

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

- and -

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

Defendants

AND 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 by Counterclaim

**RESPONDING FACTUM OF THE PLAINTIFFS
(ANTI-SLAPP MOTIONS –SECTION 137.1 COURTS OF JUSTICE ACT)**

May 12, 2021

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PART 1 – OVERVIEW

1. As set out more fully in the Plaintiffs' Libel Factum filed in the Dow Jones Action, Catalyst and Callidus were publicly accused of fraud to an international audience of 2.4 million readers of *The Wall Street Journal*.
2. The publication of the WSJ Fraud Articles had a devastating effect on Catalyst and Callidus. The WSJ Fraud Articles were designed to and did attack their reputations. The impact was immediate and predictable. Callidus' share price "tanked". The uncontradicted evidence of NERA, an economic consulting firm, analyzed and assessed that the WSJ Fraud Articles caused a loss of at least \$144 million to Callidus. The reputational hit from such public accusations of fraud was also devastating to Callidus' business and lending opportunities. As Mark Sunshine, a financial advisory services expert, opined, borrowers avoid doing business with a company accused of fraud.
3. The impact of the WSJ Fraud Articles on Catalyst's reputation was also immediate. Catalyst's LPs from across North America contacted Catalyst about their concerns with the article. When investors "get even a whiff of fraud", they will stay away.
4. Neither the WSJ Fraud Articles nor the harm they caused to Catalyst and Callidus were matters of chance. Rather, the publication of fraud accusations was part of a plan carried out by a group of "aggrieved borrowers" of Callidus; a long-time adversary of Catalyst; a group of short-sellers; and journalists with ties to short-sellers. This action is intended to hold those responsible to account for the harm they caused.

5. In this motion, only some of the defendants have sought to dismiss the action as against them using the anti-SLAPP provisions.

6. The "aggrieved borrowers" are Guarantors who blame Catalyst and Callidus for the loss of their businesses. They had a strong animus against Catalyst and Callidus. Before participating in the campaign to defame and harm Catalyst and Callidus, the Guarantors attempted to bring a RICO Action and a class action. They also accused Callidus of fraud, without success, in defence of guarantee enforcement actions and in other court actions. They were out for revenge, seeking to harm to Catalyst and Callidus by having fraud accusations out in the public. As one guarantor said, he was at "war" with Callidus and as another borrower said, he was after their "throats".

7. A long-time adversary of Catalyst, West Face and its CEO, Greg Boland, also have a strong animus against Catalyst and Callidus as a result of multi-year and acrimonious litigation. Before participating in this campaign to defame and harm Catalyst and Callidus, they engaged in a prior short attack against Callidus in 2014-2015. They were also working with a freelance journalist, Bruce Livesey, on writing a negative story on Catalyst and Glassman. Livesey had been engaged by Voorheis, a short-seller, who had "come to hate Callidus". West Face and Boland were on a "crusade" against Catalyst and Glassman.

8. Anderson is a professional whistleblower and short-seller who uses the media to publicize fraud accusations in whistleblower complaints against his target companies. He has close ties to his "brah" Copeland who had published articles about companies that Anderson had targeted in the past. Not content with allowing the whistleblower process

to take its course, and before any findings or any investigation can even be commenced, Anderson engages the media to publish the substance and content of the fraud accusations made in the complaints, knowing that such accusations will have a devastating effect on the company and cause the company's stock to tank. He has no interest in allowing the truth of these serious allegations to be determined in a confidential whistleblower process; instead he uses the whistleblower process to harm and profit from shorting his target company.

9. This Factum sets out the details known to date of the interactions of the various defendants. Conspiracies are by their nature formulated and executed in secrecy. This case is no exception. Parties have destroyed text messages, used encrypted communication, and have denied involvement yet produced partial telephone records (late in this proceeding). More will come out at discovery, particularly when all the defendants have been examined.

10. Based on the facts known to date, the defendants co-operated, participated, lent aid, and encouraged the making, dissemination and/or publication of fraud accusations to the public. In doing so, they "kept close", "compared notes", made sure "all of [their] efforts were coordinated" with respect to their "mutual matter" i.e. their common design to harm Catalyst and Callidus. The defendants' actions constitute defamation, conspiracy and breaches of s 126.1 and 126.2 of the *Securities Act*.

11. Aside from the harm to Catalyst and Callidus, this case involves a matter of public importance, being the unlawful manipulation of the capital markets. The illegal strategy of "short and distort", being the tactic of publicizing a negative story about a company and

profiting from a short position taken against the company, is a growing concern in Canada. As recently reported, Canada is becoming a haven for this type of illegal activity. The Canadian Securities Administration recently recommended changes in the OSC's enforcement powers to make it easier to prosecute those who seek to manipulate and impugn the integrity of Ontario's capital market.

12. Defamatory expressions for revenge and for profit are not expressions that the anti-SLAPP legislation was intended to insulate from judicial inquiry. This case not only addresses the significant harm to Catalyst and Callidus, which alone would be sufficient to allow the action to continue, but also addresses whether those who seek or aid in distorting the truth and manipulate the markets ought to have their conduct fully scrutinized. This action ought to continue.

PART 2 – SUMMARY OF FACTS¹

2.1. CATALYST AND CALLIDUS

13. Catalyst is a Canadian private equity firm that specializes in investments in distressed and undervalued entities (i.e. investments in companies that are under-managed, under-valued or poorly capitalized).² Catalyst has established five private equity funds (plus two parallel funds), comprising over US\$4 billion of capital.³ Newton Glassman is the co-founder and Managing Partner of Catalyst.⁴ Glassman was also

¹ For ease of reference, the terms capitalized herein have been defined in Appendix "A". References to the Plaintiffs' Compendium are prefaced by "CB". References to the Plaintiffs' Book of Authorities are prefaced by "BOA".

²[CB001-Affidavit of James A. Riley, sworn on May 29, 2020 regarding The Conspiracy, Tab 1 of Catalyst's Motion Record \("Riley Affidavit"\), paras 10 and 16.](#)

³[CB001-Riley Affidavit para 13.](#)

⁴[CB001-Riley Affidavit para 11.](#)

formerly the Executive Chairman and CEO of Callidus.⁵ James Riley is a Managing Director of Catalyst and was the Chief Operating Officer until his retirement. Riley was also an officer and director of Callidus until 2019 when Callidus went private pursuant to a court-approved plan of arrangement. Gabriel De Alba is the co-founder, a Managing Director and Partner of Catalyst and has no role at Callidus.⁶

14. Callidus is a specialty asset-based lender. Callidus and the Catalyst Funds carry on different businesses. Callidus provides loans to primarily privately-owned companies whose credit risk is too high for traditional lenders and whose capital requirements are too small to access high-yield markets.⁷ In the vast majority of Callidus' 105 loans made since 2006, the borrower fulfilled its loan obligations and the loans were fully repaid in the normal course.⁸ Only 13 of these loans resulted in the borrower defaulting on its loan. Callidus, like any secured lender, has had to take enforcement proceedings against the assets of the company and/or the guarantors when the borrower failed to meet its obligations, and in six of those cases, Callidus, has had to take control of the borrower through restructuring, at significant risk and expense to Callidus.⁹

15. Catalyst and Callidus, like other private equity firms and lenders, are dependent upon their reputation for conducting their business in legitimate and lawful manner. The uncontradicted evidence, including of Mark Sunshine, an expert in financial advisory services, is that the good reputation of firms operating in the distressed lending and investing industry such as Callidus and Catalyst is critical to successfully attracting new

⁵[CB001-Riley Affidavit para 11.](#)

⁶[CB001-Riley Affidavit para 12.](#)

⁷[CB001-Riley Affidavit para 14.](#)

⁸[CB001-Riley Affidavit para 18.](#)

⁹[CB001-Riley Affidavit para 18.](#)

borrowers and investors.¹⁰ Being accused of fraud, unlawful conduct, and accounting and lending improprieties is a devastating blow to such firms.¹¹ Given a choice, investors and borrowers avoid doing business with a company that has been accused of such improprieties.¹²

16. Being well aware of the importance of reputation to Catalyst and Callidus' businesses, the defendants participated in a course of conduct to create, disseminate, and/or publish defamatory allegations to bring significant harm to Catalyst and Callidus. The Defendants made accusations of fraud, accounting misstatements, financial crimes, securities law violations and deceptive lending practices that caused significant and lasting harm to Catalyst and Callidus' reputation and business.¹³

2.2. THE DEFENDANTS

17. The Defendants are:

- (a) **Levitt, McFarlane, Baumann, and Duhamel:** guarantors of loans from Callidus that had a strong animus against Catalyst, Callidus, and Glassman personally, as a result of guarantee enforcement actions taken against them and proceedings against their former companies which defaulted on loans with Callidus (the "**Guarantors**");

¹⁰[CB001-Riley Affidavit para 352; CB183-Expert Report of Mark Sunshine, dated May 29, 2020, Tab 4 of Catalyst's Motion Record \(the "Sunshine Report"\) at para 4.1.](#)

¹¹[CB001-Riley Affidavit para 351.](#)

¹²[CB183-Sunshine Report at para 4.2.](#)

¹³[CB183-Sunshine Report at 6.9.9; CB184-Expert Report of Vinita Juneja dated May 29, 2020, Tab 4 of Catalyst's Motion Record \(the "Juneja Report"\), at paras 10, 49, and 52.](#)

- (b) **West Face and Boland:** a hedge fund, of which Boland is the CEO, that has been embroiled in extensive and acrimonious litigation with Catalyst for years;
- (c) **Anderson, ClaritySpring, Voorheis, Kassam, Puri, Spears, and Anson:** well-known professional short-sellers;
- (d) **Langstaff:** a former employee of Canaccord Genuity, an investment advisor to Catalyst and Callidus, and a “friend” of Boland; and
- (e) **Livesey and Copeland:** journalists with ties to short sellers.¹⁴

2.2.1. The “Moving Parties”

2.2.1(a) *Darryl Levitt*

18. Levitt was a shareholder and director of Fortress Resources LLC, a coal mining company in Kentucky.¹⁵ He, along with the defendant Molyneux, and another officer of Fortress, Gary Smith, were guarantors to a loan Fortress obtained from Callidus.¹⁶

19. Levitt has had an animus against Callidus since 2015, when Fortress voluntarily filed for bankruptcy in the U.S. Bankruptcy Court, and guarantee enforcement actions were taken against Levitt and Molyneux in Ontario, and Smith in Kentucky.¹⁷ The U.S. Bankruptcy Court has already held that the agreements between Fortress and Callidus (including the loan documents that Levitt claims were fraudulently induced) are valid, binding, enforceable and unavoidable.¹⁸ The U.S. District Court has also found Smith

¹⁴[CB001-Riley Affidavit para 55.](#)

¹⁵[CB001-Riley Affidavit para 56.](#)

¹⁶[CB001-Riley Affidavit para 57.](#)

¹⁷[CB001-Riley Affidavit para 58.](#)

¹⁸[CB012-Memorandum Opinion and Order of the U.S. District Court, Eastern District of Kentucky, Central Division of Callidus v Gary Smith dated September 7, 2016, Exhibit 19 of Riley Affidavit.](#)

liable on his guarantee – not accepting his allegation that the personal guarantees were induced by fraud.¹⁹ Enforcement proceedings against Levitt and Molyneux in Ontario are currently ongoing.²⁰ In defence of this proceeding, Levitt has made the very same allegations of fraud that were not accepted by the U.S. District Court in defence of Callidus' guarantee enforcement proceeding.²¹

2.2.1(b) Jeffrey McFarlane

20. McFarlane is the former President and CEO of XTG, a supplier of information technology products.²² McFarlane has had an animus against Catalyst and Callidus since 2013, when XTG defaulted on its loan with Callidus, a court-approved Receiver was appointed by Justice Morawetz, and enforcement proceedings were commenced against McFarlane on his guarantee.²³ This Court has already found that McFarlane is liable to Callidus on his guarantee; that decision was modified but upheld on appeal.²⁴ In defence of this proceeding, McFarlane has made the very same allegations of fraud and improper lending tactics and practices that were not accepted previously by this Court.²⁵

¹⁹[CB001-Riley Affidavit para 58; CB012-Memorandum Opinion and Order of the U.S. District Court, Eastern District of Kentucky, Central Division of Callidus v Gary Smith dated September 7, 2016, Exhibit 19 of Riley Affidavit.](#)

²⁰[CB001-Riley Affidavit para 59.](#)

²¹[CB001-Riley Affidavit para 59. CB235-Affidavit of Daryl Levitt sworn November 6, 2019 \(“Levitt Affidavit”\),](#) see for example paras 54, 70, 89, and 94.

²²[CB001-Riley Affidavit para 60.](#)

²³[CB001-Riley Affidavit para 61.](#)

²⁴[CB001-Riley Affidavit paras 62-63; Callidus Capital Corporation v McFarlane, 2016 ONSC 3451–BOA013; CB013-Receiver Order of October 29, 2013, Summary Judgment decision of May 31, 2016 and Court of Appeal decision of July 28, 2017, Exhibit 20 of Riley Affidavit.](#) On appeal the amount owed by McFarlane pursuant to his guarantee was reduced by the Court of Appeal.

²⁵[CB001-Riley Affidavit para 62; Callidus Capital Corporation v McFarlane, 2016 ONSC 3451,](#) at paras 5 and 6–[BOA013. CB244-Transcript of Cross-Examination of Jeff McFarlane, held November 24, 2020 \(“McFarlane CXM”\), p. 203, q. 823.](#)

2.2.1(c) Kevin Baumann

21. Kevin Baumann was the president of Alken Basin Drilling Ltd., a water and drilling services company in the oil and gas commercial industry.²⁶ Baumann has had an animus against Callidus since 2015, when Baumann was removed as an officer and director of Alken Basin after it was discovered that Baumann had been diverting funds from the company.²⁷ A receiver was appointed by the Court notwithstanding Baumann's allegation of fraud and improper lending practices against Callidus.²⁸ Callidus commenced guarantee enforcement proceedings against Baumann in Alberta. Callidus also commenced a separate defamation claim against Baumann in Alberta in connection with Baumann's repeated defamatory blog postings about Callidus. The guarantee enforcement and the defamation proceedings are currently ongoing.²⁹ In the defamation proceeding, Baumann was found in contempt of an order to cease making statements about Callidus on his websites and Twitter.³⁰ In defence of this proceeding, Baumann has made allegations of fraud and improper lending practices against Callidus that are similar to the allegations he made in the receivership application.³¹

²⁶[CB001-Riley Affidavit para 75.](#)

²⁷[CB001-Riley Affidavit para 76.](#)

²⁸[CB001-Riley Affidavit para 76.](#)

²⁹[CB001-Riley Affidavit paras 77-78.](#)

³⁰[CB001-Riley Affidavit para 78](#); **Exhibit 25**, **Exhibit 26**, and **Exhibit 27** are copies of the Statement of Claim ([CB018](#)), Orders of contempt against Baumann dated January 8, 2018 ([CB019](#)) and February 14, 2020 ([CB020](#)), and the underlying court orders for which Baumann was found to be in contempt.

³¹[CB001-Riley Affidavit para 77](#); [CB017-Baumann's Statement of Defence to the guarantee enforcement action](#), **Exhibit 24** of Riley Affidavit.

2.2.1(d) West Face and Gregory Boland

22. Gregory Boland is the President and CEO of West Face, an alternative asset management firm.³² West Face has been involved in multiple pieces of litigation with Catalyst since 2014. There is no doubt that West Face and Boland have a strong animus against Catalyst, Callidus and Glassman. In 2014-2015, West Face engaged in a short selling campaign against Callidus, which included producing a short-selling report about Callidus (the “**West Face Short Report**”). In late 2014, West Face disseminated the West Face Short Report (or versions thereof) to various members of the industry including Veritas Investment Research, and to reporters including Jacquie McNish (at the time with *The Globe and Mail*), and Ben Dummett (of *The Wall Street Journal*) who authored a disparaging article about Callidus published on May 15, 2015.³³ West Face closed its short position following the publication of Dummett’s article.³⁴

23. The plaintiffs recently discovered that West Face also made a complaint to the OSC in December 2014 regarding Callidus, just days before it contacted McNish and provided the same version of the West Face Short Report to the OSC that it provided to McNish.³⁵ When Boland provided McNish with a version of the West Face Short Report

³²[CB001-Riley Affidavit para 79.](#)

³³[CB001-Riley Affidavit paras 80, 114, 119-134.](#) West Face contends that the Plaintiffs are attempting to litigate their allegations in the Veritas Actoin in this proceeding and have breached the deemed undertaking rule by referring to documents listed in West Face’s Affidavit of Documents styled with the Veritas title of proceeding. The Plaintiffs have not breached the deemed undertaking rule. The assertion ignores that Hainey J. has been case managing the Veritas Actin and this Action since 2018 and made various orders for production of both matters in the context of the SLAPP motion. In addition, West Face has put the Veritas matter at issue in this Action asserting that the issues in the Veritas Action are “key” to this Action. A full response to West Face’s claim of a breach of the deemed undertaking rule is set out in the answers to undertakings and refusals given at the cross-examination of James Riley, October 26, 2017. p. 62, Q 194.

³⁴[CB234-Affidavit of Gregory Boland, sworn November 8, 2019 \(the “Boland Affidavit”\), para 48.](#)

³⁵[CB200-Boland’s email of December 9, 2014 to the OSC, produced by way of answer to undertaking as WF16007.](#)

he advised her that “Shorts are circling around this [*i.e.* Callidus] and the stock has come off sharply”.³⁶

24. West Face denies that it “published” its report, and asserts that the West Face Short Report was “solely” for “internal purposes”.³⁷ Boland’s evidence is that the West Face Short Report was “internal” as of March 2015 and was only disclosed in the course of the Moyse litigation.³⁸ As described above, this is untrue. In support of their anti-SLAPP motion, West Face and Boland also deny being sources for the WSJ Fraud Articles and assert that they played no role in the content of the WSJ Fraud Articles.³⁹ As described further below, this too is untrue. Indeed, when cross-examined, McNish refused to answer questions relating to West Face and Boland, claiming confidential source privilege.⁴⁰

2.2.1(e) Nathan Anderson and ClaritySpring Inc.

25. Nathan Anderson is a principal and shareholder of ClaritySpring Inc. He also operates an entity called Hindenberg Research that publishes negative articles on public companies.⁴¹

26. Anderson is an admitted professional short-seller and whistleblower.⁴² He uses the media to publicize the fraud accusations he has made in his whistleblower complaints.⁴³

³⁶[CB039-Emails between Boland and McNish in December 2014, Exhibit 51 to the Riley Affidavit.](#)

³⁷[CB229-West Face and Boland’s Fourth Fresh as Amended Statement of Defence and Counterclaim, para 90.](#)

³⁸[CB234-Boland Affidavit, para 52.](#)

³⁹[CB234-Boland Affidavit, paras 127, 129.](#)

⁴⁰[CB245-Cross Examination of Jacquie McNish on November 12, 2020 \(“McNish CXM”\), p. 50-51 q. 173-176; p. 149-152 q. 463-464; p. 155 q. 473-474.](#)

⁴¹[CB001-Riley Affidavit para 87.](#)

⁴²[CB001-Riley Affidavit para 88; CB233-Affidavit of Nathan Anderson, sworn November 8, 2019 \(“Anderson Affidavit”\), paras 16, 29.](#)

⁴³[CB233-Anderson Affidavit, para 30.](#)

To fund his activities, Anderson seeks investors to make monetary investments in return for a potential share of a whistleblower award.⁴⁴ In the case of a public company, Anderson shorts the stock knowing that fraud accusations will cause the company's stock to "tank".⁴⁵

2.2.1(f) Rob Copeland and Jacquie McNish

27. Copeland and McNish are reporters at *The Wall Street Journal*.

28. Copeland and Anderson have had a relationship since at least September 2014 when Copeland used Anderson as a source for an article he published in *The Wall Street Journal*.⁴⁶ Copeland has also published articles on some of the same companies against which Anderson has filed whistleblower complaints.⁴⁷

29. McNish and Boland have had a relationship since at least 2014, when Boland sought to have McNish (then with *The Globe and Mail*) publish an article on Catalyst and Callidus regarding alleged improprieties surrounding XTG.⁴⁸ West Face sought McNish (and later successfully with Dummett of *The Wall Street Journal*) to publish a negative story on Callidus as part of its short selling campaign against Callidus in 2014-2015.⁴⁹

⁴⁴[CB233-Anderson Affidavit para 16.](#)

⁴⁵[CB233-Anderson Affidavit para 16; CB112-text messages exchanged between Copeland and Anderson \(p. 32, texts of August 9, 2017\), Exhibit 161 of Riley Affidavit.](#)

⁴⁶[CB001-Riley Affidavit paras 95 and 180.](#)

⁴⁷[CB001-Riley Affidavit paras 95 and 181.](#)

⁴⁸[CB001-Riley Affidavit paras 80, 114, 119-134 .](#)

⁴⁹[CB001-Riley Affidavit paras 120-121; CB039-Emails between Boland and McNish in December 2014, Exhibit 51 to the Riley Affidavit.](#)

2.2.1(g) *Bruce Livesey*

30. Bruce Livesey is a corporate investigative consultant and a freelance journalist.⁵⁰

31. From 2016-2018, Livesey attempted to publish a story on Glassman which he shopped to several publications. He finally found an outlet in 2018 to publish two articles on Catalyst, Callidus and Glassman on a website formerly known as *Southern Investigative Research Foundation* (“**SIRF**”), which was funded by short-sellers.⁵¹

32. Livesey was the principal of Mosaic Advisors Canada Inc., a research consulting company that purported to provide commercial intelligence services.⁵² He had been hired by Voorheis (who had a dispute with Glassman and had “come to hate” Callidus) to investigate Callidus.⁵³

33. Livesey is currently the principal and Managing Director of i20 Research Inc., (formerly Mosaic Advisers Canada Inc.).⁵⁴ Stan Levitt (Darryl Levitt’s brother) and Dave Oswald (Forensic Restitution) are also “associates” at i20 Research.⁵⁵ Livesey is also a consultant with Forensic Restitution, a purported fraud investigation firm run by Dave

⁵⁰[CB001-Riley Affidavit para 96.](#)

⁵¹[CB001-Riley Affidavit para 98.](#)

⁵²[CB001-Riley Affidavit para 97; CB027-Vcard of Livesey identifying Livesey at Mosaic and a LinkedIn profile search of Mosaic \(i20 Research Inc.\), Exhibit 34 of Riley Affidavit.](#)

⁵³[CB001-Riley Affidavit para 84; CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit.](#)

⁵⁴[CB001-Riley Affidavit para 99.](#)

⁵⁵[CB001-Riley Affidavit para 99; CB028-Corporate profile report of i20 Research and excerpts from i20 Research website, Exhibit 35 of Riley Affidavit.](#)

Oswald, at which Levitt is its General Counsel.⁵⁶ Oswald was retained by Baumann for his complaint against Callidus to the RCMP.⁵⁷

2.2.2. The “Other Defendants”

2.2.2(a) Wesley Voorheis

34. Voorheis is the principal of Voorheis and Co. LLP, and manages the investment fund VMK Partners Fund LP.⁵⁸ He is a short-seller who has had an animus against Glassman since 2007, arising from a bitter dispute in the Hollinger-Conrad Black matter. Voorheis (with Glassman’s backing) was put in charge of Hollinger when Conrad Black was removed but was later criticized for his leadership of the company.⁵⁹

35. Voorheis and Anderson have had an ongoing relationship since December 19, 2016, when McFarlane introduced Anderson to Voorheis so that Voorheis could provide information about Catalyst, Callidus and Glassman to aid and support the defamation campaign.⁶⁰ Voorheis shorted Callidus and other companies about which Anderson published negative reports, and Voorheis and Anderson arranged a “bonus” payment to Anderson for shorting opportunities.⁶¹

⁵⁶[CB001-Riley Affidavit para 99](#); [CB029-Excerpt from the Forensic Restitution website listing Livesey as a private investigator for Forensic Restitution, Darryl Levitt as the General Counsel and Oswald as founder and director, Exhibit 36 of Riley Affidavit.](#)

⁵⁷[CB192-Baumann’s Complaint filed with the Alberta Commercial Crimes South on October 3, 2019, p. 74, Exhibit E to the Affidavit of Kevin Baumann \(sworn November 8, 2019\).](#)

⁵⁸[CB001-Riley Affidavit para 82.](#)

⁵⁹[CB001-Riley Affidavit para 83](#); [CB022-National Post article reporting on the dispute between Voorheis and Glassman, Exhibit 29 of Riley Affidavit.](#)

⁶⁰[CB001-Riley Affidavit para 169](#); [CB073-McFarlane email of December 19, 2016, Exhibit 93 of Riley Affidavit.](#)

⁶¹[CB236-Continued Cross-Examination of Nathan Anderson on April 28, 2021 \(“Anderson Continued CXM”\), p. 349, q. 1128.](#)

36. Voorheis also shorted other companies, one of which was the subject of an alleged short and distort attack by Anson, and another involving a Canaccord client and for which Langstaff was reprimanded for disclosing confidential information to a short-seller.⁶²

2.2.2(b) Moez Kassam, Sunny Puri, Adam Spears and Anson

37. Kassam, Spears, and Puri are the principals of the defendants, M5V Advisors Inc. c.o.b. Anson Group Canada, Admiralty Advisors LLC, Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, and ACF GP (“**Anson**”).⁶³ Anson is an alternative asset management company that manages investment equity funds.⁶⁴

38. Kassam, Puri, Spears and Anson are well-known short-sellers.⁶⁵ They have been previously accused of engaging in a short and distort campaign and are the subject of a conspiracy and defamation lawsuit for \$300 million relating to another short attack.⁶⁶

2.2.2(c) Bruce Langstaff

39. Bruce Langstaff was a managing director at Canaccord, who owed fiduciary duties and duties of confidentiality to Catalyst and Callidus.⁶⁷

⁶²[CB001-Riley Affidavit para 138](#); [CB049-Voorheis’ analysis of shorting Callidus, Exhibit 61 Riley Affidavit](#); [CB050-Copy of Voorheis’ portfolio records showing his short positions in EIF and in other companies that were the subject of articles by Anderson and connected with Langstaff, Exhibit 62 of Riley Affidavit.](#)

⁶³[CB001-Riley Affidavit para 85.](#)

⁶⁴[CB001-Riley Affidavit para 85.](#)

⁶⁵[CB001-Riley Affidavit para 86.](#)

⁶⁶[CB001-Riley Affidavit para 86](#); [CB024-Extract of Statement of Claim in *Nobilis Health v Anson*, Exhibit 31 of Riley Affidavit](#); [CB025-Articles reporting on the conviction of Jonathan Daws and on the short attack of Terra Tech, Exhibit 32 of Riley Affidavit.](#)

⁶⁷[CB001-Riley Affidavit para 90.](#)

40. Langstaff is also a “friend” of Boland who as Langstaff said to a guarantor, Levy, was “helping West Face” while Catalyst and Callidus were clients of Canaccord.⁶⁸

41. On August 9, 2017, Langstaff was reprimanded by Canaccord for providing confidential information about a client to a well-known short-seller.⁶⁹ Langstaff was later terminated on September 26, 2017 following the publication of the WSJ Fraud Articles.⁷⁰ After his termination, Langstaff was hired to work for Voorheis.⁷¹

2.2.2(d) Gerald Duhamel

42. Gerald Duhamel was the sole shareholder of Bluberi Group Inc., Bluberi Gaming Technologies Inc. and Bluberi USA, Inc. (together “**Bluberi**”), a manufacturer, distributor, installer and servicer of electronic gaming machines.⁷² Bluberi filed for CCAA protection in November 2015.⁷³ As part of the restructuring process, Bluberi made claims against Callidus for alleged wrongdoings relating to their lender-borrower relationship.⁷⁴ The proceeding with respect to these allegations is ongoing.⁷⁵

2.3. THE GUARANTORS’ COMPLAINT TO THE OSC

43. Callidus lent to troubled companies who were unable to obtain conventional loans. In some cases, the borrowers defaulted. As a result, enforcement proceedings were

⁶⁸ [CB001-Riley Affidavit para 105\(j\)](#); [CB030-Levy Transcript of August 30, 2017, p. 53 line 23, Exhibit 39 of Riley Affidavit.](#)

⁶⁹ [CB001-Riley Affidavit para 92](#); [CB035-Letter of reprimand from Canaccord to Langstaff of August 9 2017, Exhibit 47 of Riley Affidavit.](#)

⁷⁰ [CB001-Riley Affidavit paras 89 and 92](#); [CB035-Letter of reprimand from Canaccord to Langstaff of August 9 2017, Exhibit 47 of Riley Affidavit.](#)

⁷¹ [CB001-Riley Affidavit para 93.](#)

⁷² [CB001-Riley Affidavit para 69.](#)

⁷³ [CB001-Riley Affidavit para 71.](#)

⁷⁴ [CB001-Riley Affidavit para 72.](#)

⁷⁵ [CB001-Riley Affidavit para 73.](#)

taken, including against guarantors of those companies. Those identified as Guarantors in this action sought retribution against Callidus, Catalyst and its principles.

44. In May 2016, several guarantors, being Levitt, McFarlane, Baumann, Duhamel, Smith, Molyneux, Jaross and Levy banded together. These Guarantors agreed to what was described as a “joint decision-making process”.⁷⁶ The intention was to work together against Callidus and Catalyst. By this time, some of the Guarantors were in contact with Boland and Panet of West Face. Levy described Panet as “a fountain of info on Callidus” and West Face as “more than happy to work with us”.⁷⁷ Levy had a copy of the 52-page West Face Short Report on “why Callidus (now a public company) is a good short”.⁷⁸

45. The Guarantors approached several U.S. law firms about a possible action, including either RICO or class action.⁷⁹ Indeed, the Guarantors received one recommendation from West Face’s counsel.⁸⁰ Notwithstanding contacting U.S. law firms, no firm would take the Guarantors’ claim.⁸¹

46. Having failed to attract any counsel to take action against Catalyst and Callidus, the Guarantors decided on a new approach. On September 30, 2016, the Guarantors held a group call to discuss a new “joint strategy” of filing a whistleblower complaint with

⁷⁶[CB056-McFarlane’s email of May 17, 2016 to Guarantors, Exhibit 76 of Riley Affidavit.](#)

⁷⁷[CB023-Levy Memorandum of August 14, 2015, at para 23, Exhibit 30 of Riley Affidavit.](#)

⁷⁸[CB023-Levy Memorandum of August 14, 2015, at para 23, Exhibit 30 of Riley Affidavit.](#)

⁷⁹[CB001-Riley Affidavit paras 143-149.](#)

⁸⁰[CB001-Riley Affidavit para 149.](#)

⁸¹[CB001-Riley Affidavit paras 143-149; CB055-Transcript of Examination of Richard Jaross held August 30, 2017, Exhibit 75 of Riley Affidavit; CB056-McFarlane’s email attaching the memo for Guarantors, Exhibit 76 of Riley Affidavit; CB057-various emails exchanged among the guarantors and among the Boies Schiller law firm, Exhibit 77 of Riley Affidavit; CB059-email from Matthew Milne-Smith to the Guarantors dated November 30, 2016, Exhibit 79 of Riley Affidavit.](#)

the OSC.⁸² The Guarantors did not act alone. From the outset of this new “joint strategy”, the Guarantors were in contact with West Face and Voorheis. Prior to their group call, Levy spoke to Boland for “over an hour”, and reported to the Guarantors that Boland “had many interesting things to report”.⁸³ In connection with their “joint strategy”, Levy also informed the Guarantors that he would be speaking with Voorheis who was “much closer to striking”.⁸⁴

47. In furtherance of their “joint strategy”, Levitt met with the OSC on December 6, 2016 to present the Guarantors’ claims of fraud against Catalyst and Callidus.⁸⁵ Prior to Levitt’s meeting with the OSC, and as described further below, Levitt was in communication with Anderson.

48. For Levitt’s meeting with the OSC, the Guarantors collaborated on and prepared a PowerPoint presentation that outlined allegations of fraud, insider trading, non-disclosure of material facts, securities fraud, and other alleged misconduct.⁸⁶ The Guarantors also prepared talking points for Levitt alleging that Callidus engaged in fraudulent business and lending practices.⁸⁷

⁸²[CB001-Riley Affidavit para 153](#); [CB061-Levitt’s email to the guarantors of September 27, 2016 Exhibit 81 of Riley Affidavit.](#)

⁸³[CB001-Riley Affidavit para 154](#); [CB061-Levitt’s email to the guarantors of September 27, 2016 Exhibit 81 of Riley Affidavit.](#)

⁸⁴[CB001-Riley Affidavit para 154](#); [CB061-Levitt’s email to the guarantors of September 27, 2016 Exhibit 81 of Riley Affidavit.](#)

⁸⁵[CB001-Riley Affidavit paras 155-156](#); [CB062-Emails exchanged between Levitt and the OSC in late November and early December 2016, Exhibit 82 of Riley Affidavit](#); [CB063-emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83 of Riley Affidavit.](#)

⁸⁶[CB001-Riley Affidavit para 155](#); [CB062-Emails exchanged between Levitt and the OSC in late November and early December 2016, Exhibit 82 of Riley Affidavit.](#)

⁸⁷[CB001-Riley Affidavit para 156](#); [CB063-Emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83 of Riley Affidavit.](#)

49. Boland and West Face assisted the Guarantors with their complaints to the OSC.⁸⁸ Boland contacted Levy on December 3, 2016, before the December 6th OSC meeting, and falsely asserted that Callidus had improperly and fraudulently moved the XTG loan to unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst: “*Greg Boland said they moved the XChange loan now about \$100M to fund #5 from an earlier fund. You should speak with Boland and coordinate with him*”.⁸⁹ XTG had been the story Boland had promoted to McNish and Dummett in 2014 and was the subject of West Face’s complaint to the OSC in December 2014.⁹⁰ This would be the same story that would be promoted in the whistleblower complaint and the WSJ Fraud Articles.

50. Given the importance of this allegation, Levy suggested that Levitt speak to Boland.⁹¹ Levitt later exchanged emails with Panet on December 3, 2016 regarding a document titled “Callidus Catalyst Fraud Outline”.⁹² To date, the details of Panet’s communications with Levitt regarding the “Callidus Catalyst Fraud Outline” are unknown, as West Face has claimed privilege over such communications, and it was revealed on his cross-examination that Panet immediately deleted this communication with Levitt.⁹³

⁸⁸[CB001-Riley Affidavit para157](#); [CB063-Emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83](#) of Riley Affidavit.

⁸⁹[CB001-Riley Affidavit para 157](#); [CB063-Emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83](#) of Riley Affidavit; [CB071-Emails between Levy and Levitt of December 3, 2016, Exhibit 91](#) of Riley Affidavit.

⁹⁰[CB200-See for example Boland’s email of December 9, 2014 to the OSC, produced by way of answer to undertaking as WF16007.](#)

⁹¹[CB071-Emails between Levy and Levitt of December 3, 2016, Exhibit 91](#) of Riley Affidavit.

⁹²[CB246-Cross-Examination of Philip Panet on December 8, 2020 \(“Panet CXM”\), p. 84-85, q. 234.](#)

⁹³[CB001-Riley Affidavit para 158](#); [CB063-Emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83](#) of Riley Affidavit; [CB246-Panet CXM, p. 84-85, q. 234.](#)

2.4. THE SCHEME TO MAKE AND PUBLISH A FALSE WHISTLEBLOWER COMPLAINT

51. Complaints to the OSC are neither disclosed to the public nor are they accessible by the public. Unlike a class action or RICO Claim, the Guarantors' fraud accusations made to the OSC would not be made public by the OSC. Other means to publicize the fraud accusations were needed.

2.4.1. Introduction of Anderson to the Guarantors

52. Before Levitt presented the Guarantors' false fraud accusations to the OSC on December 6, 2016, he had been in contact with Anderson, a professional short-seller and whistleblower.⁹⁴

53. Anderson claims that he was introduced to the Guarantors in November 2016 after discovering an anonymous Twitter account, "@StoptheScandal" which tweeted numerous allegations about Callidus, Catalyst, and Glassman, such as:⁹⁵

- The Limited Partners are going to lose a lot of their money when they figure it out and it gets unwound. Chatter already in the industry.
- Canadian hedge fund Catalyst Capital Group, in the crosshairs of Westface Capital with allegations of non-disclosure of non-performing loans.
- A director of pe fund cannot claim ignorance of fraud when he has been party to approving the financial statements. Trust but verify
- If one strips all the net tangible assets and realizable loans in it, it looks doubtful the [National Bank Financial] valuation will withstand scrutiny?
- This business should not be in the business of lending.

⁹⁴[CB233-Anderson Affidavit, para 30 and para 16.](#)

⁹⁵[CB001-Riley Affidavit para 159; CB064-Tweets posted by StoptheScandal, Exhibit 84 of Riley Affidavit.](#)

- There is no other interested party in the minority stake in \$[Callidus]. Come clean. The last resort is to pass the garbage to Catalyst investors

54. The use of aliases and social media to spread false rumours about a target company is a common tool used to manipulate the target company's stock price under anonymity.⁹⁶

55. It is now known that Levitt is the author of the StoptheScandal tweets. In his defence, Levitt specifically denied that he “created or was responsible for any Twitter posts” commenting on the plaintiffs.⁹⁷ On cross-examination however, Levitt reluctantly revealed that he was the author of the StoptheScandal tweets.⁹⁸ Levitt created and began tweeting anonymously through StoptheScandal about Catalyst, Callidus and Glassman in September 2016, around the same time that the Guarantors met to discuss their “joint strategy” of filing an OSC whistleblower complaint against Callidus.⁹⁹ His denial that he was the author of any tweets about Catalyst, Callidus and Glassman is not credible. At trial, the court will be asked to draw a negative inference regarding Levitt's credibility. His attempt to obfuscate his role in the conspiracy to harm Catalyst and Callidus is clear in this instance.

⁹⁶[CB001-Riley Affidavit para 111](#); [CB002-McMillan Report, Exhibit 3 of Riley Affidavit](#); [CB004-“Illegal Naked Short Selling Appears to Lie at the Heart of an Extensive Stock Manipulation Scheme”, by Larry Smith dated June 16, 2015 published on Smithonstocks.com, Exhibit 7 of Riley Affidavit.](#)

⁹⁷[CB227-Levitt Statement of Defence, para 22.](#)

⁹⁸[CB242-Transcript of Cross-Examination of Darryl Levitt, held November 26, 2020 \(“Levitt CXM”\) p. 221 g. 947-949](#); [CB064-Tweets posted by StoptheScandal, Exhibit 84 of Riley Affidavit.](#)

⁹⁹[CB001-Riley Affidavit para 153](#); [CB061-Levitt's email to the guarantors of September 27, 2016 Exhibit 81 of Riley Affidavit.](#)

56. After discovering Levitt's tweets online, Anderson said that he contacted the StoptheScandal account directly in late November 2016.¹⁰⁰ At the time that he contacted StoptheScandal, Anderson was "broke", "ran out of money" and "couldn't pay his bills".¹⁰¹

57. Anderson states that StoptheScandal suggested that he contact certain borrowers of Callidus, who believed that Catalyst was engaging in "deceptive lending practices".¹⁰² There is no direct evidence of who StoptheScandal suggested Anderson to contact. Anderson's production of his exchanges with StoptheScandal is incomplete. Levitt similarly has not produced any of his communications as StoptheScandal. The failure to produce these documents underscores Levitt and Anderson's lack of credibility.

58. It is evident, however, that immediately after his communication with StoptheScandal (now known to be Levitt) Anderson began to directly contact McFarlane, Baumann and Levitt (himself). On November 27, 2016, Anderson sent an email to Levitt, McFarlane and Baumann offering to "dig in on Callidis [sic]".¹⁰³ Although he had performed little to no "due diligence", Anderson began describing Catalyst and Callidus as a "large, complex fraud" and a "Ponzi scheme".¹⁰⁴ It is clear that he had a preconceived bias that Catalyst and Callidus were a fraud and Ponzi scheme, which was necessary for a successful short attack.

¹⁰⁰[CB001-Riley Affidavit para 16](#); [CB233-Anderson Affidavit para 18](#).

¹⁰¹[CB237-Transcript of Cross-Examination of Nathan Anderson, held 2020, \("Anderson CXM"\) p. 47-49 q. 98-101](#); [CB225-"How Nikola Stock Got Torched by a Short-Seller," WSJ September 23, 2020, Anderson CXM Exhibit Brief, Tab 9 – Doc 14](#).

¹⁰²[CB233-Anderson Affidavit para 18](#); [CB065-Anderson StoptheScandal Twitter Messages, Exhibit 85 of Riley Affidavit](#).

¹⁰³[CB066-Anderson Emails to McFarlane, Baumann and Levitt, November 27, 2016, Exhibit 86 of Riley Affidavit](#)

¹⁰⁴[CB070-Copies of emails between Anderson and others, Exhibit 90 of Riley Affidavit](#); [CB078-Anderson email to Levitt and McFarlane of December 7, 2016, Exhibit 102 of Riley Affidavit](#).

59. A call was arranged for the following evening between Anderson, Levitt, and McFarlane.¹⁰⁵ Levitt, McFarlane and Anderson claim to have little to no recollection of their introductory discussion with Anderson.¹⁰⁶

60. It is clearly evident however that during that call, Anderson, Levitt and McFarlane discussed the use of the media to publicize whistleblower complaints against Catalyst and Callidus. Within minutes of their call, McFarlane sent an email to Anderson with the contact details of Livesey, Dummett of *The Wall Street Journal*, John Tilak of *Reuters* and Scott Deveau of *Bloomberg*.¹⁰⁷ From the outset, the plan was to publicize fraud accusations to cause maximum harm to the reputations of Catalyst and Callidus. Suggestions by these defendants to the contrary are not credible.

61. Indeed, in response to McFarlane's email with the journalists' contact details, Anderson said that "[he]'ll connect with all of them when the timing makes sense".¹⁰⁸ It is clear that the plan at the outset was to use the media to publicize the whistleblower complaint when the timing was right.

2.4.2. Introduction of Anderson to Langstaff, West Face, Levy

62. In furtherance of the scheme to publicize the whistleblower complaint, Anderson and the Guarantors set about executing the strategy including by contacting others who

¹⁰⁵[CB066-Anderson Emails to McFarlane, Baumann and Levitt, November 27, 2016, Exhibit 86 of Riley Affidavit](#)

¹⁰⁶[CB242-Levitt CXM, p. 36-37, q. 133-134; CB244-McFarlane CXM, p. 102-103, q. 367-368; CB237-Anderson CXM, p. 126-127, q. 331.](#)

¹⁰⁷[CB121-November 27, 2016 Email Correspondence re Contact Info for Journalists, Exhibit 172 of Riley Affidavit.](#)

¹⁰⁸[CB070-Anderson email to McFarlane of November 29, 2016, Exhibit 90 of Riley Affidavit.](#)

would be prepared to assist with the whistleblower complaint and disseminating it to the media.

63. On November 28, 2016, the same day that Baumann was contacted by Anderson, Baumann immediately put Anderson in touch with Langstaff – a “friend” of Boland who Levy described as “helping West Face”.¹⁰⁹ Indeed, Boland used Langstaff as an intermediary to gather and convey information.¹¹⁰ According to recently produced records of Boland’s outgoing cell phone calls, Boland made over 170 phone calls to Langstaff from November 28, 2016 to August 9, 2017.¹¹¹ Boland and Langstaff contacted each other on a frequent basis. They knew each other “pretty well” and frequently discussed Callidus.¹¹²

64. On November 29, 2016, following Levitt’s call with Anderson the evening prior, Levitt spoke to Boland on the phone. Boland also spoke to Langstaff who later that day arranged to speak to speak with Anderson in the evening.¹¹³ Langstaff offered to “help” Anderson.¹¹⁴ As Langstaff told Anderson, “My friends and I were glad someone else had

¹⁰⁹ [CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit](#); [CB030-Levy Transcript August 30, 2017, p. 53 line 23, Exhibit 39 of Riley Affidavit](#); [CB069-Langstaff email to Anderson of November 29, 2016, Exhibit 89 of Riley Affidavit](#).

¹¹⁰ [CB030-Levy Transcript August 30, 2017, pp. 53-56, Exhibit 39 of Riley Affidavit](#).

¹¹¹ [CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland](#).

¹¹² [CB238 - Transcript from the continued Cross-Examination of Greg Boland on April 20, 2021 \(“Continued Boland CXM”\), p. 418-419, q. 1070-1073](#).

¹¹³ [CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland](#); [CB069-Langstaff email to Anderson of November 29, 2016, Exhibit 89 of Riley Affidavit](#).

¹¹⁴ [CB069-Langstaff email to Anderson of November 29, 2016, Exhibit 89 of Riley Affidavit](#).

noticed”.¹¹⁵ That evening Langstaff and Anderson spoke for almost an hour.¹¹⁶ After his call with Langstaff, Anderson spoke to Levitt, most likely to report on his call with Langstaff.¹¹⁷

65. McFarlane had also suggested that “it might be helpful to connect [Anderson] with West Face”.¹¹⁸ Panet had previously been identified by Levy as “a helpful fountain of info”.¹¹⁹

66. Levitt, through his StoptheScandal twitter account, told Anderson to “connect with Andrew Levy also”.¹²⁰ Within minutes of Levitt sending this message to Anderson, Levitt wrote to Levy to advise him that he “should put Bruce Livesey in touch with [Anderson]”.¹²¹ Livesey had been hired by Voorheis to investigate Callidus as Voorheis was “after Callidus” and “has come to hate Callidus”.¹²² Livesey was also communicating by then with Boland and Panet about a negative story he was writing about Glassman.¹²³ Indeed, three days after Boland spoke to Levitt and Langstaff had spoken to Anderson on November 29, Boland spoke at length with Livesey.¹²⁴ Levy had testified under oath that

¹¹⁵[CB069-Langstaff email to Anderson of November 29, 2016, **Exhibit 89** of Riley Affidavit.](#)

¹¹⁶[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹¹⁷[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹¹⁸[CB001-Riley Affidavit para 168; CB072-McFarlane’s email suggesting that Anderson connect with West Face, **Exhibit 92** of Riley Affidavit.](#)

¹¹⁹[CB023-Levy Memorandum of August 14, 2015, **Exhibit 30** of Riley Affidavit.](#)

¹²⁰[CB065-Anderson StoptheScandal Twitter Messages, **Exhibit 85** of Riley Affidavit.](#)

¹²¹[CB121-November 27, 2016 Email Correspondence re Contact Info for Journalists, **Exhibit 172** of Riley Affidavit.](#)

¹²²[CB001-Riley Affidavit paras 136 and 209; CB121-Levitt’s email to Levy and Jaross of November 28, 2016, **Exhibit 172** of Riley Affidavit; CB023-Levy Memorandum of August 14, 2015, para 23, **Exhibit 30** of Riley Affidavit.](#)

¹²³[CB044-Livesey Note re Boland Interview, **Exhibit 56** of Riley Affidavit.](#)

¹²⁴[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

Livesey was hired by West Face but this has since been disputed by both Livesey and West Face.¹²⁵

67. It would be a remarkable coincidence if all of the above communications just happened to occur at the same time. Of course, it was not a coincidence. It was the marshalling of a group of individuals looking to harm Catalyst and Callidus. Any suggestion that the aforementioned parties were not embarking on a common design or plan to harm Catalyst and Callidus is not credible.

2.4.3. Collaboration on the Whistleblower Complaint

68. Anderson, McFarlane, Levitt, Baumann, Boland, Panet, Livesey, and the other defendants collaborated in carrying out the plan of making fraud accusations in a whistleblower complaint against Catalyst and Callidus and having them published in the media.

69. On December 15, 2016, Anderson travelled to Toronto to meet with McFarlane, Levitt, Duhamel, Levy and other guarantors.¹²⁶ The purpose of the meeting was to share information for their false fraud allegations to be made in a whistleblower complaint with the OSC/SEC.¹²⁷

¹²⁵[CB030-Levy Transcript August 30, 2017, p.11, line 4, Exhibit 39 of Riley Affidavit.](#)

¹²⁶[CB001-Riley Affidavit para 171\(h\) and \(i\); CB079-Levitt email re Toronto Meeting on December 13, 2016; Exhibit 103 of Riley Affidavit; CB080-Levitt email re Guarantor meeting of December 15, 2016, Exhibit 104 of Riley Affidavit. Duhamel and Levy would be calling into the meeting.](#)

¹²⁷[CB001-Riley Affidavit para 171\(h\) and \(i\); CB079-Levitt email re Toronto Meeting on December 13, 2016; Exhibit 103 of Riley Affidavit; CB080-Levitt email re Guarantor meeting of December 15, 2016, Exhibit 104 of Riley Affidavit.](#)

70. In the week following the December 15 meeting with the Guarantors, Anderson contacted Baumann, Voorheis, Copeland, Boland and Langstaff.

71. Anderson later contacted Baumann, who was not present at the December 15 meeting.¹²⁸ As described further below, Baumann thereafter began providing information to Anderson in aid of the whistleblower complaint.

72. On December 19, 2016, McFarlane introduced Voorheis to Anderson, advising him that, “[t]here’s a case in the US that’s just recently broken that has many parallels. The guy who did the research and filed an SEC complaint that got the investigation started came up to meet us last week and he’s all over Catalyst / Callidus now. I think you guys might benefit from a conversation and I’d be happy to connect you”.¹²⁹

73. After introducing Anderson to Voorheis, McFarlane wrote to Voorheis privately, advising him that Anderson is “pretty pumped up” about the recent arrest of founders of a company against whom he filed whistleblower complaints and that he is “looking forward to his next target”.¹³⁰

74. The next day, Anderson contacted Copeland by phone on December 20, 2016.¹³¹

¹²⁸ [CB205-McFarlane email to Anderson of December 15, 2016 attaching Baumann’s contact information, Baumann CXM Exhibit Brief, Tab 15 – AND0001244.](#)

¹²⁹ [CB001-Riley Affidavit para 169; CB073-McFarlane email of December 19, 2016, Exhibit 93 of Riley Affidavit.](#)

¹³⁰ [CB195-McFarlane email to Voorheis of December 19, 2016, Answer to Undertaking from cross-examination of Jeff McFarlane, produced as JM0000082.](#)

¹³¹ [CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

75. Anderson then spoke on the phone at length with Boland on December 21, 2016.¹³²

76. On December 22, 2016, Anderson called Langstaff.¹³³ Just an hour earlier, Langstaff had spoken on the phone at length to Boland.¹³⁴ Anderson later spoke to Langstaff on December 23, 2016.¹³⁵

77. The details of these phone calls are unknown. Records of Boland's outgoing cell phone calls and Anderson's phone records were only recently produced. However, it is reasonable to infer that these calls between Anderson, Boland, Copeland and Langstaff following the December 15, 2016 meeting with the Guarantors were about the whistleblower complaint against Catalyst and Callidus.

78. Indeed, two weeks later, Langstaff wrote to Anderson on January 4, 2017, "I will get you the stuff".¹³⁶ That same afternoon, Boland had called Anderson and spoke at length with him.¹³⁷ Eight minutes after Anderson's call with Boland, Anderson and Langstaff spoke on the phone.¹³⁸ Boland then called Langstaff an hour after Langstaff's

¹³²[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson; CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹³³[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹³⁴[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹³⁵[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹³⁶[CB083-Langstaff to Anderson Email dated January 4, 2017, Exhibit 109 of Riley Affidavit](#)

¹³⁷[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹³⁸[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

call with Anderson.¹³⁹ Anderson then spoke again on the phone with Langstaff after Langstaff's call with Boland.¹⁴⁰

79. It is evident that Anderson, Langstaff and Boland were working together on the whistleblower complaint. It is also evident that they kept each other informed of their progress.

80. Indeed, as previously stated, Boland's outgoing cell phone calls which were initially not produced, although clearly relevant, disclose that Boland made over 170 calls to Langstaff from November 29 2016 to August 9, 2017 (there has been no production of his incoming cell phone calls or any of West Face's phone records).¹⁴¹

81. Anderson's phone records, which were also only recently produced, show that Langstaff and Anderson had over 50 calls together between November 29, 2016 and July 8, 2017.¹⁴² Like the calls they had on January 4th described above, many of Langstaff's calls with Anderson were made on the same days, sometimes within minutes of calls between Langstaff and Boland. Anderson and Boland/Panet also had 20 calls together.¹⁴³

82. The full extent of their communications amongst themselves and communications with the other defendants is not yet known. Anderson has not produced any of his phone

¹³⁹[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁴⁰[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹⁴¹[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁴²[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹⁴³[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

records from the key period of July 9 – August 9, 2017. McFarlane has produced only limited records. Langstaff has not produced any phone records, nor have any of the other defendants.

83. Boland also kept in contact with McFarlane to “catch up” so that they could “compare notes”.¹⁴⁴ Levy also kept Boland updated, by telling him “exactly what [the Guarantors] were doing” with respect to their “mutual matter”.¹⁴⁵

84. Langstaff also kept West Face apprised about information regarding Catalyst and Callidus that Langstaff sent to Anderson. Langstaff sent information to an “undisclosed recipients” contact group, which at least included Anderson, Levitt, Kassam, Spears, Panet, and other West Face representatives.¹⁴⁶ By blind copying West Face, Langstaff kept West Face informed of his activities with the Guarantors and the other short-sellers. Langstaff is not a party to the anti-SLAPP motions and the full extent of his involvement with the other defendants is not yet fully known. He has not produced any emails from his personal Gmail account that he used to communicate with Anderson and others.

85. To coordinate their efforts, a data room was created to facilitate the sharing of information regarding Catalyst and Callidus for the whistleblower complaint.¹⁴⁷

¹⁴⁴[CB001-Riley Affidavit para 139\(f\)](#); [CB052-McFarlane email to Boland of March 4, 2016, Exhibit 69 of Riley Affidavit](#); [CB244-McFarlane CXM](#), p. 84-85 q. 299-300.

¹⁴⁵ [CB001-Riley Affidavit paras 150 and 171\(jj\)](#); [CB054-Emails between Langstaff and West Face, Exhibit 74 of Riley Affidavit](#); [CB030-Levy Transcript, August 30, 2017, pp. 55-56, Exhibit 39 of Riley Affidavit](#); [CB093-Boland email to Levy of April 25, 2017, Exhibit 129 of Riley Affidavit](#).

¹⁴⁶[CB001-Riley Affidavit para 140](#); [CB053-copies of Langstaff emails to “undisclosed recipients” including Griffin or Panet at West Face, Exhibit 73 of Riley Affidavit](#).

¹⁴⁷[CB001-Riley Affidavit para 171\(a\)](#); [CB076-emails of November 30, 2016, providing access to data room for OSC complaint, Exhibit 96 of Riley Affidavit](#).

86. Levitt engaged his former assistant, Mary Zambri, to gather information about Catalyst and Callidus for the whistleblower complaint.¹⁴⁸ In return for her help, Zambri was entitled to a share of any whistleblower reward.¹⁴⁹

87. In addition, Oswald, who was retained by Baumann to file a complaint with the RCMP, was engaged to “support” Anderson’s work on the whistleblower complaint.¹⁵⁰

88. McFarlane provided copies of his whistleblower complaint to the OSC (which has not been produced) and documents he relied upon in support of his complaint.¹⁵¹

89. Duhamel had his lawyers assist Anderson with the whistleblower complaint. As Levitt told Duhamel’s lawyer on January 17, 2017: “Nathan is assisting the group with filing an SEC complaint and has had several successes recently ...”¹⁵²

90. Duhamel’s lawyer was also communicating with West Face about Callidus in 2017. The details of those discussions are unknown and have not been disclosed on the basis of common interest privilege between West Face and Duhamel. It is known, however, that Duhamel and Boland kept in contact with each other. Indeed, Duhamel and Boland met on July 26, 2017, just weeks before the publication of the WSJ Fraud Articles.¹⁵³

¹⁴⁸[CB001-Riley Affidavit para 171\(l\) and \(m\); CB081-Levitt email to Zambri on December 19, 2016, Exhibit 106 of Riley Affidavit; CB082-Zambri email to Anderson on December 28, 2016, Exhibit 107 of Riley Affidavit.](#)

¹⁴⁹[CB104-Side Letter Agreement to Zambri Concerning Proceeds of Potential Whistleblower Tips, Complaints or Referrals, Exhibit 152 of Riley Affidavit.](#)

¹⁵⁰[CB084-Levitt email to Anderson introducing Oswald on January 12, 2017, Exhibit 111 of Riley Affidavit.](#)

¹⁵¹[CB001-Riley Affidavit para 171\(a\); CB076-emails of November 30, 2016, providing access to data room for OSC complaint, Exhibit 96 of Riley Affidavit.](#)

¹⁵²[CB185-Levitt Email to Simard of January 17, 2017, Levitt CXM Exhibit Brief, Tab 13 - AND0001390.](#)

¹⁵³[CB098-Boland meeting request to Duhamel sent July 17, 2017, Exhibit 137 of Riley Affidavit.](#)

91. Baumann provided Anderson, among other things, copies of his complaints to the TMX¹⁵⁴, and a “complete Dropbox” of documents relating to Alken Basin.¹⁵⁵

92. Langstaff, among other things, provided a copy of a confidential list of Callidus’ borrowers to Anderson, Anson and others; a list that Baumann had originally provided to West Face.¹⁵⁶

93. Langstaff had also texted Levitt accusing Callidus of hiding the losses of Leader Energy in another borrower.¹⁵⁷ As described below, this accusation by Langstaff was contained in the whistleblower complaint and was the only information upon which the accusation regarding Leader Energy was made.

94. On February 24, 2017, McFarlane sent an email to Anderson suggesting that Gateway Casino, a portfolio company of a Catalyst Fund, would be vulnerable to a whistleblower complaint.¹⁵⁸ As described further below, Gateway Casino was a subject of Anderson’s whistleblower complaint. Gateway Casino was also the subject of West

¹⁵⁴[CB210-Baumann email to Anderson of March 31, 2017, **Baumann CXM Exhibit Brief**, Tab 7 – AND0001676.](#)

¹⁵⁵[CB207-Baumann email to Anderson of February 1, 2017, **Baumann CXM Exhibit Brief**, Tab 19 – AND0001492.](#)

¹⁵⁶[CB095-Langstaff email to undisclosed recipients of June 2, 2017, **Exhibit 134** of Riley Affidavit; CB051-Baumann emails with West Face in October 2015 attaching loan statements, **Exhibit 65** of Riley Affidavit.](#)

¹⁵⁷[CB215-Text Messages between Levitt and Langstaff on March 24, 2017, **Levitt CXM Exhibit Brief**, Tab 3 – BL00000011.](#)

¹⁵⁸[CB208-McFarlane Email to Anderson and Levitt of February 24, 2017, **McFarlane CXM Exhibit Brief** – Tab 49 – AND0001561.](#)

Face's complaint to the OSC.¹⁵⁹ McFarlane also sent a copy of his whistleblower complaint that he apparently filed with OSC to Anderson.¹⁶⁰

95. Anson also was a resource to Anderson for his work on the whistleblower complaint.¹⁶¹ Anderson had been introduced to Adam Spears of Anson by Levitt. Levitt had come to know Spears when Marc Cohodes, a notorious short-seller, emailed Spears and Levitt: "You guys need to connect ASAP" and "Mention my name and [Callidus] and off to the races we go..."¹⁶²

96. Anderson acknowledged during his cross-examination that Langstaff, Levitt, McFarlane, Spears, Boland, Panet, and Voorheis were all sources who provided information to "aid" Anderson with an "eye" to preparing the whistleblower complaint.¹⁶³ These individuals, including Langstaff and Boland, were sharing information directly with each other, and they understood the purpose for which they were providing information to him.¹⁶⁴ They all provided information to Anderson that was "helpful".¹⁶⁵

¹⁵⁹[CB202-Email from West Face to OSC of April 9, 2017, produced by way of answer to undertaking as WF016068.](#)

¹⁶⁰[CB244-McFarlane CXM, p. 115-116 q. 421-425; CB076-McFarlane email to Anderson of November 30, 2016, providing Dropbox link, Exhibit 96 to Riley Affidavit.](#)

¹⁶¹[CB237-Anderson CXM, p. 133-134, q.355-360.](#)

¹⁶²[CB086-Cohodes email to Levitt and Spears of February 23, 2017, Exhibit 114 of Riley Affidavit.](#) Levitt claims that his email with Marc Cohodes was obtained by Callidus or Black Cube hacked his personal email account. Contrary to Levitt's allegation, neither the Plaintiffs nor Black Cube hacked Levitt's personal email account. As described in paras. 441-445 of Riley's Affidavit, a copy of the email was obtained from Derrick Snowdy who obtained it from Cohodes. Levitt made a complaint against the Law Society of Ontario against Riley and others alleging that they illegally obtained his email with Cohodes. The LSO closed their file when they learned that it was obtained from Snowdy when Cohodes sent him a copy.

¹⁶³[CB237-Anderson CXM, p. 76-77, q. 166-168; p. 117-119, q. 293-307; p. 133-134, q. 355-360; p. 138-139, q. 383-385; p. 141, q. 388-390.](#)

¹⁶⁴[CB237-Anderson CXM, p. 149, q. 419; p. 212, q. 860; CB242-Levitt CXM, p. 115, q. 471; CB244-McFarlane CXM, p. 212-213, q. 860.](#)

¹⁶⁵[CB237-Anderson CXM, p. 141, q. 390.](#)

97. Anderson arranged to be in Toronto on March 1 and 2, 2017. The whistleblower complaint was close to being finalized. Anderson travelled to Toronto to meet at least with Langstaff, Anson, and the Guarantors to provide an update on the whistleblower complaint.¹⁶⁶ In preparation for his meetings in Toronto, Anderson spoke to Boland, Voorheis, McFarlane, and Langstaff on February 27, 2017.¹⁶⁷

98. The day before Anderson was in Toronto, Levitt sent an email to Spears of Anson on February 28, 2017, with the subject “OSC/JSOT” and informed him that “This thing is about to blow”.¹⁶⁸ That same day, Boland and Anderson spoke on the phone.¹⁶⁹ Boland also made four phone calls to Langstaff within minutes of his call with Anderson.¹⁷⁰

99. On March 1, Anderson met with Langstaff at the Sheraton Hotel.¹⁷¹ Later that morning, Boland called both Anderson and Langstaff.¹⁷² That same day, West Face’s legal counsel contacted the OSC to arrange a call with Panet and the OSC.¹⁷³ It is evident that West Face shared the same view that “This thing is about to blow”.

¹⁶⁶[CB099-Emails exchanged re Anderson meeting on March 2, 2017, Exhibit 139 of Riley Affidavit.](#)

¹⁶⁷[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹⁶⁸[CB088-Levitt email to Spears of February 28, 2017, Exhibit 117 of Riley affidavit.](#)

¹⁶⁹[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹⁷⁰[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁷¹[CB089-Email from Anderson to Langstaff of March 1, 2017, Exhibit 118 of Riley Affidavit.](#)

¹⁷²[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson; CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁷³[CB201-Email from West Face Counsel to OSC of March 1, 2017, produced by way of answer to undertaking as WF16019.](#)

100. On March 2, Anderson met with Spears and other representatives at Anson.¹⁷⁴ In addition to providing information in aid of the whistleblower complaint, Anderson offered Anson an opportunity to invest in the whistleblower complaint.¹⁷⁵

101. On March 3, following his meetings in Toronto, Boland's outgoing phone records show that he spoke to Anderson twice that morning.¹⁷⁶ Boland then spoke to Langstaff following his calls with Anderson.¹⁷⁷

102. On March 3, Anderson also spoke to Voorheis.¹⁷⁸ McFarlane advised Levitt that he was in "close contact" with Voorheis so that "all of our efforts are co-ordinated".¹⁷⁹ Voorheis was also in close contact with Langstaff. According to an email from Voorheis, he and Langstaff spoke "a hundred times" about the Callidus "situation".¹⁸⁰ Voorheis was also in close contact with Anderson. Voorheis and Anderson had or made over 48 calls from November 29, 2016 to July 8, 2017.¹⁸¹

¹⁷⁴[CB087-Anderson emails with Spears of February 28, 2017, Exhibit 115 of Riley Affidavit.](#)

¹⁷⁵[CB102-Anderson email to Spears of May 23, 2017 including copy of whistleblower proposal, Exhibit 147 of Riley Affidavit.](#)

¹⁷⁶[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁷⁷[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁷⁸[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

¹⁷⁹[CB074-Emails from McFarlane dated March 3, 2017, Exhibit 94 of Riley Affidavit.](#)

¹⁸⁰[CB001-Riley Affidavit para 170; CB074-Emails from McFarlane dated March 3, 2017, Exhibit 94 of Riley Affidavit; CB075-Email from Voorheis dated May 25, 2017, Exhibit 95 of Riley Affidavit.](#)

¹⁸¹[CB187-Anderson Phone Records, Answer to Undertaking from cross-examination of Nathan Anderson.](#)

103. On March 21, 2016, McFarlane arranged to travel to Toronto to meet with Voorheis, Langstaff, and Tilak on March 22, 2017.¹⁸² McFarlane was told by Anderson the day prior that the whistleblower complaint was “2-3 weeks” away from being filed.¹⁸³

2.4.4. Media Was Contacted as the Timing was Right

104. While the whistleblower complaint was 2-3 weeks away from filing, efforts were made to carry out the plan of disseminating the complaint to the media.

105. Anderson contacted Livesey sometime in March 2017. He also contacted Lawrence Delevingne of *Reuters*.¹⁸⁴

106. On March 22, 2017, McFarlane met with Tilak of *Reuters*.¹⁸⁵ Afterwards, he reported to Anderson that Tilak advised him that if the whistleblower complaint made fraud allegations that encompassed *Catalyst*, Tilak believed it would “be substantial enough to get his editor’s approval”.¹⁸⁶ Callidus was deemed too small, according to Tilak.¹⁸⁷ McFarlane had clearly informed Tilak about the draft whistleblower complaint and Tilak informed McFarlane that the whistleblower complaint needed to allege fraud against

¹⁸²[CB090-McFarlane email to Levy of March 21, 2017, Exhibit 121 of Riley Affidavit.](#)

¹⁸³[CB090-McFarlane email to Levy of March 21, 2017, Exhibit 121 of Riley Affidavit.](#)

¹⁸⁴[CB233-Anderson Affidavit, para 32.](#)

¹⁸⁵[CB186-McFarlane email to Anderson of March 22, 2017, Tab 53 - AND0001641, McFarlane CXM Exhibit Brief.](#)

¹⁸⁶[CB186-McFarlane email to Anderson of March 22, 2017, Tab 53 - AND0001641, McFarlane CXM Exhibit Brief.](#)

¹⁸⁷[CB186-McFarlane email to Anderson of March 22, 2017, Tab 53 - AND0001641, McFarlane CXM Exhibit Brief.](#)

Catalyst in order for it to be published.¹⁸⁸ In its final form, the whistleblower complaint would indeed encompass fraud allegations against Catalyst.¹⁸⁹

107. On March 22, the same day as his meeting with *Reuters*, McFarlane met with Langstaff.¹⁹⁰ That afternoon, Boland spoke to Anderson and then immediately after his call with Anderson, called Langstaff.¹⁹¹

108. The next day, Boland called Livesey.¹⁹² The details of that call are unknown. Although Livesey has produced recordings of phone calls with individuals, including Boland, he has not produced a recording of this call. It is reasonable to infer however that they spoke about the whistleblower complaint.

109. Further, after McFarlane's meeting with Langstaff, Kassam of Anson wrote to Langstaff on March 23 (the same day that Boland contacted Livesey), asking for a "draft" – presumably of the whistleblower complaint that McFarlane said was 2-3 weeks away from being filed: "*Any draft for me?*"¹⁹³

110. In addition, Levitt emailed Panet on April 23, 2017 to arrange to speak with him regarding the whistleblower complaint.¹⁹⁴ As Levitt had done previously when he contacted Panet about the "Catalyst Callidus Fraud Outline" before his meeting with the

¹⁸⁸[CB186-McFarlane email to Anderson of March 22, 2017, Tab 53 - AND0001641, **McFarlane CXM Exhibit Brief**.](#)

¹⁸⁹[CB233-Anderson Affidavit para 23; CB204-Whistleblower Complaint](#), and [CB198-Supplementary Whistleblower Complaint](#), Exhibit I and Exhibit J to Anderson Affidavit.

¹⁹⁰[CB090-McFarlane email to Levy of March 21, 2017, **Exhibit 121** of Riley Affidavit.](#)

¹⁹¹[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁹²[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

¹⁹³[CB091-Kassam text message to Langstaff of March 23, 2017, **Exhibit 122** Riley Affidavit.](#)

¹⁹⁴[CB092-Email from Panet to Levitt, April 23, 2017, **Exhibit 128** of Riley Affidavit.](#)

OSC in December 2016, Levitt wrote to Panet on April 23, 2017 “will need to speak to you re material.”¹⁹⁵ Levitt and Panet arranged to speak later that night and Levitt informed Anderson “if we [Panet and Levitt] don’t connect tonight we will be speaking in the morning.”¹⁹⁶ According to Panet’s phone records, Panet and Levitt did speak the following morning on April 24, 2017.¹⁹⁷

111. On cross-examination, Anderson claimed that he could not recall what the “material” was that Levitt needed to speak to Panet about.¹⁹⁸ Levitt, on his cross-examination, initially claimed that he too could not recall what the “material” was in reference to. When pressed on cross-examination that the “material” was the whistleblower complaint, Levitt said that he “cannot speak to exactly what the material is, but it is close to – to the dates of the filing of the whistleblower report” and that the whistleblower complaint was the “only material” that he and Anderson were working on at that time.¹⁹⁹ It clearly was the whistleblower complaint. Levitt and Anderson, in fact, made arrangements on April 28 for Anderson to be in Toronto to review a draft of the whistleblower complaint with potential investors.²⁰⁰ Their inability to be forthright on such a detail is telling.

112. The day after Levitt and Panet spoke, Boland emailed Levy asking him to give him a call.²⁰¹ As disclosed in Boland’s outgoing cell phone records, Boland contacted Levy

¹⁹⁵[CB092-Email from Panet to Levitt, April 23, 2017, Exhibit 128 of Riley Affidavit.](#)

¹⁹⁶[CB092-Email from Panet to Levitt, April 23, 2017, Exhibit 128 of Riley Affidavit.](#)

¹⁹⁷[CB190-Chart of Phil Panet Mobile Phone Calls, Answer to Undertaking from cross-examination of Phil Panet.](#)

¹⁹⁸[CB237-Anderson CXM, p. 158-160, q. 453-457.](#)

¹⁹⁹[CB242-Levitt CXM, p. 150-154, q. 625-643.](#)

²⁰⁰[CB101-Levitt email to McFarlane and others of April 28, 2017, Exhibit 144 of Riley Affidavit.](#)

²⁰¹[CB093-Boland email to Levy of April 25, 2017, Exhibit 129 of Riley Affidavit.](#)

on April 25, 2017, and spoke to him at length.²⁰² Langstaff also contacted Levy that same day on behalf of “his friend” Boland and informed him that he “was helping West Face”.²⁰³ Levy informed Boland that there is “A lot going on in our mutual matter”.²⁰⁴

113. There was indeed a lot going on in their “mutual matter”. As only recently revealed in the last few weeks, while Boland and Panet were working on the whistleblower complaint with Anderson, Levitt, McFarlane, Langstaff and the other Guarantors, West Face concurrently had filed its own complaint with the OSC, just a week earlier on April 18, 2017. West Face filed its own complaint when it was anticipated that the whistleblower complaint would be filed (i.e. 2-3 weeks after March 22).²⁰⁵ The substance of West Face’s complaint and the whistleblower complaint that was ultimately filed were similar.²⁰⁶ West Face’s complaint to the OSC would lend aid and credibility to the whistleblower complaint that was anticipated to be filed imminently.

114. In addition, three days after West Face filed its complaint with the OSC, Boland called Livesey on April 21 and spoke to him at length.²⁰⁷ Livesey recorded and produced transcripts of a number of calls with Boland. He did not produce any recording or transcript of this call with Boland.

²⁰²[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

²⁰³[CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit; CB030-Levy Transcript August 30, 2017, p. 53 line 23, Exhibit 39 of Riley Affidavit.](#)

²⁰⁴[CB093-Email exchanges between Levy and Boland on April 25, 2017, Exhibit 129 of Riley Affidavit.](#)

²⁰⁵West Face Submissions to the OSC of April 9 and 18, 2017, produced by way of answer to undertaking as [CB202-WF16068](#) and [CB203-WF16073](#).

²⁰⁶ West Face Submissions to the OSC of April 9 and 18, 2017, produced by way of answer to undertaking as [CB202-WF16068](#) and [CB203-WF16073](#)

²⁰⁷[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

115. It is also important to note that a week later, Livesey met with Anderson on April 28, 2017, at which time Anderson gave him a copy of the whistleblower complaint.²⁰⁸ It was a draft of the complaint, as the final complaint was not filed until May 22, 2017. As Anderson states, he uses the media to vet his complaints.²⁰⁹

2.4.5. The Guarantors' Police Complaint

116. On May 19, 2017, 3 days before the whistleblower complaint was filed, Levitt, McFarlane, Baumann, Duhamel and Levy contacted Gail Regan of the Toronto Police to make a criminal complaint against Catalyst and Callidus.²¹⁰ They delivered a PowerPoint presentation to Detective Regan.²¹¹ In addition, Levitt, McFarlane, Baumann, Duhamel also provided Detective Regan information regarding their respective loans including information about Fortress (Levitt), XTG (McFarlane), Alken Basin (Baumann), Bluberi (Duhamel), and Esco Marine (Levy).²¹²

117. Anderson was kept informed of the Guarantors' complaints to the Police.²¹³ Anderson asserted that he had no knowledge or involvement relating to any complaints

²⁰⁸[CB243-Cross Examination of Bruce Livesey on December 18, 2020 \("Livesey CXM"\)](#), p. 137-138, q. 501.

²⁰⁹[CB233-Anderson Affidavit, para 30.](#)

²¹⁰[CB107-Communications among the guarantors and with the Police regarding a criminal complaint, Exhibit 155 of Riley Affidavit.](#)

²¹¹[CB001-Riley Affidavit para 177; CB106-Emails exchanged between McFarlane, Levitt, Gary Smith, Molyneux regarding a "Draft Slide deck for Police", which attaches a PowerPoint Presentation titled "Overview of Callidus and Catalyst Capital Business Practices", Exhibit 154 of Riley Affidavit.](#)

²¹²[CB107-Communications among the guarantors and with the Police regarding a criminal complaint, Exhibit 155 of Riley Affidavit.](#)

²¹³[CB108-Emails evidencing Anderson's involvement in complaints to Police, Exhibit 156 of Riley Affidavit.](#)

to the Police. However, documents now produced show that Anderson made arrangements to have his lawyer, Bryan Wood, speak to the Toronto Police.²¹⁴

118. The Police specifically instructed the Guarantors not to disclose that a complaint had been made. The Guarantors, in complete disregard of the request from the Police, told *Reuters*, Livesey and Copeland that the Police were investigating Catalyst and Callidus.²¹⁵ The disregard of the police's warning is consistent with the actual intent of the Guarantors who sought to have Catalyst and Callidus tagged in the press as fraudsters who were under a criminal investigation by the police. As Anderson stated to Levitt and McFarlane, "most due-diligence pros in the industry stop caring when they get even a whiff of fraud because they know its uninvestible and just move on."²¹⁶

2.4.6. Disregard of Confidential Whistleblower Process

119. On May 22 and 30, 2017, the whistleblower complaint and a supplementary whistleblower complaint were filed with the OSC.²¹⁷ The whistleblowers were identified as Anderson and "an additional Whistleblower" who wished to "remain anonymous". The anonymous whistleblower was Levitt. Although Anderson and Levitt were the "whistleblowers", the complaint was prepared and filed with the assistance, participation and/or encouragement of McFarlane, Baumann, Langstaff, Boland, Panet, and Livesey. As described further below, the Whistleblower Complaint alleged that Catalyst and

²¹⁴[CB001-Riley Affidavit para 179](#); [CB108-Emails evidencing Anderson's involvement in complaints to Police, Exhibit 156 of Riley Affidavit](#).

²¹⁵[CB214-Levitt Email to Copeland dated July 14, 2017, Baumann email to Tilak dated July 6, 2017, Levitt CXM Exhibit Brief, Tabs 38 and 40](#).

²¹⁶[CB072-Anderson email to Levitt and McFarlane of December 7, 2016, Exhibit 92 of Riley Affidavit](#).

²¹⁷[CB001-Riley Affidavit para 175](#); [CB233-Anderson Affidavit para 23](#); [CB204-Whistleblower Complaint and CB198-Supplementary Whistleblower Complaint, Exhibit I and Exhibit J to Anderson Affidavit](#).

Callidus are engaged in a “massive fraud”, running a Ponzi or pyramid scheme and playing a “shell game”.

120. The Plaintiffs’ claim and the expressions at issue do not take issue with the filing of the whistleblower complaint with the OSC. Had the defendants allowed the whistleblower process play out confidentially, as the whistleblower program is designed to do, then there would have been no claim advanced by the Plaintiffs. The circumstances however that give rise to this proceeding go beyond whistleblowing.

121. Anderson uses the media to publicize whistleblower complaints even though he acknowledges that it may take years for a regulatory prosecution to conclude and there is a *high degree* of uncertainty as to outcome.²¹⁸ This is because regardless of whether regulators investigate and/or conclude that no enforcement action is warranted, he seeks to profit from short selling the companies that he has caused harm to by the public accusations of fraud. As Anderson says, short selling “keeps the lights on”.²¹⁹

122. It had been the plan from the outset to use the whistleblower complaints to garner negative publicity disastrous to Catalyst and Callidus. As mentioned, months earlier, Anderson said that he would contact Tilak “when the timing makes sense”.²²⁰

²¹⁸[CB233-Anderson Affidavit, paras 16 and 30.](#)

²¹⁹[CB237-Anderson CXM, p. 25-27, q. 47-49; CB112-text messages exchanged between Copeland and Anderson \(p. 20\), Exhibit 161 of Riley Affidavit.](#)

²²⁰[CB070-Anderson email to McFarlane of November 29, 2016, Exhibit 90 of Riley Affidavit.](#)

123. Indeed, only a week after the whistleblower complaint was filed, Anderson and Levitt contacted *Reuters*.²²¹ As discussed in their emails of June 2, Levitt wrote to Anderson to “coordinate what we want to say to John T[ilak]”.²²²

124. Anderson and Levitt did speak to Tilak. On June 2, 2017, Levitt informed McFarlane, Levy, and Jaross that *Reuters* was “pushing hard on info,” and he “Had some requests from Tilak”.²²³ On June 3, 2017, Levitt texted Langstaff to tell him that *Reuters* was “working hard now”.²²⁴

125. On June 5, Voorheis was in contact with Tilak.²²⁵ Levy was also in contact with Tilak a week later on June 12, 2017 and had a “long talk with [Tilak]”.²²⁶ The details of those discussions are currently unknown. Voorheis and Levy have yet to be examined in this proceeding.

126. Baumann spoke to *Reuters* and told them that he filed complaints with the police and other regulatory authorities, including the OSC and the ASC, and alleged that Callidus engaged in fraud.²²⁷

127. Anderson provided Tilak with a copy of the whistleblower complaint.²²⁸ The whistleblower complaint now encompassed fraud allegations against Catalyst, which

²²¹[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

²²²[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

²²³[CB125-Email from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

²²⁴[CB126-Text messages exchanged between Levitt and Langstaff on June 21, 2017, Exhibit 178 of Riley Affidavit.](#)

²²⁵[CB127-Email from Tilak to Voorheis of May 31, 2017, Exhibit 179 of Riley Affidavit.](#)

²²⁶[CB128-Email from Levy to Levitt and others of June 12, 2017, Exhibit 180 of Riley Affidavit.](#)

²²⁷[CB001-Riley Affidavit para 414; CB175-Email exchanges between Tilak, Gagnier and Delevingne re Reuters Investigation, Exhibit 252 of Riley Affidavit.](#)

²²⁸[CB237-Anderson CXM p. 89-90 q. 207-209.](#)

Tilak had earlier said was necessary to entice his editors to publish a story on the complaints.²²⁹

128. McFarlane also spoke to Tilak to advise him that he too filed a whistleblower complaint with the OSC.²³⁰ McFarlane, according to a text message he sent to Tilak, spoke to Tilak on June 26, 2017.²³¹

129. That same evening, Levitt sent an email to McFarlane, Baumann, Levy, Molyneux, Smith, and Jaross, informing them that an article from *Reuters* was believed to be coming out mid-week (i.e. June 28).²³² When asked on cross-examination whether Levitt also informed Anderson that the *Reuters* article would be coming out mid-week, Levitt could not recall.²³³ He did acknowledge however that there would be no reason not to tell Anderson about the pending *Reuters* article.²³⁴ Clearly, the timing of the article was of importance for Anderson's shorting activity.

130. When put to Anderson on cross-examination that he was told that *Reuters'* article was to be published mid-week (i.e. June 28), Anderson refused to say that he knew the timing of the pending publication. He went only so far as to say he "could have had that belief".²³⁵ Anderson's conduct however shows that he *did* know or certainly did believe that *Reuters* would publish an article on the whistleblower complaints on June 28. On

²²⁹[CB186-McFarlane email to Anderson of March 22, 2017, Tab 53 - AND0001641, **McFarlane CXM Exhibit Brief**.](#)

²³⁰[CB001-Riley Affidavit para 414; CB175-Email exchanges between Tilak, Gagnier and Delevingne re Reuters Investigation, **Exhibit 252** of Riley Affidavit.](#)

²³¹[CB222-McFarlane text messages with Tilak of June 26, 2017, **McFarlane CXM Exhibit Brief, Tab 6 – Doc 16 – McFarlane Prod. 46**.](#)

²³²[CB250-Levitt Email to McFarlane et al. of June 26, 2017, Tab 36 - **Levitt CXM Brief**.](#)

²³³[CB242-Levitt CXM, p. 168, q. 704.](#)

²³⁴[CB242-Levitt CXM, p. 173, q. 725-726.](#)

²³⁵[CB237-Anderson CXM p. 173-175, q. 507-513.](#)

June 27 (after Levitt said the evening before that he believed an article is coming out mid-week), Anderson executed his first short trade against Callidus.²³⁶ Anderson sought to profit from the pending *Reuters* publication of the fraud accusations against Callidus.

131. On June 28, 2017, Tilak and Delevingne of *Reuters* contacted Callidus' Investor Relations Representative and told him that they were working on a story containing "bombshell" allegations about Callidus and Catalyst.²³⁷ By this time, Tilak and Delevingne had the OSC, ASC and police complaints from Anderson, Levitt, Baumann and McFarlane. Delevingne asked to interview Glassman that day or to receive responses to certain questions by close of business that day.²³⁸ Delevingne represented that the Police were "investigating" Callidus for potential criminal fraud relating to its lending practices.²³⁹

132. In response to these accusations, Callidus and Catalyst contacted Tilak and Delevingne to request a fair opportunity to respond to the allegations prior to the publication of an article.²⁴⁰ Callidus and Catalyst informed Tilak and Delevingne that their sources were not credible, that the allegations of investigations into Callidus and Catalyst were extremely serious, and that the publication of this information would cause substantial damage to them.²⁴¹ They also pointed out the disparities, contradictions, and

²³⁶[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.](#)

²³⁷[CB001-Riley Affidavit para 413.](#)

²³⁸[CB001-Riley Affidavit para 414; CB175-Email exchanges between Tilak, Gagnier and Delevingne re Reuters Investigation, Exhibit 252 of Riley Affidavit.](#)

²³⁹[CB001-Riley Affidavit para 414; CB175-Email exchanges between Tilak, Gagnier and Delevingne re Reuters Investigation, Exhibit 252 of Riley Affidavit.](#)

²⁴⁰[CB001-Riley Affidavit para 416.](#)

²⁴¹[CB176-Callidus/Catalyst Counsel letter to Reuters dated June 29, 2017, Exhibit 253 of Riley Affidavit.](#)

the unreliability of Tilak and Delevingne's sources (these were the same sources that Copeland and McNish later relied upon for the WSJ Fraud Articles).²⁴²

133. The Guarantors and Anderson expected the article in *Reuters* by June 28, 2017. Having not seen the article, McFarlane spoke to Tilak on June 29 and then reported to Levitt and Anderson: "Just spoke to John [Tilak]. Nothing's been released yet – still under review internally".²⁴³ It is evident that they were being kept apprised of the article's progress.

134. *Reuters'* internal review revealed several problems with the threatened "bombshell" story. For example, *Reuters* would later confirm, contrary to Tilak's assertion, that the Police were "not making any inquiries" and that there was "no investigation."²⁴⁴ Ultimately, no story was published at that time.

135. As *Reuters* had not published an article about the Whistleblower Complaints as anticipated, Anderson closed out his entire short position on July 13, 2017. The share price of Callidus did not materially change when he first shorted Callidus on June 27 to when he closed his short position on July 13.²⁴⁵

136. Anderson was not deterred. He sought others to publish the whistleblower complaint, including Livesey and Copeland.

²⁴²[CB001-Riley Affidavit para 419; CB177-Callidus/Catalyst Counsel letter to Reuters dated July 6, 2017, Exhibit 255 of Riley Affidavit.](#)

²⁴³[CB129-Email exchange among McFarlane, Levitt and Anderson on June 29, 2017, Exhibit 181 of Riley Affidavit.](#)

²⁴⁴[CB178-Email from Reuters re no investigation, Exhibit 260 of Riley Affidavit.](#)

²⁴⁵[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.](#)

2.5. THE WHISTLEBLOWER COMPLAINT GETS PUBLISHED

137. On July 13, 2017, the same day that he closed his short position in Callidus, Anderson arranged to meet with Livesey the following day in Toronto.²⁴⁶ Livesey could not say that he received a final copy of the Whistleblower Complaint when he met Anderson. He did state that at some point in the first half of 2017, Livesey received a copy of the Whistleblower Complaint.²⁴⁷ He also received a report prepared by Anderson titled “Callidus Capital Corporation (TSE : CBL): Opaque Portfolio, Questionable Disclosure, Buyer Beware”, in which it is disclosed that Anderson and others who contributed to this report held short positions in Callidus and stood to realize gains in the event that the price of the stock decreases.²⁴⁸ Notwithstanding that this is clearly stated in the report, Livesey denies knowing that Anderson was a short-seller and had shorted Callidus.²⁴⁹ Further, Livesey claims that he does not recall how or who provided these documents to him.²⁵⁰ These claims are not credible. Livesey would only have received the report from Anderson and as a business reporter/investigator would have recognized the clear wording in the report. He also admitted that he received approximately 20 calls from Levitt asking when he was going to be publishing his article.²⁵¹

²⁴⁶[CB130-Anderson emails with Livesey of July 13, 2017, Exhibit 183 of Riley Affidavit.](#)

²⁴⁷[CB243-Livesey CXM, p. 138, q. 503.](#)

²⁴⁸[CB001-Riley Affidavit para 183; CB097-Broken Bridge Report, Exhibit 136 of Riley Affidavit; CB233-Anderson Affidavit para 31.](#)

²⁴⁹[CB243-Livesey CXM, p. 128-129, q. 457-463.](#)

²⁵⁰[CB243-Livesey CXM, p. 136, q. 494-495.](#)

²⁵¹[CB243-Livesey CXM, p. 52-56, q. 187-194.](#)

138. In addition, on July 13, the same day Anderson contacted Livesey, Anderson contacted Copeland. Anderson began: “You around Monday? Got something”. Copeland replied “Ya brah”:²⁵²

139. Anderson admits that he contacted Copeland about Catalyst and Callidus because of Copeland’s past articles on companies that were the subject of Anderson’s own whistleblower complaints.²⁵³

140. Copeland also knew that Anderson had been in contact with “Lawrence” Delevingne at *Reuters* to publish a story on the “actual” whistleblower complaint against Catalyst and Callidus. As Anderson told Copeland, *Reuters* was “wussing out so it’s yours”.²⁵⁴

141. Anderson was texting Copeland arranging for him to publish a story on the whistleblower complaint, while he was in a car with Langstaff (referred to in the text as “one of Callidus’ underwriters”). Anderson and Langstaff were on their way to an Anson barbeque hosted by Spears.²⁵⁵ Copeland advised Anderson (who in turn told Langstaff) that McNish was going to be involved in writing the story.

142. At the Anson barbecue on July 13, 2017, Anderson met with several short-sellers including Cohodes, and Spears and Kassam of Anson.²⁵⁶ Anderson spoke about Eros

²⁵²[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

²⁵³[CB232-Supplementary Affidavit of Nathan Anderson, sworn August 20, 2020 \(“Anderson Reply Affidavit”\) para 15.](#)

²⁵⁴[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

²⁵⁵[CB237-Anderson CXM, p. 16, q. 27.](#)

²⁵⁶[CB237-Anderson CXM p. 224 q. 739.CB001-Riley Affidavit para 195; CB112-text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

International, a company about which he published a report and subsequently shorted.²⁵⁷ In Anderson's own words, Eros was a "stupid" company that he "beat up", "crushed" and "[s]ent a couple of tweets about their accounting fraud and the thing ripped down 20%".²⁵⁸ According to Anderson, what he did to Eros was "Good for brand Nate" and "Helps keep the lights on".²⁵⁹ As described further below, their interactions did not stop there. They followed up on their conversation a few days later, after which Anson began "spreading" Callidus shorts around "so as not to arouse suspicion or questions".²⁶⁰

143. That evening, after the Anson barbecue, Anderson sent Copeland documents via a Dropbox folder named "Catalyst".²⁶¹ In addition to providing Copeland with documents, Anderson spoke with Copeland on the phone "fairly regularly".²⁶² How frequently and when are not yet known as Anderson and Dow Jones have not produced any phone records for this period.

144. On July 14, 2017, the day after Anderson contacted Copeland, Anderson introduced Copeland to Levitt.²⁶³ Copeland contacted Levitt that same day, and Levitt immediately began providing information to Copeland for the WSJ Fraud Article, including information relating to the Police complaint even though he had been asked by the Police

²⁵⁷[CB001-Riley Affidavit para 195; CB112-text messages exchanged between Copeland and Anderson \(p. 19, text of July 28, 2017\), Exhibit 161 of Riley Affidavit.](#)

²⁵⁸[CB112-Text messages exchanged between Copeland and Anderson \(p. 10, text of July 21, 2017\), Exhibit 161 of Riley Affidavit.](#)

²⁵⁹[CB237-Anderson CXM, p. 25-27, q. 47-49; CB112-text messages exchanged between Copeland and Anderson \(p. 20\), Exhibit 161 of Riley Affidavit.](#)

²⁶⁰[CB001-Riley Affidavit para 197; CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit.](#)

²⁶¹[CB001-Riley Affidavit para 190; CB096-Anderson email to Copeland on July 13, 2017, Exhibit 135 of Riley Affidavit.](#)

²⁶²[CB237-Anderson CXM, p. 30-31, q. 56.](#)

²⁶³[CB223-Text messages exchanged between Copeland and Anderson, Levitt CXM Exhibit Brief, Tab 37 – Riley Libel Exhibit 9.](#)

“not to talk to anyone about this”.²⁶⁴ As Copeland learned, Levitt had been shopping a story on Catalyst and Callidus for a “long time”.²⁶⁵

145. Over the next several weeks leading up to the publication of the WSJ Fraud Articles, it is known that Anderson, Levitt, Boland, Panet, Langstaff, McFarlane and Baumann provided information to Copeland and McNish for the article, including copies of the whistleblower complaint that were filed with the OSC, copies of the complaints made to the Police, and copies of complaints made to other regulators like CPA Ontario.²⁶⁶ There were also numerous phone calls with Copeland and McNish including conference calls among Baumann, Anderson and Copeland, and among McFarlane, Anderson and McNish.²⁶⁷ Some of the defendants used intermediaries to provide information to Copeland and McNish. Directly or indirectly, they were all sources for the WSJ Fraud Articles.

146. Boland has denied that he, Panet or anyone at West Face were sources for the WSJ Fraud Article.²⁶⁸ West Face also asserts that they had no communication with Copeland and that there is no evidence that West Face knew the whistleblower complaint was to be publicized.²⁶⁹ However, the text messages between Copeland and Anderson reveal otherwise. While Copeland and McNish were working on the article, “Greg Boland”

²⁶⁴[CB221-Levitt Email to Copeland dated July 14, 2017, Levitt CXM Exhibit Brief, Tab 38 – Riley Libel Exhibit 18.](#)

²⁶⁵[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

²⁶⁶ See for example: **Baumann CXM Exhibit Brief - CB217-Levitt forwarding Baumann criminal complaint to Copeland on July 15, 2017, Tab 27 – DOW000999; CB219-Baumann email to Copeland forwarding police complaint on July 31, 2017, Tab 28 – DOW001015.**

²⁶⁷[CB188-See phone call transcripts in Catalyst Amended Order 7 Apr 2021.](#)

²⁶⁸[CB234-Boland Affidavit, para 127.](#)

²⁶⁹Factum of the Moving Party Defendants West Face and Boland, delivered May 5, 2021, paras 24 and 43.

was communicating with Anderson (the short-seller) who he had aided in preparing the whistleblower complaint, and using Anderson to convey documents to Copeland and McNish in aid of their article.²⁷⁰ As the transcript of a call between Copeland and McNish further revealed Anderson was sending “stuff” to McNish through Copeland.²⁷¹ Boland’s denial that he provided no information to McNish for the article is not credible.²⁷² It is also contrary to what Anderson stated on his cross-examination that Boland wanted documents to get to McNish and “Greg had at least thought towards what public records might be interesting to the Wall Street Journal and their research”.²⁷³ Boland was actively participating in an effort to get the Wall Street Journal publish the negative article against Catalyst and Callidus.

147. This is not the only known time that Boland used an intermediary to convey or obtain information to the conspirators. Boland used Langstaff to “help West Face” when he contacted Levy to obtain information on his behalf.²⁷⁴ Boland’s continued assertion that he was not involved in the whistleblower complaint and the WSJ Fraud Articles is not credible.

148. The relationship between West Face and McNish was so significant that McNish spoke with Panet on August 8, the day before the publication of the WSJ Fraud Articles.²⁷⁵ McNish and Copeland had met with representatives of Catalyst and Callidus on August

²⁷⁰[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

²⁷¹[CB188-Transcript of Phone call between McNish and Copeland on July 20, 2017, p. 90 of Catalyst Amended Order 7 Apr 2021.](#)

²⁷²[CB238-Boland Continued CXM, p. 398, q. 1010.](#)

²⁷³[CB236-Anderson Continued CXM, p. 398, Q. 1010](#)

²⁷⁴[CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit; CB030-Levy Transcript August 30, 2017, p. 53 line 23, Exhibit 39 of Riley Affidavit.](#)

²⁷⁵[CB188-McNish notes from phone call between McNish and Panet on August 8, 2017, p. 53 of Catalyst Amended Order 7 Apr 2021.](#)

8. It was the day before the publication and Copeland had reported to Anderson and Levitt about their meeting with Catalyst and Callidus.²⁷⁶ McNish's conversation with Panet is detailed in her notebook; they apparently discussed topics including Alken Basin, Baumann, issues around guarantees/guarantors, limited partners, the Moyses appeal; VimpelCom, and the sale of Callidus to a private debt fund.²⁷⁷ Panet claims that he cannot recall speaking to her.²⁷⁸ A call with McNish, after her meeting with Catalyst and Callidus the day before the publication, affirms that West Face and Boland were highly involved in the WSJ publication to tout the fraud allegations against Catalyst and Callidus.

149. In addition to the Whistleblower Complaint, the Police Complaint and other complaints to regulators, Copeland was provided with, and reviewed, the report prepared by Anderson titled "Callidus Capital Corporation (TSE: CBL): Opaque Portfolio, Questionable Disclosure, Buyer Beware".²⁷⁹ As stated previously, this report specifically disclosed that Anderson and others who had contributed to the report held short positions in Callidus and stood to realize gains in the event that the price of the stock decreased.²⁸⁰

2.6. ANDERSON SHORTS CALLIDUS PENDING PUBLICATION OF THE WSJ FRAUD ARTICLE

150. Notwithstanding that Copeland received and reviewed Anderson's report with the notice of Anderson's short position in Callidus, Copeland has denied knowing Anderson

²⁷⁶[CB237-Anderson CXM](#), p. 193, q. 606-610.

²⁷⁷[CB188-McNish notes from phone call between McNish and Panet on August 8, 2017](#), p. 53 of [Catalyst Amended Order 7 Apr 2021](#).

²⁷⁸[CB247-Continued Cross Examination of Philip Panet on April 20, 2021 \("Panet Continued CXM"\)](#), p. 203-238, q. 495-584, and in particular p. 226-227, q. 552-558.

²⁷⁹[CB240-Transcript from the cross-examination of Rob Copeland on November 9, 2019 \("Copeland CXM"\)](#), p. 69-73, q. 142-144

²⁸⁰[CB001-Riley Affidavit para 183](#); [CB097-Broken Bridge Report, Exhibit 136 of Riley Affidavit](#); [CB233-Anderson Affidavit para 31](#).

or any other source was shorting Callidus.²⁸¹ It was spelled out in the report provided by Anderson, a known short-seller.²⁸² Anderson had bragged to Copeland how he ripped down Eros 20% and what he did “helps keep the lights on”.²⁸³ Moreover, the manipulation of the media by short sellers is well known. Even McNish acknowledged the dangers of short-sellers who are out for a “quick hit”.²⁸⁴ Copeland’s assertion is not credible.

151. Despite being informed of Anderson’s short position, Copeland provided advance notice to Anderson of when his fraud article was going to be published. Copeland sent a text message to Anderson on July 27, 2017 at 6:17 PM ET informing him that the “Story should be out Tuesday” “Don’t tell the conspiracy of short sellers!”²⁸⁵ It is evident that Copeland was aware that there were short-sellers who had an interest in the article that he and McNish were about to publish. But this did not stop Copeland.

152. In what Anderson described in his cross-examination as a “joke”, he told Copeland that he was deleting “this whole chat log”.²⁸⁶ It appears that he made good on his promise. Anderson has not produced any chat logs of his communications with Copeland. The destruction of such key evidence is telling and weighs against Anderson and his credibility.

153. When cross-examined about being told by Copeland that the “Story should be out Tuesday”, Anderson claims that Copeland was also “quite clearly joking” and he denied

²⁸¹[CB240-Copeland CXM, p. 71-72, q. 143](#); Factum of the Moving Party, Rob Copeland, dated May 5, 2021, para 27.

²⁸²[CB097-Broken Bridge Report, Exhibit 136 of Riley Affidavit](#); [CB240-Copeland CXM, p. 72-73, q. 144](#).

²⁸³[CB237-Anderson CXM, p. 25-27, q. 47-49](#); [CB112-text messages exchanged between Copeland and Anderson \(p. 20\), Exhibit 161 of Riley Affidavit](#).

²⁸⁴[CB245-McNish CXM, p. 56, q. 190](#).

²⁸⁵[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit](#).

²⁸⁶[CB001-Riley Affidavit para 191](#); [CB237-Anderson CXM, p. 36-40, q. 65-74](#).

that he thought the article would be coming out on Tuesday, August 1st.²⁸⁷ However, what he did next shows otherwise. After being informed that evening that the “Story should be out Tuesday”, Anderson shorted Callidus stock the very next morning.²⁸⁸ He executed two short trades totaling \$30,180 of Callidus stock. Once again, Anderson’s attempt to distance himself from responsibility is not credible.

154. In addition, on the morning of Tuesday, August 1, when he believed the story would be published, Anderson executed another short trade against Callidus of \$15,240.²⁸⁹ The knowledge of the proposed publication date demonstrates that the article was not just of passing interest. Rather, it was intended to drive down Callidus’ share price.

155. The WSJ Fraud Article, however, was not published on August 1, 2017. Copeland and McNish had arranged a meeting with Catalyst and Callidus for August 8, 2017, to ask questions about the story that they intended to publish.²⁹⁰ Copeland reported this to Anderson and Levitt.²⁹¹ In addition, as previously stated McNish spoke to Panet on August 8, who provided her with further information for the WSJ Fraud Articles.²⁹² The article was a group effort. The defendants’ denials that they had no involvement with and were not sources for the WSJ Fraud Articles is not credible.

²⁸⁷[CB237-Anderson CXM](#), p. 187-188, q. 582-583; p. 198, q. 637-638.

²⁸⁸[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring](#) from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.

²⁸⁹[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring](#) from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.

²⁹⁰[CB237-Anderson CXM](#), p. 193, q. 606-610.

²⁹¹[CB242-Levitt CXM](#), p. 196-197, q. 828-834; [CB237-Anderson CXM](#), p. 193, q. 606-609.

²⁹²[CB188-McNish notes from phone call between McNish and Panet on August 8, 2017, p. 53 of Catalyst Amended Order 7 Apr 2021](#).

156. Following the meeting with Catalyst and Callidus representatives on August 8, Copeland reported back to Anderson and Levitt.²⁹³ The next morning (the day of the publication of the WSJ Fraud Articles), Anderson executed two more short trades in the amount of \$91,525 of Callidus stock.²⁹⁴

157. Later that day at 3:20 pm, minutes before the WSJ Fraud Article was published, Copeland texted Anderson “*I’ve never had to lift harder to get a story out*”. A few minutes later at 3:33 PM, Copeland told Anderson “*it’s out*”.²⁹⁵

158. After being informed that the WSJ Fraud Article was “out”, Anderson closed his entire short position in Callidus minutes before the close of trading.²⁹⁶ By then, Callidus stock price “tanked” 19.2%. In total, Anderson shorted \$136,945 of Callidus stock at a time when Anderson was “broke”. His short against Callidus was a “quick hit”.²⁹⁷

159. Anderson asserts that his shorting on the morning of August 9, 2017 was not related at all to the WSJ Fraud Article but the anticipated release of Callidus’ earnings.²⁹⁸ This is not credible. Anderson closed his short position within a half hour of being told the story is “out”, before any release of Callidus’ earnings that was scheduled for August 10.

²⁹³[CB242-Levitt CXM](#), p. 194, q. 189; [CB237-Anderson CXM](#) p. 193, q. 606-609.

²⁹⁴[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring](#) from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.

²⁹⁵[CB112-Text messages exchanged between Copeland and Anderson](#) (p. 32, texts of August 9, 2017), [Exhibit 161](#) of Riley Affidavit; the WSJ Fraud Article was published online at 3:32 PM, [CB006-Exhibit 12](#) of Riley Affidavit, see also [CB005-Exhibit 10](#) of Riley Affidavit.

²⁹⁶[CB193-Page 11-12 of Interactive Brokers Activity Statement of ClaritySpring](#) from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit.

²⁹⁷[CB237-Anderson CXM](#), p. 193, Q. 624

²⁹⁸Factum of the Moving Parties/Defendants, ClaritySpring Inc. and Anderson (“**Anderson Factum**”), para 37.

160. The intent of the publication of the whistleblower complaint was always to harm Catalyst and Callidus' reputation. By having a publication like *The Wall Street Journal* repeat the allegations of the fraud, the defendants were aware that it would have devastating short and long term effects on Catalyst and Callidus. It would immediately drive down the share price of Callidus. As discussed below, a lender's reputation is key and the allegation of fraud is disastrous to the business long term. The immediate result would be for potential investors of Callidus to flee, thereby driving down the share price. The damage of course was intended to and did continue. The texts between Anderson and Copeland highlight that this was always their intent.

161. On the afternoon of the publication and after Callidus share price had dropped, Copeland texted Anderson to inform him that "shares tankinggggg". Anderson replied "lol, that'll happen when they get called out for fraud", and congratulated Copeland: "You da man". Anderson also told Copeland about their next target: "I actually know the next one we crack and it will be epic."²⁹⁹

162. On August 9, 2017, Copeland and Anderson continued to exchange several revealing messages.³⁰⁰ Copeland informed Anderson that his fraud article could not have been published without the whistleblower complaint, his editors were concerned about being used by "aggrieved" borrowers. Copeland went on and told his editors that Anderson was as pure as Canadian rocky snow.³⁰¹ But for the Whistleblower Complaint, the WSJ Fraud Articles would not have been published. The WSJ would not have

²⁹⁹[CB112-Text messages exchanged between Copeland and Anderson \(p. 32, texts of August 9, 2017\), Exhibit 161 of Riley Affidavit.](#)

³⁰⁰[CB001-Riley Affidavit paras 185 – 186.](#)

³⁰¹[CB001-Riley Affidavit para 195.](#)

published the article based on the “aggrieved borrowers”; they were not credible enough to carry a story in *The Wall Street Journal*.

2.7. THE WHISTLEBLOWER SYNDICATE

163. In addition to shorting Callidus, Anderson with the assistance of Levitt, created a syndicate of investors to invest in the whistleblower complaint in return for a share of any reward arising from it.³⁰² This was another means for Anderson to make money regardless of the outcome of the whistleblower complaint.

164. Anderson prepared a “whistleblower proposal” (an OM of sorts), met with potential investors that Levitt arranged, made a “pitch”, gave presentations to go through a draft of the complaint with potential investors, and kept potential investors informed of “filing expectations and timeline and investment”.³⁰³

165. The pitch was not overly successful. Investors committed only \$30,000 in the whistleblower complaint.³⁰⁴ Anderson had offered Spears of Anson the opportunity to invest in the whistleblower complaint.³⁰⁵ Spears on behalf of Anson declined the opportunity to invest.³⁰⁶ Anson shorted Callidus instead. In reply to Spears turning down the offer, Anderson told Spears “hopefully we both do well here”.³⁰⁷ As Anderson knew that Anson were short-sellers, it is evident that they were both looking forward to Callidus’ shares dropping on the news of the complaint. Indeed, Langstaff had previously told

³⁰²[CB001-Riley Affidavit para 172.](#)

³⁰³[CB001-Riley Affidavit para 173](#); see for example [CB099-Exhibit 139](#) of Riley Affidavit; [CB100-Exhibit 140](#) of Riley Affidavit; [CB101-Exhibit 144](#) of Riley Affidavit.

³⁰⁴[CB001-Riley Affidavit para 174.](#)

³⁰⁵[CB001-Riley Affidavit para 173.](#)

³⁰⁶[CB103-Spears email to Anderson of June 13, 2017, Exhibit 151](#) of Riley Affidavit.

³⁰⁷[CB103-Spears email to Anderson of June 13, 2017, Exhibit 151](#) of Riley Affidavit.

Kassam of Anson that “[Callidus] must be stopped” and to “short this fraud”.³⁰⁸ As described below, Anson did short Callidus.

2.8. ANSON AND VOORHEIS SHORT CALLIDUS

166. As mentioned above, while Anderson was feeding information to Copeland for the WSJ Fraud Article, Anderson and Bogdan Tudose of Anson followed up on the conversation that they had regarding EROS at the Anson barbeque. On July 17, 2017, Tudose wrote “Hi Nate, great speaking to you at the BBQ last week... Happy to chat any time on ideas.”³⁰⁹ Anderson responded that he had “one idea that could be interesting if you have a minute at some point later this week”.³¹⁰ Anderson conceded on cross-examination that it was “certainly possible that [he] mentioned that Mr. Copeland was looking into Catalyst and Callidus” to representatives of Anson.³¹¹

167. The timing of when Anderson spoke to Tudose about the “interesting” idea is currently unknown as Anderson has not produced his telephone records for this period. However, two days after the email exchange of July 17 between Anderson and Tudose, Anson made arrangements to start transferring the shorts around in a way “so as not to arouse any suspicion or questions”.³¹² As stated in an email to Kassam: “Once you give me the green light, I will start transferring the shorts around. I will start with the easier

³⁰⁸[CB060-Langstaff message to Kassam of May 16, 2016, Exhibit 80 of Riley Affidavit.](#)

³⁰⁹[CB001-Riley Affidavit para 195; CB113-Email exchange between Tudose and Anderson of July 17-18, 2017, Exhibit 163 of Riley Affidavit.](#)

³¹⁰[CB001-Riley Affidavit para 195; CB113-Email exchange between Tudose and Anderson of July 17-18, 2017, Exhibit 163 of Riley Affidavit; CB026-List of articles, including articles on Eros International, posted on the Hindenburg website, Exhibit 33 of Riley Affidavit.](#)

³¹¹[CB237-Anderson CXM, pp. 226 and 230-231, qq.748-749 and 770-772.](#)

³¹²[CB001-Riley Affidavit para 197; CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit.](#)

ones and I'll spread it around among all the brokers, doing only a few at a time so as not to arouse any suspicion or questions.”³¹³The timing of Anderson's email (and possible call) with Tudose and the timing of Anson making arrangements to start spreading shorts around when given the green light, is no coincidence.

168. The amount of Callidus stock that Anson shorted and profited from in connection with the WSJ Fraud Articles is unknown due on the limited number of documents which have been produced by Anson.³¹⁴ It is however clear that Anson and Anderson were working together; as Kassam wrote to Anderson after the WSJ Fraud Articles were published: “I see you been working with *some of our guys!*”³¹⁵

169. Voorheis was also tipped about the pending publication of the WSJ Fraud Articles.³¹⁶ On August 8, 2017, Voorheis purchased 50,000 call options in Callidus.³¹⁷

170. On August 9, 2017, after the online WSJ Fraud Article was published, Voorheis wrote to McNish to congratulate her on the Article: “Nice. Let the games begin. Good on you.”³¹⁸ Boland also called McNish at 4:15 PM on August 9, presumably to discuss the WSJ Fraud Article that was just published.³¹⁹

³¹³[CB001-Riley Affidavit para 197](#); [CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit](#).

³¹⁴[CB001-Riley Affidavit para 201](#); [CB118-Anson's trading records and short positions relating to Callidus that have been produced, Exhibit 168 of Riley Affidavit](#).

³¹⁵[CB001-Riley Affidavit para 200](#); [CB114-Email from Kassam to Anderson on August 11, 2017, Exhibit 164](#) (incorrectly referred to as Exhibit 165 in Riley Affidavit).

³¹⁶[CB001-Riley Affidavit para 198](#); [CB116-Call Option Agreement between Voorheis and CIBC dated August 8, 2017, Exhibit 166 of Riley Affidavit](#).

³¹⁷[CB001-Riley Affidavit para 198](#); [CB116-Call Option Agreement between Voorheis and CIBC dated August 8, 2017, Exhibit 166 of Riley Affidavit](#).

³¹⁸[CB001-Riley Affidavit para 199](#); [CB117-Email from Voorheis to McNish on August 9, 2017 at 6:14 PM, Exhibit 167 of Riley Affidavit](#).

³¹⁹[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland](#).

171. On August 9 at 4:26 pm, Voorheis also wrote to McFarlane following the publication of the WSJ Fraud Articles “Very good stuff. Good on you.” Knowing that the WSJ Fraud Article would have a devastating impact on Catalyst and Callidus, Voorheis and McFarlane discussed a potential class action by Catalyst’s LPs or Callidus’ shareholders. According to Voorheis, “the end of (Glassman) is at hand”.³²⁰

172. Voorheis had shorted over \$1.2 million of Callidus stock. It is unknown how much Voorheis profited from shorting Callidus’ stock based on the limited records he has produced.³²¹ Voorheis not only held short positions in Callidus, he also held short positions in EROS, the company that Anderson “crushed”.³²² He also held short positions in another company on which Anderson had disseminated negative reports.³²³

173. The plaintiffs do not know how much Voorheis profited from these short positions based on the limited records produced by Voorheis. However, his records do show a “bonus” owing to “Nate” of USD\$50,000.³²⁴ Anderson admitted that he and Voorheis discussed shorting opportunities and bonuses to Anderson for opportunities he presented, but he denied that the bonus related specifically to Callidus.³²⁵ His claim lacks credibility as does his assertion that there is no evidence of him speaking to anyone

³²⁰[CB194-Email from Voorheis to McFarlane dated August 9, 2017, Answer to Undertaking from cross-examination of Jeff McFarlane, produced as JM00000078.](#)

³²¹[CB001-Riley Affidavit para 202](#); Voorheis’ portfolio records that he has produced, **Exhibit 62** of Riley Affidavit.

³²²[CB112-Text messages exchanged between Copeland and Anderson \(p. 10, text of July 21, 2017\), Exhibit 161](#) of Riley Affidavit; Voorheis’ portfolio records that he has produced, **Exhibit 62** of Riley Affidavit.

³²³[CB001-Riley Affidavit para 203; CB119-Email from Michael Woolcombe of VMK of April 3, 2017 listing Eros International, Callidus and other various companies in which VMK held short positions, Exhibit 169](#) of Riley Affidavit.

³²⁴[CB224-CB199-VWK Fund: Callidus Capital Corp Profit & Loss: 1/01/15 to 4/11/17, Anderson Cont. CXM Exhibit Brief – Tab 12 – Exhibit 16 - VOOR0000098.](#)

³²⁵[CB236-Anderson Continued CXM, p. 349, q. 1128.](#)

about his intention to short-sell Callidus.³²⁶ There is no rationale why Anderson would not get bonuses on short sells to Callidus. Indeed, the document produced by Voorheis “VMK Fund: Callidus Capital Corp Profit & Loss” on which the “bonus” to “Nate” is recorded suggests otherwise.³²⁷

174. The campaign to drive down Callidus’ share price are tactics employed by a “wolf pack”. The term “wolf pack” was not coined by Callidus or Catalyst as some have portrayed but rather is a term in the financial industry that refers to a group who join together to attack a target company. In fact, it is a well-known term described by Forbes:

Whether they are in communication with other activists coordinating campaigns or working in tandem without such communication, their combined presence in a company’s stock as a “wolf pack” increases the likelihood of success of the activist campaign...

Typically, there is a lead activist that has invested a significant amount of resources studying a target company, and other members of the pack follow the leader’s cues, piggyback on the leader’s efforts and provide support for the leader’s campaign.³²⁸

175. Indeed, after the publication of the WSJ Fraud Articles, Langstaff tweeted through an anonymous twitter account William Struth @GlasgowSkeptic,³²⁹ a photograph of a pack of four wolves with the caption “The scariest beasts are the ones that roam your mind”.³³⁰ His tweet was preceded by Kassam’s retweet of Cohodes, who tweeted: “This

³²⁶Anderson Factum, para 80.

³²⁷[CB199-VWK Fund](#): Callidus Capital Corp Profit & Loss: 1/01/15 to 4/11/17, **Anderson Cont. CXM Exhibit Brief** – Tab 12 – Exhibit 16 - VOOR0000098.

³²⁸[CB001-Riley Affidavit para 109](#); [CB033-Forbes Article “Best Defence Against ‘Wolfpack’ Investors Is To Anticipate Their Attack, Exhibit 43 of Riley Affidavit.](#)

³²⁹ Based on other Tweets from “William Struth @GlasgowSkeptic”, Langstaff is most likely the author of William Struth @GlasgowSkeptic In other tweets posted by “William Struth”, he uses the phrase “hat tip” to congratulate another Twitter user. Langstaff uses the same phrase “hat tip” in text messages with Kassam. In addition, “William Struth” posted a tweet on July 21, 2017, quoting the CEO of Exchange Income Fund as saying “no need for capital in foreseeable future”. Langstaff was reprimanded by Canaccord for disclosing confidential information about EIF that he obtained at a meeting he had with the CEO of EIF on July 21, 2017 to a well-known short seller.

³³⁰[CB001-Riley Affidavit paras 108 and 110](#); [CB032-Tweet of William Struth @GlasgowSkeptic of September 28, 2017, and @GlasgowSkeptic’s other tweets about Catalyst and Callidus, Exhibit 42](#) of

is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".³³¹



2.9. DEFENDANTS' OTHER FAILED ATTEMPTS TO PUBLISH

176. In addition to *Reuters* and *The Wall Street Journal*, the conspirators sought other means to publicize the fraud allegations against Catalyst and Callidus as part of their campaign to harm their reputations, including:

- (a) **The News & Observer** – The News & Observer is a local newspaper in North Carolina where McFarlane is based. On March 2, 2017, McFarlane sought to have the local newspaper write an article about Callidus.³³²
- (b) **Glassdoor.com** – Glassdoor.com is a public website on which employees can anonymously post reviews about their employer. On March 3, 2017,

Riley Affidavit; [CB034-Text message between Kassam and Langstaff of May 17, 2016, Exhibit 46](#) of Riley Affidavit; [CB035-Letter of reprimand from Canaccord to Langstaff of August 9, 2017, Exhibit 47](#) of Riley Affidavit..

³³¹[CB001-Riley Affidavit para 107; CB031-Cohodes' tweet of September 27, 2017, Exhibit 40 of Riley Affidavit.](#)

³³²[CB196-Emails between Levitt, McFarlane, and Anderson on March 2, 2017, Tab 51 - REL0000000033-00031, McFarlane CXM Exhibit Brief.](#)

McFarlane noted that Callidus' stock was down about a dollar for the week and suggested that "It might be a good time for [Glassdoor.com] to get some coverage."³³³ It is clear that McFarlane was monitoring Callidus stock and recognized the impact of negative news on Callidus' share price;

- (c) **Dummett of WSJ** – On March 6, 2017, McFarlane contacted Dummett of the WSJ, who had published an article on Callidus on May 11, 2015, asking if he was covering any recent news that Callidus was engaged in a fraud.³³⁴ As McFarlane reported to Anderson and Levitt, Dummett was no longer covering Callidus as he had moved to London;
- (d) **National Post** – On June 13, 2017, after McFarlane learned that Cohodes had been given a platform with the National Post to discuss Home Trust Capital which at the time was reportedly having financial difficulties, he suggested to Levitt and Anderson: "Should see if he can get a [Callidus] commentary posted."³³⁵

177. In addition, Livesey, with the Guarantors and West Face, made numerous attempts to have *Canadian Business*,³³⁶ *The Globe and Mail*³³⁷ and *Bloomberg*³³⁸ run a disparaging story about Glassman, Catalyst, and Callidus. None of these publications ran Livesey's article. Livesey was aware of and supported the plan to use the press to write negative articles on Catalyst and Callidus including the whistleblower complaint. His claim that he did nothing with the whistleblower complaint lacks credibility.³³⁹

³³³[CB074-Email from McFarlane of March 3, 2017, Exhibit 94 of Riley Affidavit.](#)

³³⁴[CB122-McFarlane email to Anderson of March 6, 2017, Exhibit 173 of Riley Affidavit.](#)

³³⁵[CB212-Email from McFarlane to Anderson dated June 13, 2017, Tab 58 - AND0002113, McFarlane CXM Exhibit Brief.](#)

³³⁶[CB135-Livesey email to Canadian Business of August 5, 2016, attaching article ideas, Exhibit 194 of Riley Affidavit.](#)

³³⁷[CB001-Riley Affidavit para 241; CB138-Livesey's emails with Derek DeCloet of the Globe and Mail on August 11 and September 7, 2017, Exhibit 198 of Riley Affidavit.](#)

³³⁸[CB001-Riley Affidavit para 242; CB139-Livesey's story proposal to Bloomberg dated November 7, 2017, Exhibit 199 of Riley Affidavit.](#)

³³⁹[CB243-Livesey CXM, p. 137-139, q.501-507.](#)

178. In August and September 2016, Livesey attempted to have a disparaging article about Catalyst and Glassman published by *Canadian Business*. The article, titled “Bay Street’s Biggest Grudge Match”, repeated many of the same allegations made by the Guarantors, including that Callidus was a “loan to own” lender.³⁴⁰ Baumann and Boland were named sources in the proposed article. *Canadian Business* however did not publish Livesey’s story. Livesey withdrew his story from *Canadian Business*.

179. In November 2016, Panet assisted Livesey with his efforts to write and publish a negative story about Glassman. Panet passed on information relating to a 30+ year old family dispute between Glassman and his father, as well as family court filings relating to a proceeding involving Glassman’s wife and her ex-husband and forwarded selective documents to Livesey, which were intended to embarrass Glassman so as to undermine his credibility.³⁴¹ This information that Panet selectively collected also made its way into the hands of *The Wall Street Journal*.³⁴²

180. In December of 2016, Livesey attempted to have his article published by *The Globe and Mail*.³⁴³

181. Livesey’s efforts to have *The Globe and Mail* publish his article continued even after the publication of the WSJ Fraud Articles.³⁴⁴ On August 9, 2017, Livesey asked

³⁴⁰[CB134-Livesey email to Canadian Business of August 5, 2016, attaching article ideas, Exhibit 194 of Riley Affidavit.](#)

³⁴¹[CB220-Email correspondence between Panet and Livesey from November 23-24, 2016, Livesey CXM Exhibit Brief– Tab 20 – Exhibit F to Boland Affidavit.](#)

³⁴²[CB216-Emails between Copeland and Sara Munoz of July 25, 2017, McNish and Copeland CXM Exhibit Brief – Tab 53 – Doc 87 – DOW000300.](#)

³⁴³[CB137-Livesey’s story pitch to the Globe and Mail, Exhibit 197 of Riley Affidavit.](#)

³⁴⁴[CB001-Riley Affidavit para 241; CB138-Livesey’s emails with Derek DeCloet of the Globe and Mail on August 11 and September 7, 2017, Exhibit 198 of Riley Affidavit.](#)

Anderson for a copy of the WSJ Article so that he can send it to *The Globe and Mail* in order to “prod” them to run his story sooner.³⁴⁵ Even though Anderson was not named in the WSJ Fraud Articles, it is evident that Livesey knew that Anderson was behind the article as he knew to ask Anderson for a copy of it within an hour of its publication.³⁴⁶

182. In addition, Livesey told *The Globe and Mail* that “one of [his] American sources told [him] that the WSJ is thinking of doing a follow up and *Reuters* has gone back to calling people to finalize the story they have been sitting on for months”.³⁴⁷ The American source was Anderson. *The Globe and Mail* however chose not to publish Livesey’s story after it learned that Levy testified that he had been contacted by Livesey in 2015 on behalf of West Face.³⁴⁸

183. After *The Globe and Mail* decided not to publish his article, Livesey pitched a story to *Bloomberg* titled “Is Newton Glassman Committing Fraud?”³⁴⁹ This story specifically mentioned XTG, Esco Marine, Opes Resources, Alken Basin, Bluberi, Leader Energy Services Limited, SFX Entertainment Inc. - all borrowers mentioned in the complaints that were made by Anderson or the Guarantors.

184. In December 2017, Livesey drafted another story proposal titled “Newton Glassman’s War” which alleged that Glassman was under investigation for money laundering, misleading borrowers to grab their assets, misleading investors about losses, bailing out money from one fund to rescue another fund, inflating valuations, and running

³⁴⁵[CB001-Riley Affidavit para 241.](#)

³⁴⁶[CB131-Email from Livesey to Anderson dated August 9, 2017, Exhibit 184 of Riley Affidavit.](#)

³⁴⁷[CB138-Emails between Livesey and DeCloet in August 2017, Exhibit 198 of Riley Affidavit.](#)

³⁴⁸[CB001-Riley Affidavit para 241.](#)

³⁴⁹[CB139-Livesey’s story proposal to Bloomberg, Exhibit 199 of Riley Affidavit.](#)

a Ponzi scheme.³⁵⁰ These allegations are similar to the allegations made by the Guarantors and Anderson in their complaint.

185. Livesey finally “found an outlet for the Glassman story” at *SIRF*, a non-profit organization that purports to provide in-depth independent investigative reporting on “stories that are going untold”.³⁵¹ *SIRF* has no employees other than Roddy Boyd, its President.³⁵² It is funded by short-sellers or hedge funds that profit off of short-selling, including Cohodes.³⁵³

186. On April 11, 2018 and November 27, 2018, Livesey and Boyd published two disparaging articles about Catalyst, Callidus and Glassman titled “Newton Glassman’s Legacy of Ashes” and “Newton Glassman and Other People’s Money”, respectively.³⁵⁴ Upon the publication of Livesey’s articles, Voorheis wrote to congratulate him.³⁵⁵

187. Before publishing the *SIRF* articles, Boyd unequivocally denied that Livesey ever worked “against” Glassman, Callidus or Catalyst.³⁵⁶ This is obviously false as Livesey had been hired through his firm Mosaic by Voorheis to investigate Callidus who was after Catalyst.³⁵⁷

³⁵⁰[CB140-Livesey’s story proposal re Newton Glassman’s War, Exhibit 200 of Riley Affidavit.](#)

³⁵¹[CB001-Riley Affidavit paras 229-230; CB132-Livesey’s email to Voorheis on January 17, 2018, advising that he found an outlet for the Glassman story on SIRF, Exhibit 188 of Riley Affidavit; CB133-Description of SIRF taken from its website, Exhibit 189 of Riley Affidavit.](#)

³⁵²[CB001-Riley Affidavit para 231; CB134-SIRF Tax Filings and Donors, Exhibit 190 of Riley Affidavit.](#)

³⁵³[CB001-Riley Affidavit para 232; CB134-SIRF Tax Filings and Donors, Exhibit 190 of Riley Affidavit.](#)

³⁵⁴[CB001-Riley Affidavit para 245.](#)

³⁵⁵[CB132-Voorheis email to Livesey of November 27, 2018, Exhibit 188 of Riley Affidavit.](#)

³⁵⁶[CB001-Riley Affidavit para 246; CB143-Boyd’s email of March 28, 2018 to Gagnier, Exhibit 203 of Riley Affidavit.](#)

³⁵⁷[CB001-Riley Affidavit para 246; CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit.](#)

2.10. SECRECY

188. Although the Defendants took concerted steps to disclose to the media the whistleblower complaint, they took various measures to keep their activities secret.³⁵⁸

Secrecy is a hallmark of a conspiracy. The full particulars of the Defendants' activities in carrying out the conspiracy to harm Catalyst and Callidus are not yet fully known.³⁵⁹ As Levitt cautioned very early on "we have to be discrete about what we are doing".³⁶⁰

189. The following tactics were employed:

- (a) anonymous tweets were used to spread false rumours. The identity of anonymous Twitter accounts used to spread false rumours about Catalyst and Callidus known so far are Levitt / @StoptheScandal, and Langstaff / @GlasgowSkeptic.
- (b) a pretext was used in attempt to obtain documents and information from Catalyst – in particular, Anderson posed as an investor purportedly acting for families seeking to invest in Catalyst Funds in order to obtain Catalyst Fund V documents.³⁶¹
- (c) nondisclosure agreements were entered into;³⁶²
- (d) used personal email accounts to communicate amongst each other were used. For example, when a source of McNish sought to keep his identity hidden, she suggested that the source send documents to her personal

³⁵⁸[CB001-Riley Affidavit para 248.](#)

³⁵⁹[CB001-Riley Affidavit para 249.](#)

³⁶⁰[CB001-Riley Affidavit para 249; CB144-Email from Levitt warning of the need to be discrete on December 31, 2016, Exhibit 205 of Riley Affidavit.](#)

³⁶¹[CB237-Anderson CXM, p 145, q. 401.](#)

³⁶²[CB001-Riley Affidavit para 250; CB145-Emails regarding the signing of nondisclosure agreements exchanged among the guarantors, Anderson, and Bryan Wood of Berman DeValerio, Exhibit 206 of Riley Affidavit.](#)

email address.³⁶³ Although clearly relevant, McNish has not produced any emails from her personal email account that she used to communicate with the defendants;³⁶⁴

- (e) intermediaries to obtain and convey information to each other were used. For example, Boland used Anderson to provide information to Copeland and McNish for the WSJ Fraud Article.³⁶⁵ He also used Langstaff to obtain information from Levy.³⁶⁶
- (f) communications amongst themselves were deleted. Known examples include Panet's deletion of his email exchange with Levitt regarding the "Callidus Catalyst Fraud Outline" for the OSC,³⁶⁷ and Anderson's deletion of his "whole chat log" with Copeland.³⁶⁸ Indeed, Anderson has not produced any text messages.³⁶⁹
- (g) encrypted and self-destructing messaging applications, such as "Confide" were used to avoid leaving any trace of their communications.³⁷⁰ While the Moving Parties who used this application have attempted to justify their use of Confide by alleging that they began using Confide when they learned about Black Cube's activities, their justification lacks any credibility. Their earliest known use of Confide began in April, 2017, well before Black Cube was retained in September 2017.

³⁶³[CB188-Transcript of Phone call between McNish and Confidential Source on July 20, 2017, p. 89 of Catalyst Amended Order 7 Apr 2021.](#)

³⁶⁴[CB248-Continued Cross-Examination of Jacquie McNish on April 28, 2021 \("McNish Continued CXM"\), p. 231, q. 703.](#)

³⁶⁵[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

³⁶⁶[CB023-Levy Memorandum of August 14, 2015, Exhibit 30 of Riley Affidavit.](#)

³⁶⁷[CB246-Panet CXM, p. 84-85, q. 234.](#)

³⁶⁸[CB001-Riley Affidavit para 254; CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

³⁶⁹[CB001-Riley Affidavit para 254.](#)

³⁷⁰[CB001-Riley Affidavit paras 251-253; CB146-Description of the Confide messaging app taken from Confide's website, Exhibit 207 of Riley Affidavit; CB147-Text messages exchanged between Levitt and Langstaff about their use of Confide, Exhibit 208 of Riley Affidavit.](#)

- (h) short trades were “spread” around among different brokers “so as not arouse any suspicion of questions”.³⁷¹

2.11. THE WHISTLEBLOWER COMPLAINTS ARE DEFAMATORY

190. The whistleblower complaints accuse Catalyst and Callidus of engaging in a “massive and ongoing fraud”, carrying out a “pyramid” or “Ponzi scheme”, and playing a “shell game”. These serious accusations include:³⁷²

- (a) “Glassman is using Catalyst-controlled entities as part of a corporate **shell game** to mislead investors as to the value of the companies in his **fraudulent enterprise.**”
- (b) “Whistleblowers have uncovered numerous additional red flags indicating that Glassman is using Catalyst and Callidus as part of a **massive fraudulent scheme.**”
- (c) “Catalyst employs a distressed lending strategy whereby the Firm and/or other related entities take a debt stake in its debtors’ business when those companies inevitably fall into distress or bankruptcy. That control, in turn, allows Glassman to play a **shell game** with the impaired assets...”
- (d) “To perpetuate **the scheme**, Glassman also uses publicly-traded Callidus....”
- (e) “Glassman’s corporate tag team process allows Catalyst and the other companies under Glassman’s control ... to misrepresent the true financial condition of the entities involved in **Glassman’s fraudulent enterprise.**”
- (f) “This submission details **Glassman’s scheme** as well as several additional red flags of **fraud** that Whistleblowers have uncovered...Whistleblowers

³⁷¹[CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit; CB244-McFarlane CXM p. 14, q. 30-33.](#)

³⁷²[CB204-Whistleblower Complaint Exhibit I to the Anderson Affidavit.](#)

submit that regulators must closely examine the business activities of Glassman, Catalyst, Callidus and all other Glassman-controlled entities to limit losses from what appears to be a **massive and ongoing fraud.**”

- (g) “The following chart illustrates the web that Glassman has woven between Catalyst and Callidus, allowing him to use the two entities as the anchors for **his fraudulent scheme.**”
- (h) “This submission details the information that Whistleblowers have uncovered to date regarding **the fraud** they believe Glassman to be perpetrating at Catalyst and Callidus.”
- (i) “The end result is that Catalyst’s investors are unaware of the true value of its funds’ portfolios, while Callidus’ investors are likewise oblivious to **the ticking time bomb of fraudulent loss transfers** that props up the value of their publicly traded stock.”
- (j) “The next step in **the fraud** is truly astonishing in its brazenness.”
- (k) “Yet that was not the end of the **fraudulent manipulations** in Glassman’s scheme.”
- (l) “So Glassman’s **shell game** allowed Callidus to report a wildly successful loan transaction....”
- (m) “Regardless, **Glassman’s fraudulent** Catalyst/Callidus enterprise provides the perfect cover ... “
- (n) “...the companies in Glassman’s **fraudulent enterprise** permit assets to flow freely between themselves and other related entities.”
- (o) “In effect, Catalyst’s proposed scenario whereby the earliest Catalyst funds to invest in Callidus exit before the Catalyst funds that subsequently invested in the company – in some cases, with the latter funds guaranteeing the earlier funds against losses – creates a **de facto pyramid scheme.**”

- (p) “Current and prospective investors in Catalyst and Callidus face enormous risks because of the **fraud described herein.**”

191. These allegations were shared with the media for the purpose of harming Callidus and Catalyst.³⁷³ These allegations of fraud, shell game and Ponzi scheme are false and defamatory. It is important to note that:

- (a) at no time was Catalyst or Callidus ever criminally charged with fraud;³⁷⁴
- (b) at no time was Callidus subject of any enforcement proceeding for any securities law violation;³⁷⁵
- (c) at no time was Callidus ever required to restate or refile its quarterly or year-end audited financial statements;³⁷⁶
- (d) Callidus’ financial statements for year-end December 31, 2017, audited by KPMG, were further reviewed by the Canadian Public Accountability Board which found no issue with Callidus’ reported “Allowance for loan losses” and “Goodwill & Intangibles”;³⁷⁷
- (e) in many cases, independent third party valuers carried out the valuation of companies to which Callidus provided loans or in which Callidus had an interest;³⁷⁸
- (f) many of the allegations made by the Guarantors were previously made in response to Callidus’ guarantee enforcement actions.³⁷⁹ In some cases, the courts found the Guarantors liable under their guarantees notwithstanding

³⁷³[CB001-Riley Affidavit para 257.](#)

³⁷⁴[CB001-Riley Affidavit para 257\(b\).](#)

³⁷⁵[CB001-Riley Affidavit para 257\(a\).](#)

³⁷⁶[CB001-Riley Affidavit para 257\(c\).](#)

³⁷⁷[CB001-Riley Affidavit para 257\(d\); CB150-CPAB Engagement Findings Report of June 13, 2018, Exhibit 211 of Riley Affidavit.](#)

³⁷⁸[CB001-Riley Affidavit para 257\(e\).](#)

³⁷⁹[CB001-Riley Affidavit para 257\(f\).](#)

their allegations against Callidus.³⁸⁰ In other cases, the Guarantors withdrew their allegations and acknowledged that the court would make adverse findings against them.³⁸¹ Notwithstanding these court decisions and acknowledgments, the same allegations were repeated to the Police and OSC and to the media,³⁸² and

- (g) in addition to the complaints to the OSC and the Police, the Guarantors made complaints to the Alberta Securities Commission, the RCMP, JSOT, the TSX, the Superintendent of Bankruptcy, the Law Society of Ontario, and the Attorney General of North Carolina.³⁸³ None of these regulatory or law enforcement authorities initiated any securities, criminal or other proceedings against Catalyst or Callidus.³⁸⁴

192. Examples of the falsity of the complaints made to the OSC are set out below.

2.11.1. Shell Game

193. The whistleblowers alleged that Glassman played a shell game to mislead investors as to the value of companies in his fraudulent enterprise.³⁸⁵ The whistleblowers alleged that Catalyst under-reported losses or transfers, and obfuscated asset impairments by shifting assets between Catalyst and Callidus. Glassman is also alleged to have caused Callidus to report consistently positive returns while shifting risks to Catalyst.³⁸⁶

³⁸⁰[CB001-Riley Affidavit para 257\(f\).](#)

³⁸¹[CB001-Riley Affidavit para 257\(f\).](#)

³⁸²[CB001-Riley Affidavit para 257\(f\).](#)

³⁸³[CB001-Riley Affidavit para 257\(g\).](#)

³⁸⁴[CB001-Riley Affidavit para 257\(g\).](#)

³⁸⁵[CB001-Riley Affidavit para 260.](#)

³⁸⁶[CB001-Riley Affidavit para 260.](#)

194. Three examples are cited in the whistleblower complaint in support of these allegations: Bluberi, Sherwood and XTG.³⁸⁷

2.11.1(a) Bluberi

195. In 2012, Bluberi and Callidus entered into a loan agreement for a \$24 million credit facility that was increased to \$86 million over the next three years.³⁸⁸ The whistleblower complaints allege that Callidus should have written down Bluberi's loans and recognized an impairment on the Bluberi loans from 2013 to 2016. They allege that Glassman did not write down or recognize an impairment of the Bluberi loan, as he fraudulently marked up Callidus' position in Bluberi by \$100 million based on an agreement for Bluberi to deploy 7,000 slot machines to a Catalyst-controlled company, Gateway Casinos.³⁸⁹ Contrary to these allegations, there was no \$100 million markup of Callidus' earnings or position in Bluberi based on a 7,000 slot machine contract, nor was a write-down or impairment of the Bluberi loan required, because the enterprise value of Bluberi assessed by PWC exceeded the carrying value of the Bluberi loan.³⁹⁰ In coming to its conclusion, PWC did not take into account the 7,000 gaming machines contract, which the whistleblowers alleged were relied upon in order to inflate Callidus' assets on its balance sheet.³⁹¹

196. In making these allegations that Callidus inflated its assets, the whistleblowers also failed to distinguish what Callidus recognized on its balance sheet from what it had clearly

³⁸⁷[CB001-Riley Affidavit para 261.](#)

³⁸⁸[CB001-Riley Affidavit para 262.](#)

³⁸⁹[CB001-Riley Affidavit para 263.](#)

³⁹⁰[CB001-Riley Affidavit paras 264 – 265; CB151-PWC's independent assessment of the reasonableness of management's valuation of Bluberi, **Exhibit 212** of Riley Affidavit.](#)

³⁹¹[CB001-Riley Affidavit para 265; CB151-PWC's independent assessment of the reasonableness of management's valuation of Bluberi, **Exhibit 212** of Riley Affidavit.](#)

identified as unrecognized non-IFRS forward-looking statements.³⁹² The \$110.7 million valuation of Bluberi was not recorded or recognized on Callidus' balance sheet as an asset, as alleged.³⁹³

2.11.1(b) Sherwood Hockey

197. Sherwood is a manufacturer of hockey sticks, equipment, and sports paraphernalia.³⁹⁴ Callidus acquired Sherwood as part of its acquisition of a portfolio of loans from another lender in June 2011, which included a loan to Sherwood for \$12.6M. In September 2014, Gracious Living acquired Sherwood from Callidus.³⁹⁵ The whistleblowers alleged that this was not an arm's length transaction, as Gracious Living was formerly owned by Royal Group Technologies, a Catalyst Fund I portfolio investment.³⁹⁶ The whistleblowers further alleged that Callidus loaned funds to Gracious Living to pay the carrying value of Callidus' position in Sherwood of \$12.6 million, and in doing so, Callidus avoided recording its loss on Sherwood by extending the same amount of loan to Gracious Living, an alleged related company.³⁹⁷ This allegation is false.

198. This was not a related-party transaction between two Glassman-controlled entities.³⁹⁸ Catalyst Fund I had no equity interest in Royal Group at the time of the transaction described above.³⁹⁹ Catalyst Fund I realized its investment in Royal Group in

³⁹²[CB001-Riley Affidavit para 266](#); [CB152-Callidus' MD&A for year-end December 31, 2016, Exhibit 213 of Riley Affidavit](#).

³⁹³[CB001-Riley Affidavit para 266](#); [CB152-Callidus' MD&A for year-end December 31, 2016, Exhibit 213 of Riley Affidavit](#).

³⁹⁴[CB001-Riley Affidavit para 267](#).

³⁹⁵[CB001-Riley Affidavit para 267](#); [CB153-News release dated September 9, 2014, regarding the acquisition of Sherwood from Callidus, Exhibit 214 of Riley Affidavit](#).

³⁹⁶[CB001-Riley Affidavit para 268](#).

³⁹⁷[CB001-Riley Affidavit para 268](#).

³⁹⁸[CB001-Riley Affidavit para 269](#).

³⁹⁹[CB001-Riley Affidavit para 269](#).

May 2005, some *nine years before* Gracious Living acquired Sherwood.⁴⁰⁰ In addition, Royal Group did not have any ownership interest in Gracious Living at the time of the transaction, as Royal Group had sold its interest in Gracious Living in February 2006, some *eight years before* Gracious Living's acquisition of Sherwood.⁴⁰¹ Anderson wrongly alleged that this was a related transaction.

2.11.1(c) XTG:

199. The whistleblowers also made a number of accusations regarding XTG in support of their complaint that Glassman played a shell game.⁴⁰² As detailed in the Plaintiffs' Libel Factum, the allegations regarding XTG are false.

2.11.2. Pyramid or Ponzi Scheme

200. The whistleblowers alleged that Glassman fraudulently permitted assets to flow freely between Catalyst Funds and used "new money from investors to compensate earlier investors in funds to realize returns", thus acting in a serious conflict of interest.⁴⁰³ The whistleblowers further alleged that Glassman/Catalyst engaged in a *de facto* pyramid scheme.⁴⁰⁴ Two examples are cited in the whistleblower complaint in support of these serious allegations: Leader Energy Services Limited and SFX Entertainment Inc.

⁴⁰⁰[CB001-Riley Affidavit para 269.](#)

⁴⁰¹[CB001-Riley Affidavit para 270; CB154-News Release dated February 1, 2006, announcing Royal Group's sale of its interest in Gracious Living, Exhibit 215 of Riley Affidavit.](#)

⁴⁰²[CB001-Riley Affidavit para 273.](#)

⁴⁰³[CB001-Riley Affidavit para 275.](#)

⁴⁰⁴[CB001-Riley Affidavit para 275.](#)

2.11.2(a) Leader Energy

201. Leader Energy was an oil fuel services company that declared bankruptcy in 2015 when crude oil prices significantly declined.⁴⁰⁵ Callidus was a secured creditor of Leader Energy that was owed \$12.7MM. Leader Energy was a fully-guaranteed loan by Catalyst Fund III and Catalyst Fund IV.⁴⁰⁶ The whistleblowers alleged that Horizontal Well Drillers, another Callidus investment, purchased Leader Energy's assets in September 2016 for the precise amount that Leader Energy owed Callidus.⁴⁰⁷ In doing so, it was alleged that Callidus shifted the loan owed by Leader Energy to Horizontal Well Drillers, rather than recognizing a loss in Leader Energy. The complaint further alleged that Callidus' actions transferred the risk from the investors in Catalyst Fund III and Catalyst Fund IV, who were made whole, to the new investors in Catalyst Fund V.⁴⁰⁸

202. These allegations are false. Catalyst Fund V never had any equity interest in Callidus, nor any connection with Horizontal Well Drillers or Leader Energy.⁴⁰⁹ The risk of loss remained with Catalyst Fund III and Catalyst Fund IV.⁴¹⁰ There was no transfer of loan or risk of any kind, as alleged.⁴¹¹ The whistleblowers made these allegations that losses were transferred to Catalyst Fund V without having any Catalyst Fund V records.⁴¹² Indeed, Anderson tried but were unsuccessful in obtaining Catalyst Fund V records from Catalyst when Anderson posed as an investment advisor.⁴¹³ Without having reviewed

⁴⁰⁵[CB001-Riley Affidavit para 276.](#)

⁴⁰⁶[CB001-Riley Affidavit para 276.](#)

⁴⁰⁷[CB001-Riley Affidavit para 277.](#)

⁴⁰⁸[CB001-Riley Affidavit para 277.](#)

⁴⁰⁹[CB001-Riley Affidavit para 278.](#)

⁴¹⁰[CB001-Riley Affidavit para 278.](#)

⁴¹¹[CB001-Riley Affidavit para 278.](#)

⁴¹²[CB237-Anderson CXM, p. 147, q. 411.](#)

⁴¹³[CB237-Anderson CXM, p 145, q. 401.](#)

any Fund V documents to substantiate their allegation, the whistleblowers nevertheless alleged that loan losses of Leader Energy were transferred to Catalyst Fund V as part of a Ponzi scheme.

2.11.2(b) SFX Entertainment Inc.

203. SFX is a dance music company that filed for bankruptcy in February 2016.⁴¹⁴ The whistleblowers alleged that one month prior to SFX's bankruptcy, Catalyst Fund V provided SFX with \$20MM in financing, after which Catalyst Fund IV boasted of its successful exit from SFX.⁴¹⁵ The whistleblowers alleged that Catalyst Fund V simply bought out Catalyst Fund IV's position, thereby shifting the risk to new Catalyst investors.

204. This allegation is false. Catalyst Fund V did not buy out Catalyst Fund IV's position in SFX.⁴¹⁶ Both Catalyst Fund IV and Catalyst Fund V invested in SFX at the *same time* in December 2015 and both realized a gain on their investments in SFX at the *same time* in February 2016 upon SFX's bankruptcy.⁴¹⁷ Again, the whistleblowers made these serious allegations and disseminated it to the media without having reviewed any Catalyst Fund V records to substantiate these false allegations.

⁴¹⁴[CB001-Riley Affidavit para 279.](#)

⁴¹⁵[CB001-Riley Affidavit para 279.](#)

⁴¹⁶[CB001-Riley Affidavit para 280; CB155-Statement of Return of Catalyst Fund IV and Catalyst Fund V, which shows the dates of investment and dates of realization relating to the investment in SFX, **Exhibit 216** of Riley Affidavit.](#)

⁴¹⁷[CB001-Riley Affidavit para 280; CB155-Statement of Return of Catalyst Fund IV and Catalyst Fund V, which shows the dates of investment and dates of realization relating to the investment in SFX, **Exhibit 216** of Riley Affidavit.](#)

2.11.3. Fraud

205. The whistleblowers alleged that Glassman created or artificially inflated valuations of companies to avoid having Callidus record any impairment of its investment in these companies.⁴¹⁸ In support of their claim, the whistleblowers alleged that Catalyst had valued Gateway Casinos at levels “disconnected from reality”, and that “Glassman [had] placed” a value on Therapure Biopharma Inc. that was “wholly disconnected” from the “fact pattern” presented by the whistleblowers about the company.⁴¹⁹ The whistleblowers alleged that these valuations were part of an overall fraud perpetrated by Glassman in connection with the business affairs of Catalyst.⁴²⁰ Again, these allegations are false.

2.11.3(a) Gateway Casinos

206. The whistleblowers alleged that the reported value of Gateway Casinos in 2016 of USD\$391,713,936 was “disconnected from reality”.⁴²¹ The whistleblowers, however, failed to mention that these valuations were supported by independent valuers and independent auditors. Each year, PWC and KPMG conducted independent valuations and audits. PWC conducted an independent assessment of the reasonableness of management’s valuation of the portfolio investments held by the Funds.⁴²² KPMG then conducted a separate independent review of the portfolio valuations as part of its annual audits, based upon its own skill and expertise, prior to the issuance of its audit opinions.⁴²³ KPMG has never delivered a qualified audit opinion in respect of any of Catalyst’s

⁴¹⁸[CB001-Riley Affidavit para 281.](#)

⁴¹⁹[CB001-Riley Affidavit para 281.](#)

⁴²⁰[CB001-Riley Affidavit para 281.](#)

⁴²¹[CB001-Riley Affidavit para 282.](#)

⁴²²[CB001-Riley Affidavit para 282.](#)

⁴²³[CB001-Riley Affidavit para 282.](#)

Funds.⁴²⁴ There is no basis for the whistleblowers' allegation that the value of Gateway Casinos that valued by PWC and audited by KPMG was artificially inflated by Glassman or is part of any fraudulent scheme.⁴²⁵

207. Moreover, the whistleblowers also failed to reference the fact that just months before they filed their complaint to the OSC, Gateway Casinos was selected in December 2016 by the Ontario Lottery and Gaming Corporation to be the service provider of two Ontario gaming bundles – North and Southwest Gaming Bundles.⁴²⁶ In addition, on May 9 and 30, 2017, OLG and Gateway Casinos signed 20-year Casino Operating and Services Agreements wherein Gateway Casinos took over day-to-day operations and assets of the Southwest and North Gaming Bundles, respectively.⁴²⁷ These bundles include casinos in Thunder Bay, Sault Ste. Marie, and Sudbury, and the opportunity to build two new gaming and entertainment facilities in Kenora and North Bay.⁴²⁸ In addition, Gateway Casinos was awarded the Central Gaming Bundle which includes Casino Rama Resort and the opportunity to build a new gaming facility in Collingwood or Wasaga Beach.⁴²⁹ By May 30, 2017, Gateway Casinos was the largest and most diversified gaming companies in Canada, with operations in British Columbia, Alberta and Ontario.⁴³⁰ Gateway Casinos had over 5,200 employees and 26 gaming properties with 57

⁴²⁴[CB001-Riley Affidavit para 282.](#)

⁴²⁵[CB001-Riley Affidavit para 282.](#)

⁴²⁶[CB001-Riley Affidavit para 283; CB156-Press Release issued by OLG of December 13, 2016 announcing Gateway Casinos' successful bid of the North and Southwest Gaming Bundles, **Exhibit 217** of Riley Affidavit.](#)

⁴²⁷[CB001-Riley Affidavit para 284; CB157-Press Releases issued by OLG regarding the awards of these Gaming Bundles to Gateway Casinos, **Exhibit 218** of Riley Affidavit.](#)

⁴²⁸[CB001-Riley Affidavit para 284; CB157-Press Releases issued by OLG regarding the awards of these Gaming Bundles to Gateway Casinos, **Exhibit 218** of Riley Affidavit.](#)

⁴²⁹[CB001-Riley Affidavit para 284; CB157-Press Releases issued by OLG regarding the awards of these Gaming Bundles to Gateway Casinos, **Exhibit 218** of Riley Affidavit.](#)

⁴³⁰[CB001-Riley Affidavit para 285.](#)

restaurants and 272 hotel rooms.⁴³¹ Gateway Casinos operates over 40% of all slot machines and table games in British Columbia and is the exclusive service provider in the north, southwest and central Ontario Bundles (contracts with OLG), with expansion plans to open and relocate new casinos in Ontario, British Columbia and under-penetrated new markets.⁴³² It is also worth noting that in December 2017, Gateway Casinos sold three of its properties in British Columbia for over \$500 million and entered into long-term leases with the purchaser to continue operating the three casinos.⁴³³

208. The whistleblowers assert that Catalyst's valuation of Gateway Casinos was "troubling" on the basis that another private equity firm, Tennenbaum Capital Partners, placed a lesser value in respect of the "exact same position" it holds in Gateway Casinos.⁴³⁴ Catalyst is not privy to Tennenbaum's valuation.⁴³⁵ However, it is incorrect to suggest that Tennenbaum held the exact same position in Gateway Casinos as Catalyst.⁴³⁶ Tennenbaum holds between a 5-25% equity interest, being a minority interest in Gateway Casinos.⁴³⁷ Catalyst, on the other hand, holds an equity interest of 74%.⁴³⁸ The value of Catalyst's 74% super majority controlling interest in Gateway Casinos attracts a greater valuation than Tennenbaum's minority interest.⁴³⁹

⁴³¹[CB001-Riley Affidavit para 285.](#)

⁴³²[CB001-Riley Affidavit para 285.](#)

⁴³³[CB001-Riley Affidavit para 286; CB158-Press Release dated February 26, 2018 regarding the refinancing, and Press Release dated March 12, 2018 announcing the closing of the sale transaction, Exhibit 219 of Riley Affidavit.](#)

⁴³⁴[CB001-Riley Affidavit para 287.](#)

⁴³⁵[CB001-Riley Affidavit para 287.](#)

⁴³⁶[CB001-Riley Affidavit para 287.](#)

⁴³⁷[CB001-Riley Affidavit para 287.](#)

⁴³⁸[CB001-Riley Affidavit para 287.](#)

⁴³⁹[CB001-Riley Affidavit para 287.](#)

2.11.3(b) Therapure

209. Therapure is a biopharmaceutical company that manufactures complex biologics and develops, manufactures and sells blood and plasma-related therapeutic products.⁴⁴⁰

Therapure's business consists of (i) outsourced pharmaceutical development and manufacturing ("CDMO") and (ii) proprietary product development.⁴⁴¹ It operates out of a 130,000 square foot facility acquired from Hemosol Corporation that includes biomanufacturing, research, and quality control laboratories that meet Health Canada, FDA (US), EMA (Europe) and MHRA (UK) standards, and a newly-built 43,000 square foot facility housing a 30,000 square foot warehouse.⁴⁴²

210. In late 2015, Therapure filed a preliminary prospectus in connection with an IPO to offer up to 11,818,181 common shares of Therapure at an offering price of \$11 to \$13 per share.⁴⁴³ Based on the number of outstanding shares at the time of Therapure's IPO filing, Therapure was valued at approximately \$970 million.⁴⁴⁴ There is no credible basis to assert that the valuation of Therapure was artificially inflated by Glassman.⁴⁴⁵ Therapure's IPO was led by GMP Securities, CIBC Capital Markets and National Bank Financial as joint lead managers, and a syndicate that included Scotia Capital and Canaccord – all experienced underwriters.⁴⁴⁶ The allegation that the valuation of

⁴⁴⁰[CB001-Riley Affidavit para 288.](#)

⁴⁴¹[CB001-Riley Affidavit para 288.](#)

⁴⁴²[CB001-Riley Affidavit para 288.](#)

⁴⁴³[CB001-Riley Affidavit para 289.](#)

⁴⁴⁴[CB001-Riley Affidavit para 289.](#)

⁴⁴⁵[CB001-Riley Affidavit para 290.](#)

⁴⁴⁶[CB001-Riley Affidavit para 290.](#)

Therapure, as determined by five underwriters, was wholly disconnected from reality is false.

211. As with any IPO, the offering price, amount of shares, valuation and time frame for Therapure's IPO were determined and based upon the advice and assistance of the underwriters.⁴⁴⁷ Underwriters to an IPO are typically compensated for their work and expense incurred for, among other things, their underwriting due diligence and promotion of the offering, following a successful closing of the offering.⁴⁴⁸ Artificially inflating and promoting an inflated value of an offering company would put the success of the IPO and consequently their underwriting fee at risk.⁴⁴⁹ The allegation that Therapure's value was artificially inflated has no substance.⁴⁵⁰

212. In support of their allegations that the value of Therapure was artificially inflated, the whistleblowers cite a link to an article titled "Rich Valuation Likely Hinders IPO – Market Talk" which states "Therapure Biopharma blames its delayed IPO on weak market conditions. But the biotech's rich value also likely hurt, say some investors."⁴⁵¹ The investors who supposedly expressed this opinion are not identified in the article, and the article was written by Dummett – who had written a disparaging article about Catalyst with assistance and information provided by West Face, Boland and McFarlane.⁴⁵² It is also worth noting that after the whistleblower complaint was filed, Therapure entered into an agreement for the sale of Therapure's CDMO business and certain rights to plasma

⁴⁴⁷[CB001-Riley Affidavit para 290.](#)

⁴⁴⁸[CB001-Riley Affidavit para 290.](#)

⁴⁴⁹[CB001-Riley Affidavit para 290.](#)

⁴⁵⁰[CB001-Riley Affidavit para 290.](#)

⁴⁵¹[CB001-Riley Affidavit para 291.](#)

⁴⁵²[CB001-Riley Affidavit para 291.](#)

products and technology for US\$290 million to 3SBio Inc., a biotechnology company in China, and at least a \$20-25 million investment in Therapure's plasma protein and therapeutics business to fund the construction of a new facility.⁴⁵³

2.11.4. Gabriel de Alba and SatMex

213. The whistleblowers have alleged that Gabriel de Alba acted improperly in respect of his family's involvement with a Mexican telecommunications company known as Satelites Mexicanos, S.A. de C.V. ("**SatMex**") some *ten years ago*.⁴⁵⁴ They alleged that the SatMex opportunity was diverted to the de Alba Family from Catalyst and Callidus, and that Gabriel de Alba blatantly did not dedicate 100% of his professional time to Catalyst while leading and closing the SatMex deal for the benefit of his family, not Catalyst.⁴⁵⁵ The whistleblowers alleged that Gabriel de Alba and his family led efforts to present SatMex with a restructuring deal and by doing so that he betrayed his loyalties to Catalyst.⁴⁵⁶ They further alleged that Gabriel de Alba compromised his loyalties by providing a substantial opportunity to finance the SatMex deal to two competitors of Catalyst - Monarch Partners LP and Centerbridge.⁴⁵⁷ These allegations are false and defamatory.

⁴⁵³[CB001-Riley Affidavit para 291](#); [CB159-Press Release dated September 3, 2017 announcing the joint venture agreement between Therapure and 3SBio Inc., Exhibit 220 of Riley Affidavit.](#)

⁴⁵⁴[CB001-Riley Affidavit para 294.](#)

⁴⁵⁵[CB237-Anderson CXM, p. 164, q. 476](#); [CB233-Anderson Affidavit para 23](#); [CB204-Whistleblower Complaint, CB198-Supplementary Whistleblower Complaint, Exhibit I and Exhibit J to Anderson Affidavit.](#)

⁴⁵⁶[CB237-Anderson CXM, p. 164, q. 476](#); [CB233-Anderson Affidavit para 23](#); [CB204-Whistleblower Complaint, CB198-Supplementary Whistleblower Complaint, Exhibit I and Exhibit J to Anderson Affidavit.](#)

⁴⁵⁷[CB237-Anderson CXM, p. 164, q. 476](#); [CB233-Anderson Affidavit para 23](#); [CB204-Whistleblower Complaint, CB198-Supplementary Whistleblower Complaint, Exhibit I and Exhibit J to Anderson Affidavit.](#)

214. The de Alba Family is based in Mexico and has had extensive business enterprises and ties in Mexico for many generations.⁴⁵⁸ The de Alba Family made a significant investment in SatMex, which was going through a complicated restructuring of its financial affairs in 2011.⁴⁵⁹ Contrary to the whistleblowers' allegations, the restructuring was not led by Gabriel de Alba and the de Alba Family, but was rather led by Monarch Partners LP and Centerbridge, SatMex's then two largest creditors.⁴⁶⁰ Monarch Partners LP and Centerbridge approached the de Alba Family to invest in SatMex, as they required a Mexican partner to restructure the company.⁴⁶¹ The de Alba Family did not approach Monarch Partners and Centerbridge to offer finance opportunities to detriment of Callidus as alleged; they were already creditors of SatMex that approached the de Alba Family.

215. Further, contrary to the whistleblowers' allegations, Gabriel de Alba had little to no involvement in the SatMex restructuring.⁴⁶² As a result of the restructuring, the de Alba Family was entitled to representation on SatMex's newly constituted Board of Directors.⁴⁶³ De Alba only became a director of SatMex on May 26, 2011, along with other members of his family, after the restructuring deal closed. He maintained this position until December 31, 2013.⁴⁶⁴ Catalyst knew about Gabriel de Alba's appointment and participation on the SatMex Board during this period, and it did not give rise to Gabriel de Alba being unable to devote 100% of his professional time to Catalyst.⁴⁶⁵ Further, contrary to the whistleblowers' allegations, the funds managed by Catalyst could not have

⁴⁵⁸[CB001-Riley Affidavit para 296.](#)

⁴⁵⁹[CB001-Riley Affidavit para 296.](#)

⁴⁶⁰[CB001-Riley Affidavit para 296.](#)

⁴⁶¹[CB001-Riley Affidavit para 296.](#)

⁴⁶²[CB001-Riley Affidavit para 296.](#)

⁴⁶³[CB001-Riley Affidavit para 297.](#)

⁴⁶⁴[CB001-Riley Affidavit para 297.](#)

⁴⁶⁵[CB001-Riley Affidavit para 298.](#)

invested in SatMex.⁴⁶⁶ The Catalyst funds were restricted to investments in businesses or entities connected to Canada or the U.S. and the Mexican telecommunications industry at that time restricted foreign ownership of SatMex.⁴⁶⁷

216. Prior to making these allegations, Anderson had attempted to pull documents relating to SatMex for months without success⁴⁶⁸ Nevertheless, he made these false allegations and disseminated them to the media without substantiating the allegations.

217. Notwithstanding that Anderson asserts that the accusations are true, Anderson claims that he relied on WSJ to verify the truth of these serious accusations. As stated above, Copeland relied on Anderson who was “pure as snow”. Neither assertion is credible. They both either knew the complaints and resulting article were false or, at the least, reckless as to the truth.

2.12. THE CRIMINAL COMPLAINTS TO THE POLICE ARE FALSE

218. The Police complaint made serious allegations that Callidus engaged in a pattern of acts and behaviour to deprive people of their business and personal assets by using a “Scheme of Deception and Economic Distortion” made “Fraudulent Financial Misrepresentation” to the public markets, among other things.⁴⁶⁹ The Guarantors alleged that Catalyst and Callidus fraudulently induced the borrowers and Guarantors to enter

⁴⁶⁶[CB001-Riley Affidavit para 299.](#)

⁴⁶⁷[CB251-Toronto Police Services Presentation, Exhibit B to Levitt Affidavit.](#)

⁴⁶⁸[CB237-Anderson CXM pp. 82-83, q. 187-188; CB112-text messages exchanged between Copeland and Anderson \(p. 21, text of August 2, 2017\), Exhibit 161 of Riley Affidavit.](#)

⁴⁶⁹[CB001-Riley Affidavit para 301, CB001-Riley Affidavit para 177; CB106-Emails exchanged between McFarlane, Levitt, Gary Smith, Molyneux regarding a “Draft Slide deck for Police”, which attaches a PowerPoint Presentation titled “Overview of Callidus and Catalyst Capital Business Practices”, Exhibit 154 of Riley Affidavit.](#)

into loan agreements and personal guarantees, and then engineered defaults on these loans in order to acquire the borrowers' assets and business.⁴⁷⁰ They alleged that half of the loans made by Callidus resulted in a loss of control for the borrower. These allegations are false. As set out in the publicly filed Callidus corporate records, only 6 out of 105 loans resulted in loss of equity and control by the Guarantors.⁴⁷¹

219. In support of their "loan to own" allegation that half of Callidus' loans resulted in loss of control, the complainants cited three examples: Esco Marine, XTG, and Fortress.⁴⁷² These allegations however were made previously and dismissed by the courts or acknowledged by the Guarantors to be false.

2.12.1. Fortress

220. Fortress was a coal mining company engaged in Kentucky.⁴⁷³ Fortress sought financing from Callidus to pursue acquisitions, and each of Levitt, Molyneux, and Gary Smith provided personal guarantees as security for advances by Callidus to Fortress.⁴⁷⁴ After Callidus advanced approximately USD\$36 million, Smith (not Callidus) petitioned for voluntary bankruptcy on behalf of Fortress on November 5, 2015.⁴⁷⁵ Following a three-day motion, the U.S. Bankruptcy Court ordered that all agreements between Fortress and

⁴⁷⁰[CB001-Riley Affidavit para 301.](#)

⁴⁷¹[CB001-Riley Affidavit paras 14 and 18.](#)

⁴⁷²[CB001-Riley Affidavit para 301.](#)

⁴⁷³[CB001-Riley Affidavit para 303.](#)

⁴⁷⁴[CB001-Riley Affidavit paras 303-306; CB160-Loan Agreement and Guarantees dated September 5, 2014, **Exhibit 221** of Riley Affidavit; CB161-Amended and Restated Loan Agreement and Guarantees dated January 9, 2015, **Exhibit 222** of Riley Affidavit; CB162-Reaffirmation of Credit Documents, **Exhibit 223** of Riley Affidavit.](#)

⁴⁷⁵[CB001-Riley Affidavit para 307; CB163-Voluntary Petition filed by Fortress filed on November 5, 2015 in the U.S. Bankruptcy Court, **Exhibit 224** of Riley Affidavit.](#)

Callidus, including the loan documents that Levitt claims were fraudulently induced, were valid, binding, enforceable and unavoidable.⁴⁷⁶

221. Further, in response to Callidus' summary judgment motion against Smith on his personal guarantee, Smith alleged that Callidus represented that it would not require personal guarantees, that such guarantees would be released upon the fulfillment of various conditions, that the personal guarantees deviated from Callidus' oral representations, and that the personal guarantees were provided under duress.⁴⁷⁷ Smith also asserted that Callidus knowingly made false promises regarding its intention to extend financing, and obtained inflated appraisals to support Callidus' false promises.⁴⁷⁸ Smith also alleged that Callidus engaged in similar tactics regarding the personal guarantees of Levy, Jaross, McFarlane and Duhamel.⁴⁷⁹

222. Smith's allegations made in response to Callidus' summary judgment motion are similar, if not the same, as the allegations Levitt made in the complaint to the Police and in his affidavit filed in support of his anti-SLAPP motion.⁴⁸⁰ By Memorandum Opinion and Order dated September 7, 2016, the U.S. District Court granted Callidus' motion and held Smith liable under his guarantee.⁴⁸¹ There is no merit to the allegations Levitt has

⁴⁷⁶[CB001-Riley Affidavit para 308](#); [CB164-Final Order Regarding Debtor's Use of Cash Collateral issued December 16, 2015 by the U.S. Bankruptcy Court, Exhibit 225 of Riley Affidavit.](#)

⁴⁷⁷[CB001-Riley Affidavit para 312, and Exhibit 228 therein – Declaration of Gary Smith sworn in response to the summary judgment motion.](#)

⁴⁷⁸[CB001-Riley Affidavit para 312.](#)

⁴⁷⁹[CB001-Riley Affidavit para 312.](#)

⁴⁸⁰[CB001-Riley Affidavit para 313.](#)

⁴⁸¹[CB001-Riley Affidavit para 314; CB012-Memorandum Opinion and Order of the US District Court of September 7, 2016, Exhibit 19 of Riley Affidavit.](#)

asserted in support of his anti-SLAPP motion that were unsuccessfully made by Smith and dismissed by the U.S. District Court.⁴⁸²

2.12.2. XTG

223. In 2015, Callidus brought a summary judgment motion against McFarlane on his guarantee of the loan XTG had obtained from Callidus.⁴⁸³ In response to Callidus' summary judgment motion, McFarlane alleged, among other things, that Callidus engaged in a "loan to own" strategy by "drip-feeding" capital increases, artificially restricting liquidity, blocking re-financing opportunities, and asset divesture opportunities.⁴⁸⁴ He accused Callidus of choking its borrowers into bankruptcy and forcing him to give control of XTG to Callidus. McFarlane also asserted that other borrowers such as Baumann, Levitt, Levy, and Duhamel had similar experiences with Callidus.⁴⁸⁵

224. Notwithstanding McFarlane's allegations, this Court found McFarlane liable to Callidus under his guarantee.⁴⁸⁶ In his complaint to the Police, McFarlane has made similar allegations as those he previously advanced in this Court in the guarantee action.⁴⁸⁷

⁴⁸²[CB001-Riley Affidavit para 317.](#)

⁴⁸³[CB001-Riley Affidavit para 318.](#)

⁴⁸⁴[CB001-Riley Affidavit para 319; CB165-Affidavit of McFarlane sworn March 17, 2016, in response to the SJ motion, **Exhibit 229** of Riley Affidavit.](#)

⁴⁸⁵[CB001-Riley Affidavit para 319; CB165-Affidavit of McFarlane sworn March 17, 2016, in response to the SJ motion, **Exhibit 229** of Riley Affidavit.](#)

⁴⁸⁶[CB001-Riley Affidavit para 320; CB166-Reasons and Decision of Justice Newbold of May 24, 2016, **Exhibit 230** of Riley Affidavit.](#)

⁴⁸⁷[CB001-Riley Affidavit para 321. **CB244-McFarlane CXM**, p. 203, q. 823.](#)

2.12.3. Esco Marine

225. Esco Marine operated a marine yard and recycling operation in Texas. Levy and Jaross were officers and directors of Esco Marine, and they guaranteed Esco Marine's loan from Callidus.⁴⁸⁸ On March 7, 2015, Levy and Jaross, on behalf of Esco Marine, filed for bankruptcy in Texas.⁴⁸⁹

226. Callidus brought summary judgment motions against Jaross and Levy to enforce their guarantees.⁴⁹⁰ In response to the summary judgment motions, Levy and Jaross alleged that the guarantees were unenforceable as they were unconscionable, made under economic duress, and fraudulently induced by Callidus.⁴⁹¹ Levy and Jaross filed, among other things, declarations from McFarlane, Baumann, and Smith, which alleged that they had similar experiences with Callidus at their own companies.⁴⁹² The U.S. District Court disposed or dismissed most of Levy and Jaross' defenses and counterclaims, including their assertion that the guarantees were unconscionable and made under economic duress.⁴⁹³

227. On April 7, 2017, Levy and Jaross filed their own summary judgment motion to deny Callidus' claims of breach of guarantees, civil theft, and conversion, and to grant summary judgment with respect to their defense of fraudulent inducement of their

⁴⁸⁸[CB001-Riley Affidavit paras 322 – 323.](#)

⁴⁸⁹[CB001-Riley Affidavit para 323.](#)

⁴⁹⁰[CB001-Riley Affidavit para 323; CB014-Decision of the U.S. District Court dated March 30, 2017, Exhibit 21 of Riley Affidavit.](#)

⁴⁹¹[CB001-Riley Affidavit para 331; CB167-Affidavits of Levy and Jaross sworn in response to the summary judgment motion, Exhibit 232 of Riley Affidavit.](#)

⁴⁹²[CB001-Riley Affidavit para 331; CB167-Affidavits of Levy and Jaross sworn in response to the summary judgment motion, Exhibit 232 of Riley Affidavit.](#)

⁴⁹³[CB001-Riley Affidavit para 323; CB014-Decision of the U.S. District Court dated March 30, 2017, Exhibit 21 of Riley Affidavit.](#)

guarantees.⁴⁹⁴ The U.S. District Court dismissed Levy and Jaross' summary judgment motions.⁴⁹⁵

228. Based on the adverse rulings of the U.S. District Court, Levy and Jaross entered into a settlement agreement with Callidus.⁴⁹⁶ Levy and Jaross expressly acknowledged that the U.S. District Court rulings "made clear in express and unambiguous language that it considered the Levy/Jaross Parties to be sophisticated business professionals... and expressly noted that the economic harm to the Levy/Jaross Parties was a result of acts and/or omissions by the prior lender to Esco and the Levy/Jaross Parties – as opposed to Callidus".⁴⁹⁷ Levy and Jaross also expressly acknowledged that the summary judgment orders of the U.S. District Court "signaled to all parties that the final findings of facts and conclusions of law from the District Court on the sole remaining issue for a bench trial [i.e. allegation of fraudulent inducement] would be adverse to the Levy/Jaross parties".⁴⁹⁸

2.13. OSC REFILINGS AND CORRECTION OF ERRORS LIST – UNRECOGNIZED YIELD ENHANCEMENTS

229. In support of the anti-SLAPP motions, the Moving Parties rely upon and mischaracterize Callidus' inclusion on the OSC's Refilings and Corrections of Errors List as proof that Callidus engaged in fraudulent activities and accounting improprieties.⁴⁹⁹

⁴⁹⁴[CB001-Riley Affidavit para 333.](#)

⁴⁹⁵[CB001-Riley Affidavit para 334; CB015-Order of the U.S. District Court dated June 21, 2017, **Exhibit 22** of Riley Affidavit.](#)

⁴⁹⁶[CB001-Riley Affidavit para 335; CB016-Settlement Agreement executed by Levy and Jaross dated August 30, 2017, **Exhibit 23** of Riley Affidavit.](#)

⁴⁹⁷[CB001-Riley Affidavit para 335; CB016-Settlement Agreement executed by Levy and Jaross dated August 30, 2017, para 4, **Exhibit 23** of Riley Affidavit.](#)

⁴⁹⁸[CB001-Riley Affidavit para 68.](#)

⁴⁹⁹[CB001-Riley Affidavit para 336.](#)

230. The Refilings and Corrections of Errors List was introduced by securities regulators to provide notice to the market when an issuer amends its continuous disclosure record, website, or social media in the context of a Continuous Disclosure Review.⁵⁰⁰ The Continuous Disclosure Review Program was introduced by the OSC to make every Ontario-based firm subject to a full disclosure review every four years.⁵⁰¹ The goal of the program is to improve the completeness, quality, and timeliness of continuous disclosure provided by reporting issuers.⁵⁰²

231. In 2014, there were 991 Continuous Disclosure reviews conducted by Canadian Securities Administrators.⁵⁰³ Seventy-six percent of these reviews required issuers to take action to improve or amend their disclosure, or resulted in the issuer being referred to enforcement, ceased traded or placed on the default list.⁵⁰⁴ In 2015, 1,058 reviews were conducted, of which 59% required issuers to take some action.⁵⁰⁵ In 2016, 902 continuous disclosure reviews were conducted, of which 62% required issuers to take some action.⁵⁰⁶ In 2017, 1,014 reviews were conducted, of which 43% required issuers

⁵⁰⁰[CB001-Riley Affidavit para 337; CB168-OSC Staff Notice 51-711 \(Revised\) Refilings and Corrections of Errors, Exhibit 233 of Riley Affidavit.](#)

⁵⁰¹[CB001-Riley Affidavit para 339.](#)

⁵⁰²[CB001-Riley Affidavit para 340; CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰³[CB001-Riley Affidavit para 340; CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰⁴[CB001-Riley Affidavit para 340; CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰⁵[CB001-Riley Affidavit para 340; CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰⁶[CB001-Riley Affidavit para 340; CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

to take some action.⁵⁰⁷ In 2018, 840 reviews were conducted, of which 51% required issuers to take some action.⁵⁰⁸

232. Callidus was placed on the Refilings and Correction of Errors List in 2017 and 2018 because Callidus had amended its disclosure of forward-looking information relating to unrecognized yield enhancements, a forward-looking, non-IFRS disclosure measure, in its MD&As.⁵⁰⁹ Unlike IFRS measures, unrecognized yield enhancements were not recorded nor recognized on Callidus' balance sheet or income statement – they are neither recorded as assets nor earnings on Callidus' financial statements. Contrary to the defendants' allegations, the unrecognized yield enhancements did not inflate Callidus' assets or earnings.⁵¹⁰ Callidus' inclusion on the Refilings and Corrections of Errors List is in no way proof of fraud, as alleged. Indeed, in none of the communications exchanged between Callidus and the OSC during the Continuous Disclosure Review that the Moving Parties attempt to rely on, state that Callidus committed a fraud.

233. The use and disclosure of non-IFRS metrics is widely used in the public market and is in no way “fraudulent”.⁵¹¹ It is common for companies to use non-IFRS measures

⁵⁰⁷[CB001-Riley Affidavit para 340](#); [CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰⁸[CB001-Riley Affidavit para 340](#); [CB169-CSA Staff Notice 51-355 Continuous Disclosure Review Program Activities, for fiscal year ended, March 31, 2014, 2015, 2016, 2017 and 2018, Exhibit 234 of Riley Affidavit.](#)

⁵⁰⁹[CB001-Riley Affidavit paras 341-342](#); [CB170-Callidus' Press Release of May 31, 2017, Exhibit 235 of Riley Affidavit](#); [CB170-Callidus' Press Release of August 10, 2017, Exhibit 236 of Riley Affidavit](#); [CB172-Callidus' Press Release of May 15, 2018, Exhibit 237 of Riley Affidavit](#); [CB173-Callidus' Press Release of August 13, 2018, Exhibit 238 of Riley Affidavit.](#)

⁵¹⁰[CB001-Riley Affidavit para 342.](#)

⁵¹¹[CB001-Riley Affidavit para 347.](#)

explain a company's unique business and forward-looking position. As recently reported, 70% of companies on the S&P/TSX 60 index report non-IFRS metrics.⁵¹²

234. It is important to note that in being placed on the Errors and Refilings List for amending its disclosure relating to unrecognized yield enhancements, Callidus was never noted in default by the OSC regarding its disclosure, required to refile any financial statements, or subject to any OSC enforcement proceeding or cease trade order.⁵¹³ The changes Callidus made to its disclosure that caused it to be placed on the Refilings and Corrections of Errors List were not even material changes that required Callidus to file a material change report.⁵¹⁴

2.14. SIGNIFICANT HARM TO CATALYST AND CALLIDUS

235. On the evening of August 9, 2017, Callidus issued a statement in response to the online WSJ Fraud Articles, in an attempt to defend the reputations and businesses of Callidus and Catalyst that were seriously damaged by the false and defamatory statements made about the companies.⁵¹⁵ In addition, Riley sent a confidential email notification to Catalyst's Limited Partners. Given the timing of the publication of the online articles, Callidus did not have enough time to release the statement or the email to investors until after the close of trading.

⁵¹²[CB174-Globe & Mail article dated December 27, 2019, "Canadian Regulators Delay Plan to Toughen Rules on Company's Use of Non-GAAP Measures", Exhibit 239 Riley Affidavit.](#)

⁵¹³[CB001-Riley Affidavit para 346.](#)

⁵¹⁴[CB001-Riley Affidavit para 346.](#)

⁵¹⁵[CB001-Riley Affidavit para 348.](#)

236. Callidus and Catalyst received numerous telephone calls and emails from people who read the WSJ Fraud Articles and expressed concerns about the fraud accusations contained therein.⁵¹⁶

237. Callidus' ability to originate new loans to grow its loan portfolio was seriously damaged by the WSJ Fraud Articles.⁵¹⁷ In a confidence business such as lending, being accused of fraud, unlawful conduct and accounting and other improprieties to over two million readers of *The Wall Street Journal* on its website and the Front Page is a devastating blow.⁵¹⁸ A lender such as Callidus depends on its reputation for conducting its business in a legitimate and lawful manner.⁵¹⁹ Catalyst also depends on the trust of investors, and Catalyst and was falsely accused of fraud and controlling a "loan to own" company and a predatory lender.⁵²⁰

238. The good reputation of a firm operating in the distressed lending and investing industry such as Callidus and Catalyst is critical in order to successfully attract new borrowers and investors.⁵²¹ Anderson knew this. As he acknowledged to McFarlane and others regarding the damage caused by a fraud accusation: "Frankly most due diligence pros in the industry stop caring when they get even a whiff of fraud because they know its uninvestible and just move on".⁵²²

⁵¹⁶[CB001-Riley Affidavit para 350.](#)

⁵¹⁷[CB001-Riley Affidavit para 351.](#)

⁵¹⁸[CB001-Riley Affidavit para 351.](#)

⁵¹⁹[CB001-Riley Affidavit para 351.](#)

⁵²⁰[CB001-Riley Affidavit para 351.](#)

⁵²¹[CB001-Riley Affidavit para 352.](#)

⁵²²[CB001-Riley Affidavit para 352; CB072-McFarlane's email suggesting that Anderson connect with West Face, Exhibit 92 of Riley Affidavit.](#)

239. Prior to the publication of the WSJ Fraud Articles, Callidus was able to originate 102 new loans.⁵²³ In the 3.5 years before the WSJ Fraud Articles were published, Callidus originated 29 new loans.⁵²⁴ In 2014, Callidus originated 17 new loans. In 2015, Callidus originated 11 new loans.⁵²⁵

240. In 2016, there were no new loans as Callidus implemented a slowdown of new loan underwriting and focused on addressing the impact of the first short attack by West Face in 2014-2015.⁵²⁶

241. As Callidus restarted growth of its loan portfolio, Callidus originated one new loan in Q2 2017.⁵²⁷ Following the publication of the WSJ Fraud Articles, there was a significant decline in loan origination.⁵²⁸ In the year following the publication of the WSJ Fraud Articles, Callidus only originated three new loans.⁵²⁹

242. Callidus' ability to originate new loans was seriously harmed by the defamatory accusations made in the WSJ Fraud Articles.⁵³⁰ Potential borrowers or investors do what Anderson said happens when there is a whiff of fraud – they move on.⁵³¹

243. Callidus retained Mark Sunshine, an expert in this segment of the lending market. His evidence was not opposed by any responding expert. As a lending expert, Sunshine explained that for a lender, credibility and reputation are crucial. Accusations of fraud,

⁵²³[CB001-Riley Affidavit para 353.](#)

⁵²⁴[CB001-Riley Affidavit para 353.](#)

⁵²⁵[CB001-Riley Affidavit para 353.](#)

⁵²⁶[CB001-Riley Affidavit para 353.](#)

⁵²⁷[CB001-Riley Affidavit para 353.](#)

⁵²⁸[CB001-Riley Affidavit para 357.](#)

⁵²⁹[CB001-Riley Affidavit paras 353 and 357.](#)

⁵³⁰[CB001-Riley Affidavit para 358.](#)

⁵³¹[CB001-Riley Affidavit para 359.](#)

financial crimes, accounting improprieties, deceptive lending practices and securities law violations, particularly non-depository financial institution, such as Callidus, is ruinous to the business.⁵³² The fraud accusations made against Callidus, and the public nature of such allegations as reported in *The Wall Street Journal*, were particularly damaging as they were made public to over 2 million readers in the business world. The publication of an allegation of fraud by *The Wall Street Journal* decimated Callidus' ability to attract new legitimate borrowers.⁵³³ As Sunshine opined, given a choice, counterparties to non-depository financial institutions avoid doing business with a company accused of fraud, accounting misstatements, financial crimes, securities law violations and deceptive lending practices.⁵³⁴ They would avoid taking the risk of entering into a credit relationship with Callidus. This is especially true when such accusations are published by *The Wall Street Journal* with a color photograph that features a Toronto police car above a caption stating "A unit of the Toronto Police Service has begun its own inquiries..."⁵³⁵

244. Further, Sunshine testified that potential borrowers who might consider using Callidus as a lender, inevitably would investigate Callidus' reputation as part of their due diligence.⁵³⁶ The WSJ Fraud Articles is easily found online. Its harm to Callidus extend beyond the publication date. The accusations published by *The Wall Street Journal* Articles are so prejudicial that Sunshine opined that it made Callidus one of the most undesirable non-bank lenders.⁵³⁷

⁵³²[CB183-Sunshine Report, para. 4.1.](#)

⁵³³[CB183-Sunshine Report, para. 4.1.](#)

⁵³⁴[CB183-Sunshine Report, para. 4.1.](#)

⁵³⁵[CB183-Sunshine Report, para. 4.2.](#)

⁵³⁶[CB183-Sunshine Report, para. 6.9.2.](#)

⁵³⁷[CB183-Sunshine Report, para. 6.9.6.](#)

245. The inability to generate new loans caused by the accusations published in *The Wall Street Journal*, had an ongoing impact on Callidus' profitability which caused Callidus' share price to continue to be suppressed. Callidus' stock price suffered an immediate drop of 19.2% within the half hour of publication of the WSJ Fraud Articles and 21.4% from the previous day's closing share price.⁵³⁸ The impact of the WSJ Fraud Article on the value of Callidus persisted.

246. Vinita Juneja, an expert in securities, finance, valuation disputes, and regulatory investigations, used an event study to measure the impact of the WSJ Fraud Articles on Callidus' share price. The event study concluded:

- (a) Callidus' share price fell between \$2.86 and \$3.19, at a minimum, because of the WSJ Fraud Articles;
- (b) the harm to Callidus was at least approximately \$144 to 161 million;
- (c) the impact of the WSJ Fraud Articles on the value of Callidus has persisted to the present day.⁵³⁹

247. The decline in Callidus' share price is exactly what Anderson had told Copeland would occur following the publication of the WSJ Fraud Article - "lol, that'll happen when they get called out for fraud".⁵⁴⁰ Callidus has not been able to regain its share price. As noted in a recent report, even if a company targeted by a short attack can refute the

⁵³⁸[CB001-Riley Affidavit para 360.](#)

⁵³⁹[CB184-Juneja Report, para 52.](#)

⁵⁴⁰[CB001-Riley Affidavit para 360; CB009-Text messages between Anderson and Copeland, Exhibit 15 of Riley Affidavit.](#)

allegations (which are often made in research reports that are framed in a way to make it difficult to disprove) it may never regain its share price.⁵⁴¹

248. The Moving Parties rely on an affidavit of David Sutin that was sworn in the context of Callidus' privatization to assert that the damage caused to Callidus' business and reputation had nothing to do with the WSJ Fraud Articles. They have mischaracterized Sutin's affidavit and ignored relevant facts. The Moving Parties ignore the fact that the Sutin Affidavit, as it clearly stated, did not set out an exhaustive list of all the matters affecting the share price of Callidus. The Moving Parties also ignore the Management Information Circular filed with the OSC for which the Sutin Affidavit was sworn that clearly stated:

The Corporation believes that beginning as early as 2015, the Corporation was subject to a series of attacked by short sellers pursuant to which a number of entities acted in concert to disseminate false information about the Corporation, file false whistleblower reports, and to leak both the existence of and the allegations contained in those reports to the media. The "short and distort" attack was followed by a significant decline in the trading price of the Shares and adversely affected the Corporations ability to, among other things, raise financing, originate new loans, and retain key personelle, as further described below.⁵⁴²

249. The assertion that Callidus being accused of fraud and criminal activity had no impact on Callidus' business and reputation is without merit.

⁵⁴¹[CB003-Paul Simon, "Without Regulation of short sellers, investors are left making assumptions"\(30 March 2016\), Exhibit 4 of Riley Affidavit.](#)

⁵⁴²[CB252-Management information Circular, Callidus Capital Corp, September 17, 2019, Exhibit No. 7 to the examination of Jim Riley on November 18, 2020.](#)

PART 3 – LAW AND ARGUMENT

3.1. PURPOSE OF ANTI-SLAPP LEGISLATION

250. The anti-SLAPP provisions are not a tool to squash potentially meritorious claims or impede access to justice for plaintiffs with anti-SLAPP suits.⁵⁴³ Where there is a “genuine controversy” and/or where there are “potentially significant pecuniary damages”, the action should be tried on its merits.⁵⁴⁴

251. Anti-SLAPP motions are not adjudications of the merits of the underlying proceeding. Anti-SLAPP motions are not summary judgment motions, where parties are expected to put their best foot forward.⁵⁴⁵ In assessing this motion, the motion judge should be wary of turning his or her assessment into a *de facto* summary judgment motion.⁵⁴⁶ The Supreme Court of Canada has stated that a motion judge deciding an anti-SLAPP motion is to engage in only limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep dive into the evidence to a later stage, where judicial powers of inquiry are broader and pleadings more fully developed.⁵⁴⁷

⁵⁴³ *1704604 Ontario Ltd. v Pointes Protection Association*, [2018 ONCA 685](#), at para 41 – [BOA001](#); see also Anti-SLAPP Advisory Panel, *Report to the Attorney General (Ontario: Ministry of the Attorney General, 2010)* – [BOA058](#).

⁵⁴⁴ *Bondfield Construction Company Limited v The Globe and Mail Inc.*, [2019 ONCA 166](#), at paras 25 and 28– [BOA010](#).

⁵⁴⁵ *Bent v Platnick*, [2020 SCC 23](#), at para 51– [BOA007](#).

⁵⁴⁶ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 52 – [BOA002](#).

⁵⁴⁷ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 52– [BOA002](#).

252. The Supreme Court of Canada has also stated that courts must be acutely aware of the potentiality of future evidence arising in the proceeding.⁵⁴⁸ This caution must be particularly heeded in this case as, among other things:

- (a) There have been no examinations for discovery of *any* of the Defendants. Examinations of discovery are necessary to obtain the facts of the conspiracy. As the courts have recognized “the very nature of a conspiracy is that ... [t]he relevant evidence will likely be in the hands and minds of the alleged conspirators. Part of the character of a conspiracy is its secrecy and the withholding of information from alleged victims...such details would not usually be available to a plaintiff until discoveries.”⁵⁴⁹
- (b) There have been cross-examinations of *only some of* the Defendants. Langstaff, Voorheis, Molyneux, Kassam, Spears and Puri have not testified as to their activities with the Moving Parties to harm Catalyst and Callidus.
- (c) The Defendants have not produced all of their documents, including text messages, phone records and communications from their personal email accounts. For example,
 - (i) McNish and Langstaff, who communicated through their personal Gmail accounts, have not produced their email from their Gmail accounts.⁵⁵⁰

⁵⁴⁸ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 37– [BOA002](#); *Bent v Platnick*, [2020 SCC 23](#), at para 51– [BOA007](#).

⁵⁴⁹ *Beaver Lumber Inc. v. Hamer*, [2004 CarswellOnt 1969](#) (ON SC), at paras 32 and 38– [BOA006](#); *Apotex Inc. v. Laboratoires Fournier S.A.*, [2006 CarswellOnt 7164](#) (ON SC), at para 50– [BOA005](#); *Winnipeg (City) v. Caspian Projects Inc. et al.* [2020 MBQB 129](#), at paras 27-28 – [BOA055](#); *Cannon v. Funds for Canada Foundation*, [2012 ONSC 6101](#), at para 121 – [BOA016](#); *Dale v. Toronto Real Estate Board*, [2012 ONSC 512](#), at para 53– [BOA020](#).

⁵⁵⁰ [CB188-Transcript of Phone call between McNish and Confidential Source on July 20, 2017, p. 89 of Catalyst Amended Order 7 Apr 2021](#).

- (ii) Anderson has not produced any phone records from and after July 8, 2017 which he admitted are necessary to have a full picture of his communications with Copeland, McFarlane, Levitt, Langstaff, Voorheis, and Livesey.⁵⁵¹
- (iii) Boland deleted his text messages with Langstaff,⁵⁵² and Langstaff has produced only some of these messages. Boland has also not produced all emails from his Gmail account where he received emails from Levy (and perhaps others).⁵⁵³
- (iv) Baumann has not produced emails from the primary account he used to communicate with the other defendants, claiming it is inactive and the emails unrecoverable, even though the account is with a company run by Baumann's brother.⁵⁵⁴
- (d) West Face has refused to produce documents at this time on the basis that the documents are not required for the purposes of the anti-SLAPP motions.⁵⁵⁵
- (e) Some Moving Parties have failed to produce documents that their co-Defendants have produced. Other Moving Parties have refused to produce documents on the basis of common interest privilege amongst each other and with the Other Defendants who have not brought anti-SLAPP motions;

⁵⁵¹[CB236-Anderson Continued CXM, p. 325-328, q. 1028-1046.](#)

⁵⁵²[CB239-Transcript from the cross-examination of Greg Boland on December 10, 2020, \("Boland CXM December 10"\), p. 292-293, q.790-792.](#)

⁵⁵³[CB094-Levy email to Boland attaching materials from the Esco SJ motion on May 3, 2017, Exhibit 131 of the Riley Affidavit.](#)

⁵⁵⁴[C253-Email from K. Baumann with Answers to Undertakings dated April 27, 2021.](#)

⁵⁵⁵[C254- Chart of Responses to Undertakings, Questions Taken Under Advisement, and Refusals delivered by West Face dated January 3, 2021 items 33, 36, 37.](#)

253. Further production and examinations for discovery of all the Defendants will be necessary for a proper adjudication of the merits at trial.

3.2. THRESHOLD BURDEN ON THE MOVING PARTY – S. 137.1(3)

254. On an anti-SLAPP motion, the defendant(s) bear the onus under subsection 137.1(3) of satisfying on a balance of probabilities that:

- (a) the proceedings arise from an expression made by the defendant(s); and
- (b) the expression relates to a matter of public interest.⁵⁵⁶

255. If a defendant fails to admit making the expression or fail to prove, on a balance of probabilities, that the litigation arises from that expression and that the expression relates to a matter of public interest then the anti-SLAPP motion must be dismissed.⁵⁵⁷

3.2.1. Expression Not Made by the Defendants

256. If a defendant denies making the expression that gave rise to the proceeding, then the defendant cannot satisfy the first part of the test. The court has stated that allowing a defendant the protection of s. 137.1 while denying that they made the statement in issue is inconsistent with the purpose of s. 137.1.⁵⁵⁸ A defendant cannot both demonstrate that the proceeding arises from the expression made by it and deny making the expression.⁵⁵⁹ A defendant who brings a motion to dismiss under section 137.1(3) must “be prepared to admit to making the impugned expression.”⁵⁶⁰ As the Court of Appeal recently held,

⁵⁵⁶CJA, s. 137.1(3)

⁵⁵⁷CJA, s. 137.1(3)

⁵⁵⁸*Walsh v. Badin*, [2019 ONSC 689](#), at para 29– [BOA054](#).

⁵⁵⁹*Walsh v. Badin*, [2019 ONSC 689](#), at para 27– [BOA054](#).

⁵⁶⁰*Walsh v. Badin*, [2019 ONSC 689](#), at para 27– [BOA054](#); *Zoutman v Graham* [2020 ONCA 767](#) at para 18– [BOA057](#).

there is “no viable argument” that can be advanced by a defendant who does not admit making the expression that the defendant seeks to protect.⁵⁶¹

257. In this case, the expressions that gives rise to this proceeding are the fraud allegations set out in the whistleblower complaint that were disseminated to Copeland and McNish for publication and the fraud allegations published in the WSJ Fraud Article. West Face, Boland, Levitt, Baumann and Livesey have denied making the expressions in issue and therefore have failed to meet the first part of the two-part inquiry under section 137.1(3). In particular:

- (a) **West Face and Boland** have denied making or being involved with the making of the fraud allegations contained in the Whistleblower Complaint, which were provided to Copeland and McNish.⁵⁶² They have also denied being sources of Copeland and McNish for the WSJ Fraud Articles.⁵⁶³
- (b) **Livesey** has denied making or being involved with the making of the fraud allegations contained in the Whistleblower Complaint to Copeland and McNish.⁵⁶⁴ Similarly, he has denied being a source of the fraud allegations published in the WSJ Fraud Article.⁵⁶⁵ Livesey advances his anti-SLAPP motion based on two articles he published in 2018 regarding Catalyst, Callidus and Glassman, in respect of which no claims of defamation have been advanced and which do not give rise to this proceeding.⁵⁶⁶

⁵⁶¹[Zoutman v Graham 2020 ONCA 767](#) at para 18– [BOA057](#).

⁵⁶²[CB234-Boland Affidavit, para 127](#).

⁵⁶³[CB234-Boland Affidavit paras 128-129](#); [CB229-West Face Fourth as Amended Statement of Defence para 15 and 20](#).

⁵⁶⁴[CB228-Livesey Statement of Defence para 3](#).

⁵⁶⁵[CB249-Livesey affidavit para 144-145](#).

⁵⁶⁶See [CB249-Livesey Notice of Motion, paras h-n](#), and [CB249-Livesey Affidavit, paras 33-36](#).

- (c) **Levitt** has denied that he contacted *The Wall Street Journal* and was not an author of the WSJ Fraud Article.⁵⁶⁷
- (d) **Baumann** has denied making or being involved with the making of the fraud allegations contained in the Whistleblower Complaint or being a source of the fraud allegations published in the WSJ Fraud Article.⁵⁶⁸ Baumann advances his anti-SLAPP motion based on complaints he made to the Toronto Police Services, JSOT, and to the OSC in 2018 and 2019, in respect of which no claims of defamation have been advanced and which do not give rise to this proceeding.

258. As these Moving Parties have denied making the expressions giving rise to this proceeding, the threshold burden has not been met. Their anti-SLAPP motions must be dismissed.

3.2.2. Expressions Do Not Relate to a Matter of Public Interest

259. The expressions at issue are not expressions that relate to a matter of public interest.

260. Expression that relates to a matter of public interest must be distinguished from expression that simply makes reference to something of public interest, or to a matter about which the public is merely curious. Neither of the latter two forms of expression will be sufficient for the moving party to meet its burden under s. 137.1(3) CJA.⁵⁶⁹

261. The expression at issue is the dissemination of the whistleblower complaints to the Copeland and McNish for publication. The OSC Whistleblower Program is a confidential

⁵⁶⁷ [CB227-Levitt Statement of Defence para 23](#); Levitt Notice of Motion para 10c.

⁵⁶⁸ [CB226-Baumann Statement of Defence para 13](#).

⁵⁶⁹ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 29– [BOA002](#); [Sokoloff v Tru-Path Occupational Service Inc.](#), 2020 ONCA 730 at para 32– [BOA043](#).

process - whistleblower complaints are not disclosed to the public and are not accessible by the public. The fraud and other accusations set out in the confidential whistleblower complaints that was disseminated were only at the intake/inquiries stage.

262. There is not a genuine interest in receiving information about complaints that are at only the intake/inquiries stage. There may be curiosity about these matters, but they do not relate to a matter of public interest.

263. When assessed as a whole, having regard to the circumstances as they existed when the expression was made (the confidential complaints were at the intake stage) the expressions do not relate to a matter of public interest.

3.3. THE PLAINTIFFS CLAIM HAVE SUBSTANTIAL MERIT– S. 137.1(4)(a)(i)

264. There are grounds to believe that the Plaintiffs claims have substantial merit – they are legally tenable and supported by evidence that is reasonably capable of belief.

265. The “grounds to believe” standard means “something more than mere suspicion, but less than ... proof on the balance of probabilities”.⁵⁷⁰ “Something more” does not require showing that a claim is likely to succeed.⁵⁷¹ Instead, it requires the lesser burden of showing a real prospect of success - not a demonstrated likelihood of success, but merely one which tends to weigh more in favour of the plaintiff.⁵⁷² As the Supreme Court of Canada stated, this means that if there is a basis in the record and law that is legally tenable and reasonably capable of belief, it will be sufficient.⁵⁷³ “‘Grounds to believe’

⁵⁷⁰ 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), para 40– [BOA002](#).

⁵⁷¹ 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), para 48– [BOA002](#).

⁵⁷² 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), para 50– [BOA002](#).

⁵⁷³ Bent v Platnick, [2020 SCC 23](#), at para 88– [BOA007](#).

simply requires a (single) basis in the record and the law” to support the conclusion [*emphasis in the original*].⁵⁷⁴

266. In this case, there are grounds to believe that the underlying claim for damages and declarations against the Moving Parties for (i) defamation and injurious falsehood, (ii) breach of section 126.1 and 126.2 of the *Securities Act*, (iii) intentional interference of economic relations and (iv) civil conspiracy, have substantial merit. The plaintiffs ought not to be deprived of the opportunity to prosecute these legitimate and meritorious claims.

3.3.1. Defamation and Injurious Falsehood Has Substantial Merit

267. For the reasons set out in the Plaintiffs’ Libel Factum, there are grounds to believe that the claim for defamation and injurious falsehood against Dow Jones, Copeland, McNish and McFarlane have substantial merit such that the claims ought not to be dismissed at this stage.

268. There are also grounds to believe based on the evidentiary record thus far that the claims for defamation and injurious falsehood against Anderson, Levitt, Baumann, West Face, Boland, and Livesey have substantial merit due to their participation, cooperation, adoption, assistance and/or encouragement in the making, dissemination and/or publication of the fraud accusations. The claims are legally tenable and reasonably capable of belief - such that they ought not to be terminated at this stage.

⁵⁷⁴*Bent v Platnick*, [2020 SCC 23](#), at para 120– [BOA007](#).

3.3.2. Defamation Has Substantial Merit

269. As described in more detail in the Plaintiffs' Libel Factum, a defendant is liable for defamation, if:

- (a) the impugned words are defamatory;
- (b) the words in fact referred to the plaintiff;
- (c) the words were published, meaning that they were communicated to at least one other person other than the plaintiff.⁵⁷⁵

270. A defendant is also liable for defamation if they cooperated, aided, supported, or encouraged another defendant in furtherance of a common design to defame and harm the plaintiff. As the Court of Appeal stated in *Rutman v. Rabinowitz*, "All those who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or ratify and adopt the wrongdoer's acts done for their benefit, are equally liable."⁵⁷⁶ Under the concerted action doctrine, concerted action liability arises when a tort like defamation is committed in furtherance of a common design or plan, by one party on behalf of or in concert with another party. "Knowingly assisting, encouraging or merely being present as a conspirator at the commission of the wrong would suffice, so too would any form of inducement, incitement or persuasion which procures the commission of the wrong, even though they do not realize they are committing the wrong."⁵⁷⁷

⁵⁷⁵*Grant v. Torstar Corp.*, [2009 SCC 61](#), at para 28– [BOA022](#).

⁵⁷⁶*Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 34– [BOA041](#).

⁵⁷⁷*Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 33-34– [BOA041](#).

271. As the Court of Appeal stated concerted action liability is a fact-sensitive concept. The Court warned against attempting to define the necessary amount of “connection” and that each case “must depend on its own circumstances”.⁵⁷⁸ This assessment, in the circumstances of this case, must ultimately be made at trial where all the parties are present, discovery has been completed of all parties, and the factual context may be fully explored and credibility may be fully assessed.

272. It is important to note that the Court of Appeal in *Rutman v. Rabinowitz*, held the defendant Bergman jointly and severally liable for defamatory internet and email publications authored by the defendant Rabinowitz even though Bergman did not actually write or contribute to any of the publications or was an active participant from the outset.

The Court of Appeal upheld the finding of liability by the trial judge against Bergman:

“That Bergman did not publically approve or repeat the defamatory statements at issue does not absolve him from liability for Rabinowitz’s tortious conduct. Bergman was not merely a passive or silent observer of the Internet defamation campaign.

...

It was not necessary for the trial judge to find that Bergman was an active participant in the Internet defamation campaign from the outset in order to attract joint and several liability. The trial judge found that Bergman was aware of the campaign at least by the end of April 2009 and was willing to use it to his advantage [in the litigation with Rutman]”.⁵⁷⁹

273. Based on the limited facts known to date, there is a real prospect both as a matter of fact and law that each of the Moving Parties acted in furtherance of a common design to defame and harm Catalyst and Callidus.

⁵⁷⁸*Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 35– [BOA041](#).

⁵⁷⁹*Rutman v Rabinowitz*, [2018 ONCA 80](#) at paras 36-37– [BOA041](#).

274. For the reasons stated above and in the Plaintiffs' Libel Factum, the expressions regarding Catalyst and Callidus engaging in a fraud, running a "Ponzi" or "pyramid scheme", and playing a "shell game", are defamatory.

275. As set out in detail above, each of the Moving Parties, co-operated, lent aid, supported, and encouraged the making, dissemination and/or publication of these defamatory accusations to harm Catalyst and Callidus. The facts include but are not limited to:

- (a) **Copeland, McNish and McFarlane** – As set out in the Dow Jones Libel Factum, each of them directly participated in the publication of the defamatory article and are hence liable.
- (b) **Anderson** – he drafted the defamatory whistleblower complaint. In doing so, he collaborated with Levitt, McFarlane, Baumann, Boland and Livesey.⁵⁸⁰ Once filed with the OSC, he disseminated copies of the defamatory complaint to the media, including Copeland, *Reuters* and Livesey for publication.⁵⁸¹ Anderson connected Levitt, McFarlane, and Baumann with Copeland to collaborate and aid in WSJ's publication of the defamatory complaint.⁵⁸²
- (c) **Levitt** – he prepared the defamatory whistleblower complaint with Anderson – he was a co-whistleblower.⁵⁸³ He provided information for and reviewed drafts of the defamatory complaint.⁵⁸⁴ He had his former assistant collect information for the defamatory complaint.⁵⁸⁵ He connected others, such

⁵⁸⁰See [CB001-paras 159-171 of Riley Affidavit and Exhibits therein](#).

⁵⁸¹[CB237-Anderson CXM p. 89-91 q. 207-214](#).

⁵⁸²[CB223-Text messages exchanged between Copeland and Anderson, Levitt CXM Exhibit Brief, Tab 37 – Riley Libel Exhibit 9](#).

⁵⁸³[CB242-Levitt CXM, p. 11, q. 25](#).

⁵⁸⁴[CB242-Levitt CXM, p. 8, q. 10-11](#).

⁵⁸⁵[CB242-Levitt CXM, p. 97, q. 382-384](#).

Spears, who also aided Anderson in making the defamatory complaint.⁵⁸⁶ He made arrangements and discussed the defamatory complaint with Panet.⁵⁸⁷ Once filed, he [coordinated] with Anderson to speak to Tilak to have *Reuters* publish the defamatory complaints in the media.⁵⁸⁸ He provided information to Tilak.⁵⁸⁹ He collaborated with and aided Copeland to publish the defamatory complaint by providing information, including his false police complaint.⁵⁹⁰

- (d) **Baumann** – like Levitt, he collaborated with Anderson on the whistleblower complaint and made his own complaints.⁵⁹¹ He immediately connected Langstaff to Anderson to “help”.⁵⁹² Baumann provided information including his regulatory complaint and police complaint to Anderson for the defamatory complaint.⁵⁹³ Baumann also provided information, including his police complaints, to *Reuters* when they were working hard on publishing the defamatory complaint.⁵⁹⁴ He also collaborated with Copeland and provided information including his regulatory complaints and police complaints, to aid in the publication of the defamatory complaints.⁵⁹⁵ Indeed, he was one of the four whistleblowers referred to in the WSJ Fraud Articles;
- (e) **West Face and Boland** – Panet and Boland were consulted from the outset. Panet was consulted before Levitt went to meet with the OSC in December 2016.⁵⁹⁶ Panet provided input into the whistleblower complaint being prepared by Levitt and Anderson.⁵⁹⁷ Panet was a “helpful fountain of

⁵⁸⁶[CB242-Levitt CXM, p. 70, q. 263.](#)

⁵⁸⁷[CB242-Levitt CXM, p. 150-152, q. 626-632.](#)

⁵⁸⁸[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

⁵⁸⁹[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

⁵⁹⁰[CB221-Levitt Email to Copeland dated July 14, 2017, CB214-Baumann email to Tilak dated July 6, 2017, Levitt CXM Exhibit Brief, Tabs 38 and 40.](#)

⁵⁹¹[CB213-Baumann CXM Exhibit Brief – Baumann Email to OSC January 19, 2017, Tab 6.](#)

⁵⁹²[CB069-Langstaff email to Anderson of November 29, 2016, Exhibit 89 of Riley Affidavit.](#)

⁵⁹³[CB211-Baumann CXM Exhibit Brief - Baumann email to Anderson of April 10, 2017, Tab 24 – AND0001748.](#)

⁵⁹⁴[CB218-Baumann CXM Exhibit Brief – Baumann Email to Tilak July 12, 2017, Tab 30 – DOW001012.](#)

⁵⁹⁵[CB219-Baumann CXM Exhibit Brief - Baumann email to Copeland forwarding police complaint on July 31, 2017, Tab 28 – DOW001015.](#)

⁵⁹⁶[CB246-Panet CXM, p. 84-85, q. 234.](#)

⁵⁹⁷[CB092-Email from Panet to Levitt, April 23, 2017, Exhibit 128 of Riley Affidavit.](#)

information".⁵⁹⁸ Boland directed Levy to the issues of XTG and alleged improper transfer of assets between Catalyst Funds.⁵⁹⁹ Panet and Boland were also in telephone contact with McNish in the month leading up to the publication of the WSJ fraud article.⁶⁰⁰ McNish initially refused to answer questions about her conversation with West Face claiming confidential source privilege, but later produced notes showing she obtained information about Callidus and Glassman from Panet the day before the publication of the Article.⁶⁰¹ Although Boland denies having any communication with Copeland, Boland was using Anderson to convey information to Copeland and McNish.⁶⁰² Boland also communicated with Langstaff and Anderson over the phone, often within minutes of each other while Anderson was working on the whistleblower and communicating with the media.⁶⁰³

- (f) **Livesey** – he was working with Anderson, West Face and the Guarantors to have the defamatory complaint published. He received a draft of the whistleblower complaint from Anderson.⁶⁰⁴ Anderson acknowledged that he provided the complaint to Livesey.⁶⁰⁵ Anderson also purportedly relies on the media to verify the fraud accusations and have it published.⁶⁰⁶ At that time, Livesey had been working on publishing a negative story about Catalyst, Callidus and Glassman for a year with *The Globe and Mail* and *Canadian Business*.⁶⁰⁷ Livesey's assertion that he did nothing with the draft complaint and had no involvement with the complaint or the plan to have it

⁵⁹⁸[CB023-Levy Memorandum of August 14, 2015, at para 23, Exhibit 30 of Riley Affidavit.](#)

⁵⁹⁹[CB001-Riley Affidavit para 157; CB063-Emails exchanged among the guarantors re the OSC meeting and PowerPoint presentation apparently presented to the OSC, Exhibit 83 of Riley Affidavit; CB071-Emails between Levy and Levitt of December 3, 2016, Exhibit 91 of Riley Affidavit.](#)

⁶⁰⁰[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland; CB190-Chart of Phil Panet Mobile Phone Calls, Answer to Undertaking from cross-examination of Phil Panet.](#)

⁶⁰¹[CB188-McNish notes from phone call between McNish and Panet on August 8, 2017, p. 53 of Catalyst Amended Order 7 Apr 2021.](#)

⁶⁰²[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

⁶⁰³[CB189-Chart of Greg Boland mobile phone calls, Answer to Undertaking from cross-examination of Greg Boland.](#)

⁶⁰⁴[CB243-Livesey CXM, p. 138, q. 503.](#)

⁶⁰⁵[CB237-Anderson CXM, p. 90, q. 209.](#)

⁶⁰⁶[CB233-Anderson Affidavit, para 30.](#)

⁶⁰⁷[See CB001-Riley Affidavit paras 236-240 and exhibits therein.](#)

published is not credible.⁶⁰⁸ If this were the case, there would have been no reason for Livesey to meet with Anderson subsequently on July 14 after Anderson had also contacted Copeland to get the fraud accusations published.

3.3.3. Injurious Falsehood Has Substantial Merit

276. Actions for injurious falsehood involve the publication of false statements reflecting adversely on the plaintiff's business or property, or title to property, and so calculated as to induce persons not to deal with the plaintiff.⁶⁰⁹ There must be a showing that the published statements are untrue, that they were made maliciously, that is without just cause or excuse, and that the plaintiff suffered special damages.⁶¹⁰

277. As set out in detail in the Plaintiffs' Libel Factum, malice is commonly understood as spite or ill-will.⁶¹¹ Malice also includes statements made for "any indirect motive or ulterior purpose" that conflicts with the sense of duty or mutual interest with the occasion created.⁶¹² Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth.⁶¹³ In this regard, relying on biased sources is evidence of malice.⁶¹⁴ In addition, apart from the statements themselves, malice may be inferred by looking at the conduct of the defendant throughout the course of events before and after the publication of the defamatory statements.⁶¹⁵

⁶⁰⁸[CB243-Livesey CXM, p. 141, q. 510.](#)

⁶⁰⁹*Brown on Defamation (Canada, United Kingdom, Australia, New Zealand, United States)*, 2nd Ed. (Thompson Reuters Westlaw Proview, 2019) ("**Brown on Defamation**") at §28.1(1) – [BOA059](#).

⁶¹⁰*Brown on Defamation* at §28.1(1) – [BOA059](#).

⁶¹¹ *Hill v. Church of Scientology of Toronto*, [\[1995\] 2 SCR 1130](#) at para 148– [BOA026](#).

⁶¹² *Hill v. Church of Scientology of Toronto*, [\[1995\] 2 SCR 1130](#) at para 148– [BOA026](#).

⁶¹³ *Hill v. Church of Scientology of Toronto*, [\[1995\] 2 SCR 1130](#) at para 148– [BOA026](#).

⁶¹⁴ *Leenen v. Canadian Broadcasting Corporation*, [2000 CarswellOnt 1417](#) (ON SC), para 178– [BOA028](#), aff'd [2001 CarswellOnt 2011](#) (CA) – [BOA029](#).

⁶¹⁵ *Leenen v. Canadian Broadcasting Corporation*, [2000 CarswellOnt 1417](#) (ON SC), para 143– [BOA028](#), aff'd [2001 CarswellOnt 2011](#) (CA) – [BOA029](#).

Each of the Moving Parties, in carrying out the common design to defame Catlayst and Callidus, acted maliciously to harm Callidus and Catalyst's business.

278. Each of Levitt, McFarlane, Baumann and the West Face Parties had a strong animus or ill-will against Catalyst and Callidus and/or had ulterior purposes for aiding, participating and encouraging the publication of the defamatory complaints. Among other things,

- (a) **Levitt, McFarlane and Baumann** - each of them had been or are embroiled in acrimonious litigation against Catalyst and Callidus. They blame Callidus for the loss of their business. Their animus is evident in their failed attempt at retribution to bring a RICO claim and a class action against Catalyst and Callidus, and their failed allegations of fraudulent inducement against Callidus.⁶¹⁶ McFarlane said he was at "war" with Callidus. Baumann was after their "throats".⁶¹⁷ Their animus can be clearly shown in a reading of their own affidavits in support of their anti-SLAPP motion.
- (b) **West Face and Boland** - they have been embroiled in bitter litigation with Catalyst and Callidus for years. Their animus is particularly evident in their attempt to have Livesey and *The Wall Street Journal* write an article regarding Glassman and a 30+ year old court proceeding involving his father, and sister and Glassman's spouse based on selective court filings that they obtained and provided to Livesey and McNish.⁶¹⁸ Boland and West Face were on a "crusade" against Glassman".⁶¹⁹

⁶¹⁶[CB001-Riley Affidavit paras 143-149.](#)

⁶¹⁷[CB085-Baumann email to Levitt of January 20, 2017, Exhibit 113 of Riley Affidavit.](#)

⁶¹⁸[CB220-Email correspondence between Panet and Livesey from November 23-24, 2016, Livesey CXM Exhibit Brief- Tab 20 - Exhibit F to Boland Affidavit.](#)

⁶¹⁹[CB188-McNish notes from phone call with Copeland on July 19, 2017, p. 152 of Catalyst Amended Order 7 Apr 2021.](#)

- (c) **Anderson** - his text messages with Copeland show that he had a strong animus against Glassman.⁶²⁰ Prior to any “due diligence” Anderson described Catalyst and Callidus as a “large, complex fraud” and a “Ponzi scheme”.⁶²¹ He clearly had an animus before he started. He also had an ulterior motive to have the defamatory complaints published – his own self-interest to profit from the harm caused by the publication of the defamatory complaint.

279. The Moving Parties participated in a course of conduct to create, disseminate and/or publish the defamatory complaints with the intention of publicizing their allegations of fraud in the media knowing that it would harm Catalyst’s and Callidus’ business and reputation. As Anderson stated, once there is a “whiff” of fraud, investors stay away.⁶²² As set out in the uncontradicted expert opinions of Sunshine and Juneja, the public accusations of fraud, accounting misstatements, financial crimes, securities violations and deceptive lending practices, caused significant and lasting damage to Catalyst and Callidus.⁶²³

280. Based on the evidentiary record thus far, there are grounds to believe that the claims for defamation and injurious falsehood have substantial merit. The claims are legally tenable and supported by evidence that is reasonably capable of belief. Such claims ought not to be terminated at this stage.

⁶²⁰[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit.](#)

⁶²¹[CB070-Copies of emails between Anderson and others, Exhibit 90 of Riley Affidavit; CB078-Anderson email to Levitt and McFarlane of December 7, 2016, Exhibit 102 of Riley Affidavit.](#)

⁶²²[CB072-Anderson email to Levitt and McFarlane of December 7, 2016, Exhibit 92 of Riley Affidavit.](#)

⁶²³[CB184-Juneja Report, para 52.](#)

3.3.4. Breach of Subsection 126.1 and 126.2 of the Securities Act Has Substantial Merit

281. Sections 126.1 and 126.2 of the *Securities Act*⁶²⁴ create offences relating to fraud, market manipulation and making misleading or untrue statements that would reasonably be expected to have a significant effect on the market price or value of a security.

282. Subsection 126.1(1) of the *Securities Act* prohibits any person from directly or indirectly engaging or participating in any act or course of course of conduct that the person knows or reasonably ought to know “results in or contributes” to an artificial price for a security. Subsection 126.1(1) provides:

Fraud and market manipulation

126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
- (b) perpetrates a fraud on any person or company. [emphasis added]

283. The conduct need not cause the misleading appearance of trading in its entirety. Instead, acts which “contribute to” a misleading appearance of trading may satisfy a finding that the respondent breached the provision, if the defendant knew or reasonably ought to have known that their actions would lead to the misleading appearance.⁶²⁵

⁶²⁴*Securities Act*, RSO 1990, c S.5, Sched “B” below.

⁶²⁵*Re Boock*, 2013 ONSEC 33, [36 OSCB 9361](#) at para 105– [BOA040](#).

284. Subsection 126.1(2) prohibits any person from even “directly or indirectly” attempting to engage or participate in any act or course of conduct, that the person knows or reasonably ought to know results in or contributes to an artificial price for a security:

Attempts

126.1(2) A person or company shall not, directly or indirectly, attempt to engage or participate in any act, practice or course of conduct that is contrary to subsection (1) [emphasis added]

285. Further, subsection 126.2(1) of the *Securities Act* provides that a person shall not make a statement the person knows or reasonably ought to know is misleading or does not state a fact that is necessary to make the statement not misleading that would reasonably be expected to have significant effect on the market price of a security:

Misleading or untrue statements

126.2 (1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative.

286. These prohibitions of the *Securities Act* are broad and are necessary to protect the integrity of the capital market. The provisions preclude persons from directly or indirectly engaging or attempting to engage in market manipulation through the dissemination of untrue or misleading statements.⁶²⁶

⁶²⁶*Harrington Global Opportunities Fund S.A.R.L. v Investment Industry Regulatory Organization of Canada*, [2018 ONSC 7739](#) at para 14– [BOA024](#).

287. In this case, the Moving Parties' direct and indirect actions in cooperating, aiding, supporting, encouraging and/or participating in the creation, dissemination and/or publication of false and defamatory allegations, were successful in causing Callidus' share price to "tank". There are grounds to believe that their actions constitute a breach of s. 126.1 and 126.2 of the *Securities Act*.

288. In addition to the Moving Parties' actions to defame Catalyst and Callidus, Anderson directly or indirectly contributed to the tanking of Callidus' stock by encouraging others to short stock in addition to his own.

289. Anderson told Anson at a barbeque about EROS, a company that he "crushed" and "beat up", and undoubtedly told Anson that Copeland was writing a story about Callidus and Catalyst.⁶²⁷ Within days of that barbecue, Anson made arrangements when given the "green light", to "start spreading the shorts around so as to not raise any suspicion".⁶²⁸ Anson indeed shorted Callidus stock.

290. Voorheis also shorted Callidus. Voorheis did not only short Callidus but also shorted other companies of which Anderson published negative reports, including EROS.⁶²⁹ They negotiated compensation or a "bonus" payment to Anderson for other opportunities Anderson presented to Voorheis.⁶³⁰ Anderson denies that the bonus related specifically to Callidus.⁶³¹ The document produced by Voorheis "VMK Fund: Callidus

⁶²⁷[CB112-Text messages exchanged between Copeland and Anderson \(p. 10, text of July 21, 2017\), Exhibit 161 of Riley Affidavit.](#)

⁶²⁸[CB001-Riley Affidavit para 197; CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit.](#)

⁶²⁹[CB119-Woolcombe Email re Voorheis Short Positions of April 3, 2017, Exhibit 169 of Riley Affidavit.](#)

⁶³⁰[CB236-Anderson Continued CXM, p. 349, q. 1128.](#)

⁶³¹[CB236-Anderson Continued CXM, p. 349, q. 1128.](#)

Capital Corp Profit & Loss” suggests otherwise.⁶³² Anderson’s assertion that there is no evidence that he told anyone about short-selling Callidus is not credible.

291. These direct and indirect acts and these direct and indirect acts to drive down Callidus’ share price are sufficient grounds to believe that the plaintiffs’ claims for a declaration that the Moving Parties breached s. 126.1 and 126.2 of the *Securities Act* and conspiracy based on a breach of those provisions have substantial merit. The plaintiffs’ claims in this regard ought not to be terminated at this stage.

3.3.5. Intentional Interference with Economic Relations Has Substantial Merit

292. The tort of intentional interference with economic relations applies in three-party situations in which the defendant commits an unlawful act against a third party and intentionally causes economic harm to the plaintiff through that act.⁶³³ For the purposes of this tort, conduct is unlawful if it would be actionable by the third party or would have been actionable if the third party had suffered loss as a result of it.⁶³⁴

293. To the extent that the WSJ Fraud Articles are defamatory in accusing Catalyst and Callidus of engaging in fraud, accounting improprieties, financial crimes, securities law violations and deceptive lending practices, it gives rise to actionable claims in defamation (by implication)⁶³⁵ and/or misrepresentation⁶³⁶ by:

⁶³²[CB199-VWK Fund](#): Callidus Capital Corp Profit & Loss: 1/01/15 to 4/11/17, **Anderson Cont. CXM Exhibit Brief** – Tab 12 – Exhibit 16 - VOOR0000098.

⁶³³*Bram Enterprises Ltd v A.I. Enterprises Ltd.*, [\[2014\] SCC 12](#), at para 5– [BOA012](#).

⁶³⁴*Bram Enterprises Ltd v A.I. Enterprises Ltd.*, [\[2014\] SCC 12](#), at para 5– [BOA012](#).

⁶³⁵ *SG v. JC*, [2001 CarswellOnt 3417](#) (CA), at paras. 18-31– [BOA042](#); *Bernstein v. Poon*, [2015 ONSC 155](#), at paragraphs 86 and 87– [BOA008](#).

⁶³⁶*The Usand Group v Kempton*, [2016 ONSC 3175](#) at para 40-41- [BOA050](#); *Crown Crest Financial Corp. v. Sabbah*, [2019 ONSC 7114](#) at para 45– [BOA018](#).

- (a) the independent directors of Callidus and Catalyst who form the audit committee that are responsible for and allegedly failed to detect or were complicit in the alleged fraudulent and criminal activities carried out by Catalyst and Callidus;
- (b) service providers such as appraisers and valuers who were engaged by Callidus and Catalyst, who the Moving Parties alleged falsely valued borrowers' assets for the benefit of Callidus and Catalyst;
- (c) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the defendants' conduct; and
- (d) investors that sold shares in Callidus as a result of reading the WSJ Fraud Articles or in response to the resulting sell-off of Callidus shares due to the defendants' conduct.

294. As such, there are grounds to believe that the Moving Parties actions (as described in detail above) relating to the publication of WSJ constitutes intentional interference with Callidus' and Catalyst's economic relations. The claim is legally tenable and supported by evidence that is reasonably capable of belief. The claim, based on the evidentiary record thus far, ought not to be terminated at this stage.

3.3.6. Unlawful Means Conspiracy Has Substantial Merit

295. There are two types of civil conspiracies that a party may advance: unlawful means conspiracy and predominant purpose conspiracy (sometimes called lawful means conspiracy).⁶³⁷

⁶³⁷ *Canada Cement LaFarge Ltd. v British Columbia Lightweight Aggregate Ltd.*, [1983] 1 SCR 452, at para 33– [BOA014](#).

296. Defendants are liable for unlawful means conspiracy if:

- (a) the defendants acted in concert by agreement or with a common design,
- (b) their conduct was unlawful;
- (c) their conduct was directed toward the plaintiff,
- (d) the defendants should have known that injury to the plaintiff is likely to result; and
- (e) their conduct caused injury to the plaintiff.⁶³⁸

3.3.6(a) *The defendants acted in concert with a common design*

297. A defendant is liable for conspiracy if a defendant agreed to join in concerted action or a common design.⁶³⁹

298. Agreements to conspire are rarely admitted to by the conspirators. As a result, the courts may infer a conspiracy from circumstantial evidence.⁶⁴⁰ The term “agreement” is not to be understood in a contractual sense. It is sufficient if a defendant has “agreed in the sense of having combined or conspired with one or more others to carry out a common design or a means of achieving a common objective, which is then implemented with resulting injury to the plaintiff”.⁶⁴¹

⁶³⁸*Agribands Purina Canada Inc v Kasamekas*, [2011 ONCA 460](#) at para 26– [BOA004](#).

⁶³⁹*671122 Ontario Ltd v. Sagaz Industries Canada Inc*, [1998 CarswellOnt 2219](#) (ON SC), at para 35– [BOA003](#).

⁶⁴⁰*671122 Ontario Ltd v. Sagaz Industries Canada Inc*, [1998 CarswellOnt 2219](#) (ON SC), at para 35– [BOA003](#).

⁶⁴¹*Berry v Pulley*, [2012 ONSC 1790](#) at para 378– [BOA009](#).

299. The conspirators need not all join at the same time, nor need they have exactly the same aim in mind.⁶⁴² It is not necessary for all defendants to be involved in a scheme from start to finish or to participate in all elements to be part of an actionable conspiracy.⁶⁴³ A conspirator who joins with others in a common design will be responsible for all damages that are the probable consequences of the common design, even though some of the acts may have been solely inspired or instigated by a co-conspirator.⁶⁴⁴

300. As the Court of Appeal has put it: "Concerted action may occur in a variety of ways ... [and] "is a fact-sensitive concept".⁶⁴⁵ It "would be unwise to attempt to define the necessary amount of connection", and that each case "must depend on its own circumstances".⁶⁴⁶ This may include "[k]nowingly assisting, encouraging or merely being present as a conspirator at the commission of the wrong would suffice, so too would any form of inducement, incitement or persuasion which procures the commission of the wrong."⁶⁴⁷

301. In this case, the Moving Parties engaged in a concerted course of conduct in furtherance of a common design to publicize fraud accusations in the media to harm Catalyst and Callidus.

⁶⁴² *Ferrostaal Metals Ltd. v. Cameron*, [2006 CarswellOnt 400](#) (ON SC), at para 8– [BOA021](#).

⁶⁴³ *R. v. Prathapan*, 2007 CarswellOnt 9876 at para 18– [BOA038](#), aff'd [2009 ONCA 93](#)– [BOA039](#).

⁶⁴⁴ *Claiborne Industries Ltd. v. National Bank of Canada*, [1989 CarswellOnt 1425](#) (CA), at para 91– [BOA017](#).

⁶⁴⁵ *Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 34-35– [BOA041](#).

⁶⁴⁶ *Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 35– [BOA041](#), citing *Sea Shepherd UK v. Fish & Fish Limited*, [2015] UKSC 10 at para 56.

⁶⁴⁷ *Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 33– [BOA041](#), citing John G. Fleming, *The Law of Torts* 10th ed. (Sydney: Thomson Reuters, 2011) at p. 302.

302. As described above and in the Plaintiffs' Libel Factum, each of the Moving Parties co-operated, lent aid, supported, and participated in the making, dissemination and/or publication of these false and defamatory allegations in furtherance of a common design to harm Catalyst and Callidus.

303. Moreover, Anderson acted with Copeland in furtherance of a common design to profit from the harm caused by defamatory fraud accusations against Catalyst and Callidus. Anderson is a professional short-seller and whistleblower who uses the media to publish fraud allegations made in his whistleblower complaints of the target company that he has shorted.

304. The evidence thus far includes but is not limited to:

- (a) Anderson, a professional whistleblower, and the aggrieved borrowers Levitt, McFarlane and Baumann agreed to file a whistleblower complaint and contact Livesey, *Reuters*, *The Wall Street Journal* and *Bloomberg*, "when the timing makes sense".⁶⁴⁸
- (b) West Face, Boland, Langstaff, Livesey, Levitt, McFarlane, and Baumann, aided in the making of the defamatory complaint. As described above, they provided information and discussed drafts of the complaint in aid of and with an eye to the filing of the whistleblower complaint. They knew the purpose for which they were providing and assisting Anderson.
- (c) Within a week of the Whistleblower Complaint being filed, Anderson and Levitt contacted the media, as they previously agreed they would do. They made arrangements to "coordinate what we want to say to John T[ilak]" of *Reuters*.⁶⁴⁹ Levitt, Baumann, McFarlane and Anderson provided

⁶⁴⁸[CB070-Anderson email to McFarlane of November 29, 2016, Exhibit 90 of Riley Affidavit.](#)

⁶⁴⁹[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

information to Tilak including the Police Complaint and whistleblower complaint which included fraud allegations against Catalyst.⁶⁵⁰ Anderson also contacted Livesey and provided him with a copy of the whistleblower complaint.⁶⁵¹

- (d) When *Reuters* “wussed out” and Livesey was unsuccessful in publishing the fraud accusations, Anderson contacted Copeland to have him publish the fraud accusations.⁶⁵² West Face, Boland, Levitt, McFarlane and Baumann also provided information directly and/or indirectly, including other complaints to law and regulatory authorities, to Copeland and/or McNish to aid in the publication of the fraud accusations.
- (e) Copeland and McNish published the WSJ Fraud Articles. The WSJ Fraud Articles would not have been published but for the whistleblower complaint. The WSJ editors were worried about the credibility of the “aggrieved borrowers”.⁶⁵³
- (f) the WSJ Fraud Articles had the effect of what the Defendants intended to have. Callidus and Catalyst suffered significant harm and damage as a result of their concerted actions.⁶⁵⁴

305. In addition, at least Anderson, Copeland, Anson and Voorheis, acted in a concerted effort to profit from the harm caused to Callidus. Anderson was tipped by Copeland as to the timing of the release of the WSJ Fraud Article (even though he knew of a “conspiracy of short sellers”), and immediately took a short position in Callidus.⁶⁵⁵ Minutes after the Article was released, Anderson closed out his entire short position and

⁶⁵⁰[CB221-Levitt Email to Copeland dated July 14, 2017](#), [CB214-Baumann email to Tilak dated July 6, 2017](#), [Levitt CXM Exhibit Brief, Tabs 38 and 40](#).

⁶⁵¹[CB237-Anderson CXM, p. 90, q. 209](#).

⁶⁵²[CB112-Text messages exchanged between Copeland and Anderson, Exhibit 161 of Riley Affidavit](#).

⁶⁵³[CB001-Riley Affidavit para 195](#).

⁶⁵⁴See [CB184-Juneja](#) and [CB183-Sunshine Reports](#).

⁶⁵⁵[CB193-Page 11 of Interactive Brokers Activity Statement of ClaritySpring from June 21, 2017 to June 20, 2018, Exhibit A of Anderson Reply Affidavit](#).

secured a “quick hit”. Anson also made arrangements to “start spreading the shorts around so as to not raise any suspicion” a few days after the barbeque hosted by Spears and attended by Anderson and Langstaff.⁶⁵⁶ Voorheis also shorted Callidus and other targets of Anderson, for which Anderson and Voorheis unquestionably negotiated a “bonus” payment.⁶⁵⁷

3.3.6(b) *The defendants’ conduct was unlawful*

306. For an unlawful conspiracy, it need only be shown that the conspirators used unlawful means. Unlawful means may include conduct amounting to an independent tort or other actionable wrong and conduct not actionable in itself, including criminal or quasi-criminal conduct.⁶⁵⁸

307. Moreover, those who act in furtherance of a common design need not have an intent to commit an unlawful act, i.e. it is not necessary that the defendant realize they are committing an unlawful act.⁶⁵⁹

308. To the extent that the Moving Parties are liable for defamation (as described), it constitutes an unlawful conduct for the purposes of the conspiracy to harm Catalyst and Callidus.

⁶⁵⁶[CB001-Riley Affidavit para 197](#); [CB115-Internal Anson email regarding the arrangements to short dated July 20, 2017, Exhibit 165 of Riley Affidavit](#).

⁶⁵⁷[CB001-Riley Affidavit para 198](#); [CB116-Call Option Agreement between Voorheis and CIBC dated August 8, 2017, Exhibit 166 of Riley Affidavit](#).

⁶⁵⁸*Agribrands Purina Canada Inc v Kasamekas*, 2011 ONCA 460 at para 37– [BOA004](#); see also *Prim8 Group Inc v. Tisi*, [2016 ONSC 5662](#) at para 49– [BOA037](#).

⁶⁵⁹*Botiuk v Toronto Free Press Publications Ltd*, [\[1995\] 3 SCR 3](#), at para 74– BOA011; *Rutman v Rabinowitz*, [2018 ONCA 80](#) at para 33– [BOA041](#).

309. Similarly, to the extent that the Moving Parties breached s. 126.1 and 126.2 of the *Securities Act* (as described in further detail above), these acts would ground a claim of unlawful conspiracy.⁶⁶⁰

3.3.6(c) *The defendants' conduct was directed towards the Catalyst Parties in circumstances where the defendants should have known that injury to the plaintiffs was likely to result*

310. Where the acts done in furtherance of a common design are unlawful, the plaintiff need only show that the defendants' conduct was directed towards the plaintiffs in circumstances where the defendants should have known that injury to the plaintiffs is likely to result. It is not necessary to show that the predominant purpose was to cause injury to the plaintiffs.⁶⁶¹

311. In this case, the Moving Parties' conduct to make, disseminate and/or publish fraud accusations was directed at Catalyst and Callidus. They knew or should have known that harm would result.

312. It is difficult to imagine more serious allegations than those made by the Moving Parties. Allegations unlawful or criminal conduct are extremely damaging to one's reputation,⁶⁶² particularly in a confidence business such as lending.⁶⁶³ As Anderson stated investors will stay away from Catalyst and Callidus if there is a "whiff of fraud".⁶⁶⁴

⁶⁶⁰ *Midland Resources Holding Ltd. v Shtauf*, [2014 ONSC 997](#) at para 937– [BOA032](#). For breaches of statute generally, see *Bram Enterprises Ltd v A.I. Enterprises Ltd.*, [\[2014\] SCC 12](#), at para 67– [BOA012](#).

⁶⁶¹ *Canada Cement LaFarge Ltd. v British Columbia Lightweight Aggregate Ltd.*, [\[1983\] 1 SCR 452](#), at para 33– [BOA014](#).

⁶⁶² *Canadian Standards Association v PS Knight Co Ltd*, [2019 ONSC 1730](#) at para 44– [BOA015](#); [Hobbs v Warner](#), [2019 BCSC 2196](#) at para 152– [BOA027](#).

⁶⁶³ [CB001-Riley Affidavit para 351-352](#).

⁶⁶⁴ [CB072-Anderson email to Levitt and McFarlane of December 7, 2016, Exhibit 92 of Riley Affidavit](#).

He also knew that Callidus stock would swoon – as he put it – “lol, that’ll happen if you get called out for fraud”.⁶⁶⁵

3.3.6(d) *The defendants’ conduct caused injury to Catalyst and Callidus*

313. A party to a conspiracy is responsible for any damage that was a foreseeable consequence of the conspiracy.⁶⁶⁶ Each conspirator is responsible for the unlawful acts of other conspirators that were “probable consequences of the original design”.⁶⁶⁷ Although assessment of damages may be difficult, the judge or jury must assess them as best they can “even though the assessment must be more or less guesswork”.⁶⁶⁸

314. In this case, as described above, Catalyst and Callidus suffered harm to their businesses and reputations. They also suffered significant loss of value that persists to this day.

315. Callidus and Catalyst received numerous telephone calls and emails from persons who read and expressed concerns about the fraud accusations in the WSJ Fraud Articles.⁶⁶⁹ In a confidence business such as lending, being accused of fraud to over 2 million readers of *The Wall Street Journal* on its website and the Front Page was a devastating blow. As Sunshine explained, lenders, like Callidus, are dependent upon their reputation for conducting business in a legitimate and lawful manner and attracting new

⁶⁶⁵[CB001-Riley Affidavit para 352](#).

⁶⁶⁶*Tsui-Wong v Xiao*, [2018 ONSC 3315](#) at para 249– [BOA053](#).

⁶⁶⁷ *Claiborne Industries Ltd. v. National Bank of Canada*, [1989 CarswellOnt 1425](#) (CA), at para 61– [BOA017](#).

⁶⁶⁸ Lewis Klar et al, *Remedies in Tort* (Thomson Reuters Westlaw Proview, 2021) (“*Remedies in Tort*”), Chapter 3 – Conspiracy, IV – Remedies, §31 – [BOA062](#).

⁶⁶⁹[CB001-Riley Affidavit para 350](#).

borrowers.⁶⁷⁰ Similarly, reputation is also critical to Catalyst to attract new investors. Catalyst requires the trust of investors and was falsely accused of fraud and controlling a “loan to own” company and a predatory lender.⁶⁷¹

316. As Sunshine further explained, there is little chance that a non-depository financial institution, such as Callidus, would be able to remain competitive in originating new loans and investments after being publicly accused of fraud, accounting misstatements, financial crimes, securities law violations and deceptive lending practices.⁶⁷²

317. Following the publication of the WSJ Fraud Articles, there was a significant decline in loan origination.⁶⁷³

318. Moreover, Callidus suffered a significant loss of value following publication of the WSJ Fraud Articles.⁶⁷⁴ Callidus suffered an immediate drop of 19.2% within the half hour of publication of the WSJ Fraud Articles and 21.4% from the previous day’s closing share price.⁶⁷⁵ As Vinita Juneja, an expert in securities economics and valuations, concluded, Callidus’ share price fell between \$2.86 and \$3.19, at a minimum, because of the WSJ Fraud Articles, the harm to Callidus was at least approximately \$144 to \$161 million, and the impact of the WSJ Fraud Articles on the value of Callidus has persisted to the present day.⁶⁷⁶

⁶⁷⁰[CB001-Riley Affidavit para 351.](#)

⁶⁷¹[CB001-Riley Affidavit para 351.](#)

⁶⁷²[CB183-Sunshine Report, paras 4.1, 4.2, 6.9.8, 6.9.9, and 7.2.](#)

⁶⁷³[CB001-Riley Affidavit para 357.](#)

⁶⁷⁴[CB001-Riley Affidavit para 360.](#)

⁶⁷⁵[CB001-Riley Affidavit para 360.](#)

⁶⁷⁶[CB184-Juneja Report, para 52.](#)

3.3.6(e) *Predominant Purpose of Causing Injury Conspiracy Has Substantial Merit*

319. In addition, to an unlawful means conspiracy, a defendant may also be liable where the predominant purpose of the defendant's conduct is to injure the plaintiff, regardless of whether the defendant's conduct was unlawful or lawful. Activities that would be lawful if done by one person on his or her own, may be actionable as a tortious conspiracy if done by several persons in combination and if the predominant purpose was to injure the plaintiff.⁶⁷⁷

320. Based on the evidentiary record thus far, there are grounds to believe that the predominant purpose of engaging in the course of conduct described at least of Levitt, Baumann, McFarlane, West Face and Boland, was to injure Catalyst and Callidus.

321. As previously stated Levitt, McFarlane, Baumann and the West Face Parties each had a strong animus against Catalyst and Callidus. Each had been or were embroiled in acrimonious litigation against Catalyst and Callidus and had made public and/or private expressions of their animus.

322. Anderson played off the Guarantors' and West Face's desire to harm the Plaintiffs and is therefor also liable for predominant purpose conspiracy. Although he claims to have acted out of self-interest (i.e. profit), his knowledge of the predominant purpose of his co-conspirators and agreement to act in concert with them is sufficient to establish liability. He is tainted by his co-conspirators who he knew intended to make, disseminate

⁶⁷⁷ *Guccione v Bell*, [1998 ABQB 613](#), at para 15– [BOA023](#), quoting *Lonrho Plc v Al-Fayed*, [1994] 1 All E.R. 188.

3.4.1(a) No valid defences to defamation claim and injurious falsehood

326. For the reasons set out in the Plaintiff's Libel Factum, there are grounds to believe that Dow Jones, Copeland and McFarlane have no valid defences to the Plaintiffs' claim for defamation and injurious falsehood such that the proceeding ought not to be terminated at this stage.

327. There are also grounds to believe that Anderson, West Face, Boland, Levitt, Baumann and Livesey have no valid defences to the plaintiffs' claim for defamation and injurious falsehood.

3.4.1(a)(i) Boland and West Face

328. The West Face Parties have baldly denied any involvement with the whistleblower complaint that were provided to Copeland and McNish, or any involvement in the publication of the WSJ Fraud Articles.⁶⁸³ Their bald denials are insufficient to show a "valid defence" to the plaintiffs' claim for defamation and injurious falsehood. In any event, their defence would hinge on their credibility which is a matter for trial.

329. Their bald denial is also contrary to the evidentiary record of their involvement in the defamation campaign to harm Catalyst and Callidus.

330. As set out above, the West Face Parties co-operated, aided, supported, and participated in the making, dissemination and/or publication of these false and defamatory allegations. Panet and Boland collaborated with Anderson and the other Guarantors in preparing the Whistleblower Complaint.⁶⁸⁴ They were sources for the Whistleblower

⁶⁸³[CB234-Boland Affidavit, paras 127, 129.](#)

⁶⁸⁴[CB092-Email from Panet to Levitt, April 23, 2017, Exhibit 128 of Riley Affidavit.](#)

Complaint. They provided “helpful” information for the Whistleblower Complaint.⁶⁸⁵ They discussed the “material” i.e. the whistleblower complaint with Levitt in advance of filing the Whistleblower Complaint.⁶⁸⁶ Boland provided information to Anderson to pass on to Copeland to pass on to McNish for the fraud article.⁶⁸⁷ Panet provided information directly to McNish the day before the Article was published.⁶⁸⁸ They were not merely passive or silent observers to the defamation campaign against Catalyst and Callidus. Their actions were intended to cause harm to Catalyst and Callidus’ business and reputation. They were motivated by their strong animus against Catalyst and Callidus. Their bald denials are not credible.

3.4.1(a)(ii) Livesey

331. In his defence of the Plaintiffs’ claim for defamation and injurious falsehood, Livesey baldly denies any involvement in the making, dissemination and/or publication of the defamatory allegations in the Whistleblower Complaint in furtherance of a common design to harm Catalyst and Callidus.⁶⁸⁹ Livesey has advanced defences of fair comment, responsible communication, qualified privilege and truth concerning the articles he published on *SIRF* in April and November of 2018.

⁶⁸⁵[CB237-Anderson CXM](#), p. 141, q. 390; [CB023-Levy Memorandum of August 14, 2015](#), at para 23, [Exhibit 30](#) of Riley Affidavit.

⁶⁸⁶[CB092-Email from Panet to Levitt, April 23, 2017](#), [Exhibit 128](#) of Riley Affidavit.

⁶⁸⁷[CB112-Text messages exchanged between Copeland and Anderson](#), [Exhibit 161](#) of Riley Affidavit.

⁶⁸⁸[CB188-McNish notes from phone call between McNish and Panet on August 8, 2017](#), p. 53 of [Catalyst Amended Order 7 Apr 2021](#).

⁶⁸⁹See [CB249-Livesey Notice of Motion, paras h-n](#), and [CB249-Livesey Affidavit, paras 33-36](#).

332. These defences with respect to the *SIRF* articles are irrelevant to the Plaintiffs' claim of defamation and injurious falsehood. *The plaintiffs' have not brought such claims in respect of Livesey's articles published on SIRF.*

333. Livesey's bald denial of his involvement with the making, dissemination and/or publication of the fraud allegations at issue is also insufficient to show a "valid defence" to the plaintiffs' claim for defamation and injurious falsehood.

334. Further, his bald denial is also contrary to the evidentiary record thus far of his co-operation, aid, support, encouragement and participation in the making, dissemination and/or publication of these false and defamatory allegations to harm Catalyst and Callidus.

3.4.1(a)(iii) Baumann

335. Baumann has also baldly denied any involvement in the making, dissemination and/or publication of the false allegations against Catalyst and Callidus.

336. His bald denials are insufficient for the purpose of advancing a "valid defence" to be assessed by this Court in the anti-SLAPP motion. Further, his bald denials are contrary to the evidentiary record thus far showing his participation, co-operation, aid, encouragement and support in the making, dissemination and/or publication of the defamatory allegations against Catalyst and Callidus.

337. As set out in detail above, when Anderson first contacted Baumann to "dig in" on Catalyst and Callidus, he immediately contacted Langstaff to help.⁶⁹⁰ Baumann engaged

⁶⁹⁰[CB066-Anderson Emails to McFarlane, Baumann and Levitt, November 27, 2016, Exhibit 86 of Riley Affidavit](#)

his forensic accountant to assist.⁶⁹¹ Baumann provided information to Anderson including his own complaints to securities regulators and law enforcement authorities in support of the whistleblower complaint.⁶⁹² Baumann also provided the same information to *Reuters* when they were “working hard” to publish the fraud accusations.⁶⁹³ Similarly, when Copeland was working on the WSJ Fraud Article, Baumann was a source providing information including providing copies of his police complaint and other complaints to Copeland.⁶⁹⁴ Indeed, while Copeland was working on the fraud article, Baumann was making new complaints to regulators to forward on to Copeland. He was not merely a passive or silent observer to the defamation campaign against Catalyst and Callidus. His actions were intended to cause harm to Catalyst and Callidus. Baumann was motivated by his strong animus against Catalyst and Callidus. His credibility is also in issue.

3.4.1(a)(iv) Levitt

338. Levitt was a co-whistleblower who, with Anderson, filed the whistleblower complaint with the OSC. Levitt has baldly denied however any involvement in the dissemination of the whistleblower complaint to the media and has denied any involvement with the publication of the fraud accusations. His bald denial is insufficient in advancing a “valid defence” to be assessed by this Court.

⁶⁹¹[CB084-Levitt email to Anderson introducing Oswald on January 12, 2017, Exhibit 111 of Riley Affidavit.](#)

⁶⁹²[Baumann emails to Anderson of February 1 and March 31, 2017, Baumann CXM Exhibit Brief, CB210-Tab 7 – AND0001676, CB207-Tab 19 – AND0001492.](#)

⁶⁹³[CB218-Baumann Email to Tilak on July 12, 2017, Baumann CXM Exhibit Brief, Tab 30 – DOW001012.](#)

⁶⁹⁴[Baumann CXM Exhibit Brief - CB217-Levitt forwarding Baumann criminal complaint to Copeland on July 15, 2017, Tab 27 – DOW000999; CB219-Baumann email to Copeland forwarding police complaint on July 31, 2017, Tab 28 – DOW001015.](#)

339. Moreover, his bald denial is contrary to the evidentiary record thus far. As set out in detail above, Levitt co-operated, lent aid, supported, and participated in the dissemination and/or publication of these false and defamatory allegations to harm Catalyst and Callidus. Levitt, among other things, prepared the whistleblower complaint knowing and with the intent that they would be disseminated to the media. When Levitt was first contacted by Anderson, he immediately suggested that Livesey be put in touch with Anderson.⁶⁹⁵ Anderson said he that will contact Livesey, as well as *Reuters* and *The Wall Street Journal* “when the timing makes sense”.⁶⁹⁶ Within a week of the whistleblower complaint being filed, Levitt coordinated with Anderson about “what to say to Tilak”.⁶⁹⁷ He provided information to Tilak while *Reuters* was “working hard” on the article.⁶⁹⁸ When *Reuters* “wussed out” of writing the article, Levitt worked with Copeland. He provided information to Copeland for the fraud article including a copy of the Police Complaint to lend credibility to the whistleblower complaint and to make it possible to allege that the Catalyst and Callidus are the subject of a criminal investigation. He did so even though he was told by the Police “not to talk to anyone”.⁶⁹⁹ Levitt was not a passive or silent observer to the defamation campaign against Catalyst and Callidus. He was motivated by his strong animus to harm Catalyst and Callidus.

340. In his defence, Levitt has advanced defences of truth, fair comment, and absolute or qualified privilege with respect to his communications with the OSC and the Police.

⁶⁹⁵[CB121-November 27, 2016 Email Correspondence re Contact Info for Journalists, Exhibit 172 of Riley Affidavit.](#)

⁶⁹⁶[CB070-Anderson email to McFarlane of November 29, 2016, Exhibit 90 of Riley Affidavit.](#)

⁶⁹⁷[CB125-Emails from Levitt to Anderson on June 2, 2017, Exhibit 177 of Riley Affidavit.](#)

⁶⁹⁸[CB126-Text messages exchanged between Levitt and Langstaff on June 21, 2017, Exhibit 178 of Riley Affidavit.](#)

⁶⁹⁹[CB221-Levitt Email to Copeland dated July 14, 2017, Levitt CXM Exhibit Brief, Tab 38 – Riley Libel Exhibit 18.](#)

The plaintiffs, however, have not advanced any claim of defamation with respect to his communications with the OSC and the Police. Had Levitt stopped at providing the whistleblower complaint to the OSC, there would be no defamation claim. His participation with the dissemination of the whistleblower complaint to the media and the publication of the fraud accusations by the WSJ gives rise to the claim of defamation. His credibility is in issue in this proceeding.

3.4.1(a)(v) *Anderson*

341. Anderson has asserted that he is not liable for defamation and injurious falsehood with respect to his communications of the fraud accusations to Copeland and McNish on the basis that such communications are:

- (a) accurate and true, made after extensive due diligence;
- (b) are fair comment expressing opinions based on true facts and made in good faith and without malice;
- (c) constitute responsible communication on a matter of public interest; and
- (d) are protected by qualified privilege.
- (e) No Valid Truth Defence

342. For the reasons set out above, Anderson's allegations that he communicated to Copeland and McNish that Catalyst and Callidus are engaged in "massive fraud", running a "Ponzi" or a "pyramid" scheme, and playing a "shell game" are defamatory.

343. There are reasonable grounds to believe that Anderson will not be able to prove the substantial truth of the stings of these defamatory statements. The burden on the defendant is to prove the substantial truth of the "sting", or main thrust, of the defamatory

words.⁷⁰⁰ The sting of the words includes the expressed defamatory meaning of the words and any implication that is found to have been a correct defamatory meaning of them.⁷⁰¹ Truth is only made out by proving all of the meanings of the words complained of by the Plaintiffs.⁷⁰² A broad generalization that “these statements were true in substance” or reliance on other publications is insufficient.⁷⁰³ In other words, “[t]he defence of justification will fail if the publication in issue is shown to have contained only accurate facts but the sting of the libel is not shown to be true. Of particular importance is the fact that partial truth is not a defence.⁷⁰⁴ If a material part of the justification defence fails, the defence fails altogether.”⁷⁰⁵

344. As set out in detail above, the accusations made in the whistleblower complaint are factually untrue. Even if some facts are true, there is no truth to the sting of the libel that Catalyst and Callidus are engaged in “massive fraud”, running a “Ponzi” or a “pyramid” scheme, and playing a “shell game”.

345. Many of these false allegations were previously made to securities regulators and law enforcement agencies, including the Alberta Securities Commission, the RCMP, JSOT, the TSX, CPAO, the Superintendent of Bankruptcy, the Law Society of Ontario, and the Attorney General of North Carolina. Catalyst and Callidus have never been

⁷⁰⁰*Bent v Platnick*, [2020 SCC 23](#), at para 107– [BOA007](#).

⁷⁰¹Peter A. Downard, *The Law of Libel in Canada*, 4th ed. (Markham; LexisNexis, 2018), at paras. 6.2-3.3 – [BOA064](#).

⁷⁰²*Bent v Platnick*, [2020 SCC 23](#), at paras 107-108 – [BOA007](#).

⁷⁰³*Montour v. Beacon Publishing Inc.*, [2019 ONCA 246](#), para 14– [BOA033](#).

⁷⁰⁴*Bent v Platnick*, [2020 SCC 23](#), at paras 107-108 – [BOA007](#).

⁷⁰⁵*Bent v Platnick*, [2020 SCC 23](#), at paras 107-108 – [BOA007](#).

criminally charged, the subject of any enforcement proceeding for any securities law violation, or the subject of any other regulatory proceeding.⁷⁰⁶

346. Anderson relies on the contents of a letter sent by the Office of the Examiner of the SEC to Catalyst upon the conclusion of a review of Catalyst's affairs (the "**Exit Letter**"). They do so based on the premise that the views expressed by the Office of the Examiner in the Exit Letter are somehow confirmatory of the accusations they made against Catalyst that they disseminated to the media.

347. In relying on the Exit Letter, Anderson fails to note that the SEC Examiners Office sends an exit letter in overwhelming majority of examinations. SEC Examiners Office Guidance specifically states that language such as "appears" or "may have violated" can be used even if it "is not clear that a deficiency has occurred".⁷⁰⁷ The SEC emphasized that such communications "are of limited value to entities other than the parties to the communications because the communications are with Commission staff and *are not reviewed by the Commission*". *[emphasis in original]*.⁷⁰⁸

348. Anderson also fails to note that the Exit Letter did not represent the views or opinions held by the SEC or any of its offices or branches. The purpose of the review was to identify potential issues for review with the Examinee, not to conduct an investigation nor determine whether misconduct has occurred. The Exit Letter specifically

⁷⁰⁶ [CB001-Riley Affidavit para 257\(a\) and \(b\)](#).

⁷⁰⁷ [SEC.GOV.](#), Compliance Examination Deficiency Letter Process, <https://www.sec.gov/oig/reportspubs/aboutoigaudit364finhtm.html> – [BOA065](#).

⁷⁰⁸ D.H. Herrington and K. Chotiros, "The Developing Privilege For Regulatory Communications with the SEC" (2007) 124 *Banking L.J.* 704, p. 710 – [BOA061](#).

stated that its findings “are not findings or conclusions or binding on the U.S. Securities and Exchange Commission ... or any of its divisions or offices.”⁷⁰⁹

349. Indeed, the Exit Letter makes no findings of fact and couches each of its comments in explicitly inconclusive language. This is to be contrasted with the direct and unambiguous claims of “fraud”, operating a “Ponzi scheme”, and other such accusations made in the Whistleblower Complaints.

350. Anderson also fails to refer to the detailed response provided by Catalyst to the Exit Letter which provide unequivocal and detailed responses to each and every comment made by the SEC.⁷¹⁰

351. Moreover, Anderson fails to refer to the fact that the SEC sent letters to Catalyst and Callidus dated June 28, 2019 confirming that no action was to be taken by the SEC as a result of the matters raised in the Exit Letter, effectively confirming the inconclusiveness of the comments in the Exit Letter. The Enforcement Branch:⁷¹¹

- (a) did not make any further enquiries and did not and did not ask for any additional documents Catalyst or Callidus;
- (b) did not request or require Catalyst or Callidus to make any further submissions in respect of the Exit Letter

⁷⁰⁹[CB179-Exit Letter dated May 11, 2018, SEC Documentation Produced Pursuant to the Cross-examination of James Riley.](#)

⁷¹⁰[CB180-Letter from Marlon Paz dated June 11, 2018, SEC Documentation Produced Pursuant to the Cross-examination of James Riley.](#)

⁷¹¹[CB181-Letter from SEC dated June 28, 2019 re Callidus; CB182- Letter from SEC dated June 28, 2019 re Catalyst.](#)

- (c) did not conduct any examinations or even any interviews or any officer, director or executive of Catalyst or Callidus;
- (d) did not issue a “Wells Letter”;
- (e) did not commence any proceedings against Catalyst or Callidus.

352. Anderson’s reliance on inconclusive views expressed by the SEC Examiner office that are not binding on the SEC and for which the SEC Enforcement Branch determined no action was warranted against Catalyst and Callidus, is not a defence to the Plaintiffs’ claim of defamation.

353. There are reasonable grounds to believe that Anderson will not be able to prove the substantial truth of the stings of these defamatory statements.

3.4.1(b) No Fair Comment Defence

354. Further, there are reasonable grounds to believe that Anderson has no valid defence of fair comment. The defamatory statements are neither fair comment, nor made in good faith without malice. A comment is something “incapable of proof”.⁷¹² Accusing Catalyst and Callidus engaged in “massive fraud”, running a “Ponzi” or a “pyramid” scheme, playing a “shell game” are statements of fact (not comment) that are capable of proof in criminal, regulatory and civil proceedings.⁷¹³ Indeed, the defendants sought to have criminal, regulatory and class actions brought against Catalyst and Callidus in respect of these allegations.

⁷¹²[WIC Radio Ltd v Simpson](#), 2008 SCC 40 at para 26– [BOA056](#).

⁷¹³[Thompson v Cohodes](#), 2017 ONSC 2590 at para 27 – [BOA051](#).

355. Further, there are grounds to believe that the defamatory statements made by Anderson were not made in good faith without malice. In this case, Anderson acted with an “indirect motive or ulterior purpose” that “conflicts with the sense of duty or mutual interest with the occasion created”.⁷¹⁴ He also published in reckless disregard for the truth.⁷¹⁵ In this regard, relying on biased sources is evidence of malice.⁷¹⁶ The assertion of good faith by Anderson are not credible and are not supported by the evidence.

356. In this case the false allegations made by Anderson to the media were not made in good faith without malice. They were “shopped” to the media for an ulterior purpose - to have them published and profit from the resulting harm to Callidus.

3.4.1(c) No Valid Responsible Communication Defence

357. There are grounds to believe that Anderson has no valid defence of responsible communication. As stated above, Anderson disseminated fraud allegations to the media for publication to profit from the “swoon” in Callidus stock price. Such market manipulation activity is illegal. Communications made as part an illegal short and distort attack cannot constitute responsible communication. A defendant who has carried out an illegal activity has by definition not acted responsibly.

358. Anderson, in his defence of responsible communication, attempts to rely heavily on his purported due diligence that supposedly verified the truth to the accusations that Catalyst is engaged in a “massive fraud”, “Ponzi scheme”, “pyramid” scheme, and “shell

⁷¹⁴*Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para 148– [BOA026](#).

⁷¹⁵ *Leenen v. Canadian Broadcasting Corporation*, [2000 CarswellOnt 1417](#) (ON SC), para 142– [BOA028](#), quoting from *Brown on Defamation* at pp. 16-33 to 16-35, aff'd [2001 CarswellOnt 2011](#) (CA) – [BOA029](#).

⁷¹⁶ *Leenen v. Canadian Broadcasting Corporation*, [2000 CarswellOnt 1417](#) (ON SC), para 178– [BOA028](#).

game”. He asserts that he conducted independent research to investigate the true state of affairs, relied on publicly filed corporate records such as PPSA filings, financial statements, Bankruptcy court records, and discussions with numerous individuals. His research was neither independent nor sufficient to verify the accuracy of such serious allegations.

359. As set out above, in making and disseminating these allegations to the media, Anderson relied and collaborated with parties who either had an animus against Catalyst and Callidus or who were themselves well-known short-sellers who would profit from the publication of fraud allegations. His purported research was aimed to make and disseminate fraud allegations to the media for publication for profit. His “research” was not impartial but rather the partial activities of a professional short seller and whistleblower. Indeed, from the outset, before any meaningful due diligence had been carried out, he had already described Catalyst and Callidus as a large complex fraud and Ponzi scheme. His reliance on publicly filed corporate records as verification that Catalyst was a running a massive fraud, Ponzi scheme and shell game defies credibility and directly contradicts yearly unqualified audit opinions of KPMG that Catalyst’s and Callidus’ financial statements are fairly and appropriately presented without any material misstatement.⁷¹⁷ Further, documents produced by Anderson now show that these allegations were made without supporting documents that Anderson had sought but failed to obtain in order to verify these accusations. His assertions to the contrary are not credible.

⁷¹⁷[CB001-Riley Affidavit para 257\(a\), \(b\), and \(g\)](#)

360. Anderson’s reliance on his alleged due diligence to advance his defence of responsible communication is insufficient in this case. As the Supreme Court has stated, the degree of diligence required in verifying allegations increases in proportion to the seriousness of the allegations’ potential effects on the party defamed.⁷¹⁸ Publication of the kinds of allegations considered the most serious (such as corruption or other criminality) demand more thorough efforts at verification than will suggestions of lesser mischief.⁷¹⁹ In this case, there can be no more serious allegation against a company than being accused of engaging in a “massive fraud”, “Ponzi scheme”, “pyramid” scheme and “shell game”. Such accusations required a higher degree of scrutiny and more due diligence than what was purportedly carried about by Anderson.⁷²⁰ Certainly relying on the media to vet the allegations is no answer to fulfilling his own obligations to carry out the necessary due diligence to support the allegations made.

3.4.1(d) No Valid Qualified Privilege Defence

361. Anderson asserts that his communications with Copeland and McNish of the false allegations contained in the whistleblower complaint are protected by qualified privilege. Qualified privilege attaches to the occasion upon which the communication is made and not to the communication itself.⁷²¹ Although the occasion in which the whistleblower complaint was made to the OSC is protected by privilege, the occasion in which those allegations were disseminated to Copeland and McNish is not. Anderson did not impart the whistleblower complaint to Copeland and McNish out of a sense of duty but rather to

⁷¹⁸*Grant v. Torstar Corp.*, [2009 SCC 61](#), at para 111– [BOA022](#).

⁷¹⁹*Grant v. Torstar Corp.*, [2009 SCC 61](#), at para 111– [BOA022](#).

⁷²⁰*Subway v. CBC*, [2021 ONCA 26](#), at para 57– [BOA044](#).

⁷²¹*Botiuk v Toronto Free Press Publications Ltd*, [\[1995\] 3 SCR 3](#), at para 78– [BOA011](#).

harm Catalyst and Callidus and enrich himself. Anderson's reliance on the defence of qualified privilege is contrary to this Court's order which held that, unlike a journalist that aims to publish articles in the public good or of a general interest to the public, Anderson is a professional short seller and whistleblower motivated primarily, if not solely, by profit.⁷²²

362. In any event, even if Anderson's communication is subject to qualified privilege, it has been defeated as it was made in relation to an illegal market manipulation activity against Catalyst and Callidus. Such an illegitimate occasion defeats any alleged qualified privilege.

3.4.1(d)(i) *No valid defences to breach of s. 126.1 and 126.2 of the Securities Act*

363. As described above, sections 126.1 and 126.2 of the *Securities Act* prohibit any person from directly or indirectly participating or attempting to participate in any act or course of conduct that results in or contributes to an artificial price of a security and prohibits any person from making any misleading statement that the person knows or reasonably ought to know would reasonably be expected to have a significant effect on the market price of the security.

364. There are grounds to believe that the Moving Parties have no valid defence to the plaintiffs' claim for a declaration that they breached s. 126.1 and 126.2 of the *Securities Act*.

⁷²²*The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2021 ONSC 1454 at para 28, 61, and 63-64– [BOA048](#); *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2019 ONSC 128 at para 128, 134-135– [BOA047](#).

365. In each of their defences, the Moving Parties baldly deny any violation of s. 126.1 and 126.2 of the *Securities Act*. Such bald denials are insufficient for the purposes of advancing a valid defence for the court's consideration in assessing their anti-SLAPP motion to dismiss the plaintiffs' claim at this stage. Bald denials are not credible and provide the court with no basis to find the defence is even available, let alone valid.

366. Moreover, their bald denials are contrary to the evidentiary record thus far, which shows that the Moving Parties directly or indirectly engaged or participated, or directly or indirectly attempted to engage or participate in an act or course of conduct that would contribute to the fall of Callidus' share price.

367. Anderson, in his defence, asserts that the plaintiffs' claim relating to the breach of s. 126.1 and 126.2 of the *Securities Act* have no substantial merit as neither of those statutory provisions is capable of grounding civil liability. In particular, Anderson asserts that s. 126.2 only gives rise to a statutory right of action for damages in respect of certain disclosure documents not applicable to the allegations made by the plaintiffs. This is not a valid defence. There are no such restrictions in s. 126.1 and 126.2 that Anderson seeks to read into the legislation. Further, s. 126.2 prohibits a statutory right of action for damages, not a declaration as claimed by the Plaintiffs or to ground a conspiracy claim.

368. Anderson also asserts that the *Securities Act* is not applicable to him as the conduct at issue was committed in the U.S. by an individual and company residing in the U.S. This defence has no validity. The *Securities Act* does have extraterritorial

application where the conduct has a “real and substantial connection” to Ontario.⁷²³ In this case, there can be no doubt that there is a real and substantial connection to Ontario. Anderson travelled to Toronto to carry out the conspiracy to harm Callidus. Callidus is an Ontario corporation that was targeted.⁷²⁴ Anderson’s assertion that the *Securities Act* does not apply to him ignores the realities of modern securities regulation.⁷²⁵ His claim that he can harm Canadian corporations by making the most serious of allegations in breach of the *Securities Act* with impunity has no merit.

369. Moreover, breaches of the *Securities Act* constitute unlawful means by which a conspiracy claim may be grounded. In this case, the drop in Callidus’ share price on the TSX. Callidus suffered harm in Ontario. Where harm occurs in Ontario, Ontario has jurisdiction. As stated by the Court of Appeal “it is well established that a conspiracy occurs in the jurisdiction where harm is suffered regardless of where the wrongful conduct occurred”.⁷²⁶

370. There are grounds to believe that the Moving Parties’ denial that they did not engage directly or indirectly or attempt to engage directly or indirectly in such conduct are not credible.

⁷²³*Da Silva v Ontario Securities Commission*, [2017 ONSC 4576](#) at para 56– [BOA019](#). See also *McCabe v British Columbia*, [2016 BCCA 7](#)– [BOA030](#).

⁷²⁴*Torudag v. British Columbia (Securities Commission)*, [2011 BCCA 458](#) at para 26– [BOA052](#).

⁷²⁵*McCabe v British Columbia*, [2016 BCCA 7](#), at paras 36-37– [BOA030](#); *Pacific International Securities Inc v Drake Capital Securities Inc*, [2000 BCCA 632](#) at para 20– [BOA035](#); *Torudag v. British Columbia (Securities Commission)*, [2011 BCCA 458](#) at paras 20-22– [BOA052](#).

⁷²⁶*Ontario v Rothmans Inc*, [2013 ONCA 353](#) at para 37– [BOA034](#).

3.4.1(d)(ii) *No valid defences to intentional interference with economic relations claim*

371. There are grounds to believe that the Moving Parties have no valid defence to the plaintiffs' claim for intentional interference with economic relations.

372. As described above, the Moving Parties allege that Catalyst and Callidus have engaged in a fraud, accounting improprieties, financial crimes, security law violations and deceptive lending practices. These allegations raise actionable claims against the Moving Parties by various third parties, including (i) audit committee members and the independent directors of Callidus and Catalyst that are responsible for and allegedly failed to detect the supposed fraudulent activities carried out by the Plaintiffs (ii) service providers such as appraisers engaged to appraise and alleged to have falsely valued borrowers' assets for the benefit of Callidus and Catalyst; (iii) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the Defendants' conduct; and (iv) investors that sold shares in Callidus as a result of reading the WSJ Fraud Articles.⁷²⁷

3.4.1(d)(iii) *No valid defences to conspiracy claim*

373. There are grounds to believe that the Moving Parties have no defence to the plaintiffs' claim of conspiracy.

374. As described above, the Moving Parties cooperated, lent aid, or encouraged in the making, dissemination and/or publication of fraud allegations in the media in furtherance of a common design to harm Catalyst and Callidus.

⁷²⁷ SG v. JC, [2001 CarswellOnt 3417](#) (CA), at paras. 18-31– [BOA042](#); *Bernstein v. Poon*, [2015 ONSC 155](#), at paras 86 and 87– [BOA008](#).

375. Further, other Moving Parties cooperated, lent aid in furtherance of a common design to profit from the harm caused to Catalyst and Callidus.

3.5. HARM OUTWEIGHS PUBLIC INTEREST IN PROTECTING THE EXPRESSION – S. 137.1(4)(B)

376. The final weighing exercise under s. 137.1(4)(b) is the fundamental crux of the analysis.⁷²⁸ If the bar is set too high in showing that the claim has substantial merit and there are no valid defences, a motion judge will never reach the critical weighing exercise set out in S. 137.1(4)(b). As the Supreme Court of Canada stated “this cannot possibly be what the legislature contemplated”.⁷²⁹

377. Subsection. 137.1(4)(b) is concerned with weighing the public interest in vindicating legitimate claims through the courts against the resulting potential for quelling expression that has already been determined under s. 137.1(3) to be related to a matter of public interest.⁷³⁰

378. “Public interest” has a different meaning in this context than “related to a matter of public interest”. Here, “public interest” refers to an evaluation of the societal interests served.⁷³¹ The following play an important role in measuring the extent to which there is a public interest in protecting the defendant’s expression: (a) the quality of the expression; (b) the motivation of the speaker; and (c) the consequences of the plaintiff having brought a claim, such as “libel chill”.⁷³²

⁷²⁸ 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), at para 18– [BOA002](#).

⁷²⁹ 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), at para 63– [BOA002](#).

⁷³⁰ 1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#), at para 33– [BOA002](#).

⁷³¹ 1704604 Ontario Ltd. v. Pointes Protection Association, [2018 ONCA 685](#), at para 54 – [BOA001](#).

⁷³² 1704604 Ontario Ltd. v. Pointes Protection Association, [2018 ONCA 685](#), at paras 93-95 – [BOA001](#).

379. Not all expression on matters of public interest serves the values underlying freedom of expression in the same way or to the same degree.⁷³³ For example, a statement that contains deliberate falsehoods or gratuitous personal attacks may still be an expression that relates to a matter of public interest. However, the public interest in protecting the speech will be less than would have been the case had the same message been delivered without lies and vitriol.⁷³⁴ This applies to the Plaintiffs' case.

380. There is little public interest in protecting the expressions at issue in this case. When assessed as a whole:

- (a) the expressions at issue were made by parties who had an animus against Catalyst and Callidus as part of a defamation campaign to harm Catalyst and Callidus;
- (b) the expressions at issue were part of a short and distort investment strategy to profit from the harm caused by the defamation campaign; and
- (c) the expressions at issue were made for self-interest, not the public interest.

381. Further, the public interest in protecting the expressions at issue in this case does not sufficiently outweigh the harm caused to Catalyst and Callidus.

382. A plaintiff need not prove harm or causation, but must simply provide evidence for the motion judge to draw an inference of likelihood in respect of the existence of the harm and the relevant causal link.⁷³⁵

⁷³³ *1704604 Ontario Ltd. v Pointes Protection Association*, [2018 ONCA 685](#), at para 94 – [BOA001](#).

⁷³⁴ *1704604 Ontario Ltd. v Pointes Protection Association*, [2018 ONCA 685](#), at para 94 – [BOA001](#).

⁷³⁵ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 71– [BOA002](#).

383. The magnitude of the harm is important in assessing whether the harm is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression.⁷³⁶

384. For the purposes of ss. 137.1(4)(b), it is sufficient to present “potentially credible evidence of significant general and pecuniary damages attributable to the allegations”.⁷³⁷ Damages are not required to be assessed by the same standard as at the end of a trial.⁷³⁸

385. A plaintiff is not expected to present a fully-developed damages brief. The motion judge must be able to make an informed assessment, at least a general or “ballpark” level about the nature and quantum of the damages suffered or likely to be suffered by the plaintiff.⁷³⁹

386. In this case the harm suffered by Catalyst and Callidus as a result of the Moving Parties’ conduct is significant. As set out above and as supported by the uncontradicted opinion of Sunshine, Callidus’ ability to originate new loans was seriously harmed after being publicly accused of fraud, accounting misstatements, financial crimes, securities law violations and deceptive lending practices.⁷⁴⁰ Potential borrowers or investors do what Anderson said happens when there is a whiff of fraud – they move on.⁷⁴¹

387. In addition to not being able to generate new loans, Callidus suffered harm of at least C\$144 million as a result of the WSJ Fraud Articles.⁷⁴² The harm caused is exactly

⁷³⁶ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#), at para 70– [BOA002](#).

⁷³⁷ *Platnick v Bent*, [2018 ONCA 687](#), at para 108– [BOA036](#).

⁷³⁸ *Platnick v Bent*, [2018 ONCA 687](#), at para 108– [BOA036](#).

⁷³⁹ *1704604 Ontario Ltd. v. Pointes Protection Association*, [2018 ONCA 685](#), at para 91 – [BOA001](#).

⁷⁴⁰ [CB183-Sunshine Report, paras 4.1, 4.2, 6.9.8, 6.9.9, and 7.2.](#)

⁷⁴¹ [CB001-Riley Affidavit para 359.](#)

⁷⁴² [CB001-Riley Affidavit para 360.](#)

what Anderson had told Copeland would occur following the publication of the WSF Fraud Article - “lol, that’ll happen when they get called out for fraud”.⁷⁴³

388. Anderson and West Face attempt to rely on the views expressed in the 2019 Dalton Report in support of their argument that “Callidus’ demise had nothing to do with short sellers, negative publicity, or the conduct of the Defendants in this Action”.⁷⁴⁴ Contrary to their assertion, the Dalton Report drew no such conclusion. To be sure, it focused on the number and extent of the non-performing loans that comprised Callidus’ loan book, and made it clear that the increasing concentration of such loans had a detrimental impact on Callidus’ financial results. In this context, when read in its totality, the Dalton Report recognized the need to “rebrand” as part of its remediation strategy.⁷⁴⁵

389. Further the Dalton Report did not purport to analyse all the reason why Callidus had been unable to grow its loan book following its resumption of new loan generation in 2017. If successful, Callidus’ attempts to generate new loans from 2017 onwards would have offset the losses of non-performing loans. Of course, Callidus’ attempt in this regard were not successful as a result of the WSJ Fraud Article for the reasons described by Sunshine, Juneja, and Riley.

390. Anderson and West Face also fail to avert to the fact that Callidus’s share price already reflected the impact of factors other than the WSJ Fraud Article, before the “hit” it took upon the publication of the article. These factors were taken into account by Juneja

⁷⁴³[CB001-Riley Affidavit para 360; CB009-Text messages between Anderson and Copeland, Exhibit 15 of Riley Affidavit.](#)

⁷⁴⁴ Factum of the Moving Party Defendants West Face and Boland, delivered May 5, 2021, para 9.

⁷⁴⁵[CB191-Dalton Report, produced by Catalyst as CAT-D-00001019.](#)

when she assessed that Callidus suffered a loss of approximately C\$144 to C\$161 million solely as a result of the WSJ Articles.⁷⁴⁶

391. Contrary to Anderson's assertion⁷⁴⁷, Callidus suffered the harm due to a drop in its share price. Anderson's submission in this regard run counter to well established common law that the party with standing to claim such losses is the corporation itself. The Supreme Court of Canada in *Hercules Managements v. Ernst & Young*⁷⁴⁸ held that the lost value of shares was a loss properly claimed by the company and held that "if an action is to be brought in respect of such losses, it must be brought either by the corporation itself (through management) or by way of a derivative action".⁷⁴⁹ The principle that it is the corporation that is the proper party to claim for losses in market capitalization, rather than the shareholders, has been more recently affirmed by the Court of Appeal in *Meditrust Healthcare Inc. v. Shoppers Drug Mart*.⁷⁵⁰

392. Further, there is little public interest in protecting the expression at issue in this case. The public interest in permitting this proceeding to continue outweighs any public interest protecting that expression.

393. The anti-SLAPP regime was not designed and ought not to be used in the manner proposed by the defendants on this motion. There is a significant and pressing issue in Canadian capital markets with those who manipulate the market through false and defamatory statements. As McMillan LLP in its report entitled titled *An Analysis of the*

⁷⁴⁶ [CB241-Transcript from the cross-examination of Vinita Juneja on December 11, 2020, p. 22-24, Q. 45-47.](#)

⁷⁴⁷ Anderson Factum, para 89

⁷⁴⁸ *Hercules Managements Ltd. v Ernst & Young*, [\[1997\] 2 SCR 165](#)– [BOA025](#).

⁷⁴⁹ *Hercules Managements Ltd. v Ernst & Young*, [\[1997\] 2 SCR 165](#) at para 59– [BOA025](#).

⁷⁵⁰ *Meditrust Healthcare Inc. v Shoppers Drug Mart*, [2002 CarswellOnt 3380](#) (CA) at para 42– [BOA031](#).

Short Selling Landscape in Canada, “Canada is becoming a haven for those who wish to pursue short campaigns”.⁷⁵¹

394. The public sector echoes these views. The Canadian Securities Administrators remarked in its *Consultation Paper 25-403 – Activist Short Selling* that campaigns that involve either intentionally false information or making misleading or untrue statements for which there is no factual foundation have little to no public utility.

395. The Capital Markets Modernization Task Force that was established by the Ontario Government to review and modernize Ontario’s capital markets proposed:

creating a new and specific prohibition on making misleading or untrue statements about public companies to make it easier for the OSC to effectively deter and combat abusive practices intended to affect share prices or influence investor decisions, such as ‘short and distort’ campaigns.⁷⁵²

396. Given the limited facts learned in this matter so far, there are legitimate concerns that the defendants have engaged in unlawful and highly impactful concerted action against Callidus and Catalyst.

397. There is a strong public interest in permitting this proceeding to continue to discovery and trial, to ensure these matters are appropriately address. In contrast, there is no public interest in protecting the expressions that give rise to this proceeding, given the unethical and illegal manipulation of capital markets these expressions led to. To allow the anti-SLAPP regime to be used to dismiss this claim would mean that

⁷⁵¹[CB002-McMillan Report, Exhibit 3 of Riley Affidavit.](#)

⁷⁵²Online at [Ministry of Finance](#), PSSB, Tab 7, p. 37 – [BOA060](#).

professional short-sellers and others who manipulate the market would effectively be immuned from suit with respect to such activities.

398. For the reasons described above, the Plaintiffs' claim is not a SLAPP. It was brought to vindicate the Plaintiffs' legitimate claims against the defendants for harm caused by their actions. The Moving Parties' motion ought to be dismissed.

3.6. CATALYST AND CALLIDUS ARE NOT VEXATIOUS LITIGANTS

399. In an attempt to deflect attention away from their activities, the Moving Parties have alleged that Catalyst and Callidus are abusive and vexatious litigants.⁷⁵³ In particular, they point to three actions against West Face prior to the Conspiracy Action: the Moyse Action, the Veritas Action, and the VimpelCom Action.⁷⁵⁴ Each of these actions were commenced for *bona fide* and legitimate reasons.⁷⁵⁵

3.6.1. The Moyse Action

400. Catalyst commenced a claim against Brandon Moyse and West Face, alleging that they breached the non-competition and non-solicitation clauses in Moyse's Catalyst Employment Agreement, using confidential information from Moyse to successfully pursue the acquisition of WIND.⁷⁵⁶ There was a strong *prima facie*. Indeed, Justice Lederer on an injunction motion held that there was a strong *prima facie* case that Moyse had breached the confidentiality clause of his Employment Agreement.⁷⁵⁷ Although

⁷⁵³[CB001-Riley Affidavit para 361.](#)

⁷⁵⁴[CB001-Riley Affidavit para 361.](#)

⁷⁵⁵[CB001-Riley Affidavit para 361.](#)

⁷⁵⁶[CB001-Riley Affidavit para 369.](#)

⁷⁵⁷[CB001-Riley Affidavit para 375; CB036-Catalyst v Moyse 2014 ONSC 6442– BOA049.](#)

Catalyst was unsuccessful at trial, the action commenced against Moyse and West Face was neither vexatious nor improper.

3.6.2. The VimpelCom Action

401. Catalyst commenced the VimpelCom Action against VimpelCom, its advisor UBS, and members of a consortium that included West Face alleged to be responsible for inducing breach of contract, conspiracy and breach of confidence relating to the West Face Consortium's acquisition of WIND.⁷⁵⁸ 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 Consortium to conspire and induce VimpelCom to breach its agreements with Catalyst.⁷⁵⁹

402. Although the VimpelCom Action never decided whether the Exclusivity Agreement or Confidentiality Agreement were breached, because West Face succeeded in having the action dismissed on the basis of estoppel, Justice Newbould stated however in the Moyse Action that **UBS** likely told a member of the consortium when catalyst's proposal was going before the VimpelCom Board. Catalyst's action against VimpelCom, UBS and the consortium was not vexatious but commenced in good faith.⁷⁶⁰

⁷⁵⁸[CB001-Riley Affidavit para 388.](#)

⁷⁵⁹[CB001-Riley Affidavit para 392.](#)

⁷⁶⁰[CB001-Riley Affidavit para 397.](#)

3.6.3. The Veritas Action

403. On June 18, 2015, Catalyst and Callidus commenced an action against Veritas and West Face for defamation, conspiracy and intentional interference with economic relations relating to West Face's 2014-2015 short campaign against Callidus which involved the publication and dissemination of reports by West Face and Veritas.⁷⁶¹

404. West Face and Veritas sought to strike Catalyst and Callidus' claim on the basis that it disclosed no reasonable cause of action. These motions were partially dismissed.⁷⁶² On appeal, the Court of Appeal for Ontario confirmed that Catalyst and Callidus "made out a *prima facie* cause of action in defamation against both West Face and Veritas" and were "proceeding in good faith".⁷⁶³

PART 4 – ORDER REQUESTED

405. Catalyst and Callidus respectfully request an order dismissing this motion with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of May, 2021.

"Dearden et. al."

RICHARD DEADEN / JOHN CALLAGHAN
/ BENJAMIN NA / MATTHEW KARABUS

"Moore et. al."

DAVID MOORE / KEN JONES

⁷⁶¹[CB001-Riley Affidavit paras 380-382.](#)

⁷⁶²[CB001-Riley Affidavit para 383](#), *Catalyst v Veritas* [2016 ONSC 23– BOA045.](#)

⁷⁶³[CB001-Riley Affidavit para 384](#); *Catalyst v Veritas* [2017 ONCA 85– BOA046.](#)

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APPENDIX “A” DEFINITIONS

1. **“Alken Basin”** means Alken Basin Drilling Ltd., a company that was engaged in water drilling for the oil and gas commercial industry, of which Kevin Baumann was formerly the president.
2. **“Anderson”** means the Defendant, Nathan Anderson, who is in the business of filing whistleblower complaints and shorting stock for profit and reward as the principal of ClaritySpring Inc.
3. **“Anson”** means the Defendants, M5V Advisors Inc. Admiralty Advisors LLC, Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson Investment Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, ACF GP and their principals Moez Kassam, Adam Spears, and Sunny Puri.
4. **“Baumann”** means the Defendant, Kevin Baumann, the President of Alken Basin Drilling Ltd., a borrower of Callidus.
5. **“Bluberi”** means Bluberi Group Inc., a borrower of Callidus that carries on business as a manufacturer, distributor, installer and servicer of electronic gaming machines for the casino industry, of which Gerald Duhamel was the former President.
6. **“Boland”** means the Defendant, Greg Boland, the CEO of West Face Capital Inc.
7. **“Boyd”** means Roddy Boyd, the principal and sole employee of the Southern Investigative Research Foundation (now known as the Foundation for Financial Journalism).
8. **“Callidus”** means the Plaintiff, Callidus Capital Corporation.
9. **“Canaccord”** means Canaccord Genuity Corp, a financial services firm that was an adviser to Callidus and Catalyst and which, among other engagements, was the underwriter on Callidus’ initial public offering in April 2014. Canaccord is the former employer of Bruce Langstaff.

10. **“Catalyst”** means the Plaintiff, The Catalyst Capital Group Inc., a Canadian private equity investment firm.
11. **“Catalyst Funds”** mean collectively, Catalyst Fund I, Catalyst Fund II, Catalyst Fund III, Catalyst Fund IV and Catalyst Fund V.
12. **“CBL”** was the trading symbol for Callidus Capital Corporation on the Toronto Stock Exchange
13. **“ClaritySpring”** means the Defendant, ClaritySpring Inc., a company in which Nathan Anderson is a principal and shareholder that carries on the business of filing whistleblower complaints and shorting stock for profit and reward.
14. **“Cohodes”** means Marc Cohodes, a well-known short-seller based in the U.S.
15. **“Copeland”** means the Defendant, Rob Copeland, a reporter with *The Wall Street Journal* and co-author of the WSJ Fraud Articles in issue in these actions.
16. **“De Alba”** means Gabriel De Alba, the Managing Director and Partner of Catalyst.
17. **“Delevingne”** means Lawrence Delevingne, a reporter with *Reuters*.
18. **“Dow Jones”** means Dow Jones & Company, the publisher of *The Wall Street Journal* (online and print), and other publications.
19. **“Duhamel”** means the Defendant, Gerald Duhamel, the former President of Bluberi.
20. **“Dummett Article”** means an article *The Wall Street Journal* published on May 11, 2015 that was co-authored by Ben Dummett entitled “Manager Feels Heat on IPO: Catalyst Official Criticized Over Potential Conflicts”.
21. **“EIF”** means Exchange Income Fund, a client of Canaccord Genuity Corp. that was the subject of a short selling attack in July 2017 and of which Bruce Langstaff was reprimanded for disclosing confidential information about EIF to a well-known short seller.

22. **“Esco Marine”** means Esco Marine, Inc., a company that operated a marine yard and recycling operation in Texas, of which Andrew Levy and Richard Jaross were shareholders and directors.
23. **“Forensic Restitution”** means Forensic Restitution, a purported fraud investigation firm run by Dave Oswald, at which Darry Levitt is the General Counsel and Bruce Livesey is the private investigator.
24. **“Fortress”** means Fortress Resources LLC, a subsidiary of Opes Resources Inc. that carried on business in the coal mining industry in Kentucky, of which Darryl Levitt and Richard Molyneux were shareholders and directors.
25. **“Gagnier”** means Dan Gagnier, Catalyst’s and Callidus’ investor relations and media contact.
26. **“Gateway Casinos”** means Gateway Casinos & Entertainment Limited., a leading, diversified Canadian gaming and entertainment company with 25 properties across British Columbia and Ontario.
27. **“Glassman”** means Newton Glassman, the co-founder and Managing Partner of Catalyst.
28. **“Gracious Living”** means Gracious Living Corporation, a company that acquired Sherwood Hockey from Callidus in September 2014.
29. **“Guarantors”** means Kevin Baumann, Jeffrey McFarlane, Darryl Levitt, Richard Molyneux and Gerald Duhamel, the former principals of Callidus’ borrowers against whom Callidus commenced actions to enforce personal guarantees after the borrowers defaulted on their debts.
30. **“Hindenburg”** means Hindenburg Research, a website hosted by Nathan Anderson and ClaritySpring, to which Anderson posts his articles about public companies, some of which he and ClaritySpring have shorted.
31. **“i20 Research”** means i20 Research Inc. (f/k/a Mosaic Advisers Canada Inc.) a research consulting company incorporated on September 5, 2014 by Bruce Livesey that purports

to provide commercial intelligence services to clients seeking to capitalize on opportunity or address risk. In addition to Livesey, i20 Research’s employees include Stan Levitt (Darryl Levitt’s brother) and Dave Oswald (Forensic Restitution at which Darryl Levitt is General Counsel).

32. “**Jaross**” means Richard Jaross, a director and shareholder of Esco Marine.
33. “**Kassam**” means the Defendant, Moez Kassam, a principal of Anson.
34. “**LaPierre**” means Marie Claude LaPierre, the spouse of Gerald Duhamel, who co-guaranteed a loan obtained by Bluberi from Callidus.
35. “**Langstaff**” means the Defendant, Bruce Langstaff, who was an employee of Canaccord Genuity Corp. and is believed to be the author of tweets of “William Struth @GlasgowSkeptic”.
36. “**Leader Energy**” means Leader Energy Services Limited, an oil fuel services company that declared bankruptcy in 2015 when crude oil prices significantly declined. Callidus was owed \$12.7M as a secured creditor of Leader Energy.
37. “**Levitt**” means the Defendant, Darryl Levitt, a former shareholder and director of Fortress Resources LLC, a borrower of Callidus.
38. “**Levy**” means Andrew Levy who was one of the principals of Esco Marine, a borrower of Callidus.
39. “**Libel Action**” means the libel and defamation action commenced by Callidus and Catalyst against Rob Copeland, Jacquie McNish, Dow Jones & Company Inc. and McFarlane (CV-18-593156-00CL) as a result of the WSJ Fraud Articles published on August 9 and 10, 2017.
40. “**Livesey**” means the Defendant, Bruce Livesey, who is a freelance journalist as well as a corporate investigative consultant working for a research consulting company, i20 Research Inc. (f/k/a Mosaic Advisers Canada Inc.), that purports to provide commercial intelligence services to clients seeking to capitalize on opportunity or address risk.

Livesey is also a private investigator for Forensic Restitution, a purported fraud investigation firm at which Darryl Levitt is the General Counsel.

41. **“McFarlane”** means the Defendant, Jeffrey McFarlane, the former CEO of Xchange Technology Group LLC, a borrower of Callidus.
42. **“McNish”** means Jacquie McNish, a reporter with *The Wall Street Journal* (Canada Bureau) and co-author of the WSJ Fraud Articles in issue in these actions. McNish was formerly a reporter for *The Globe and Mail*.
43. **“Mosaic”** means Mosaic Advisers Canada Inc., which was a research consulting company that Livesey incorporated on September 5, 2014 that purported to provide commercial intelligence services to clients seeking to capitalize on opportunity or address risk. It now operates as i20 Research Inc.
44. **“Molyneux”** means the Defendant, Richard Molyneux, a former shareholder and director of Fortress Resources LLC, a borrower of Callidus;
45. **“Moyses Action”** means the action commenced by Catalyst against West Face and Brandon Moyses, a former financial analyst employed by Catalyst, who was alleged to have transmitted certain confidential information about Catalyst’s investment strategy to purchase WIND Mobile to West Face, in breach of his obligations as an employee of Catalyst.
46. **“Opes”** means Opes Resources Inc., a subsidiary of Fortress Resources LLC.
47. **“Oswald”** means Dave Oswald a director of Forensic Restitution, a purported fraud investigation firm at which Darryl Levitt is the General Counsel and Bruce Livesey is the private investigator.
48. **“Panet”** means Philip Panet, General Counsel of West Face Capital Inc.
49. **“Puri”** means the Defendant, Sunny Puri, a principal of Anson.
50. **“Reuters”** means the media publication *Reuters News* owned by Thomson Reuters that published an article written by John Tilak and Lawrence Delevingne titled “A private equity star’s picks shine ... until cash-out time” on March 23, 2018.

51. “**SFX**” means SFX Entertainment Inc., a dance music company that filed for bankruptcy in February 2016. Catalyst Fund IV and Catalyst Fund V held investments in SFX from December 2015 to February 2016.
52. “**Sherwood**” means Sherwood Hockey, a manufacturer of hockey sticks and equipment, and sports paraphernalia that was formerly owned by Callidus until it was sold to Gracious Living in 2014.
53. “**SIRF**” means the Southern Investigative Reporting Foundation (now known as the “Foundation for Financial Journalism”), an entity that is funded and supported by well-known short-sellers, whose sole employee is Roddy Boyd. Livesey and Boyd co-wrote and posted articles about Catalyst, Callidus and Glassman on SIRF’s website.
54. “**Spears**” means the Defendant, Adam Spears, a former principal and portfolio manager at Anson.
55. “**StoptheScandal**” is the listed name of the anonymous Twitter user “LexLexlucifer2”. StoptheScandal’s first tweet was posted in October 2016 and the last in June 2017. The majority of StoptheScandal’s tweets were about Callidus and Catalyst.
56. “**Tilak**” means John Tilak, a reporter with *Reuters*.
57. “**Therapure**” means Therapure Biopharma, Inc., a biopharmaceutical and technology company that manufactures complex biologics and develops, manufactures and sells blood and plasma-related therapeutic products.
58. “**TSX**” means the Toronto Stock Exchange.
59. “**Veritas**” means Veritas Investment Research Corporation, an equity research company located in Toronto that publishes investment research reports distributed to subscribers.
60. “**Veritas Action**” means the action commenced by Catalyst and Callidus in which it is alleged that Veritas and West Face entered into a conspiracy to harm Catalyst and Callidus by, among other things, each publishing negative and defamatory reports about

Callidus to support a “short and distort” campaign carried out from late 2014 to mid-2015.

61. **“VimpelCom”** means VimpelCom Ltd., a former shareholder of a telecom company, WIND Mobile Corp.
62. **“Voorheis”** means the Defendant, Wesley Voorheis, a securities lawyer who manages a fund, VMK Partners LP, through which he short-sells stock.
63. **“West Face”** means the Defendant, West Face Capital Inc., a Toronto-based firm managing a number of hedge funds, of which Greg Boland is the CEO.
64. **“West Face Short Report”** means the report prepared by West Face to short Callidus stocks beginning in late fall 2014. The West Face Report took the form of a slide deck and was provided to the media and others.
65. **“Whistleblower Complaints”** means the whistleblower complaints filed with the OSC in in May 2017 by Nathan Anderson and Darryl Levitt.
66. **“WSJ Fraud Articles”** means *The Wall Street Journal's* online articles published on August 9, 2017 and the print version published on August 10, 2017.
67. **“XTG”** or **“Xchange”** means Xchange Technology Group LLC and its related entities a borrower of Callidus.

**SCHEDULE “A”
LIST OF AUTHORITIES**

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**SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

Securities Act, RSO 1990, c S.5

Fraud and market manipulation

126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or

(b) perpetrates a fraud on any person or company.

Attempts

(2) A person or company shall not, directly or indirectly, attempt to engage or participate in any act, practice or course of conduct that is contrary to subsection (1).

Misleading or untrue statements

126.2 (1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative.

Same

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1.

Courts of Justice Act, R.S.O. 1990, c. C.43

Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)

Dismissal of proceeding that limits debate

Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

Definition, “expression”

(2) In this section,

“expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

Order to dismiss

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

No dismissal

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

- (a) there are grounds to believe that,
 - (i) the proceeding has substantial merit, and
 - (ii) the moving party has no valid defence in the proceeding; and

(b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding.

Costs on dismissal

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

Damages

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate.

THE CATALYST CAPITAL GROUP et al.
Plaintiffs/Defendants by Counterclaim

Court File No. CV-17-587463-00CL
- and - WEST FACE CAPITAL INC. et al.
Defendants/ Plaintiffs by Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**RESPONDING FACTUM OF THE PLAINTIFFS
(ANTI-SLAPP MOTIONS –SECTION 137.1 COURTS OF JUSTICE ACT - THE
CONSPIRACY)**

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