigation strategy to investigate these attacks and address the harm that was caused to Catalyst and Callidus. The most critical part of that litigation strategy was to in a timely manner address the intentionally false public accusations made against Catalyst and Callidus.

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34. I now understand that West Face obtained copies of confidential information that is subject to solicitor-client and litigation privilege from Phil Elwood, (the “**Elwood Documents**”), who I now believe was working with or for Psy. I did not authorise any waiver of privilege in respect of the Elwood Documents. No one else at Catalyst or

Callidus had such authority and certainly not without my prior approval. None such was ever sought or given.

35. In late September 2019, counsel for West Face and Boland (“**Davies**”) obtained copies of the Elwood Documents and with them, amongst other things, a privileged memo written by Naomi Lutes of GHW regarding her work on behalf of Catalyst and Callidus. I am told and believe Davies did not advise my current lawyers they were in possession of these documents or seek to return them. Davies listed “a document from a third party” that they “intend to submit... to the Court for a determination of privilege”, but did not disclose any further details about the document or that it was the privilege of the Catalyst Parties in issue.

36. I am told that instead, and in spite of their recognition that at least one of the documents was *prima facie* privileged, Davies without our or our counsel’s knowledge or consent gave several documents to a retired Judge, Stephen Goudge, to seek an opinion from Mr. Goudge as to the privilege.

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37. I am further told that Davies also used other information obtained from the Elwood Documents that contains privileged information and may have improperly filed copies of some of the Elwood Documents on a motion in this proceeding.

38. Until delivery of the Elwood affidavit dated May 29, 2020, I did not know the extent or proposed use of any documentation apparently provided to Elwood and/or Psy. Until this was purported to be made clear in unilateral and then unknown correspondence sent by Davies in June 2020, I also certainly did not know that West Face’s counsel had

obtained a privileged memo or that the memo and other documents had been provided to Mr. Goudge without my or any of the Plaintiffs' consent. I still do not know when or how the exchange of documents and/or information occurred between Elwood and West Face.

39. I am advised by Ms. Lutes and I believe her when she states that she provided the memo which I now understand to be the document listed in Schedule C of West Face's affidavit of documents to Mr. Tanuri on the basis that this memo was privileged and confidential. The memo was clearly marked with the GHW letterhead. I further understand and believe that at no time did she agree to a waiver of that privilege, and that Ms. Lutes never gave that material to anyone other than Mr. Tanuri and Catalyst/Callidus. It remains unclear how in fact Davies or others came into possession of this and/or other documents and the propriety of said means of possession.

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40. I believe the production and potential privilege of other documents relating to Psy has been the subject of a motion for Letters of Request which was heard by Justice Hainey on November 20, 2019. Attached hereto as **Exhibit J** is the resulting order and Letters of Request, which contain provisions for an independent review of any Psy documents resulting from this order, to ensure that no privileged documents are produced. I am informed by counsel and verily believe that this vetting process has not occurred because the issuance of a subpoena for the documents from Psy is still before the Courts in Israel.

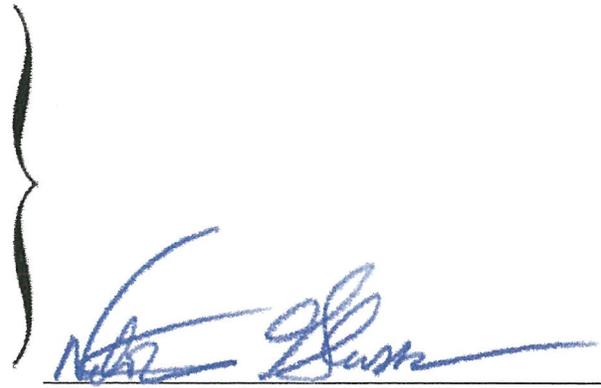
41. I am informed by counsel for Catalyst and Callidus and I believe that the normal practice on motions of this type is to provide the Court with copies of documents regarding

the privileged claims in issue, so that such documents can be reviewed as the Court deems appropriate. Catalyst and Callidus have instructed counsel to prepare a brief of such documents for review by this Court and will cooperate with any requests by the Court for access to additional documents as may be deemed necessary.

AFFIRMED REMOTELY by Newton Glassman, at the City of Nassau, in the Commonwealth of The Bahamas, **BEFORE ME** at the City of Toronto, in the Province of Ontario on November 24, 2020, in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits



Newton Glassman

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TAB 6

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

**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 AND JOHN DOES #1-10**

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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 PSY GROUP INC.**

Defendants

AFFIDAVIT OF BRIAN H. GREENSPAN

[2]

I, **Brian H. Greenspan**, of the City of Toronto, in the Province of Ontario, do solemnly affirm as follows:

1. I am a partner at Greenspan Humphrey Weinstein ("**GHW**"), one of the law firms who has acted for the defendants by counterclaim, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), Newton Glassman ("**Glassman**"), James Riley ("**Riley**") and Gabriel de Alba ("**de Alba**") (hereinafter, the "**Catalyst Defendants**"), and as such have knowledge of the matters referred to hereinafter.

2. I swear this affidavit in response to the motion by the plaintiffs by counterclaim, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") for the production of documents that are subject to solicitor-client privilege and litigation privilege. In swearing and delivering this affidavit neither I nor the Catalyst Defendants intend to, nor do we, waive any solicitor-client or litigation privilege.

B.C. Strategy Retainer – Litigation Support

3. From time to time GHW has acted as counsel to the Catalyst Defendants in respect of various matters. In 2017 and 2018, GHW provided the Catalyst Defendants with advice in respect of ongoing litigation matters including:

- (a) *The Catalyst Capital Group Inc. v. Moyses and West Face Capital Inc.*, Court File No. CV-16-11272-00CL commenced on June 25, 2014 (the "**Moyses Action**");
- (b) *The Catalyst Capital Group Inc. et al. v. Veritas Investment Research Corporation et al.*, Court File No. CV-15-530726 commenced on June 18, 2015 (the "**Veritas Action**");
- (c) *The Catalyst Capital Group Inc. v. VimpelCom Ltd. et al.*, Court File No. CV-16-553800 commenced on May 31, 2016 (the "**VimpelCom Action**"); and

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[3]

(d) *The Catalyst Capital Group Inc. v. West Face Capital Inc. et al*, Court File No. CV-17-17586096 commenced on November 7, 2017 (the "Conspiracy Action").

4. A description of each of these litigation matters are set out in paragraphs 35 to 80 of the Catalyst Defendants' Reply and Defence to Counterclaim.

5. On or about August 31, 2017, on behalf of the Catalyst Defendants, GHW retained Tamara Global Holdings Ltd. ("Tamara Global"). This engagement related to a qualitative property, personnel and equipment assessment of the current needs and future requirements of the Catalyst Defendants.

6. The above referenced retainer arrangements permitted the scope of Tamara Global's retainer to be expanded and authorized Tamara Global to retain subcontractors and additional consultants.

7. Shortly after August 31, 2017, pursuant to the above retainer arrangements, Catalyst sought Tamara Global's assistance with respect to ongoing and potential litigation referred to in paragraph 3 herein. Consequently, Tamara Global retained B.C. Strategy UK Ltd. ("B.C. Strategy") as a subcontractor to conduct investigations relating to ongoing and potential litigation of the Catalyst Defendants, including litigation between the Catalyst Defendants and West Face. Pursuant to the resulting retainer arrangements between Tamara Global and B.C. Strategy, B.C. Strategy was to undertake any such investigative work in accordance with its best professional judgment and in compliance with all local laws.

8. The purpose of the retainer arrangements and the work undertaken by B.C. Strategy on behalf of the Catalyst Defendants were in support of litigation including the litigation matters referred to in paragraph 3 herein, and/or were used by the Catalyst Defendants to obtain legal advice.

9. In order to make the statements contained in this affidavit, I have done the following things and taken the following information into account:

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[4]

- (a) I have considered my involvement in the original engagement of Tamara Global by GHW and I have reread and reviewed the terms of the retainer arrangements between GHW and Tamara Global;
- (b) I have read and reviewed the terms and purpose of the retainer arrangements between Tamara Global and B.C. Strategy, entered into shortly after August 31, 2017, as contained in the GHW file;
- (c) I have read and considered additional information relating to the retainer arrangements between Tamara Global and B.C. Strategy, obtained by me as a result of recent inquiries made by counsel for Catalyst of B.C. Strategy's counsel, John Adair;
- (d) I have considered portions of the investigative results derived from the services provided by B.C. Strategy, previously read by me;
- (e) I have considered additional information provided to me by the co-counsel in this litigation (that is, by counsel at Gowlings and Moore Barristers), which I verily believe to be true, regarding certain additional investigative results derived from the services provided by B.C. Strategy, which I had not previously reviewed myself, and,
- (f) I have considered my own recollection, and the relevant portions of the GHW file, regarding the events and issues raised on this motion.

10. In this affidavit, I have intentionally omitted any reference to any specific documents that formed part of my review, referred to above. I have done so to avoid the possibility that by identifying any such documents, it might be argued that there had been a waiver of any privilege attaching to such documents. As noted above, neither I nor Catalyst have any such intention.

11. However, Catalyst intends to propose a procedure which would enable the Court to review, if considered necessary, privileged documents and/or communications for the

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[5]

purposes of this motion, in a manner which would ensure any applicable privilege is preserved.

The Adjournment of the Moyse Appeal

12. The affidavit of Phillip Panet, filed in support of the privilege motion to which this affidavit responds, makes extensive reference to the adjournment of the Moyse appeal. The context is that in their counterclaim, West Face and Boland have made serious allegations regarding the propriety of the adjournment request of the Moyse Appeal, including that the adjournment was “engineered”. These allegations are false.

13. The Moyse Appeal was scheduled to be heard on September 26, 2017. On or about Thursday, September 21, 2017, I first learned that investigative steps had been taken to conduct interviews of former Justice Newbould and that such interviews had taken place. Because of other litigation commitments as well as scheduling difficulties that arose because of the Rosh Hashanah high holidays, neither David C. Moore (who advised me and verily believe had also just learned of these steps and interviews) nor I were able meet with Catalyst to discuss the issues until late in the afternoon on Thursday, September 21, 2017.

14. Over the next several days privileged communications took place and advice was given regarding the appropriate course of action—not only the making of a fresh evidence application, which Catalyst had just retained me and Mr. Moore to consider—but also in relation to the continued conduct of the appeal by the Lax O’Sullivan Lisus and Gottlieb firm and irreconcilable issues which arose with the firm, which are evident from some of the privileged material whose production is in issue on this motion, i.e. the interviews of former Justice Newbould.

15. During this period, the irreconcilable differences with Lax O’Sullivan Lisus and Gottlieb could not be resolved and as a result Lax O’Sullivan Lisus and Gottlieb indicated that it intended to seek an order that the firm be removed as counsel of record for the Moyse Appeal. This meant that new counsel would have to be briefed for the Moyse Appeal.

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[6]

16. I had no prior knowledge of, nor any involvement whatsoever, with the interviews of Justice Newbould which had occurred, or with the conduct of or preparation for the argument of the Moyse appeal. I am advised by Mr. Moore and verily believe that he also had no such knowledge or involvement. The interviews of Justice Newbould raised complicated and difficult issues in respect of which we, as counsel, were not in a position to properly advise Catalyst without further consideration, and it became clear that this would not be possible in the time remaining before the scheduled hearing of the Moyse appeal.

17. In light of the above, on Monday, September 25, I wrote to Mr. Justice Rouleau, the President of the Moyse Appeal Panel, to request an urgent attendance for that afternoon.

18. As a result, counsel for the parties attended in Court that afternoon. I requested an adjournment of the Moyse Appeal to permit Catalyst to retain new counsel and to enable proper consideration of a possible motion for fresh evidence on the Moyse Appeal. The submissions I made to the Court were made in good faith and based upon proper grounds.

19. Mr. Justice Rouleau granted the adjournment request. Given the position of Lax O'Sullivan Lisus and Gottlieb, Justice Rouleau held it would be unfair to force Catalyst to proceed with the Moyse Appeal without counsel. He also set new dates for the appeal for February 20-22, 2018, which included an additional day for the hearing of the appeal, to allow for the possibility of a motion regarding fresh evidence, if Catalyst decided to seek to adduce such evidence.

20. After carefully assessing all of the relevant considerations and considering the application of the Palmer tests for the introduction of fresh evidence in the circumstances of this case, I and Mr. Moore recommended to Catalyst that no fresh evidence application should be brought. Catalyst accepted this advice and instructed counsel to inform the Court of Appeal that a motion for fresh evidence would not be brought.

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[7]

21. I was shocked to read the allegations in West Face's and Boland's Statement of Defence and Counterclaim that the adjournment of the Moyse Appeal was "engineered" and the insinuation that the adjournment request was tactically and unethically manufactured.

22. In this regard, West Face's counsel had previously alleged in letters delivered late on Friday, November 24, 2017 that there could not have been any good faith basis for my request for an adjournment of the appeal nor for any potential motion to seek to adduce fresh evidence. In substance these letters aggressively alleged that I and the other counsel who had attended in Court on behalf of Catalyst on September 25, 2017 (Mr. Moore and two counsel from Lax O'Sullivan Lisus and Gottlieb) had acted improperly.

23. The above letters were (i) written and delivered without any request for comment or discussion of the allegations they contained, (ii) included in a motion record filed on the public record and available to the Press before I and Mr. Moore had had a fair opportunity to respond (despite opposing counsel knowing that such a response was imminent), and (iii) posted publicly on a website maintained by West Face.

24. In response to the above allegations, I and Mr. Moore wrote a joint letter to West Face's counsel on November 29, 2017. In it, among other things, we took strong exception to the irresponsible suggestions that we had failed to act properly and ethically when the appeal was adjourned.

25. The next day, Mr. Moore and I had a telephone conversation with Kent Thomson about the aforementioned allegations, steps, and correspondence. Mr. Thomson apologized profusely. He stated that while he had been copied with the November 24 letters sent to myself and Mr. Moore, he had not realized that they contained the allegations referred to above, and that if he had been aware, the allegations would never have been made. Mr. Thomson also made it clear that as far as he was concerned there was no basis for the allegations made against us. As a result of this telephone conversation it was agreed that the November 29th letter would be provided to the Court of Appeal as well as a complete retraction of the allegations that I, Mr.

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[8]

Moore or any of Catalyst's counsel had acted in bad faith or improperly in the appeal in any way.

26. Although various correspondence including the November 29th letter have been attached as exhibits to the Panet Affidavit filed on this motion, West Face has failed to attach their counsel's letters of November 24 (that gave rise to the November 29th letter) or the written retraction dated November 30. Attached as Exhibits "A" and "B" to my affidavit are copies of the communications containing West Face's counsel's correspondence of November 24 and the November 30, 2017 retraction.

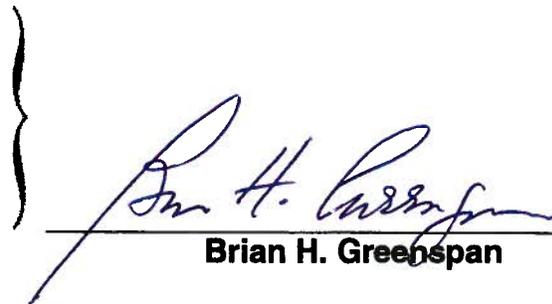
27. I affirm this affidavit in response to the relief sought on the privilege motion brought by West Face and Boland and for no other or improper purpose.

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AFFIRMED before me at the City of Toronto on November 10, 2018



Commissioner for Taking Affidavits
(or as may be)



Brian H. Greenspan

TAB 7

November 29, 2017

Matthew Milne-Smith
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON
M5V 3J7

Dear Mr. Milne-Smith:

Re: The Catalyst Capital Group Inc.

I am writing in response to your letter dated November 24, 2017. I am responding on behalf of Mr. Moore who has reviewed and concurs with the contents of this letter.

We note that your November 24, 2017 letters have been included in the motion record publicly filed and which apparently appears on your website at Tabs GG and HH. As well, Mr. Moore's initial response by e-mail on November 27th is included in the motion record at Tab II. Evidently, that motion record has been made available to the press and forms the genesis of the front page article in today's National Post. We would therefore expect that this correspondence also be provided to the court on the public record.

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You have irresponsibly alleged, based upon an incomplete and inaccurate account of tape recordings of two conversations which took place on September 18, 2017, that the application made to Justice Rouleau on September 25, 2017, was without a good faith basis for seeking the potential admission of fresh evidence or the adjournment of the appeal. We unequivocally reject the suggestion that counsel failed to properly and ethically consider the substance of the tapes and their potential evidentiary impact on the appeal in accordance with established principles of law. Neither Mr. Moore nor I had any pre-knowledge nor involvement in the events which led to the interviews 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 we have been assured by Catalyst that the same applies to them.

We agree that the unauthorized means by which the tape recordings were obtained was unacceptable. Nevertheless, our duty as counsel to our clients, once the recordings came into our possession, was to objectively and dispassionately assess the impact of the contents of the tape recordings, which we believe were improperly but not unlawfully obtained. Indeed, contrary to the mischaracterization contained in the National Post article referred to in your letters, we arrived at the initial conclusion, and remain of the view, that portions of the tape recordings are equally, if not more unacceptable and troubling than the manner in which the recordings were obtained. In our view, a proper assessment had to be conducted as to whether or not reliance could or should be placed upon this material, together with certain other historical facts, in relation to an application for the introduction of fresh evidence. Regardless of our ultimate determination of this issue, a virtually unique and unprecedented legal dilemma had been

presented in a situation not of our choosing or making. It required a careful assessment and legal research to arrive at an appropriate determination.

We are confident that any objective assessment of our actions will not only demonstrate the bona fide justification for the adjournment application but will also demonstrate appropriate professional judgment and restraint.

We will respond to your further correspondence under separate cover.

Yours truly,

A handwritten signature in black ink that reads "Brian H. Greenspan". The signature is written in a cursive, flowing style.

Brian H. Greenspan

BHG:st

cc.: Kent Thomson and Andrew Carlson *via email*

Rob Centa and Kris Borg-Olivier *via email*

David Moore *via email*

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TAB 8

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

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 INC.

Defendants by Counterclaim

FACTUM

(Motion to Strike)

The Catalyst Capital Group Inc., Callidus Capital Corporation, Newton Glassman, Gabriel De Alba and James Riley (the “Catalyst Defendants”)

PART I
INTRODUCTION AND CONCISE STATEMENT OF FACT

1. On May 22, 2018, West Face Capital Inc. and Gregory Boland amended the pleading which they initially filed on December 29, 2017. Their new pleading contains a 9 page Statement of Defence and a 90 page amended counterclaim (hereinafter referred to as the “ACC”).
2. The Catalyst Defendants seek an order striking out the ACC in its entirety.
3. This relief is sought because the ACC does not comply with the rules of pleading and contains numerous specific flaws and defects:
 - (1) the ACC contains three separate sections which purport to provide an “Overview” and “Background,” but which mainly contain repetitive argument and evidence;
 - (2) these sections, in and of themselves, take up approximately 30 pages of the ACC and do not constitute proper pleading;
 - (3) the balance of the ACC also contains numerous instances of argument, pleadings of evidence, and impermissible repetition;
 - (4) the above deficiencies are aggravated by the repeated use of inflammatory, colourful, and conclusory language which is inappropriate, starting with the first “Overview” section;
 - (5) the ACC does not plead the causes of action of defamation and conspiracy in a proper manner. Instead of being confined to a concise pleading of material facts, these causes of action are pleaded in a repetitive, argumentative and confusing manner which does not comply with the applicable principles;
 - (6) the allegations and references to Justice Newbould and the “Black Cube Campaign” should be struck as irrelevant and scandalous, or alternatively, as a proper exercise of the Court’s discretion under Rules 21.01(3)(d) and 25.11;

- (7) the claims against Newton Glassman, Gabriel De Alba and James Riley do not disclose a personal cause of action and should be struck out;
 - (8) the remainder of the claims advanced (breach of confidence, inducing breach of confidence, inducing breach of fiduciary duty, wrongful means) are not pleaded properly and do not disclose and/or constitute causes of action, and
 - (9) the claims and allegations that the Catalyst Defendants are vexatious litigants are improper and in any event should not be advanced in this action.
4. The Catalyst Defendants ask that the entire ACC be struck out because of the nature and extent of the above deficiencies, which require a completely new pleading.
 5. To assist the Court in its review of the ACC and its consideration of this motion, the Catalyst Defendants have prepared two Appendices.
 6. Appendix A hereto is an index identifying the sections contained in the ACC, and setting out the overall structure of the pleading.
 7. Appendix B is an annotated colour coded copy of the ACC. Appendix B identifies:
 - (1) in blue highlighting, extensive sections of the ACC which are expressly described therein as being “Overview” or “Background” sections;
 - (2) in yellow highlighting, the instances where Justice Newbould is referenced. These 104 references are numbered in the margin of Appendix B. 53 of these numbered references relate to allegations involving the “Black Cube Campaign,” and are underscoped in the margin of Appendix B. They include numerous allegations regarding causes or potential causes of action—if they exist—that would belong to Justice Newbould;
 - (3) in red highlighting, numerous instances (also numbered in red in the margin) where the ACC uses aggressive or inflammatory language;

- (4) in green highlighting, numerous instances where defamation is alleged or described, throughout the ACC, in various different ways and means;
 - (5) in purple highlighting, numerous instances where “conspiracies” are alleged or described, throughout the ACC, again in various different ways and means, and,
 - (6) in orange highlighting, those instances when the Defendants Newton Glassman (“Glassman”), Gabriel De Alba (“De Alba”) and James Riley (“Riley”) are personally referred to.
8. Part II of this Factum sets out the case law and arguments relied upon in support of the Catalyst Defendants’ Motion to Strike the ACC. Part II also contains many examples of pleadings in the ACC which contain impermissible repetition, recitals of evidence and argument, as well as the use of inflammatory and accusatory language impugning the Catalyst Defendants.

PART II
STATEMENT OF ISSUES, LAW & ARGUMENT

A. Issues To Be Determined

9. The Catalyst Defendants’ Motion to Strike raises the following issues:
- (1) Does the ACC conform to the basic rules and principles of pleading?
 - (2) Are the claims of defamation and conspiracy properly pleaded?
 - (3) Should the claims and allegations relating to Black Cube and to Justice Newbould be struck out?
 - (4) Are the claims alleging personal liability of Glassman, De Alba and Riley properly pleaded?
 - (5) Are certain additional claims sought to be advanced in the ACC properly pleaded and/or recognized causes of action?
 - (6) Should the vexatious litigant claim be permitted to stand?
 - (7) Should the ACC be struck out in its entirety?

B. General Principles Applicable to Pleadings

(i) The Court's Powers under Rules 21.01(1)(b), 21.01(3)(c) and (d), 25.06, and 25.11:

10. Rule 21.01(1)(b) of the Rules of Civil Procedure permits a judge to “strike out a pleading on the ground that it discloses no reasonable cause of action or defence”.¹
11. In addition, sub-rules 21.01(3)(c) and (d) permit a defendant to move before a judge to have an action (which includes a counterclaim, pursuant to Rule 1.03(1)) dismissed or stayed on the grounds that another proceeding is pending in Ontario between the same parties, or, more broadly, on the basis that the action is frivolous or vexatious or an abuse of process.²
12. Rule 25.06 provides the rules of pleadings that are applicable to all pleadings:

“25.06 Rules of Pleading — Applicable to All Pleadings

Material Facts

25.06(1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

Pleading Law

25.06(2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded.

...

Nature of Act or Condition of Mind

25.06(8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

¹ *Rules of Civil Procedure*, s. 21.01(1)(b).

² *Rules of Civil Procedure*, s. 1.03(1), 21.01(3)(c) and (d).

Claim for Relief

25.06(9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

(a) the amount claimed for each claimant in respect of each claim shall be stated; and

(b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial.”³

13. Finally, Rule 25.11 empowers the Court to strike out all or part of a pleading, with or without leave to amend, if the document:

“(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of process of the court.”⁴

(ii) The Applicable Case Law

14. Where a pleading fails to comply with the rules of pleading listed in Rule 25.06, the appropriate remedy is to strike out the pleading.⁵

15. In assessing the adequacy of pleadings under Rules 21.01, 25.06, and 25.11, the Court should consider the purposes of these rules, which were explained by Justice Cameron in *Balanyk v. University of Toronto*:⁶

“(a) define clearly and precisely the questions in controversy between the litigants;

(b) give fair notice of the precise case which is required to be met and the precise remedies sought; and

(c) assist the court in its investigations of the truth of the allegations made.”

³ *Rules of Civil Procedure*, s. 25.06(1)-(2), 25.06(8)-(9).

⁴ *Rules of Civil Procedure*, s. 25.11.

⁵ *Meridian Credit Union Limited v. Rymer*, 2018 ONSC 2893 at para 12.

⁶ *Balanyk v. University of Toronto*, [1999] O.J. No. 2162 at para 27.

16. The case law also establishes that Defendants are entitled to know with certainty the case they have to meet. The party making the claim bears the burden of ensuring their pleadings satisfy the rules governing the drafting of pleadings.⁷
17. The applicable principles have been discussed and explained in many cases, including *Cerqueira v. Ontario*, [2010] ONSC 3954 (Strathy J.); *Mudrick v. Mississauga Oakville Veterinary Emergency Professional Corp.*, [2008] O.J. No. 4512 (Master Haberman); *Somerleigh v. Lakehead Region Conservation Authority*, [2005] O.J. No. 3401 (Pierce J.); *B.A. v. Halton Childrens Aid Society*, 2016 ONSC 6195 (Master Pope); *Jacobson v. Skurka* (2015), 125 O.R. (3d) 279 (Perell J.); *Murray v. Star*, [2015] ONSC 4464 (McEwan J.); *George v. Harris*, [2000] O.J. No. 1762 (Epstein J.); *Sachedina v. De Rose*, 2017 ONSC 6560 (Bielby J.); *National Trust v. Furbacher*, [1994] O.J. No. 2385 (Farley J.), and *McCarthy Corp v. KPMG LLP*, 2006 CanLiiII 11919 (Spies J.) and [2007] O.J. No. 32 (Mesbar J.).
18. In summary, the above cases emphasize the following principles:
- (a) the Rules require that pleadings be concise, meaning that a pleading should be brief, to the point and clear (see *Cerqueira v. Ontario* at paragraphs 11(a) – (h); *Mudrick v. Mississauga* at paragraphs 20-21, 25 and 41; *Somerleigh v. Lakehead* at paragraphs 10, 12 -22, 23, 27, and 31; *B(A) v. Halton* at paragraph 56;
 - (b) the cases cited in subparagraph 1 make it clear that pleadings must be confined to material facts and must not include recitals of evidence or argument;
 - (c) where a pleading contains numerous references to evidence and argument, or is unduly *prolix*, it is preferable to strike out the pleading with leave to appeal (see *Sachedina* at paragraphs 16-26, 43, 46-49 and 62; *Jacobson v. Skurka* at paragraphs 43-47 and 67-70 and generally, *National Trust v. Furbacher* and *McCarthy Corp v. KPMG*);

⁷ *Prestige Toys Ltd v. Smith*, 2011 ONSC 8003 (Ont SCJ) at para 24.

- (d) the inclusion of lengthy “Background” or “Overview” sections in a pleading should be worded (see *Murray v. Star* at paragraphs 13-18, and,
- (e) pleadings should not use inflammatory, provocative, or unnecessarily conclusory language: see *Cerqueira v. Ontario* at paragraphs 11(d) – (e) and *George v. Harris* at paragraphs 20-21.

C. Application of the Above Principles to the ACC

- 19. It is respectfully submitted that the 90 page ACC offends many of the above principles.
- 20. Its contents are repetitive and in large measure constitute pleadings of arguments and evidence, not a concise statement of material facts.
- 21. For example, the ACC contains three lengthy sections which are stated to be “Overview” and “Background” and which add over 30 pages of narrative and colourable argument, evidence and repetition to the pleading.
- 22. In this regard, immediately following the prayer for relief, the ACC begins (at page 12) with a ten page section entitled “A. Overview.” It contains evidence and argument, not material facts.
- 23. In addition, this “Overview” sets the tone for the entire document. In it, the Catalyst Defendants are accused and described as persons who:
 - (1) participated in an “invidious, co-ordinated and systemic campaign” of defamation (ACC, at paragraph 26);
 - (2) acted with “contumelious disregard” for the rights and interests of West Face and Boland (ACC, at paragraph 27);
 - (3) engaged in a “deplorable attack” and in a “pernicious scheme” (ACC, at paragraph 32), and
 - (4) engaged in a campaign(s) of “vilification” and “harassment” (ACC, paragraph 35).

24. This approach to pleading continues in the next section of the ACC (“B. Parties”), where the Catalyst Defendants, in addition to being identified (the usual purpose of this part of a claim), are characterized as having “acted throughout in a spiteful, vindictive and abusive fashion” (ACC, at paragraph 37).
25. The intemperate and colourful tone to the pleading is continued throughout the balance of the ACC, where similar terms and allegations are repeated, not just once or twice, but over and over for good measure.⁸
26. West Face and Boland are entitled to allege that the Catalyst Defendants have made defamatory statements, harmed them, or otherwise engaged in actionable conduct. However, it is respectfully submitted that the use of the type of language referred to above—coupled with the inclusion of allegations in relation to Justice Newbould referred to below—leaves no doubt that one of the main purposes of the ACC is to create prejudice against the Catalyst Defendants by the repeated use of inflammatory, judgmental and conclusory allegations.
27. The next section of the ACC continues with seven pages of pleadings which contain arguments and evidence relating to the WIND transaction, under the heading titled “C. Background to the WIND Defamation: Catalyst’s Failure to Acquire WIND”.
28. Section C of the ACC begins with a statement that its purpose is “to understand why” the alleged WIND Defamation occurred. This is followed by 23 paragraphs which go on at great length about the ways and means by which Catalyst failed in its attempt to acquire WIND. It is beyond the scope of this Factum to review the contents of all of these 23

⁸ The red numbers in the margin of Appendix B identify such language, but do not pick up all of the instances where the same words and phrases are repeated.

paragraphs, but it is respectfully submitted that they constitute unnecessary and impermissible argument and evidence, and if permitted to stand will significantly enlarge the scope of this action.

29. At pages 31 – 39, the ACC then continues with yet another “Background” section entitled “D. Background to the Callidus Defamation.”
30. This section occupies another nine pages with over 20 lengthy paragraphs referring to issues, making arguments and setting out evidence. These paragraphs breach the basic rules of pleading. In addition, in large measure, these matters relate to another pending action in this Court: *The Catalyst Capital Group Inc. et al. v. Veritas Investment Research Corporation et al.* Court File No. CV-15-530726 (“Veritas Action”). In this regard, Section D of the ACC specifically references West Face’s Statement of Defence in that case: see ACC paragraph 71, footnote 3.
31. Apart from these three stand-alone “Overview” and “Background” sections, the remaining fifty pages of the ACC contain numerous additional paragraphs which are repetitive, argumentative and which in substance plead evidence, rather than concise material facts (see, for example paragraph 48, below).
32. It is respectfully submitted that the above defects are compounded by the failure of the ACC to plead the causes of action which are sought to be put in issue in a concise, coherent, and unambiguous manner.
33. In this regard, the two primary claims alleged in the ACC—defamation and conspiracy—are interwoven throughout the pleading in a manner which is repetitive, ambiguous and at times factually inconsistent and incomprehensible.

34. For example, paragraph 88 of the ACC alleges that the Catalyst Defendants decided in August 2017 to engage in a “two pronged campaign” to discredit West Face and Boland, consisting of the “Black Cube Campaign” and the “Defamation Campaign.”⁹

35. The alleged “Defamation Campaign” is the subject of 40 pages of the ACC (comprised of paragraphs 112-181), which is followed by another section entitled “Conspiracy”.

36. This latter section repeats the allegations in paragraph 88—referred to above—that the “Counterclaim Defendants” entered into an agreement in or about August 2017 to act in concert to “punish, embarrass, discredit, and harm” West Face and Boland by disseminating “false and defamatory statements” about them:

“183. 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, the First Investor Letter, the Internet Postings, the Misleading Transcripts and the March Investor Letter;” [Underlining added.]

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37. However, the ACC contains no pleading of material facts showing how the Counterclaim Defendants could have agreed in August 2017 to enter into a conspiracy to harm West Face and Boland by making defamatory statements a year or so earlier, which was stated to be part of the “Defamation Campaign.”¹⁰

⁹ According to the ACC, the Catalyst Defendants enlisted the assistance of the other Counterclaim Defendants in implementing both of these “campaigns” and the Defamation Campaign was “systemic, multifaceted and persistent.” The “Black Cube” and “Defamation” Campaigns are referred to throughout the ACC, including their own separate sections (F and G, respectively).

¹⁰ Namely, the alleged defamatory statements made on August 19, 2016 (i.e. the Post Judgment Comments” as defined and alleged in paragraph 112 of the ACC), on October 13, 2016 (i.e. the “October 2016 Press Release” as defined and alleged in paragraph 155 of the ACC), or between August to October 2016 through an unspecified

38. Despite the absence of any pleading of material facts to support the *prima facie* absurdity of these allegations, paragraph 184 of the ACC then repeats the contention that all of the Counterclaim Defendants were involved throughout:

“184. 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:

...

(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;” [Underlining added.]

Again, no material facts are pleaded to support this bald allegation.

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39. In addition, the “Overview” section referred to above identifies three principal means by which the defendants conspired to carry out the alleged “Defamation Campaign”—(1) the WIND Defamation,” (2) the “WolfPack Defamation,” and, (3) the “Performance Defamation.”¹¹
40. Although paragraph 26 (b) of this Overview section refers to the “Callidus ‘Short,’” nowhere does this “Overview” allege any defamatory statements by any of the Catalyst Defendants relating to Callidus.

“variety of conversations and discussions” allegedly entered into by Newton Glassman at that time (i.e., the “Glassman Defamation” as defined and alleged in paragraph 119 of the ACC).

¹¹ Later, the section contends that this was done at least five different ways (paragraph 34 of the ACC).

41. However, as noted above, the ACC contains (at page 31) a heading entitled “D. Background to the Callidus Defamation” which is followed by a lengthy section running from paragraphs 67-86.
42. These paragraphs do refer to Callidus issues, and begin with the assertion (in paragraph 67) that: “to understand why the various statements and allegations of the Counterclaim Defendants are false and defamatory, 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 what the Catalyst Defendants allege West Face has done” (emphasis added).
43. However, as noted above, the remaining 20 paragraphs of Section D of the ACC plead a detailed series of issues and events relevant to the Veritas Action, and in substance regurgitate evidence, arguments and defences which West Face has raised in that lawsuit. And, although paragraph 75 of the ACC refers to the commencement of the Veritas Action in June 2015, there is no allegation anywhere in Section D, or anywhere at all in the ACC, that the Catalyst Defendants have made or issued any defamatory statements about these matters, let alone any pleading of material facts in relation thereto.
44. In the result, the ACC does not identify the “various statements and allegations” making up the “Callidus Defamation,” or who allegedly participated in these unspecified statements and allegations, or when they occurred.
45. There are many other examples of repetition, ambiguities, inconsistencies and inaccuracies about alleged conspiracies and defamation spread throughout the ACC. These problems occur in part because references to these terms can be found over and over and over again,

from the beginning to the end of the 90 page ACC, instead of being set out in one place in a consistent or understandable pleading of concise material facts.

46. In addition, while some paragraphs of Section G of the ACC (“Defamation Campaign”) contain pleadings of material facts, many contain inappropriate pleadings.
47. In this regard, leaving aside issues as to whether of the alleged defamatory statements referred to in Section G have the meanings or effects attributed to them, there are numerous instances in Section G where the necessary material facts are simply not alleged, or where the paragraphs contain pleadings of argument, evidence or irrelevant allegations.
48. Examples of where this section contains (in some cases a mixture of) impermissible pleadings of argument, evidence, or irrelevant allegations can be found in paragraphs 111, 114, 119, 120, 121, 123, 126, 127, 128, 131(a), 135, 136, 143, 149-150, 156, 164, 167, 170, 172(a)-(e), 173(a)-(g), 174, 174(a)-(c), 178, 180 and 181.
49. Following Section G, the ACC continues with a short section entitled “H. Conspiracy.” Like its predecessor at pages 87-88 of the ACC (“F. Conspiracy”), the paragraphs in Section H plead conclusions, not the necessary material facts. The same can be said of many of the paragraphs and allegations contained in Section I of the ACC (“Unlawful Means Tort”).
50. In the result, it is respectfully submitted that the pleadings of defamation and conspiracy do not conform to the basic rules of pleading referred to in paragraphs 10-30 above. They also do not comply with the principles applicable to pleading the torts of defamation and conspiracy to defame, where proper pleadings are generally concluded to be of greater importance. A concise summary of these principles is contained in *Brown on Defamation*,

Chapter 19, Pleadings, at paragraphs 19.2 and 19.3(1): see especially, pages 19-2 to 19-3; 19-6 to 19-7; 19-10 to 19-13; 19-21; and 19-26 to 19-31 (as highlighted in the Book of Authorities).

D. The Black Cube Campaign—the allegations referring to Justice Newbould should be struck out

51. Section F of the ACC contains 25 paragraphs (85-110) which refer at length to the “Black Cube Campaign.” As is the case throughout the ACC, the allegations regarding the claims advanced in this section can be found throughout the ACC. Detailed allegations linked to this subject are located earlier (as in, for example, paragraphs 32, 33(a), 34(a), 34(c) and 41) and later in the pleading (see, for example, paragraphs 173(g), 175, 189(a), 189(d), 196 and 197 thereof).
52. In these portions of the ACC, West Face and Boland plead numerous claims, grievances, and causes or potential causes of action that could be advanced by Justice Newbould,¹² including, for example, that the purpose of the “campaign” was to “attack and discredit” Justice Newbould and/or to “fabricate” evidence and/or to publish or attempt to publish defamatory articles about Justice Newbould.
53. Elsewhere, the ACC alleges that actionable wrongs were committed against Justice Newbould as a target of the Black Cube Campaign, that the Counterclaim Defendants intended to publish false and defamatory statements about Justice Newbould, and that the Counterclaim Defendants provided distorted or otherwise falsified recordings and/or transcripts to various media outlets (without pleading any material facts as to what the falsifications or distortions were).

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¹² Of the 104 references to Justice Newbould in the ACC, 53 refer to these issues.

54. The simple fact is that the Catalyst Defendants determined, after obtaining independent legal advice, not to seek to adduce any evidence about steps taken by Black Cube in relation to Justice Newbould or any related issues—including any recordings or transcripts thereof—in the Ontario Court of Appeal, before Justice Hainey, in any other Court, or in any other proceedings.
55. It is respectfully submitted that the often repeated allegations about the Black Cube Campaign in relation to Justice Newbould have no relevance to any alleged defamation or conspiracy to defame or any other substantive or material issues raised by the ACC. Rather, it is submitted that the content of these references and their frequency in the ACC reflect an intention by West Face to inflame the Court against the Catalyst Defendants.
56. Moreover, the retention of these allegations in the ACC will inevitably result in a substantial portion of this case being devoted to a review and analysis of numerous aspects and issues of the Black Cube Campaign, including:
- (1) what was said and done in any meetings that occurred with Justice Newbould, including what former Justice Newbould himself said;
 - (2) any recordings or transcripts of the meetings;
 - (3) any instructions given, the reasons for, processes followed, and decisions taken in relation to the “Black Cube Campaign” as it related to Justice Newbould;
 - (4) the potential basis on which any evidence derived from the Black Cube Campaign in relation to Justice Newbould might have been adduced in any court proceedings;
 - (5) the accuracy of statements made about and the impact upon any third parties referred to in any meetings involving Justice Newbould;
 - (6) the circumstances relating to the trial and decision making processes in the Moyse case, and,

(7) a host of related issues.

57. In order to deal with such issues at trial, the Court would have to hear testimony from anyone and everyone involved in any meetings or interactions between Black Cube and Justice Newbould, Justice Newbould himself, any persons at Catalyst alleged to be involved, representatives of Black Cube, other third parties, and (possibly) counsel. The need to adduce such evidence—at the instance of West Face and Boland as a result of the allegations they have made in the ACC—might expose former Justice Newbould or other persons to potential reputational harm. In addition, the continued inclusion and adjudication of the allegations made by West Face and Boland could make it necessary to inquire about the decision making processes of the trial judge in the Moyse case. This is a subject matter that is not normally open for review: see *Mackeigan v. Hickman*, [1989] 2 S.C.R. 796 (per Cory J.). Catalyst submits these things should not occur.
58. It is further submitted that proceeding in this manner would have a disproportionate impact on and would substantially delay and complicate the conduct and adjudication of this case. This too would be inappropriate.
59. Accepting (as this Court must do for the purpose of this motion) that steps were taken by Black Cube to investigate, record and deceive Justice Newbould, such steps should not have been taken. It is respectfully submitted that to prolong the issues in relation to these matters—as West Face and Boland are trying to do by including them in the ACC—is inappropriate, unnecessary and contrary to the interests of justice.
60. In the alternative, even if the references and allegations in the ACC relating to Justice Newbould and Black Cube have any connection to any of the issues in this case, it is

submitted that they are of such marginal relevance—compared to the consequences of their continued inclusion—that they should be struck out pursuant to Rules 21.01(3)(d) or 25.11.

E. The Personal Claims against Newton Glassman, Gabriel De Alba and James Riley should be struck out

61. The ACC seeks personal relief against Glassman, De Alba and Riley.
62. Personal relief against all three of these individuals is based upon the allegations found in paragraphs 37 and 38 of the ACC:

37. 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.

38. 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.

63. While the ACC contains many bald conclusions that “all of the Catalyst Defendants” are responsible for the conduct complained of, the ACC contains no pleading of material facts to support any conclusion that any of Glassman, De Alba or Riley acted other than in their capacities as corporate officers or directors of Callidus and Catalyst. Similarly, there are no material facts pleaded to suggest that they obtained any personal benefits, or that Callidus or Catalyst were a sham, or were used as a shield to avoid liability for fraud or other similar conduct. Moreover, in the case at bar as pleaded, the acts and alleged statements complained of relate solely to the business and affairs of Callidus and Catalyst,

and not to any independent actions of or personal matters involving Glassman, De Alba or Riley.

64. It is respectfully submitted that it is not enough to make a bald allegation of tortious conduct by a corporate officer or director, without pleading supporting material facts to bring the case within the established exceptions allowing such personal claims.¹³
65. In these circumstances, it is respectfully submitted that the claims against Glassman, De Alba and Riley should be struck out.

F. Additional Causes of Action

66. Section J of the ACC is entitled “Inducing Breach of Confidence and Fiduciary Duty”.
67. It is respectfully submitted that the paragraphs in this section should be struck out for the following reasons.
68. First, for West Face to properly claim a breach of confidence, it is required to plead three elements:
 - (1) that information conveyed to the Catalyst Defendants was confidential;
 - (2) that the information was conveyed in confidence, and
 - (3) that the confidential information was misused by Catalyst Defendants, to the detriment of the confider.¹⁴

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¹³ The principles as to when a personal claim lies against a corporate officer or director are reviewed in many cases, including, *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.); *Scotia McLeod Inc. v. Peoples Jewellers Ltd.* (1993), 26 O.R. (3d) 481 (C.A.); *PFH Investments Limited v. Fluid Music* (unreported decision of Justice Hoy, Ont. S.C.J., dated January 23, 2009); *Piedra v. Copper Mesa Mining Corp.*, [2011] O.J. No. 1041; *Density Group Ltd. v. HK Hotels LLC*, [2014] O.J. No. 3865. See also: Shannon O’Byrne, Yemi Philip and Katherine Fraser, “The Tortious Liability of Directors and Officers to Third Parties in Common Law Canada,” 2017 54-4 *Alberta Law Review* 871, 2017 CanLIIDocs 86, <<http://www.canlii.org/t/6rp>>.

¹⁴ *Lysko v. Braley*, [2006] O.J. No. 1137 (C.A.) at para 17.

69. In *Dynamex Canada Corp v. DeSousa*, Justice Pollak considered the sufficiency of amendments to enumerate further material facts pleaded in support of a claim of breach of confidence.¹⁵ Justice Pollak first reviewed the facts pleaded “showing the information is confidential,” which included specifics as to the nature of the information at issue, reasons for the confidential nature of the specific information, details as to the individuals who were trusted with the confidential information, and a description of the manner in which the employee claimed to have breached his employer’s confidence had learned the confidential information.¹⁶ The court determined these facts to be sufficient to satisfy the first element of the cause of action.¹⁷

70. Justice Pollak then considered whether sufficient facts had been pleaded to demonstrate that the information was conveyed in confidence. The pleading contained bald allegations that the defendants “knew or ought to have known that the Confidential Information was confidential,” and that

“[t]he Confidential Information was communicated to [the employee] in confidence for the limited purpose of enabling [him] to further [the claimant’s] interests and objectives. [He] received the Confidential Information knowing the limited purpose for which it was communicated to him and his obligation to keep the Confidential Information confidential.”¹⁸

71. Justice Pollak found that the above-quoted amended pleading failed to identify sufficient facts to show that the information was conveyed in confidence, and therefore struck the pleading.¹⁹

¹⁵ *Dynamex Canada Corp v. De Sousa* [2009] OJ No 3403 at para 14.

¹⁶ *Dynamex*, at para 14.

¹⁷ *Dynamex*, at para 14.

¹⁸ *Dynamex*, at para 15.

¹⁹ *Dynamex Canada Corp v. De Sousa*, [2009] OJ No 3403 at para 15.

72. Finally, Justice Pollak considered the amended pleading with respect to the element that the confidential information had been used to the detriment of the confider. She found that the amended pleading before her was also deficient on this point, as the claimant baldly asserted that the disclosure had occurred, and, by its disclosure to a competitor, must have been wrongly used.²⁰
73. West Face has baldly asserted a claim for a breach of confidence at paragraph 25(b) of the Counterclaim as part of a list of various causes of action. The only other allegations of supposed breaches of confidence in the Counterclaim are:
- (1) at paragraph 189(b), where it is asserted that “[o]peratives 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...”, and
 - (2) at paragraphs 191-193, the short, combined section where West Face has pleaded causes of action for “inducing breach of confidence and fiduciary duty.”
74. As in *Dynamex*, West Face’s claim for breach of confidence suffers from a complete absence of required material facts. There are no material facts pleaded in the Counterclaim to indicate: (i) what, if any, specific information was confidential; (ii) who, if anyone, received the information in confidence, or (iii) how the information was confidentially conveyed; and (iv) how the information was actually used to the detriment of West Face. Absent precise pleadings of these material facts, the cause of action for breach of confidence should be struck out.
75. West Face also claims that the Catalyst Defendants induced Alex Singh (“Singh”), the former General Counsel of West Face, to breach his duty of confidence to West Face. There is no jurisprudence recognizing this cause of action as proper in an Ontario court.

²⁰ *Dynamex*, at para 16.

To the extent that such a claim exists in law, West Face must plead the elements of the tort of “breach of confidence,” in addition to some additional standard of conduct relating to the alleged inducement.

76. Therefore, to the extent that this tort is recognized at law, West Face has failed to properly plead the cause of action of “inducing breach of confidence” because it has failed to plead the tort of “breach of confidence” properly.
77. In addition, West Face claims that the Catalyst Defendants induced Singh to breach his fiduciary duties to West Face. There is no Ontario²¹ jurisprudence recognizing another cause of action which has been alleged—“inducing a breach of fiduciary duty.” While some Canadian Courts have touched on the possibility of this cause of action existing, no court has conducted an analysis of its viability.²²
78. Even though this concept is novel, the onus remains on West Face to plead material facts to support its claim,²³ including the details of the breach.²⁴ No such facts have been pleaded. Without such facts, even if such a cause of action exists, the claim cannot survive and should be struck.
79. Finally, the ACC continuously refers to “unlawful means.” It does so in support of two separate torts: unlawful conspiracy and unlawful means. However, the test for each is not the same. For example, a mere breach of a statute does not form the basis of an unlawful means tort. Nonetheless, it is pled that Black Cube’s failure to register as a private

²¹ 2027707 Ont. Ltd. v. Richard Burnside & Associates et al., 2017 ONSC 4022 (Ont Master) at para 21.

²² 2027707 Ont. Ltd., at para 21.

²³ 2027707 Ont. Ltd., at para 22.

²⁴ 2027707 Ont. Ltd., at para 22.

investigator was part of the “unlawful means.” The pleading further fails to delineate which unlawful means applies to which tort.²⁵

G. Vexatious Litigant Allegations

80. The proper time and place for West Face to have sought a remedy in respect of its complaints and allegations about the “sting” of Justice Newbould, the adjournment of the Moyse Appeal, or the “fresh evidence” issues was in the Court of Appeal, either by way of some form of relief in relation to the appeal proper, or by seeking costs of the appeal on an elevated scale. West Face did neither. In fact, its request for partial indemnity costs was reduced by the Court of Appeal.²⁶
81. In any event, any proceeding to declare that the Catalyst Defendants are vexatious litigants is not properly part of this case. Catalyst lost the Moyse lawsuit. And the Vimplecom action has been stayed because, in substance, this Court has concluded that Justice Newbould made findings as to causation/damages that were binding and determinative of any cause of action Catalyst sought to assert in the Vimplecom proceeding. That does not support a finding that Catalyst (or any of the many other parties against whom such a determination is sought) is a vexatious litigant. In any event, such a proceeding, if it is to be pursued, should not be advanced as part of this action.
82. The paragraphs in the ACC alleging that the Catalyst Defendants are vexatious litigants should be struck out.

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²⁵ See *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, [2014] SCC 12; *Canada Cement LaFarge v. B.C. Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452.

²⁶ *The Catalyst Capital Group Inc. v. Moyse*, 2018 ONCA 447

**PART III
CONCLUSION AND ORDER SOUGHT**

83. It is respectfully submitted that the omissions and defects of the ACC are so frequent that it is inappropriate to simply strike out portions of the ACC. Rather, the entire ACC should be struck out.
84. Presumptively, the law is that West Face and Boland should be granted leave to deliver a fresh pleading. This permission should not extend to the allegations relating to Black Cube and Justice Newbould or to the vexatious litigant claims.
85. Catalyst seeks an order giving effect to these conclusions.

June 14, 2018

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Moore Barristers per DCJ

MOORE BARRISTERS

David C. Moore - LSUC # 16996

Kenneth G.G. Jones – LSUC # 29918I

Counsel for The Catalyst Defendants

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Meridian Credit Union Limited v. Rymer*, 2018 ONSC 2893 (SCJ)
2. *Balanyk v. University of Toronto*, [1999] O.J. No. 2162 (SCJ)
3. *Prestige Toys Ltd v. Smith*, 2011 ONSC 8003 (SCJ)
4. *Cerqueira v. Ontario*, 2010 ONSC 3954 (CanLII) (SCJ)
5. *Mudrick v. Mississauga Oakville Veterinary Emergency Professional Corp.* [2008] O.J. No. 4512 (Master)
6. *Somerleigh v. Lakehead Region Conservation Authority*, [2005] O.J. No. 3401 (SCJ)
7. *B (A) v. Halton Children's Aid Society*, 2016 ONSC 6195 (Ont Master)
8. *Sachedina v. De Rose*, 2017 ONSC 6560 (SCJ)
9. *National Trust Co. v. Furbacher*, [1994] O.J. No. 2385 (Gen. Div.)
10. *McCarthy Corp. v. KPMG LLP*, 2006 CanLII 11919 (SCJ)
11. *McCarthy Corp. v. KPMG LLP*, [2007] O.J. No. 32 (SCJ)
12. *Jacobson v. Skurka* (2015), 125 O.R. (3d) 279 (SCJ)
13. *Murray v. Star*, 2015 ONSC 4464 (SCJ)
14. *George v. Harris*, [2000] O.J. No. 1762 (SCJ)
15. *Mackeigan v. Hickman*, [1989] 2 S.C.R. 796
16. *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.)
17. *Scotia McLeod Inc. v. Peoples Jewellers Ltd.* (1993), 26 O.R. (3d) 481 (C.A.)
18. *PFH Investments Limited v. Fluid Music* (unreported decision of Justice Hoy, Ont. SCJ, dated January 23, 2009)
19. *Piedra v. Copper Mesa Mining Corp.*, [2011] O.J. No. 1041 (C.A.)
20. *Density Group Ltd. v. HK Hotels LLC*, [2014] O.J. No. 3865 (C.A.)

21. Shannon O'Byrne, Yemi Philip and Katherine Fraser, "The Tortious Liability of Directors and Officers to Third Parties in Common Law Canada," 2017 54-4 *Alberta Law Review* 871, 2017 CanLIIDocs 86, <http://www.canlii.org/t/6rp>
22. *Lysko v. Braley*, [2006] O.J. No. 1137 (C.A.)
23. *Dynamex Canada Corp v. De Sousa*, [2009] OJ No 3403 (SCJ)
24. *2027707 Ont Ltd v. Richard Burnside & Associates et al.*, 2017 ONSC 4022 (Ont Master)
25. *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, [2014] SCC 12
26. *Canada Cement LaFarge v. B.C. Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452
27. *The Catalyst Capital Group Inc. v. Moyse*, 2018 ONCA 447

SCHEDULE "B"

RELEVANT STATUTES

1. Rules of Civil Procedure, 1.03(1)

1.03 (1) In these rules, unless the context requires otherwise,

"action" means a proceeding that is not an application and includes a proceeding commenced by,

- (a) statement of claim,
- (b) notice of action,
- (c) counterclaim,
- (d) crossclaim, or
- (e) third or subsequent party claim; ("action")

2. Rules of Civil Procedure, 21.01(1)(b), 21.01(3)(c) and (d)

21.01 (1) A party may move before a judge,

...

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

...

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

...

Another Proceeding Pending

(c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (3).

3. Rules of Civil Procedure, 25.06

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. R.R.O. 1990, Reg. 194, r. 25.06 (1).

Pleading Law

(2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded. R.R.O. 1990, Reg. 194, r. 25.06 (2).

Condition Precedent

(3) Allegations of the performance or occurrence of all conditions precedent to the assertion of a claim or defence of a party are implied in the party's pleading and need not be set out, and an opposite party who intends to contest the performance or occurrence of a condition precedent shall specify in the opposite party's pleading the condition and its non-performance or non-occurrence. R.R.O. 1990, Reg. 194, r. 25.06 (3).

Inconsistent Pleading

(4) A party may make inconsistent allegations in a pleading where the pleading makes it clear that they are being pleaded in the alternative. R.R.O. 1990, Reg. 194, r. 25.06 (4).

(5) An allegation that is inconsistent with an allegation made in a party's previous pleading or that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment to the previous pleading. R.R.O. 1990, Reg. 194, r. 25.06 (5).

Notice

(6) Where notice to a person is alleged, it is sufficient to allege notice as a fact unless the form or a precise term of the notice is material. R.R.O. 1990, Reg. 194, r. 25.06 (6).

Documents or Conversations

(7) The effect of a document or the purport of a conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation need not be pleaded unless those words are themselves material. R.R.O. 1990, Reg. 194, r. 25.06 (7).

Nature of Act or Condition of Mind

(8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred. O. Reg. 61/96, s. 1.

Claim for Relief

(9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

(a) the amount claimed for each claimant in respect of each claim shall be stated; and

(b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial. R.R.O. 1990, Reg. 194, r. 25.06 (9).

4. Rules of Civil Procedure, 25.11

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

and

WEST FACE CAPITAL INC. et al.
Defendants

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

FACTUM

(Motion to Strike)

**The Catalyst Capital Group Inc., Callidus Capital Corporation,
Newton Glassman, Garbriel De Alba and James Riley**

MOORE BARRISTERS

393 University Avenue, Suite 1600
Toronto, ON M5G 1E3

Tel: 416-581-1818

Fax: 416-581-1279

David Moore (#16996U)

Ext. 222

david@moorebarristers.ca

Lawyers for the Moving Parties

TAB 9

APPENDIX “A”

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AMENDED THIS / MODIFIÉ CE May 22/18 PURSUANT TO / CONFORMÉMENT À
 RULE/LA RÈGLE 26.02 (c)
 THE ORDER OF / L'ORDONNANCE DU Justice Hainey
DATED / FAIT LE May 15/18
Maggie Sawka
REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

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

**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 and JOHN DOES #1-10

Defendants

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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 INC.

Defendants by Counterclaim

**AMENDED 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 DEC. 29th 2017 Issued by *Yvonne Stuber*
Local Registrar

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

330 UNIVERSITY AVENUE
7th FLOOR
TORONTO, ONTARIO
M5G 1R7

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

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3. This is the fourth action that Catalyst and/or Callidus have brought against West Face in the past four years. 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 more than two and a half 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.

1, 2

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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 Livesey; 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**”); 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.

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.

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 Moyle, a junior analyst, away from Catalyst in June 2014 after Moyle 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 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 October 2014, when Callidus's shares were trading between \$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.

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

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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 or 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 of the *Courts of Justice Act* (the “**Anti SLAPP Legislation**”), and Catalyst and Callidus should be declared vexatious litigants under section 140 of the *Courts of Justice Act*.

B. The Parties to the Claim

8. Catalyst is a Toronto-based private equity investment firm. Its three principals are **Glassman**, **De Alba**, and **Riley**. **De Alba** is a Managing Director and Partner of Catalyst. **Riley** is a Managing Director and Chief Operating Officer of Catalyst.

9. 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 CEO of Callidus. **Riley** is Callidus’s Secretary. Both are also Directors of Callidus.

10. 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

11. Contrary to the allegations in paragraphs 37 and 64 of the 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.

12. 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.

13. From time to time, West Face communicated with other parties that have also been sued by Catalyst or Callidus (including the Defendants Kevin Baumann, Jeffrey McFarlane, and Darryl Levitt) about: (a) the status of ongoing litigation; and (b) the businesses of Catalyst and Callidus. West Face did so in order to collect information that might be used in defending the claims that had been asserted against it by Catalyst or Callidus, and not for the purpose of any conspiracy or campaign of defamation as pleaded by Catalyst and Callidus.

14. 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. 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

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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.

15. West Face and Boland specifically deny the allegation in paragraph 65 of the 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.

16. Contrary to the allegations in paragraph 41 of the Claim, at no time did West Face or Boland offer to fund, or in fact fund, any of the Guarantors (as defined in the Claim) in their respective defences of claims brought against them by Callidus.

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

17. Contrary to the allegations in paragraphs 56 and 76 to 93 of the 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**. 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.

18. 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

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

19. 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 Claim. West Face and Boland specifically deny the allegations in paragraph 59 of the Claim concerning Anson. At no time did West Face or Boland have any communications with Anson about Callidus, Catalyst or Glassman.

20. West Face and Boland specifically deny the allegations in paragraph 60 of the Claim regarding the Defendants Clarityspring and Anderson (both as defined in the Claim). At no time did West Face or Boland encourage Clarityspring to participate in any “short attack” against or involving Callidus. 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 in respect of Callidus.

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

21. The management, conduct and performance of publicly traded companies such as Callidus, and of funds such as Catalyst that invest billions of dollars on behalf of participants in the capital markets, 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. The Article relates to the management and performance of Callidus and, indirectly, Catalyst.

22. 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”.

23. Catalyst’s and Callidus’s pattern of engaging in bad faith 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, Riley retaliated against Langstaff by demanding that Canaccord fire Mr. Langstaff. He 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 Riley’s demand and fired Mr. Langstaff in order to placate Catalyst, Callidus, and their principals.

24. 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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AMENDED FRESH AS AMENDED COUNTERCLAIM

25. 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., B.C. Strategy UK Ltd. (together with B.C. Strategy Ltd., “**Black Cube**”), and Invop Ltd., doing business as Psy Group Inc., ~~the operating name of Invop Ltd.~~ (“**Psy Group**”) (the Catalyst Defendants, Jamieson, Rosen, Black Cube, and Psy Group, 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.

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A. OVERVIEW

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

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- (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

what they paid to acquire it. Catalyst responded by suing West Face in the
Moyle 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 Moyle. After a full trial on the merits,
Justice **Newbould** of the Commercial List rejected completely all of **6**
Catalyst’s claims. Justice **Newbould** held that West Face did not receive **7**
from Moyle 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 **236**
Glassman, De Alba, and Riley, criticized Catalyst for baselessly attacking **8**
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 **9**
Moyle 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 Moyle. 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 **10**

² The Moyle 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.

dismissed by that Court in written reasons released on March 22, 2018;
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 its shares currently trade at under \$7 per share.

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27. 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 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

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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.

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28. 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.

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29. 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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30. Second, in the period from August 16 to 18, 2017, the parties to the VimpelCom Action argued before Justice Hailey 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 Actin 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. In short, as of August 2017, Catalyst's litigation strategy with respect to its claims concerning the WIND transaction was 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 August 2017, Catalyst faced the likelihood of both of these Actions being stayed or dismissed in the very near future.

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31. 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.

32. 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 Moysé Action. 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 the position of West Face in Catalyst’s appeal to the Court of Appeal in the Moysé 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. Justice **Newbould** was an innocent victim in their **pernicious scheme**.

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33. 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 Catalyst Defendants and other Counterclaim Defendants also conspired to use the fruits of the Black Cube Campaign for the express and predominant purpose of harming and embarrassing both West Face and Boland; and

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(b) **The Defamation Campaign:** The Catalyst Defendants, Jamieson, Rosen, Black Cube, and Psy Group 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 from Moyse;

(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 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, had engaged in misconduct, including the improper manipulation of investors and regulators.

34. The unlawful conspiracy of the Counterclaim Defendants was carried out in at least five ways:

- (a) By issuing or disseminating false and defamatory press releases and other statements about West Face and its principals, including Boland, to current and potential investors with West Face as well as others;
- (b) By 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 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;
- (d) By harassing and intimidating, or retaining third parties, including Black Cube, 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

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Face, in breach of their professional and contractual obligations; (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, and in attacks against West Face and its principals, including Boland, over the Internet; and (iii) providing edited or altered transcripts of surreptitiously recorded meetings between operatives of Black Cube and their targets to various journalists, 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. Meetings and discussions between operatives of 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; and

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- (e) By obtaining and utilizing information gathered or manufactured by Jamieson, Rosen, Black Cube, Psy Group and others retained or engaged by or on behalf of them or the Catalyst Defendants, 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

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Newbould) and by employing various other techniques to conceal who was actually responsible for the dissemination of these statements.

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35. 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

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36. 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.

37. **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

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of others, could properly have authorized, sanctioned, or tolerated. They are personally liable to West Face and Boland for their misconduct.

38. 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.

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

40. 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 conspired with the Catalyst 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.

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41. 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 retained by or on behalf of the Catalyst Defendants, directly or indirectly, 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**.

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42. 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 retained by the Catalyst Defendants, directly or indirectly, 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 involved in a failed attempt to induce Blatchford to publish false and **defamatory** articles about West Face, Boland, and Justice **Newbould**.

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43. 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 Invop Ltd., whose company number in Israel is 51-517203-9. 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 campaign of **defamation** against West Face and Boland.

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

44. 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.

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45. 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. As stated above, Catalyst's appeal from the trial judgment of Justice **Newbould** was dismissed by the Court of Appeal from the bench on February 21, 2018, with written reasons released on March 22, 2018 (which also dismissed Catalyst's motion for leave to appeal from Justice **Newbould's** award of costs).

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46. 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 Moyses, who was at that time working at Catalyst as a junior analyst. Moyses accepted West Face's offer of employment, and tendered his resignation to Catalyst.

47. In June 2014, Catalyst commenced the Moyses Action against Moyses and West Face, alleging that Moyses had breached the confidentiality and non-competition provisions in his employment contract with Catalyst. In its initial Statement of Claim, Catalyst did not specify what confidential information Moyses had allegedly communicated to West Face.

48. 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 Moyses 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 Moyses. Those allegations were demonstrably false.

49. The trial of the Moyses Action was heard by Justice Newbould over seven extended days of hearings in June 2016. Multiple witnesses testified that Moyses 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 Moyses 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.

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50. 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.

51. 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.

52. 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.

53. 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.

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54. 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.

55. 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 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".

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56. 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.

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57. 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.

58. 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 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.

59. 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.

60. 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

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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.

61. 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.

62. 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.

63. 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

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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.

64. 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 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.

65. 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.

66. 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

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confidential information of Catalyst concerning WIND that was allegedly conveyed to West Face by Moyse.

D. Background to the Callidus Defamation: Callidus Was Overvalued

67. 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 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.

68. 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.

69. 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

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IPO resulted in the ownership interest held by Catalyst's funds being reduced from 100% to approximately 66%.

70. 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.

71. 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

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72. 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.

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.

73. 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.

74. 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;

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- (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;
- (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.

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75. 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.

76. 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).

77. 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 three years, and had no involvement in any alleged “short attack” of August 9, 2017, which is complained of in the Claim of Catalyst and Callidus.

78. 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.

79. 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

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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.

80. 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 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.

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81. 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”.

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82. 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.

83. 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.

84. 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:

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- (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 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 has yet been concluded, however, because no arm's length third party has been willing to pay what Callidus had indicated is the target price of \$18 to \$22 per share for Callidus's shares after having conducted diligence into the company;
- (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.

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85. 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.

86. As of the date of this amended pleading, Callidus's shares are trading at a price of less than \$7 per share. Moreover, in its most recently released financial statements (for year-end and Q4 2017), Callidus disclosed a net loss of \$218.5 million for 2017. Far from expanding its portfolio of loans (as required to justify a premium to book value) over the twelve months from December 31, 2016 to December 31, 2017, Callidus's net loans receivable fell from over \$1 billion to under \$250 million. Much of this decline was caused by Callidus acquiring its borrowers and writing down loans, rather than by the repayment by borrowers of debts owing to Callidus.

E. The Conspiracy

87. 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

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- (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.

88. 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 Catalyst Defendants enlisted the assistance of the other Counterclaim Defendants in implementing both of these Campaigns. All of the Counterclaim Defendants were active participants in the **conspiracy** described herein.

F. The Black Cube Campaign

89. 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**.

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90. 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

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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 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.

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91. As set out above, Black Cube is an investigative firm comprised of former members of the Israeli Defence Force and the Mossad, Israel's national intelligence agency. The Catalyst Defendants retained Black Cube, directly or indirectly through Yosef Tanuri, also known as Yossi Tanuri (whose personal identification number in Israel is 28541431) ("**Tanuri**"). Tanuri is a former commander of an elite unit of the Israeli Defence Force and the owner and proprietor of Tamara Global Holdings 2016 Ltd. (its company number is 51-540445-7). Tanuri acted as an intermediary between the Catalyst Defendants and Jamieson, Rosen, Black Cube and Psy Group. Black Cube was used to elicit confidential and privileged information from West Face's current and former employees, business contacts, and their family members, and in an attempt to

elicit potentially damaging information or statements from Justice **Newbould**. The purpose of these activities was to use the information and materials that Black Cube was able to obtain: (i) in their campaign of **defamation** against West Face and Boland; (ii) in various ongoing lawsuits that had been or were about to be commenced against West Face and Boland by Catalyst and/or Callidus; (iii) against West Face in Catalyst's appeal to the Court of Appeal in the Moyses Action, as well as in the VimpelCom Action; and (iv) in an **effort to "plant"** damaging articles and media coverage concerning Justice **Newbould**. West Face and Boland in, among other publications, the *National Post*, the Associated Press and Bloomberg News. Those efforts were ongoing at least as recently as April 2018.

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92. 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 a public scandal. In particular, West Face learned through the mainstream and on-line media that:

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- (a) Hollywood producer Harvey Weinstein is alleged by numerous women to have engaged in outrageous predatory and criminal behaviour, including sexual harassment and assault;
- (b) Weinstein, through counsel, hired Black Cube to investigate both women and journalists who were about to disclose Weinstein's actions; and
- (c) Operatives of Black Cube acted under false pretences to insinuate their way into the lives and confidences of Weinstein's victims in order to extract information that could potentially be used against them. One of

Black Cube's investigators who played an active role in the Weinstein matter was identified publicly as "Stella Penn Pechanac". Media coverage and coverage over the Internet concerning the involvement of Black Cube in the Weinstein scandal included photographs and at least one video of Ms Penn Pechanac.

93. 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 Stella Penn Pechanac 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 Weinstein scandal led directly to the discovery by West Face and Boland of the Black Cube Campaign against them.

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94. 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.

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95. 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.

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96. 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 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

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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.

97. 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.

98. 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. 22

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99. 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.

100. 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 23

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.

101. 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. 52 24
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102. 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. 269
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103. Even though operatives of Black Cube failed in their efforts to entrap Justice Newbould into making anti-Semitic comments, they and the Counterclaim 58

Defendants, including specifically Glassman, Riley, Jamieson, and Rosen, 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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104. 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, 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.

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105. Three days after operatives of Black Cube met with Justice Newbould, Jamieson met with Blatchford using lies and deception, on Thursday, September 21,

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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.

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106. All of Jamieson's actions described above were orchestrated and directed by the Catalyst Defendants, 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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107. 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.

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108. On the afternoon of September 25, 2017, new counsel for Catalyst 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. New counsel for Catalyst 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.

109. 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 Moyse 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 Moyse Action was sought and obtained on September 25.

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110. In the period following September 25, 2017, the Counterclaim Defendants (and others working with and for them 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 **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.

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G. The **Defamation Campaign**

111. 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**

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112. 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**"): 71

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

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.

113. All of the Catalyst Defendants 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**.

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114. The Post-Judgment Comments were false. No "additional evidence" supporting any of Catalyst's claims and allegations in the new litigation had "come out" in the period 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 substantiate the truth of the WIND **Defamation**, and of the entirely false allegations that Catalyst had made against West Face in the Moyse Action.

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115. 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.

116. All of the Catalyst Defendants 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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117. 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.

118. 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.

119. In addition, in or about the same period from August to October 2016, Glassman 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 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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120. Among other things, in disseminating the Glassman Defamation, Glassman 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.

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121. 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

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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**

122. 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.

123. 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 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.

124. 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

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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.

125. 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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126. 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 Moyse 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.

127. 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 \$7 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.

128. 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 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.

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

129. 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 Counterclaim Defendants.

130. 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 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.

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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.

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.

131. 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

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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 Moysé 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

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(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.

132. 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;
 - (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.

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133. 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.

134. 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.

135. 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 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.

136. 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.

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137. 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.

138. 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...

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.

139. 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

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

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140. 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; and
- (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.

141. 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, 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.

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142. 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.

143. 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, and further shrouding them in controversy and scandal.

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144. 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.

145. 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:

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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.

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

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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 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.

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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.

146. 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.

147. 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.

148. 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

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the express purpose of injuring Boland and West Face as well as the officers, employees and directors of West Face.

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

150. 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.

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151. 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.

152. 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 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).

153. 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.

154. 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;
- (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

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- (g) West Face and its principals, including Boland, take extraordinary and unnecessary risks at the expense of West Face's investors.

155. 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.

156. 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.

157. 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.

158. 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.

159. 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 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

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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.

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

- (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.

161. 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**

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described herein, for the express purpose of injuring Boland and West Face as well as its officers, employees and directors.

162. 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.

163. 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.

164. 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.

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165. 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.

166. 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

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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

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,

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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 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.

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167. 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.

168. 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;
- (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

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risks, are incompetent, have engaged in misconduct and the improper manipulation of investors, and have failed repeatedly to comply with applicable laws and regulations.

169. 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 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.

170. 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.

171. 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.

172. 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:

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- (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, 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.

173. 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, Rosen or one or more of the other Counterclaim Defendants (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, Rosen or one or more of the other Counterclaim Defendants (falsely using the username “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

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over the Internet, including video and voice calling, screen-sharing, and instant messaging);

- (c) On September 18, 2017, Rosen or one or more of the other Counterclaim Defendants (falsely using the username “Alex Walker”) stated that he had sent Razvi’s Skype contact information to a colleague of his, who Rosen indicated would contact Razvi soon. Rosen referred to this person as his “boss”, and stated that her name was “Samantha Beth”. Samantha Beth was in fact one of the Counterclaim Defendants, or acted on their behalf;
- (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

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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 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

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(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 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”. 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.

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174. 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**

175. 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, 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 Newbould (the “Misleading Transcripts”). The Counterclaim Defendants 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.

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176. 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

177. 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.

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178. The Counterclaim 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 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

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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.”

179. 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.

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180. 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. The quotation from a former West Face employee in the March Investor Letter was

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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.

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181. 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

182. 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.

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

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- (b) carry out the Black Cube Campaign.

184. 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, Jamieson, Black Cube, and Psy Group 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 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) Rosen, Jamieson, Black Cube, and Psy Group retained persons known to the Counterclaim Defendants but unknown to West Face and Boland to write and disseminate the Internet Postings; and
- (g) Glassman, Riley, De Alba, Rosen, Jamieson, Black Cube, and Psy Group provided the Misleading Transcripts to journalists and to others, as described above.

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185. 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.

186. 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.

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I. Unlawful Means Tort

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187. 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.

188. 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.

189. 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) 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;
- (b) 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;

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- (c) 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 Moyses. 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) 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 in the Moyses 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 Moyses Action. In doing so, the Counterclaim

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Defendants hoped and intended to further shroud West Face and Boland in controversy and scandal.

190. 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

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

192. The Counterclaim Defendants 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 with Black Cube to 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.

193. 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.

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K. Damages

194. 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 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;

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- (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.

195. 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, 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.

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196. 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,

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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.

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L. The Catalyst Defendants Are Vexatious Litigants

197. 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 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.

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198. Remarkably, Catalyst has already stated publicly that it is 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

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engage in vexatious and abusive litigation unless and until they are restrained from doing so by this Honourable Court.

M. Service Outside Ontario

199. 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*.

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

May 2, 2018

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

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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**

**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

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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

TAB 10

**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, 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

**BRIEF OF PRIVILEGED MATERIALS SUBMITTED BY THE CATALYST
DEFENDANTS BY COUNTERCLAIM
VOLUME 1 of 2**

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December 3, 2020

MOORE BARRISTERS

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

David C. Moore (LSO#16996U)

david@moorebarristers.com

Tel: 416.581.1818 x.222

Fax: 416.581.1279

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
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 (LSO#29106K)

john.callaghan@gowlingwlg.com

Benjamin Na (LSO#409580)

benjamin.na@gowlingwlg.com

Richard G. Dearden (LSO#19087H)

richard.dearden@gowlingwlg.com

Matthew Karabus (LSO#61892D)

matthew.karabus@gowlingwlg.com

Lawyers for the Catalyst Defendants by
Counterclaim

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| | | |
|-----------------------|-------|---|
| 1:43:29 | Frank | Yes I've had lots of um Chinese witnesses |
| 1:43:37 | Agent | yea |
| 1:43:37 | Frank | Chinese witnesses, I would never say this publicly, uh they basically lie ... All the time. That's been my experience |
| 1:43:49 | Agent | Excuse me, they are rude! |
| 1:43:51 | Frank | Pardon? |
| 1:43:51 | Agent | <i>They are rude</i> , Chinese are rude. (pink not in at this time) |
| 1:43:53 | Frank | Rude |
| 1:43:54 | Agent | Yes |
| 51:43:5 | Frank | Yes. Probably they-, it's what they used to say about Italians when I was a little boy. Apparently, I find the newer generations here don't appreciate the need to be truthful. And they, they put one over a judges. The judges are used to seeing witnesses and sizing... |
| 1:44:25 | Agent | But there is a difference between being tricky and lie. And if you lie in court you can be prosecuted in a court you can be prosecuted in an offence. |
| 1:44:38 | Frank | If you charged, any judge will tell you, if you charge every weapon, (...) |
| 1:44:53 to 1:45:19 | | <i>Talking to waiter/ordering</i> |
| 1:45:19 | Frank | I've had jewish witnesses, of course I've had. |
| 1:45:19 | Frank | <i>Yes, I've had witnesses in a (different from what is above)</i> |

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TAB 11

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

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and

CANACCORD GENUITY CORP.

Third Party

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

-1-

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

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

**AFFIDAVIT OF PHILIP PANET
(AFFIRMED OCTOBER 28, 2020)**

I, Philip Panet, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Operating Officer, General Counsel and Secretary of the Defendant (Plaintiff by Counterclaim) West Face Capital Inc. ("**West Face**"). I have personal knowledge of the matters set out in this Affidavit, except where I have relied on information from others, in which case I have identified the source of my information and believe it to be true.

2. West Face and its CEO, Gregory Boland ("**Boland**"), are Defendants in the main action (the "**Wolfpack Action**") and have brought a Counterclaim (the "**Counterclaim**") against The Catalyst Capital Group Inc. ("**Catalyst**"), Callidus Capital Corporation ("**Callidus**"), Newton Glassman ("**Glassman**"), Gabriel De Alba ("**De Alba**"), James Riley ("**Riley**") (collectively, the "**Catalyst Parties**"), Virginia Jamieson ("**Jamieson**"), Emmanuel Rosen ("**Rosen**"), B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd. d/b/a Black Cube (collectively, "**Black Cube**"), and Invop Ltd. d/b/a Psy Group ("**Psy Group**") (all collectively, the "**Counterclaim Defendants**") for, among other things, defamation and conspiracy.

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am advised by Mr. Thomson and believe that no request was made by counsel for the Catalyst Parties either to Justice Hainey or to West Face's counsel prior to, during, or following that Case Conference that the Compendium not be placed in the Court File. While no further steps were taken by West Face or its counsel to place this Compendium on the Court File, I learned from Donaldsons Law Clerk Services in July 2020 in the circumstances described below that a copy of that Case Conference Compendium had been placed in the public Court File associated with these proceedings.

243. Through the Spring of 2020, I was confused about the state of the public record in these proceedings for various reasons, including because of positions that the Catalyst Parties had taken in respect of previous motions brought by West Face, and because of the COVID-19 crisis and the impact that the crisis had had on the operation of the Ontario Superior Court of Justice in Toronto.

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244. West Face has often used Donaldsons to search court records in Toronto and elsewhere in Canada as part of its investment research process. In July 2020, I was advised by Donaldsons that the Court had restored public access to court records. I asked Donaldsons to review the records in the Court File associated with these proceedings, and to take photographs or scans of the cover and/or back page of each document that they found in the publicly accessible Court File. Donaldsons advised me that they did so, and in particular that they reviewed approximately five boxes of publicly filed materials. Copies of several of the photographs that were provided to me by Donaldsons are attached as **Exhibits 96** and **97**. In the course of reviewing these photographs, I saw the cover page of the Case Conference Compendium that West Face's counsel had provided to Justice Hainey on January 17, 2020 (the Compendium itself is dated January 13, 2020,

which was the originally scheduled date of the Case Conference). I then requested that Donaldsons return to the Toronto Court Office to retrieve a complete copy of that Compendium as it existed in the public Court File at that time, and they did so. A complete copy of the Case Conference Compendium that Donaldsons retrieved from the publicly accessible Court File in these proceedings and provided to me on July 10, 2020 is attached as **Exhibit 98**.

245. It appears that following the Case Conference on January 17, 2020, the Commercial List placed a copy of West Face's Case Conference Compendium into the public Court File on its own initiative. To my knowledge, the original Case Conference Compendium that was provided to Justice Hailey during the attendance before him on January 17, 2020, which contains a number of highlighted copies of the Elwood Documents, remains publicly accessible to this day.

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(vi) The Case Conference of January 17, 2020 Was Not Without Prejudice or in Furtherance of a Previous Mediation Between West Face and the Catalyst Parties

246. Based on correspondence received by counsel to the Catalyst Parties, West Face anticipates that the Catalyst Parties may take the position on this motion that the attendance before Justice Hailey of January 17, 2020, and specifically the fact that Justice Hailey confirmed at that attendance that West Face's disclosure and production of the Elwood Documents to its co-Defendants in the main action had been proper, was in furtherance of a previous mediation that had occurred between West Face and the Catalyst Parties, and was therefore "without prejudice".

WITNESS STATEMENT OF DR. AVI YANUS

I, AVI YANUS, of 1 Ropemaker Street, London, EC2Y 9HT, United Kingdom, declare as follows:

BACKGROUND

1. I am the sole director of B.C. Strategy UK Ltd, and have been so since the foundation of the company. I hold a bachelor's degree (with honours) in economics and management from the Technion, a master's degree (with honours) in business administration from Tel Aviv University, and a PhD in business administration from Tel Aviv University.
2. B.C. Strategy UK Ltd. (hereafter: "**Black Cube**" or the "**Company**"), is a business intelligence firm. The Company owns, through B.C. Strategy Ltd. (Israel), the Black Cube brand in Israel, the United Kingdom, the European Union, the United States, and 25 other countries.
3. Black Cube is based on a select group of veterans of special units in the Israeli intelligence community, skilled intelligence officers with a background in law and finance. The company has over 100 employees, including attorneys, economists, psychologists and financial professionals, who draw on their legal, business and intelligence experience. The company's advisory board include international experts in financial markets and financial risk management, as well as former senior officers in the Israeli intelligence community.
4. The main service that the company provides is litigation support. This involves the collection of intelligence that assists the Company's clients, supports their efforts to locate evidence, witnesses and assets, and analyses conflicts of interest. In general, the Company's services are chosen to support legal proceedings of extraordinary complexity which often contain an international dimension, such as when disputes are litigated in several jurisdictions concurrently.
5. Black Cube obtains legal advice from leading law firms in all jurisdictions in which it operates and in every individual case to verify and confirm that the methodologies used are in compliance with local laws.
6. The company was contracted to provide intelligence regarding misconduct, fraud and bias in the 2014 Wind Telecom deal or its proceeding legal processes (hereafter: the "**Project**").
7. During the course of the project, Black Cube's team performed comprehensive research across multiple sources, and conducted several conversations with various parties.
8. Below I will set forth the investigative activities conducted one specific operation in this project, and the findings that have been revealed through it. It should be considered that additional information might arise after the submission of this statement, as the collection activities are part of an ongoing effort.

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INITIAL CONTACT

9. Justice Francis Newbould (hereinafter: Newbould) was contacted by a Black Cube agent via email on the 13th of September 2017, in order to procure nonbinding advice prior to an arbitration proceeding. A meeting was arranged to take place in Toronto, several days later.
10. The Agent who met with Newbould was the principal of a London-based consultancy firm representing a viscous Canadian oil extraction company holding several drilling patents.
11. A partner of the technology company misused the patent rights he had procured on a limited basis in order to obtain drilling licenses.
12. Newbould was asked to act as an arbitrator in a future arbitration proceeding due in Canada between the parties mentioned.

BLACK CUBE'S FINDINGS

13. Newbould agreed to meet, discuss, and provide nonbinding advice. He informed us that he takes his responsibilities seriously as stipulated by custom and the law, and he cautioned that if he meets us, he cannot be an arbitrator in the matter at hand.

Arbitration consultancy

5 messages

To: fnewbould@tgf.ca

13 September 2017 at 22:00

Dear Mr. Newbould,

I am contacting you on behalf of [REDACTED] we are a UK based management Consulting boutique. One of our clients, a Canadian industrial company, is facing IP related legal issues and we expect to face arbitration procedures some time soon.

Your array of services and vast experience could prove very helpful in the complex process of arbitration that our client is due to face and we are looking for professional advice prior to the beginning of any such procedure.

To further explore the possibility of hiring your services as an advisor, I would like to schedule a meeting as soon as next week.

Should this be agreeable to you, I would appreciate if you could please indicate if we could meet early next week.

Best regards,

[REDACTED]

Frank Newbould <FNewbould@tgf.ca>

13 September 2017 at 22:05

To: [REDACTED]

Thank you for your email. I am available early next week. I assume you wish to meet on Monday or Tuesday, which is fine. Please let me know the time. We can meet here in my office. I should caution that if I am retained as an advisor before arbitration I could not act as an arbitrator in the matter.

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BUSINESS CONFIDENTIAL

BLACK CUBE

20. Newbould explained he had already facilitated a meeting with Lisus for us, and promised that Lisus would nominate him as arbitrator.

| | |
|----------|---|
| Newbould | I'd feel happier for you, to put you in the hands of, because I think you probably you want me as an arbitrator, that is what I assume, I'd be happy to put you in the hands of a lawyer. Really. Who could sit down with you and give you ...And then who would name me as an arbitrator. |
| Agent | Who is that? |
| Newbould | I called him today. He is an extremely, I think he is..If you have the name of top 2-3 litigation lawyers in this country, he is one of them |
| Agent | Who is that? |
| Newbould | Jonathan Lisus |
| Agent | Jonathan? |
| Newbould | L-I-S-U-S |
| Newbould | I called him today because I could see this problem arise and I said you are here today and tomorrow. He said, that he will move some things to the side and see you in the morning. |

21. Newbould went as far as to market Lisus to the Agent, reasserting that the lawyer would nominate him as arbitrator.

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| | |
|----------|---|
| Agent | And I have to get my client's legal department to agree to bring the contracts to consult with this lawyer. So, it wouldn't be tomorrow but yes, it can be in a week or so. |
| Newbould | You are better off doing that because to start off on the wrong foot, isn't gonna help your client, and I, I have, I have put other, I have put other, I have sent him patients. He's extremely, extremely good, and he can give you an extremely good price, and he'll name me as an arbitrator, I know he will. So that's not the issue. |

22. Lisus was already let in on the scheme and agreed to name Newbould as arbitrator.

| | |
|----------|---|
| Newbould | I've already talked to him and explained to him the situation but..and he understood perfectly, the problem I had. He said yeah, I'll give advice and when we start the arbitration I'll name you. So that won't be a problem. |
| Agent | OK |

BUSINESS CONFIDENTIAL

BLACKCUBE

23. Newbould's affiliation with Mr. Lisus goes way back, as they are also personal friends:

| | |
|----------|--|
| Newbould | I'll show you a picture. When I was retiring from the bench in June he had big party, a big dinner in his house for me. With about 20 people, all close friends, we are all close friends. So ...he is a lawyer, he is the fellow in the front. |
|----------|--|

24. Shortly after the meeting we indeed received an email for an immediate call with Mr. Lisus, which we decided not to take further as we had all the evidence required:

Jonathan Lisus <jlisus@counsel-toronto.com> 20 September 2017 at 00:55
 To: Tanya Zitt <tzitt@counsel-toronto.com>
 Cc: [REDACTED]

Dear Mr. [REDACTED]
 Please let me know if you would like to speak directly and I will have my assistant, copied here, coordinate a call.
 Regards,

Jonathan Lisus
 Lax O'Sullivan Lisus Gottlieb LLP
 (416) 598-7873
 [Quoted text hidden]

[REDACTED] 20 September 2017 at 18:07
 To: Jonathan Lisus <jlisus@counsel-toronto.com>
 Cc: [REDACTED]

Dear Mr. Lisus,

Thank you for your prompt reply. I'm already in the UK.
 After I consult with my client I'll probably be in touch with you early next week.

I'll ask my assistant [REDACTED] to contact your assistant and coordinate a phone call.

Best,
 [REDACTED]

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25. As can be seen from the evidence presented, Newbould has a system in place which enables him, as a biased individual, to arbitrate in cases where one of the sides is represented by one of his "closest friends", to whom he "sent patients" in the past and with whom he has a guarantee to be nominated. Such unethical conduct propagates injustice.

26. Another issue Newbould brought up during the second meeting is his attitude towards minorities. Newbould states that according to his own experience, Chinese people are liars, and lie all the time, though he would never say that publicly.

| | |
|----------|--|
| Newbould | Yeah so, I have had a lawsuit. Hum, the Chinese won the suit |
| Agent | Yeah |
| Newbould | Chinese won the suit, I would never say this publicly, they basically lie all the time. That's from my experience |
| Agent | Excuse me, they are rude! |
| Newbould | Rude |

| | |
|----------|--|
| Agent | Yes |
| Newbould | Yes. Probably they-, it's what they used to say about Italians when I was a little boy. And that's even more, they change the generations here. I find the newer generations here don't appreciate the need to be truthful. And they, they put one over the judges. |

27. These statements regarding Chinese people serve to demonstrate Newbould's biased way of thinking and his skewed approach to evaluating witnesses.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

Name: Dr. Avi Yanus Date:

Signed:

TAB 12

From: Brian H. Greenspan
Sent: Sunday, November 12, 2017 3:02 PM
To: Sharon Timlin
Subject: FW: Urgent

Catalyst



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From: Yossi Tanuri [mailto:yossi@tanuri.net]
Sent: Saturday, November 11, 2017 4:11 AM
To: Brian H. Greenspan
Subject: Re: Urgent

Brian

I would like to assure you that to the best of my knowledge and further to my discussion with the project manager whom you met and instructed directly all activities were in compliance with your instructions and of course the law. Regardless of the above and further to the below i asked all operations to stop until further notice and discussion with you. **343**

I will call you in sunday to discuss and get your going forward marching orders.

Shabbat shalom

Yossi

Yossi Tanuri

Sent from my Smartphone

On Nov 11, 2017 00:09, "Brian H. Greenspan" <bhg@15bedford.com> wrote:
Yossi:

I had, over the course of the past month, expressed my concern to you that no further surreptitious activities were to be undertaken. As you are aware, I was both concerned and critical of the methods being employed. When Naomi and I met with your associates some weeks ago, we insisted that they were not to pursue any operations or take any actions without our express approval and direction.

It has come to our attention that your agents may have continued, contrary to our clear instructions, their activities by meeting with someone in London yesterday evening. This must stop immediately.

Please contact me as soon as possible in order to ensure compliance with our instructions.

Yours truly,
Brian



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TAB 13

From: Brian H. Greenspan
Sent: Wednesday, November 29, 2017 5:51 PM
To: Yossi Tanuri
Subject: Catalyst

Follow Up Flag: Follow up
Flag Status: Flagged

Please review the attachment.

Best
Brian

 Greenspan
Humphrey
Weinstein

15 Bedford Road
Toronto, Ontario
M5R 2J7 Canada

T 416.868.1755 x222
F 416.868.1990
E bgreenspan@15bedford.com
15bedford.com

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Via email.

November 29, 2017

Yossi@tanuri.net

Mr. Yossi Tanuri

Dear Mr. Tanuri:

Re: The Catalyst Capital Group Inc.

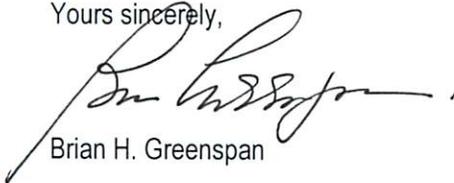
I have just discovered that an e-mail which I sent to you via my iPhone at 1:19 p.m. today was not delivered. I enclose a copy of that e-mail and a screenshot confirming that the transmission was unsuccessful.

The origin of that e-mail was a letter received last evening from counsel for West Face. A copy of that letter is attached.

It is imperative that no one at your firm, Black Cube, or anyone else, release to the media or any other third party, any transcripts or any other information resulting from or derived from any investigative activities which may have been conducted by anyone in relation to West Face.

On behalf of Catalyst, I hereby direct that no such release of any transcripts or other information occur, and instruct you and your firm to do everything in your power to ensure that this has not and will not occur.

Yours sincerely,



Brian H. Greenspan

BHG:st
Encl.

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Outbox

Yossi Tanuri

1:19 PM

 Catalyst

We insist that you immediately advise any subcontractors or parties with w...

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Brian H. Greenspan

From: Brian H. Greenspan
Sent: Wednesday, November 29, 2017 5:30 PM
To: Brian H. Greenspan
Subject: Catalyst

We insist that you immediately advise any subcontractors or parties with whom you may have contact that under no circumstances are the fruits of any investigative steps to be released or shared directly or indirectly with anyone including but not limited to any media representatives. More complete correspondence to follow.

Brian Greenspan

Sent from my iPhone

350



November 28, 2017

155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

Matthew Milne-Smith
T 416.863.5595
F 416.863.0871
mmilne-smith@dwpv.com

File No. 262163

VIA E-MAIL

Mr. Brian H. Greenspan
Greenspan Humphrey Weinstein
15 Bedford Road
Toronto, ON M5R 2J7

and

Mr. David C. Moore
Moore Barristers
393 University Avenue
Suite 1600
Toronto, ON M5G 1E6

Court File No. CV-17-586096
The Catalyst Capital Group Inc. et al ats West Face Capital Inc. et al

Dear Sirs:

We understand that members of the media, including but not necessarily limited to Bloomberg News, have been provided with transcripts and/or recordings of secretly recorded interviews, meetings, or telephone calls with current or former employees of West Face conducted by Black Cube, as outlined in my letters of November 10 and 14, 2017.

We are surprised that despite my previous requests for evidence arising from Black Cube's activities, these materials have been provided to members of the media but not to us. Can you please confirm as soon as possible whether Catalyst or anyone acting for or on behalf of Catalyst has provided these materials to members of the media?

If Catalyst or anyone for or on its behalf has played any role whatsoever in the dissemination of these materials to the media, please provide me with all relevant details of when this dissemination occurred, to whom the materials have been disseminated, and who participated in this dissemination.

Yours very truly,

Matthew Milne-Smith

MMS/

cc: Kent Thomson / Andrew Carlson (*Davies*)
Robert Centa, Kris Borg-Olivier, Denise Cooney (*Paliare Roland*)

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TAB 14

From: Yossi Tanuri <yt@tamaraglobal.com>
Sent: Thursday, November 30, 2017 12:08 AM
To: Newton Glassman
Cc: Gadi Ben Efraim; bhg@15bedford.com; Jim Riley; david@moorebarristers.ca; jlevin@fasken.com
Subject: Re: confirmation

Newton

As you are well aware Tamara global has no access or copy to/of any of the materials that were obtained on your behalf. We never received copies. We only served as financial arm to gad ben Efraim.

Tamara global hired gadi ben Efraim on your behalf to manage the project and i know that he was in touch with you regularly to update you about progress and get your directions.

All materials collected by subcontractors were collected in accordance with the law and for litigation purposes only.

Nor Gadi or Tamara have been in touch with any media source nor will we ever ask to release anything unless instructed by you.

I forwarded your email to all subproviders immediately upon receipt.

Yossi Tanuri
Tamara Global Ltd.

Sent from my Smartphone

On Nov 30, 2017 00:35, Newton Glassman <nlglassman@catcapital.com> wrote:

Yossi/Gadi, hope u guys r well.

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At the request of our lawyers I am writing to confirm that which I said to gadi previously on the phone. I am sure I was clear in that conversation, but in the event I was not, I reiterate the same herein. Please ensure tamara global and any/all contractors, sub-contractors etc thereof that may have been engaged directly or indirectly on our behalf or any party related to us etc, respect the fact that tapes (or anything derived therefrom) or any other material that may be in their possession regarding anything directly or indirectly related to catalyst, wind, frank newbould or any parties related to any thereof (including current and former employees etc) is not given to, in any way shape or form, the press or others until/unless approved or otherwise allowed by a Canadian Court.

Thank u.

N.,

Newton G. Z. Glassman
Managing Partner
Catalyst Capital Group Inc.
181 Bay Street
Bay Wellington Tower
Brookfield Place
Suite 4700, P.O. Box 792
Toronto, Ontario M5J 2T3

Phone: (416)945-3030
Fax: (416)945-3060
E-mail: nlglassman@catcapital.com

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