

**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

**MOTION RECORD OF THE DEFENDANTS,
WEST FACE CAPITAL INC. AND GREGORY BOLAND
FOR ANTI-SLAPP MOTION
VOL. 1 OF 6**

November 8, 2019

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Defendants

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28.	Exhibit 28 ~ Emails between Emmanuel Rosen and Virginia Jamieson dated October 16-23, 2017	2002-2004
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30.	Exhibit 30 ~ Text messages between Virginia Jamieson and 972.54.201.4743 (Sharon Kisluk)	2008-2019
31.	Exhibit 31 ~ Photos of Email from Sharon Kisluk to Royi Burstien, Eitan Charnoff, and Rosen dated October 26, 2017	2020-2023
32.	Exhibit 32 ~ Text messages between Virginia Jamieson and Ori	2024-2026
33.	Exhibit 33 ~ Email from Emmanuel Rosen to Virginia Jamieson dated November 12, 2017, attaching Bank of Cyprus Transaction Statement (redacted)	2027-2029
34.	Exhibit 34 ~ Text messages between Emmanuel Rosen and Virginia Jamieson	2030-2035
35.	Exhibit 35 ~ Text messages between Virginia Jamieson and 416.302.6040 (James Riley)	2036-2038
36.	Exhibit 36 ~ Article from the <i>National Post</i> – “The Judge, The Sting, Black Cube and Me” dated November 25, 2017	2039-2053

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

**NOTICE OF MOTION OF
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(ANTI-SLAPP MOTION)**

The Defendants, West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**"), will make a motion before Justice Hainey, on a date and time to be set by the Court, at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R8.

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

orally.

THE MOTION IS FOR:

- (a) an Order dismissing this action (the “**Whistleblower Action**”) brought by the Plaintiffs, The Catalyst Capital Group Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**”), as against the Defendants, West Face and Boland, pursuant to section 137.1(3) of the *Courts of Justice Act*;
- (b) costs of the motion and in respect of West Face and Boland’s defence to the Whistleblower Action on a full indemnity basis, pursuant to section 137.1(7) of the *Courts of Justice Act*;
- (c) damages as against Catalyst and Callidus on the basis that the Whistleblower Action was brought against West Face and Boland in bad faith or for an improper purpose, pursuant to section 137.1(9) of the *Courts of Justice Act*;
- (d) to the extent necessary or appropriate, an Order concerning the confidentiality of limited portions of the Motion Record of West Face and Boland; and
- (e) such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (f) West Face is an investment management firm. Boland is its Chief Executive Officer;

- (g) Catalyst and Callidus are related corporations. Catalyst's principals are Newton Glassman ("**Glassman**"), Gabriel De Alba ("**De Alba**"), and James Riley ("**Riley**"). Glassman and Riley are Directors of Callidus;
- (h) on November 7, 2017, Catalyst and Callidus commenced this Whistleblower Action against West Face, Boland and numerous other Defendants, alleging that they had participated in a conspiracy (the "**Alleged Whistleblower Conspiracy**") to cause harm to Catalyst and Callidus by, among other things:
- (i) filing a series of false whistleblower complaints (the "**Complaints**") against Callidus with the Ontario Securities Commission (the "**OSC**");
 - (ii) alerting the media to the existence and substance of the Complaints;
 - (iii) taking short positions in Callidus shares;
 - (iv) causing *The Wall Street Journal* to publish a false and defamatory article about the Complaints near the end of the trading day on August 9, 2017, so as to cause a rapid decline in Callidus's share price; and
 - (v) closing out their short positions in Callidus at a substantial profit.

- (i) as against West Face and Boland, the Whistleblower Action has no “substantial merit”, and indeed no merit whatsoever, including because West Face and Boland:
- (i) did not file the Complaints and were not responsible for the filing of the Complaints;
 - (ii) had not taken any short positions in Callidus at any time during the two years preceding the publication of the Article by *The Wall Street Journal*,
 - (iii) played no role in the Article’s publication, content, and/or timing; and
 - (iv) otherwise did not participate in any Alleged Whistleblower Conspiracy;
- (j) West Face and Boland have “valid defences” to the Whistleblower Action, including because they did not engage in the Alleged Whistleblower Conspiracy, and did not engage in any of the wrongful conduct alleged in the claim;
- (k) the only alleged conduct that West Face and Boland actually engaged in was purely lawful communications and expressions about Callidus and/or Catalyst, for the entirely proper purposes of: (i) participating in highly public debates and issues surrounding Catalyst, Callidus, West Face and Boland; (ii) sharing public information about Catalyst and/or Callidus with others;

and (iii) defending themselves against prior litigation commenced against them by Catalyst and/or Callidus;

- (l) the harm that has been suffered or is likely to be suffered by Catalyst and Callidus as a result of West Face and Boland's expression is not sufficiently serious that the public interest in permitting the Whistleblower Action to continue against them outweighs the public interest in protecting their expression;
- (m) the Whistleblower Action has been brought against West Face and Boland in bad faith and for an improper purpose;
- (n) section 137.1 of the *Courts of Justice Act*, and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (p) the Affidavit of Gregory Boland sworn November 8, 2019;
- (q) the Affidavit of Christie Blatchford sworn May 21, 2019;
- (r) the Affidavit of Philip Panet sworn May 21, 2019; and
- (s) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 8, 2019

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THE CATALYST CAPITAL GROUP INC. et al. Plaintiffs	-and-	WEST FACE CAPITAL INC. et al. Defendants	-and-	CANACCORD GENUITY CORP. Third Party
WEST FACE CAPITAL INC. et al. Plaintiffs by Counterclaim	-and-	THE CATALYST CAPITAL GROUP INC. et al. Defendants to the Counterclaim		

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION OF
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(ANTI-SLAPP MOTION)**

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West Face Capital Inc. and Gregory Boland

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

**AFFIDAVIT OF GREGORY BOLAND
(SWORN NOVEMBER 8, 2019)**

I, Gregory Boland, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Founding Principal, Chief Executive Officer and Co-Chief Investment Officer of West Face Capital Inc. ("**West Face**"). West Face and I are Defendants in this action (the "**Whistleblower Action**") commenced by the Plaintiffs, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**") almost exactly two years ago, on November 7, 2017. In this Affidavit, I use the terms "**we**" and "**us**" to refer to both West Face and myself personally.

2. I have personal knowledge of the matters set out in this Affidavit, except where I have relied on information from others, in which case I have identified the source of my information and believe it to be true. In preparing this Affidavit, I have communicated with each of the Partners at West Face: Peter Fraser, Thomas Dea, and Anthony Griffin. I have also communicated directly with Philip Panet, who is our Chief Operating Officer, General Counsel, and Secretary, though I do not waive any privilege that may apply to my communications with Mr. Panet.

3. I swear this Affidavit in support of the motion by me and West Face for an order dismissing the Whistleblower Action as against us on the basis that it is a “gag proceeding”, otherwise known as a “strategic lawsuit against public participation” (“**SLAPP**”), which has no merit as against West Face and me and has the intended purpose of limiting freedom of expression on matters of public interest.

4. I understand that for the purposes of this motion, the following issues, among others, are relevant:

- (a) whether the Whistleblower Action arises from an expression made by West Face and me relating to a matter of public interest;
- (b) whether the Whistleblower Action has substantial merit as against us;
- (c) whether West Face and I have a valid defence to the Whistleblower Action;
- (d) whether the harm suffered by Catalyst and Callidus as a result of our expression is sufficiently serious that the public interest in permitting the

proceeding to continue outweighs the public interest in protecting that expression; and

- (e) whether Catalyst and Callidus brought the Whistleblower Action against West Face and me in bad faith or for an improper purpose.

5. I have therefore sought to provide evidence relevant to these issues. As a starting point, a copy of the Plaintiffs' Fresh as Amended Statement of Claim dated July 19, 2019 (the "**Claim**") is attached to my Affidavit as Exhibit "**1**". A copy of my and West Face's Fourth Fresh as Amended Statement of Defence and Counterclaim dated October 1, 2019 (our "**Defence and Counterclaim**") is attached to my Affidavit as Exhibit "**2**".

6. By way of summary, various pieces of litigation have arisen between Catalyst, Callidus and their principals (the "**Catalyst Parties**") and West Face in the period since 2014, including this proceeding. The various disputes between the Catalyst Parties and West Face have focussed principally on two issues: (i) whether West Face committed any wrongdoing in connection with its 2014 acquisition of an interest in WIND Mobile Inc. ("**WIND**") in the face of a competing bid for WIND from Catalyst; and (ii) whether Callidus has been overvalued by the public capital markets at various points in time. West Face has already been proven correct on both counts. With respect to WIND, Catalyst has lost two separate proceedings attacking West Face's conduct, with substantial indemnity costs awarded to West Face on both occasions. With respect to Callidus, the Catalyst Parties have successfully resisted every effort by West Face to have their proceedings against West Face determined on their merits. However, the public markets have conclusively spoken on that front. Catalyst took Callidus public in April 2014 at a share

price of \$14, and saw the share price climb as high as \$22 in the Fall of that year. After years of disastrous losses, however, Callidus was very recently taken private at a price of \$0.75 per share, in the wake of a valuation indicating that the company had negative value but for certain benefits being provided by Catalyst only to the acquirer (and not to public shareholders).

A. The Parties

(i) West Face and Greg Boland

7. My firm, West Face, is a Toronto-based alternative asset management firm. West Face invests in public and private opportunities in Canadian and international markets. Our principals have, on average, more than 25 years of investment experience. We focus on distressed, event-driven, and opportunistic investments.

8. I founded West Face in 2006 and have led the firm since then as its CEO and Co-Chief Investment Officer. Before founding West Face, from 1998 to 2006, I managed a Canadian portfolio of distressed investments and special situations for Paloma Partners while at Enterprise Capital Management. I was previously one of three partners in RBC Dominion Securities' proprietary investment group, with a focus on distressed debt, convertible bonds, equities and derivatives. I have also been a director of several portfolio companies, including Maple Leaf Foods Inc., the WIND holding company, and ACE Aviation Holdings Inc. I obtained a Bachelor of Commerce in Finance from the University of British Columbia, and also have a computer science background. I am a Leslie Wong Fellow with the UBC Portfolio Management Foundation.

9. West Face earns management fees by attracting investor capital and successfully investing it on the behalf of its investors. As investors of other peoples' money, West Face and I must be considered by investors as trusted fiduciaries and advisors. West Face and I have historically had a strong reputation among investors for excellence and integrity. For example, on May 2, 2006, shortly after I had founded West Face, *The Globe and Mail* published an article titled: "Meet the new smartest guys on the Street", which featured me and other Partners at the firm, and also discussed some of our previously successful investments and experiences. A copy of this article is attached to my Affidavit as Exhibit "3". In February 2012, *The Globe and Mail's Report on Business* magazine published an article titled: "How an activist investor shook up a Canadian brand", which focussed on my and West Face's investment in Maple Leaf Foods. A copy of this article is attached to my Affidavit as Exhibit "4". On August 15, 2013 (the Summer before West Face and Catalyst first became embroiled in litigation), *Canadian Business* magazine published an article titled: "Canada's top 25 most powerful business people: The real movers and shakers of Canada". I was featured on this list, and our investment in Maple Leaf Foods was hailed as a "decisive victory for shareholder rights in Canada". A copy of this article is attached to my Affidavit as Exhibit "5". More recently, in January 2016, *The Globe and Mail* featured me in their "Invest Like a Legend" series of articles. This article referred to me as one of Bay Street's "shrewdest" hedge fund managers. A copy of this article is attached to my Affidavit as Exhibit "6".

10. In my view, a strong reputation for excellence and integrity is essential to any investment management firm's success in the investment community. Any attack on that reputation is inimical to our ability to attract investor capital and earn a return on that

capital. The issue of whether West Face and I have suffered harm to our reputations, and if so, the issue of who is legally responsible for that harm, are some of the subjects of our Counterclaim in this matter.

(ii) Catalyst, Callidus, and Their Principals – Glassman, De Alba, and Riley

11. Catalyst is another Toronto-based investment management firm, specializing in investments in distressed assets and undervalued Canadian situations. Catalyst is led by its Founder, CEO, and Managing Partner, Newton Glassman ("**Glassman**"). Its two other principals are Gabriel De Alba ("**De Alba**"), who is a Managing Director and Partner, and James (Jim) Riley ("**Riley**"), who, during the relevant time period, was a Managing Director and Catalyst's Chief Operating Officer. Riley remains a Managing Director of Catalyst but has been replaced as that firm's COO by Rocco DiPucchio, Catalyst's former external litigation counsel from the Lax O'Sullivan law firm.

12. Callidus is a niche lender to financially distressed, and typically private, borrowers. During the time period from April 15, 2014 through to November 5, 2019, Callidus was publicly-traded on the Toronto Stock Exchange. Prior to its initial public offering ("**IPO**") in April 2014, Callidus was 100% owned by funds managed by Catalyst. Since its IPO, Callidus has been majority owned by funds managed by Catalyst. Glassman is the Executive Chairman, a Director and, at the time this action was commenced, was the CEO of Callidus. Riley is its Secretary and is also a Director. The shareholders of Callidus and the Court very recently approved a plan of arrangement pursuant to which Callidus was taken private on November 5, 2019 at \$0.75 per share. A copy of Callidus's October 31, 2019 Press Release announcing shareholder approval of the plan of arrangement

and its intention to seek court approval of the plan of arrangement is attached to my Affidavit as Exhibit “7”. A copy of Callidus’s November 5, 2019 Press Release announcing the completion of the plan of arrangement is attached to my Affidavit as Exhibit “8”.

13. In this Affidavit, I refer to Catalyst, Callidus, Glassman, De Alba and Riley collectively as the “**Catalyst Parties**”.

14. The Catalyst Parties, and in particular Glassman, are high profile participants in the Canadian financial industry. There is now, and has been for years, a significant amount of public interest and debate surrounding the Catalyst Parties, their investment performance and the performance of their portfolio companies and investments, their public disclosures, and their litigation proceedings (including their multiple lawsuits against West Face and me). As a public company during the time period from April 15, 2014 to November 5, 2019, Callidus had important continuous disclosure obligations under applicable securities legislation and was subject to regular scrutiny from members of the public, investors, and regulators.

B. A Brief Background of the Legal Proceedings Between West Face and the Catalyst Parties

(i) Overview

15. This action, the Whistleblower Action, is the fourth action that Catalyst and/or Callidus have brought against West Face (and now for the first time in this action, against me personally) and the fifth contested proceeding between the parties (excluding interlocutory motions and/or appeals) in the period since June 2014. I believe that the background to the legal proceedings between the Catalyst Parties on one hand and West Face and me on the other provides important context to understanding the public interest

in the expression in which West Face and I have engaged and over which the Whistleblower Action has arisen. I believe this background is also relevant to the issue of whether this Whistleblower Action was brought against me and West Face in bad faith or for an improper purpose.

16. To date, none of the Catalyst Parties' lawsuits against West Face and/or me have been successful. In fact, the sole lawsuit that has proceeded to discovery and trial – the "**Moyse Action**" described below – resulted in the dismissal of all of Catalyst's claims and allegations, as well as a costs award of over \$1.2 million in favour of West Face made on a substantial indemnity basis. Both the trial judgment and costs award were upheld despite Catalyst's attempts to appeal these matters all the way to the Supreme Court of Canada.

17. Another of Catalyst's lawsuits against West Face – the "**VimpelCom Action**" described below – arose from the same facts and circumstances as the Moyse Action, and was dismissed by this Court as an abuse of process (among other reasons). Again, substantial indemnity costs were awarded in favour of West Face, and Catalyst's appeal to the Court of Appeal was unsuccessful. Catalyst's application for leave to appeal to the Supreme Court of Canada is currently pending before a panel of that Court and a decision is expected soon.

18. While West Face has been completely successful in defeating the Catalyst Parties' claims, doing so has come at significant cost and prejudice to West Face. The costs include both the financial and human resources necessary to disprove the many allegations of misconduct made by the Catalyst Parties. The prejudice includes the harm

to West Face's reputation and standing with past, current, and prospective investors caused by the Catalyst Parties' meritless allegations, which have had the effect of shrouding West Face in controversy and scandal. Indeed, as set out below, Catalyst has repeated its unfounded allegations of misconduct against West Face to members of the media, as well as to investors. West Face and I have also been harmed by the very uncertainty surrounding West Face as a result of these allegations and the litigation over them. In that regard, I have been told face-to-face by prospective investors in West Face that they will not invest their money with West Face unless and until the Catalyst's Parties' claims against West Face are fully resolved and the allegations they have made are disproven. It is therefore vital to me and my business that the Catalyst Parties' two remaining actions, being the Veritas Action and this Whistleblower Action, be dismissed at the earliest possible opportunity.

19. The following is a brief summary of the legal proceedings between West Face and Catalyst, and their current procedural status.

(ii) The Moyse Action and the Plan of Arrangement Application

20. Catalyst's first lawsuit against West Face, the "**Moyse Action**", was commenced against West Face and Brandon Moyse ("**Moyse**") in June 2014, shortly after Moyse had resigned from his analyst position at Catalyst to join West Face as a junior associate. Among other things, Catalyst alleged that Moyse had conveyed unspecified confidential information of Catalyst to West Face.

21. On September 16, 2014, a consortium of investors that included West Face announced that they had acquired WIND, a Canadian telecommunications company from

VimpelCom Inc. ("**VimpelCom**"). Subsequently (in November 2014), WIND became a wholly-owned subsidiary of Mid-Bowline Group Corp. ("**Mid-Bowline**"), with each member of the consortium (including West Face) holding voting interests in Mid-Bowline in proportion to their overall economic interests in WIND. The total purchase price for WIND was based on an enterprise valuation of approximately \$300 million.

22. The consortium's acquisition of WIND was the culmination of a public sale process that had played out over much of 2013 and 2014. Wireless telecommunications is a high-profile industry in Canada and WIND was one of a small number of other "new entrants" (others being Public Mobile and Mobilicity) challenging the dominant market position of the major national incumbents, Rogers, Bell and Telus. WIND had in fact been a subject of public interest and controversy since its founding in 2008, as its license was initially denied by the CRTC over Canadian ownership requirements, before finally being approved by the Governor-in-Council in 2009. A series of articles describing the public controversies surrounding WIND, as well as Catalyst's publicly stated interest in acquiring WIND, in the period before it was acquired by West Face and its co-investors are attached as Exhibits "9" to "13".

23. Catalyst initially appeared poised to acquire WIND when it entered into an exclusivity agreement with VimpelCom in July 2014. Ultimately, however, Catalyst's negotiations with VimpelCom foundered for reasons that were only revealed by Catalyst's principals shortly before trial in the Moyse Action, including because Catalyst would not agree to a modest break fee of \$5 to \$20 million, and because Catalyst had no intention of completing any acquisition for WIND unless it obtained significant "regulatory concessions" from the Government of Canada that the Government had adamantly and

repeatedly refused to provide. Catalyst initially pleaded false theories for why its negotiations with VimpelCom broke down, only admitting the truth shortly before trial in the Moyse Action.

24. On October 9, 2014, following the consortium's publicly announced acquisition of WIND, Catalyst amended its claim in the Moyse Action to assert specific claims in respect of West Face's participation in the acquisition of WIND. Among other things, Catalyst alleged that West Face had "wrongfully used" Catalyst's confidential information "to obtain an unfair advantage over Catalyst in its negotiations with [WIND]." Catalyst further alleged that "but for the transmission of Confidential Information concerning [WIND] from Moyse to West Face, West Face would not have successfully negotiated a purchase of [WIND]".

25. On December 16, 2014, Catalyst further amended its claim in the Moyse Action to seek: (i) a constructive trust over West Face's interest in WIND; and (ii) an accounting of profits earned by West Face with respect to its investment in WIND as a result of the alleged misuse of Catalyst's confidential information.

26. Over the course of the next year, from approximately January 2015 to January 2016, Catalyst engaged in a series of unsuccessful interlocutory motions and appeals against West Face and Moyse. These proceedings resulted in a number of judicial pronouncements in favour of West Face and Moyse and critical of Catalyst, as well as costs sanctions against Catalyst.

27. West Face, on the other hand, succeeded in all of its motions and appeals during this time period, and devoted its efforts towards ensuring that the Moyse Action would

proceed to a trial on the merits as quickly as was reasonably possible, including by bringing a motion to transfer the Moyse Action to the Commercial List in January 2016.

28. On December 23, 2015, Mid-Bowline (the entity through which West Face and the other consortium members had come to hold their interests in WIND) commenced an application for approval of a plan of arrangement (the "**Plan of Arrangement**") pursuant to which the shares of Mid-Bowline were to be sold to Shaw Communications Inc. ("**Shaw**") for approximately \$1.6 billion.

29. The Plan of Arrangement provided that the shares of Mid-Bowline were to be transferred to Shaw free and clear of Catalyst's claim for a constructive trust over West Face's indirect interest in WIND. The central reason why this transaction proceeded by way of plan of arrangement (as opposed to, for example, a share purchase agreement) was to enable Shaw to acquire clear title to the shares of WIND, while at the same time giving Catalyst an opportunity to be heard by the Court on the application for approval of the proposed Plan of Arrangement (the "**Plan of Arrangement Application**").

30. On January 26, 2016, Justice Newbould released his Reasons for Judgment in the Plan of Arrangement Application. These Reasons were critical of Catalyst, including in particular of Riley, who Justice Newbould found had sworn a false Affidavit concerning Catalyst's awareness of the facts and circumstances pertaining to a new claim Catalyst intended to assert to the effect that West Face (and the other members of the consortium that purchased WIND) had supposedly induced VimpelCom to breach exclusivity obligations owed to Catalyst. Justice Newbould held that Catalyst had deliberately chosen to "lie in the weeds" rather than assert this claim in a timely manner. In the result,

Justice Newbould ordered an expedited trial of the specific issue of "whether Catalyst has a right to a constructive trust" over West Face's indirect interests in WIND. The trial of an issue was to be heard roughly a month later, on February 22 to 26, 2016. A copy of Justice Newbould's Reasons dated January 26, 2016 are attached to my Affidavit as Exhibit "14".

31. However, shortly after Justice Newbould released his Reasons, Catalyst withdrew its claim for a constructive trust over West Face's interest in WIND. This withdrawal rendered the expedited trial of an issue concerning Catalyst's claim for a constructive trust unnecessary and moot. Rather than proceed with the expedited trial of an issue that was no longer in dispute, the parties to the Plan of Arrangement Application negotiated and agreed to the terms of a Consent Order approving the proposed Plan of Arrangement. That Order was granted by Justice Newbould on February 3, 2016. Thereafter, the Plan of Arrangement was implemented, and the sale of WIND to Shaw was completed on or around March 1, 2016.

32. In late February 2016, Catalyst further amended its claim in the Moyse Action to add a spoliation claim against Moyse, alleging that he had destroyed relevant evidence. A copy of Catalyst's Amended Amended Amended Statement of Claim dated February 25, 2016 is attached to my Affidavit as Exhibit "15".

33. The Moyse Action proceeded to trial before Justice Newbould in June 2016. The parties called a total of 13 witnesses to give live testimony at trial. These witnesses included Catalyst's three principals (Glassman, De Alba, and Riley), representatives of West Face, multiple representatives of other members of the consortium, forensic

computer experts called by Moyse and Catalyst regarding the spoliation issue, and Moyse.

34. On August 18, 2016, Justice Newbould released his Reasons for Judgment in the Moyse Action, in which he dismissed Catalyst's action "in its entirety". A copy of Justice Newbould's Reasons for Judgment is attached as Exhibit "16".

35. Justice Newbould dismissed every claim asserted by Catalyst against both West Face and Moyse and held that Catalyst had failed to establish any of the elements of a claim for breach of confidence. In doing so, His Honour found as a fact that:

- (a) Mr. Moyse did not convey any confidential information of Catalyst to West Face concerning WIND;
- (b) even if Mr. Moyse had communicated confidential information of Catalyst to West Face, such information was not misused in any way by West Face in its acquisition of an interest in WIND; and
- (c) even if Mr. Moyse had communicated confidential information of Catalyst to West Face, and even if West Face had misused such confidential information in its acquisition of an interest in WIND, this could not have caused any harm to Catalyst, for two reasons: (i) it was Catalyst's refusal to agree to a break fee of \$5 to \$20 million requested by VimpelCom, and not any conduct by West Face or the consortium members, that caused Catalyst to fail in its negotiations with VimpelCom; and (ii) Catalyst would never have completed the proposed acquisition of WIND because Catalyst

required, but could not obtain from the Government of Canada, significant regulatory concessions that it considered necessary as preconditions to the completion of the acquisition.

36. In his Reasons for Judgment, Justice Newbould also made adverse findings concerning the credibility of each of Catalyst's principals – Glassman, De Alba and Riley.

37. The day after Justice Newbould issued his Reasons (August 19, 2016), Catalyst chose to participate in the public discourse surrounding the acquisition and sale of WIND (which is set out in more detail below) by issuing a statement to the national news media. Specifically, in a *Financial Post* article titled: "Catalyst Capital Group Inc to appeal after judge dismisses Wind Mobile lawsuit", dated August 19, 2016, Catalyst is quoted as having provided the following written statement:

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

38. A copy of this article is attached to my Affidavit as Exhibit "17".

39. On October 7, 2016, Justice Newbould released his Costs Endorsement respecting the trial of the Moyse Action. Justice Newbould awarded West Face its costs on a substantial indemnity basis of \$1,239,965. Among other reasons for doing so, Justice Newbould held in his Costs Endorsement that the lawsuit was "driven by Mr. Glassman" because he was "not able to accept that he lost his chance to acquire [WIND] by being outsmarted by someone else ... He was certainly playing hardball attacking the

reputation and honesty of West Face. However, in spite of the best efforts of Catalyst's very able and skilled lawyers, he utterly failed." A copy of this Costs Endorsement is attached to my Affidavit as Exhibit "18".

40. Catalyst's appeal to the Court of Appeal was heard in February 2018. The Court of Appeal dismissed Catalyst's appeal on the merits from the bench, without hearing submissions from counsel to West Face or Moyse. On March 22, 2018, the Court of Appeal released its written Reasons for Decision, dismissing Catalyst's appeal, as well as for refusing Catalyst's application for leave to appeal Justice Newbould's costs award. A copy of the Court of Appeal's Reasons dated March 22, 2018, as well as its subsequent Costs Endorsement in favour of West Face and Moyse, are attached to my Affidavit as Exhibits "19" and "20".

41. Catalyst's subsequent application for leave to appeal to the Supreme Court of Canada from the Decision of the Ontario Court of Appeal was dismissed with costs in March 2019.

42. As set out below, the Moyse Action garnered significant public interest and was widely and regularly reported on by the national news media.

(iii) The Veritas Action

43. The Catalyst Parties' second lawsuit against West Face, the "**Veritas Action**", was commenced by Statement of Claim issued June 18, 2015.

44. In the Veritas Action, Catalyst and Callidus alleged that West Face and another Defendant, Veritas Investment Research Corporation ("**Veritas**"), conspired to publish

false and defamatory statements about Callidus in the period from November 2014 to April 2015 (the “**Alleged Veritas Conspiracy**”). The Plaintiffs further alleged that the purpose of the Alleged Veritas Conspiracy was to induce Callidus's shareholders to sell their Callidus shares and/or lower their estimates of Callidus's future performance, with the intended and ultimate effect of lowering Callidus's share price. The Plaintiffs further alleged that West Face engaged in this conduct to profit from a short selling strategy in Callidus's shares.

45. In its Statement of Claim in the Veritas Action, Catalyst explicitly relied on its then unproven (and later disproven) allegations in the Moyse Action to insinuate that by June 2015, West Face had demonstrated a history of wrongful conduct against Catalyst. Of course, as set out above, Catalyst's allegations in the Moyse Action were completely unfounded and were ultimately dismissed in their entirety after adverse credibility findings had been made against each of Catalyst's principals, including Glassman.

46. In 2015, West Face brought a motion to strike the Plaintiffs' claim in the Veritas Action on the basis that it did not meet the minimum requirements for pleading defamation. While West Face was partially successful on this motion at first instance, the Plaintiffs succeeded in overturning the motion judge's decision on appeal. West Face later succeeded in its motion in May 2017 to transfer the Veritas Action to the Commercial List. West Face brought that motion in the hope that the Veritas Action would proceed to trial on the merits more quickly than it otherwise would if it remained on the regular list.

47. West Face filed a comprehensive 45-page Statement of Defence in the Veritas Action on August 23, 2016. In its Statement of Defence, West Face categorically denied

the Plaintiffs' allegations, explained in detail West Face's decision to short sell Callidus (in the Fall of 2014) based on what West Face perceived as Callidus's excessive valuation at that time as well as West Face's research into Callidus's problematic loan portfolio.

48. West Face accumulated a short position in Callidus during the period from October 23 to December 31, 2014. In that period, Callidus's shares were trading in excess of \$17 per share and, for most of that time period, in excess of \$20 per share. West Face closed out its short position in the period from March 19 to June 4, 2015, when Callidus's shares were trading in the \$14 to \$18 range.

49. Importantly, West Face and I have not taken a short position in Callidus since that time, including not at any time in the more than two year period preceding the publication by *The Wall Street Journal* of its article on August 9, 2017 (the "**Article**") that lies at the heart of the claims asserted by Catalyst and Callidus in this Whistleblower Action. They claim, among other things, that the publication of that Article was the culmination of a second short selling conspiracy by West Face and others.

50. A copy of the Plaintiffs' Statement of Claim and West Face's Statement of Defence in the Veritas Action are attached to my Affidavit as Exhibits "**21**" and "**22**".

51. Notably, before Catalyst and Callidus commenced the Veritas Action in June 2015, they had alleged during a previous motion for an interlocutory injunction in the Moyse Action that West Face's research into Callidus was based on confidential information about Callidus that West Face had allegedly obtained from Moyse. There was no substance whatsoever to that entirely false allegation. In response, West Face filed detailed Affidavit evidence (namely, an Affidavit of West Face Partner Anthony Griffin,

sworn March 7, 2015 that was delivered as part of West Face's four-volume Responding Motion Record), which set out in detail, among other things: (i) the impetus behind West Face's research into and short selling of Callidus; and (ii) the entirely public sources of information that West Face had relied upon in its research.

52. Mr. Griffin's March 2015 Affidavit included, as Exhibit "46" thereto, a copy of West Face's then-current internal research work on Callidus. A copy of the Affidavit of Anthony Griffin sworn March 7, 2015 (without Exhibits other than Exhibit "46" thereto) is attached to my Affidavit as Exhibit "23". West Face included this evidence in its filing as a direct response to Catalyst's unfounded allegation that the source of West Face's research into Callidus had been information conveyed to it by Moyses.

53. Justice Glustein dismissed Catalyst's motion for an interlocutory injunction on July 7, 2015. A copy of his Endorsement is attached to my Affidavit as Exhibit "24". Copies of Court decisions relating to Catalyst's attempts to appeal Justice Glustein's Order are attached to my Affidavit as Exhibits "25" and "26".

54. This is important context, because it makes clear that before Catalyst and Callidus launched the Veritas Action in mid-June 2015, they had received sworn evidence from West Face (which had been unshaken by cross-examination), concerning how and why West Face came to its conclusions about Callidus during the October 2014 to March 2015 time period. Put simply, Catalyst and Callidus knew or should have known that its allegations against West Face were baseless before the Veritas Action was commenced. This perhaps explains why Catalyst and Callidus have taken no steps to pursue the Veritas Action in the ensuing period of more than four years.

55. To be perfectly clear, in the over **four year period** since the Plaintiffs launched the Veritas Action, including over three years since the Court of Appeal restored their pleading, they have made no effort to advance the proceeding beyond the pleadings stage. On the contrary, the Plaintiffs have repeatedly broken or sought to vary their commitments and deadlines to deliver their documentary productions and/or have repeatedly sought to delay or push back discovery. Indeed, as of the date of this Affidavit, Catalyst and Callidus have not produced a single document in the Veritas Action, even though it was commenced in June 2015. West Face has made clear repeatedly that it has been ready, willing, and able to produce its documents in the Veritas Action for years, since at least as early as September 2017. It has not done so, however, because Catalyst and Callidus have refused to reciprocate.

56. For example:

- (a) I am informed by West Face's counsel, Matthew Milne-Smith, and believe that in August 2017, he proposed to the Plaintiffs' counsel, Rocco DiPucchio of the Lax O'Sullivan firm, that the parties to the Veritas Action discuss a schedule for documentary and oral discoveries, and advised that West Face was prepared to produce its documents within a matter of weeks. A copy of Mr. Milne-Smith's email of August 21, 2017 is attached to my Affidavit as Exhibit "**27**";
- (b) I am further informed by Mr. Mline-Smith, and believe, that on August 29, 2017, more than two years after commencing the Veritas Action, Mr. DiPucchio advised Mr. Milne-Smith that he believed the Plaintiffs could

commit to producing their documents in the Veritas Action by November 2017, but intended to amend their Statement of Claim in the Veritas Action within the next 7 to 10 days to allege a conspiracy with reference to the Article published in *The Wall Street Journal* (which would change the scope of relevance). Ultimately, the Plaintiffs never amended their pleading in the Veritas Action. Instead, they commenced this action, the Whistleblower Action, more than 2 months later, on November 7, 2017;

- (c) on April 2, 2018 (almost three years after the Plaintiffs commenced the Veritas Action), the Plaintiffs' new counsel, David Moore, agreed to deliver the Plaintiffs' Affidavit of Documents "with a detailed Schedule A" by May 31, 2018. A copy of Mr. Moore's email to this effect is attached to my Affidavit as Exhibit "**28**". The Plaintiffs never did so.
- (d) on August 27, 2018, Justice Hainey issued Directions providing that documentary productions of the Plaintiffs in the Veritas and Whistleblower Actions would be made in tranches. A copy of Justice Hainey's Directions is attached to my Affidavit as Exhibit "**29**";
- (e) on September 20, 2018, the Plaintiffs' newest counsel, Ben Na of the Gowlings law firm, confirmed that the Plaintiffs would be in a position to start producing documents relevant to the Veritas and Whistleblower Actions at the end of October 2018. A copy of his email correspondence to this effect is attached to my Affidavit as Exhibit "**30**". No such productions were provided;

- (f) on March 7, 2019, Justice Hailey issued an Endorsement ordering the Catalyst Parties to deliver their complete, sworn Affidavits of Documents, together with the productions thereto, in tranches, with the *last* tranche to be delivered by October 31, 2019. A copy of this Endorsement is attached to my Affidavit as Exhibit “31”; and
- (g) I am informed by Kent Thomson, counsel to West Face, and believe that during a case conference before Justice Hailey on Wednesday, October 30, 2019, John Callaghan, acting in his capacity as counsel for Catalyst and Callidus, objected to the production of any documents in the Veritas Action on the basis that a number of Defendants in this Whistleblower Action had commenced “anti-SLAPP” motions and had not produced their documents in this action. I am further informed by Mr. Thomson and believe that Mr. Callaghan claimed that the Veritas Action and Whistleblower Action are closely intertwined. I am further informed by Mr. Thomson and believe that Justice Hailey put off to a further case conference on November 14, 2019 the issue of whether production should now be made in the Veritas Action.

57. As set out below, the Veritas Action (and the Plaintiffs’ allegations in it) were widely reported on when that proceeding was first launched by Catalyst and Callidus. However, because the Veritas Action has not proceeded past the pleadings stage, West Face has never had the opportunity to lead evidence, prove its defences or otherwise vindicate itself in the public eye.

(iv) The VimpelCom Action

58. The third lawsuit by Catalyst against West Face – the "**VimpelCom Action**" – was commenced by Statement of Claim issued on Tuesday, May 31, 2016, less than one week before the commencement of trial of the Moyse Action (which commenced Monday, June 6, 2016).

59. In the VimpelCom Action, Catalyst claimed that West Face had participated in a conspiracy (the "**Alleged Wind Conspiracy**") to induce VimpelCom, the seller of WIND, to breach exclusivity and confidentiality obligations owed by VimpelCom to Catalyst. Catalyst alleged that because of that supposed breach, VimpelCom negotiated with West Face and its co-investors rather than Catalyst, and ended up selling WIND to the consortium of investors referred to above that included West Face. Within hours of being served with Catalyst's Statement of Claim in the VimpelCom Action, West Face advised Catalyst that it regarded that proceeding to be an impermissible abuse of process, and that it intended to move to permanently stay or dismiss the VimpelCom Action. West Face commenced that motion shortly after the Moyse Action was dismissed by Justice Newbould.

60. The motion was heard by Justice Hainey over three days in August 2017, as well as on an additional day in early April 2018. On April 18, 2018, Justice Hainey issued Reasons for Decision dismissing the VimpelCom Action as against West Face and all of its co-Defendants as an abuse of process. Justice Hainey also held that the VimpelCom Action was barred as against West Face and the other members of its investor consortium pursuant to the doctrines of issue estoppel and cause of action estoppel. Justice Hainey further ordered Catalyst to pay substantial indemnity costs to West Face

and its co-Defendants. Copies of Justice Hainey's Reasons for Decision dated April 18, 2018 as well as his subsequent Costs Endorsement dated November 19, 2018 are attached to my Affidavit as Exhibits "32" and "33".

61. Catalyst appealed Justice Hainey's Decision to the Court of Appeal. The appeal was argued on February 19 and 20, 2019, and was dismissed by the Court of Appeal on May 2, 2019.

62. A copy of the Court of Appeal's Reasons dated May 2, 2019 dismissing Catalyst's appeal, as well as its Reasons on costs, is attached to my Affidavit as Exhibit "34". Catalyst is seeking leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. I am informed by my counsel, Andrew Carlson, and believe that it is reasonable to expect a decision on the leave application from the Supreme Court of Canada before the end of 2019.

63. As set out below, like the Moyse Action and the Veritas Action, the VimpelCom Action was also a matter of significant public interest and media attention.

C. The Public Interest and Debate Surrounding the Catalyst Parties, and Their Attempts to Discourage That Debate Through Legal Proceedings and Threats

64. As touched on above, the Catalyst Parties, and in particular Glassman, are high profile participants in the Canadian financial industry. There is now, and has been for years, a significant amount of public interest and debate surrounding the Catalyst Parties, their investment performance and the performance of their portfolio companies and investments, their public disclosures, and their litigation proceedings (including their multiple lawsuits against West Face and me). As a public company during the time period

from April 15, 2014 to November 5, 2019, Callidus had important continuous disclosure obligations under applicable securities legislation, and was subject to regular scrutiny from members of the public, investors, and regulators.

65. In addition to the Catalyst Parties being high profile and a matter of public interest in their own right, from close to the outset of the Moyse Action, the feud between West Face and myself on the one hand and the Catalyst Parties on the other has been a matter of significant public interest and debate. Moreover, since the public's attention was first drawn to our disputes, the Catalyst Parties have, in my view, sought to use the media as a weapon against West Face. They have also sought to ensure that the public debate would be one-sided in nature, including by repeatedly threatening to bring or bringing legal proceedings against West Face and/or its counsel for even the most trifling efforts to publicly defend ourselves or otherwise participate in the public debate that Catalyst's extraordinary conduct has given rise to.

66. The following are a relatively small sample of articles demonstrating the public interest in the Catalyst Parties and their lawsuits against West Face and others over the years, including both before and after the publication of the August 9, 2017 Article by *The Wall Street Journal* which lies at the centre of the Plaintiffs' allegations in this Whistleblower Action:

- (a) On November 19, 2014, *The Globe and Mail* published an article titled: "Bay Street analyst's hiring leads to heated court case", which publicized Catalyst's commencement of and allegations against West Face in the

Moyse Action. A copy of this article is attached to my Affidavit as Exhibit “35”.

- (b) On February 2, 2015, *The Globe and Mail* published an article titled: “Bay Street feud over analyst hire escalates in court”, which publicized Catalyst’s allegations of misconduct against West Face in the Moyse Action. A copy of this article is attached to my Affidavit as Exhibit “36”. This article is discussed further below.
- (c) On February 4, 2015, the *Financial Post* published an article titled: “Wind Mobile ownership under threat as Bay Street hiring tiff spirals into legal brawl”, which also publicized Catalyst’s allegations of misconduct against West Face in the Moyse Action. A copy of this article is attached to my Affidavit as Exhibit “37”. This article is also discussed further below.
- (d) On June 23, 2015, the *Financial Post* published an article titled: “Veritas Investment Research Corp and West Face Capital Hit with \$50 Million Lawsuit from Catalyst/Callidus”, which publicized Catalyst and Callidus’s commencement of and allegations in the Veritas Action. A copy of this article is attached to my Affidavit as Exhibit “38”.
- (e) On June 1, 2016, *The Globe and Mail* published an article titled: “Catalyst suing former owners, bankers of Wind Mobile”, which publicized Catalyst’s commencement of and allegations in the VimpelCom Action. A copy of this article is attached to my Affidavit as Exhibit “39”.

- (f) As set out above, on August 19, 2016, the *Financial Post* published an article titled: “Catalyst Capital Group Inc. to Appeal After Judge Dismisses Wind Mobile Lawsuit”, in which Catalyst stated its intention to appeal Justice Newbould’s decision, including on the basis that it exhibited “bias”. A copy of this article is attached to my Affidavit as Exhibit “17”.
- (g) On September 28, 2016, *Bloomberg News* published an article titled: “Canada’s Pugnacious Distressed-Debt King Can’t Lend”, about Glassman. A copy of this article is attached to my Affidavit as Exhibit “40”.
- (h) On February 28, 2017, *The Globe and Mail* published an article titled: “Callidus hits back at former executive in legal dispute”, which publicized Callidus’s legal proceedings with one of its own former executives, Craig Boyer (the “**Boyer Action**”). A copy of this article is attached to my Affidavit as Exhibit “41”. This article and the Boyer Action are discussed further below.
- (i) On November 8, 2017, the *Financial Post* published an article titled: "Catalyst Capital files \$450-million lawsuit accusing Anson Funds, West Face of short selling 'conspiracy'", which publicized the commencement of and allegations in this Whistleblower Action. A copy of this article is attached to my Affidavit as Exhibit “42”. This article is also discussed further below.
- (j) On November 24, 2017, the *National Post* published an article titled: “The Judge, the Sting, Black Cube and Me”, in which Christie Blatchford

described a “sting” by private investigative firm Black Cube on Justice Newbould, and how the Catalyst Parties were considering whether to introduce the transcripts from that sting as “fresh evidence” in the appeal of the Moyse Action. A copy of this article is attached to my Affidavit as Exhibit “43”.

- (k) On February 21, 2018, *The Globe and Mail* published an article titled: “Court dismisses Catalyst challenge without hearing from West Face defence”, which publicized the Court of Appeal’s dismissal of Catalyst’s appeal of Justice Newbould’s decision in the Moyse Action. A copy of this article is attached to my Affidavit as Exhibit “44”.
- (l) On March 23, 2018, journalists Lawrence Delevingne and John Tilak of Reuters published a Special Report on Catalyst and Glassman titled: “Private equity star’s picks shine, until cash-out time”. A copy of this article is attached to my Affidavit as Exhibit “45”. This article is discussed further below.
- (m) On April 11, 2018, the Southern Investigative Research Foundation (“**SIRF**”), published an article titled: “Mr. Boyer’s War”, which was also about the Boyer Action. This article and the Boyer Action are discussed further below. A copy of this article is attached to my Affidavit as Exhibit “46”.
- (n) Also on April 11, 2018, SIRF published a second article titled: “Newton Glassman’s Legacy of Ashes”. A copy of this article is attached to my Affidavit as Exhibit “47”. This article is discussed further below.

- (o) On April 17, 2018, *The Globe and Mail* published an article titled: “In Investor Letter, Catalyst Claims It Can Still Win Wind Mobile Suit”. A copy of this article is attached to my Affidavit as Exhibit “**48**”. This article is discussed further below.
- (p) On April 18, 2018, the *National Post* published an article titled: “Judge dismisses Catalyst Capital appeal of ruling in lawsuit over failed Wind Mobile acquisition”, which publicized Justice Hainey’s decision to throw out Catalyst’s suit in the VimpelCom Action. A copy of this article is attached to my Affidavit as Exhibit “**49**”.
- (q) On November 27, 2018, SIRF published an article titled: “Newton Glassman and Other People’s Money”. A copy of this article is attached to my Affidavit as Exhibit “**50**”. This article is discussed further below.
- (r) On May 2, 2019, *The Globe and Mail* published an article titled: “Appeal Court Upholds Dismissal of Catalyst Lawsuit”, which publicized the Court of Appeal’s decision to uphold Justice Hainey’s previous dismissal of the VimpelCom Action as an abuse of process in April 2018. A copy of this is attached to my Affidavit as Exhibit “**51**”.
- (s) On August 4, 2019, *The Globe and Mail* published an article titled: “Why Ira Gluskin has a Beef with Newton Glassman”, a copy of which is attached to my Affidavit as Exhibit “**52**”.

- (t) On August 17, 2019, *The Globe and Mail* published an article titled: “Newton Glassman, Broken Promises and the Inglorious Exit of Callidus”, a copy of which is attached to my Affidavit as Exhibit “53”.
- (u) On October 30, 2019, *The Globe and Mail* published an article titled: “In Newton Glassman’s Tangled Web of Lawsuits, the Truth is Even Stranger than Fiction”. In this article, the author noted that “the most compelling drama in financial circles comes from reams of documents generated by seemingly endless litigation, showing Mr. Glassman being battered by legal storms that are mostly of his own making”. A copy of this article is attached to my Affidavit as Exhibit “54”.

67. The articles listed above were published by significant news media outlets, and do not include the many press releases that Catalyst has issued over the years. Nor do they include Callidus’s many public disclosures on SEDAR.

68. Furthermore, as touched on above, the Catalyst Parties have repeatedly sued and threatened to sue West Face and even its counsel for even the most minor participation in the public discourse. The Catalyst Parties have repeatedly sought to stifle or inhibit any unwanted scrutiny concerning them, their portfolio companies and their other investments, no matter how minor.

(i) **Catalyst Threatens to Sue West Face and Its Employment Counsel for Defamation for Providing a Public Statement Denying Catalyst’s Allegations**

69. For example, on January 13, 2015, Catalyst served a motion in the Moyse Action seeking interlocutory relief against West Face, including, among other things, an

injunction restraining West Face from participating in the management and/or strategic direction of WIND, and an Order authorizing an Independent Supervising Solicitor (an “ISS”) to forensically analyze all of West Face’s computers and other electronic devices. A copy of Catalyst’s Notice of Motion dated January 13, 2015, as amended February 6, 2015, is attached to my Affidavit as Exhibit “55”. Catalyst did not serve or file any Affidavits in support of its motion at the time it filed its Notice of Motion.

70. Shortly after Catalyst filed its Notice of Motion, articles appeared in *The Globe and Mail* and *Financial Post* publicizing Catalyst's allegations against West Face. *The Globe and Mail* article, dated February 2, 2015, was titled: “Bay Street feud over analyst hire escalates in court”. The *Financial Post* article, dated February 4, 2015, was titled: “Wind Mobile ownership under threat as Bay Street hiring tiff spirals into legal brawl”. These articles repeated the entirely false allegations made by Catalyst in its Notice of Motion. Specifically, the *Financial Post* article repeated the allegations that: (a) West Face "used confidential information provided by a former employee to purchase its stake in the fledgling wireless carrier [*i.e.*, WIND]"; and (b) "West Face only began showing interest in the mobile carrier after the former Catalyst employee joined the firm". Furthermore, both the *Financial Post* and *The Globe and Mail* articles repeated Catalyst’s allegation that "West Face could not have negotiated the deal it did with [WIND] without access to Catalyst's confidential information, which was provided to it by Moyse." As determined by Justice Newbould in the Moyse Action, none of these extremely damaging allegations had any merit.

71. The same Notice of Motion alleged that West Face had obtained “information about Callidus’s borrowers ... through improper means, likely from Moyse”.

72. As alluded to above, at the time these articles were published, Catalyst had not filed any Affidavit evidence supporting the allegations in its Notice of Motion. There was no reason for the media to be aware of the Notice of Motion unless the Catalyst Parties had given it to them, or been told to look for it. Indeed, I am informed by my counsel, Andrew Carlson, and believe that the Court file in the Moyse Action was sealed in 2014 (at Catalyst's request). I am further informed by Mr. Carlson and believe that the Court file had only recently been unsealed in January 2015, and that this fact was not known to West Face or its counsel at the time, but was known to Catalyst's counsel. A copy of the Court file index, noting that the file was unsealed in January 2015, with reference to Catalyst's then-counsel Andrew Winton, is attached to my Affidavit as Exhibit "56". On May 13, 2015, Riley was asked during cross examination whether at any time after the unsealing of this Court record, Glassman, or any other spokesperson for Catalyst had spoken about this case with anyone at *The Globe and Mail* or *National Post*, specifically with either Ms. Tedesco or Mr. Kildaze (the authors of the aforementioned articles). Riley was also asked whether at any time after the unsealing of this Court record, any spokesperson for Catalyst had had any indirect communications about this case with any external press agent. As is indicated in the "Undertakings, Advisements, and Refusals" chart attached to my Affidavit as Exhibit "57", Riley declined to answer both questions.

73. West Face filed evidence both on the motion and later at the trial of the Moyse Action demonstrating that neither it nor its counsel had any involvement in encouraging this media coverage. In contrast, Catalyst *refused* to answer questions about its role in instigating the publication of these articles.

74. Moreover, and remarkably, Catalyst threatened to sue West Face and its counsel for merely denying Catalyst's unfounded allegations of misconduct. In that regard, prior to publishing the articles in question, the *Financial Post* and *The Globe and Mail* reached out to West Face's employment counsel, Jeff Mitchell of Dentons, for comment regarding Catalyst's allegations. Mr. Mitchell responded to these inquiries by stating that West Face denied and would defend Catalyst's unsubstantiated allegations, and by asserting that Catalyst's motion and allegations had been made simply to harm West Face.

75. Mr. Mitchell was referred to in *The Financial Post* article as follows:

A lawyer for West Face dismissed Catalyst's legal gambit as "without merit." Jeffrey Mitchell, a partner at Dentons in Toronto, who is representing West Face, told the *Financial Post* in an email that the "unsubstantiated allegations" against his client are "being pursued to damage West Face, and not for any proper purpose." He noted that Catalyst has filed a motion document containing "bald allegations only" with "no evidence" to back them up. "We haven't seen any evidence yet," Mr. Mitchell said, adding if Catalyst does file evidence in the form of an affidavit, "we'll fight it vigorously."

76. Mr. Mitchell was similarly quoted in *The Globe and Mail* article:

Catalyst Capital's unsubstantiated allegations about West Face are without merit and their claim is being pursued to damage West Face, and not for any proper purpose," a lawyer for West Face wrote in an email. "West Face intends to defend the claim vigorously."

77. Catalyst's litigation counsel at the time, Rocco DiPucchio of the Lax O'Sullivan law firm (who is now Catalyst's Chief Operating Officer), wrote to Mr. Mitchell on February 9, 2015 and threatened both West Face and Mr. Mitchell personally with defamation proceedings. A copy of Mr. DiPucchio's letter of February 9, 2015 is attached to my Affidavit as Exhibit "58".

78. As Mr. DiPucchio himself pointed out in his letter to Mr. Mitchell, these articles appeared in both the print and on-line versions of "national newspapers" and "were potentially read by an audience of hundreds of thousands". This assertion is, of course, true with respect to every allegation of misconduct against West Face that the Catalyst Parties have themselves promulgated to the news media both in the articles Mr. DiPucchio complained about, and in many others over the years to come.

79. Catalyst's motion was ultimately dismissed by Justice Glustein on July 7, 2015 (with costs in the amount of \$90,000), and as stated above the entirety of Catalyst's claims and allegations in the Moyse Action were dismissed by Justice Newbould in Reasons for Judgment dated August 18, 2016. Justice Newbould did, indeed, find that Catalyst's allegations about West Face were unsubstantiated and without merit. Furthermore, in his Costs Endorsement, Justice Newbould noted that Catalyst had "openly admitted" that it had never had any "direct" evidence that West Face had obtained "any confidential Catalyst information about [WIND]", and that the lawsuit was in effect an attack on West Face's honesty and reputation that was driven by Glassman simply because he "was not able to accept that he lost his chance to acquire [WIND] by being outsmarted by someone else". In other words, Mr. Mitchell's comments were entirely justified.

(ii) Catalyst Threatens to: (a) Strike West Face's Public Evidence About Callidus, (b) Seek a Sealing Order Over That Evidence, and (c) Complain to the OSC

80. In early March 2015, West Face proceeded to file its Responding Motion Record in response to Catalyst's motion in the Moyse Action referred to above, including in

response to Catalyst's allegation that West Face's research into and information about Callidus was based on confidential information obtained through improper means.

81. Upon reviewing West Face's responding evidence (including the Affidavit of Anthony Griffin sworn March 7, 2015 attached to my Affidavit as Exhibit "23"), Catalyst became agitated at the idea of West Face putting its research concerning Callidus, as well as the various public sources upon which that research was based, into the public Court record. That was so even though West Face's evidence in that regard was directly responsive to Catalyst's allegation that West Face's research and opinions concerning Callidus were based on misappropriated confidential information.

82. On March 9, 2015, Catalyst's counsel (Mr. DiPucchio) sent an email to West Face's counsel (Mr. Milne-Smith) requesting that West Face's research into Callidus not be filed with the Court until Catalyst had been given an opportunity to bring a motion to strike the allegedly "offending portions" of Mr. Griffin's Affidavit concerning Callidus and its loan portfolio. In response, and at West Face's instruction, Mr. Milne-Smith made a "with prejudice" offer to withdraw West Face's evidence concerning Callidus and settle that portion of the motion, provided that Catalyst would withdraw its unfounded allegation that West Face's information concerning Callidus had been obtained improperly. A copy of this email exchange is attached to my Affidavit as Exhibit "59".

83. On March 12, 2015, Catalyst, through its counsel, rejected this offer, took the position that Mr. Griffin's Affidavit contained "material misstatements" about Callidus, and threatened to make a complaint to the Ontario Securities Commission (the "OSC") concerning the content of West Face's Responding Motion Record. At the same time,

Catalyst refused to advise West Face what the supposed misstatements in Mr. Griffin's Affidavit and/or West Face's research into Callidus were. Remarkably, Catalyst's counsel further suggested that West Face's evidence responding to Catalyst's allegations should be *sealed*, but that Catalyst's allegations and evidence, including any reply evidence that it might file, would *not necessarily be sealed*. In reply, Mr. Milne-Smith simply advised that in West Face's view, the OSC had no jurisdiction over West Face's Court filings, but that in any event West Face would be pleased to discuss Callidus with the OSC. A copy of this correspondence between our counsel is attached to my Affidavit as Exhibit "60".

84. As it turns out, Mr. DiPucchio's threats were empty. Catalyst never moved to strike any portion of Mr. Griffin's Affidavit. Nor did Catalyst seek a sealing order in respect of Mr. Griffin's evidence. Catalyst also failed to succeed on its motion, and never proved that any of West Face's research concerning Callidus was based on misappropriated or incorrect information. Catalyst also failed to establish that any of West Face's research concerning Callidus was faulty or contained any misstatements.

(iii) Catalyst and Callidus Sue West Face and Veritas in the Veritas Action

85. As set out above, Catalyst and Callidus ultimately did, in fact, commence the Veritas Action against West Face and Veritas, based on West Face's internal research into Callidus that came to light as a result of the efforts of West Face to refute Catalyst's spurious allegations of misconduct in the Moyse Action. As also set out above, Catalyst and Callidus have not moved that proceeding forward in over **four years**.

(iv) **Callidus Launches a \$150 Million Counterclaim Against an Employee Who Sued Them for Vacation Pay**

86. I understand that in early February 2017, Callidus was sued by Craig Boyer, a former Vice President of Callidus who had departed Callidus by about August 2016 (the “**Boyer Action**”). According to Mr. Boyer’s Statement of Claim, he sought accrued employment benefits he alleged were owing to him by Callidus, including twenty-eight weeks of vacation pay and \$100,000 in damages for loss of health and other benefits.

87. Within a matter of weeks, Callidus countersued Mr. Boyer for \$150 million in damages, alleging, among other things, that Boyer had breached his fiduciary duties to Callidus and its Credit Committee by, among other things, failing to monitor properly loans within Callidus’s portfolio, failing to conduct proper due diligence concerning Callidus’s borrowers, and inflating artificially the value of certain of Callidus’s assets.

88. In his Reply and Defence to Counterclaim dated March 10, 2017 (months before, *The Wall Street Journal* published its Article), Mr. Boyer alleged as follows:

Callidus [was] subject to multiple complaints and regulatory investigations with respect to its material non-disclosure to fund members and the public as to the status, and transfer, of its various investments. The Statement of Defence and Counterclaim was provided by Callidus, directly or indirectly, to the press, in order to deflect these complaints and investigations.

89. A copy of the pleadings in the Boyer Action are attached to my Affidavit as Exhibit “61”.

90. These remarkable proceedings have also made their way into the public eye. A copy of an article by *The Globe and Mail* titled: “Callidus hits back at former executive in legal dispute”, dated February 28, 2017, is attached to my Affidavit as Exhibit “41”.

91. A copy of an article by the Defendant Bruce Livesey (“**Livesey**”), an investigative journalist, and Roddy Boyd, of the Southern Investigative Research Foundation, titled: “Mr. Boyer’s War”, dated April 11, 2018, is attached to my Affidavit as Exhibit “46”.

(v) Catalyst and Callidus Threaten to Sue West Face and Me for Asking Open Questions of Their Portfolio Companies

92. Thereafter, the efforts of the Catalyst Parties to silence West Face through threats of litigation continued.

93. On May 29, 2017, I sent an email to Keith Andrews, one of the officers of Gateway Casinos (“**Gateway**”), one of Catalyst’s portfolio companies. I asked Mr. Andrews several simple questions based on the company’s recent public disclosures. I sent the email in my own name, from my West Face email account. I did not copy anyone else on my communication.

94. Shortly thereafter, on June 13, 2017, the Catalyst Parties’ counsel, Mr. DiPucchio, sent a letter to my counsel, Mr. Milne-Smith, and asserted that my questions were the beginning of yet another “attack” on Catalyst and Callidus and that his clients would “not hesitate to initiate further action against them”. A copy of Mr. DiPucchio’s letter of June 13, 2017, which enclosed my email to Mr. Andrews, is attached to my Affidavit as Exhibit “62”. A copy of Mr. Milne-Smith’s responding letter of June 14, 2017 is attached to my Affidavit as Exhibits “63”.

(vi) Catalyst Brought an Injunction to Prevent the Globe and Mail From Publishing a Story About It

95. More recently, on March 29, 2018, Catalyst commenced an action against *The Globe and Mail* and two of its journalists, Jeffrey Jones and Derek DeCloet, seeking an “interim, interlocutory and permanent injunction” restraining them from publishing the contents of a letter that Catalyst had circulated to investors on or about March 19, 2018. A copy of Catalyst’s Notice of Action is attached to my Affidavit as Exhibit “64”. A copy of Catalyst’s March 19, 2018 letter to investors is attached as Exhibit “65”.

96. In its letter to investors, Catalyst had asserted that despite its ongoing legal setbacks, its claims against West Face in respect of WIND were meritorious and would ultimately prevail. Catalyst made this assertion in the face of having its appeal in the Moyse Action dismissed by the Court of Appeal, from the bench, the month before (in February 2018), and while West Face’s motion to dismiss Catalyst’s VimpelCom Action as an abuse of process was under reserve by Justice Hainey. This claim was extremely prejudicial to West Face, as West Face and Catalyst seek to raise capital from similar investor pools, including current investors in existing West Face funds, potential investors in future West Face funds, and advisers to those investors.

97. Catalyst’s interim motion for injunctive relief against *The Globe and Mail* was dismissed immediately. In a handwritten Endorsement dated the same day as Catalyst’s Notice of Action (March 29, 2018), Justice Conway found that Catalyst could not meet the test for an urgent interim injunction. Among other reasons, she ruled that the balance of convenience favoured the defendants, because the “media serves a public interest in reporting on activities in the business and investment world, including those of Catalyst”.

A copy of Justice Conway's Endorsement is attached to my Affidavit as Exhibit "66". A copy of her Order is attached to my Affidavit as Exhibit "67".

98. A copy of the article ultimately published by *The Globe and Mail* on April 17, 2018, titled: "In investor letter, Catalyst claims it can still win Wind Mobile suit", is attached to my Affidavit as Exhibit "48".

(vii) The Catalyst Parties Threaten to Sue Roddy Boyd and Bruce Livesey Over an Article About West Face's Counterclaim

99. As stated above, this action (the Whistleblower Action) was commenced by Catalyst and Callidus on November 7, 2017. West Face and I delivered our Statement of Defence and Counterclaim on December 29, 2017. Our pleading also gave rise to significant media coverage, which Catalyst and Callidus have sought to discourage.

100. For example, on April 11, 2018, journalists Roddy Boyd of the Southern Investigative Reporting Foundation ("**SIRF**") and Livesey published an article titled: "Newton Glassman's Legacy of Ashes". A copy of this article is attached to my Affidavit as Exhibit "47".

101. Among other things, this article discussed the "sting" on Justice Newbould that had previously been reported about by Christie Blatchford in her article titled: "The Judge, the Sting, Black Cube and Me" dated November 24, 2017 (a copy of which is attached to my Affidavit as Exhibit "43"), West Face's Counterclaim against Catalyst and others over that matter, and Catalyst and Glassman more generally.

102. All of these topics had, of course, been written about by members of the media and attracted significant public interest.

103. According to this article, SIRF “submitted detailed questions via email to Callidus and Catalyst spokesman Daniel Gagnier, but he didn’t reply”.

104. Instead, as reported in the article, David Moore, counsel to the Catalyst Parties, responded with threats in a letter to Mr. Boyd. His letter made a host of allegations about Livesey’s “agenda”, claiming that the questions were “riddled with inaccuracies, misunderstandings and purposeful fabrications”. He then threatened legal action, as follows:

Given the significant issues identified, we anticipate that you and SIRF will have concerns in publishing a story in line with Mr. Livesey’s agenda (and the agenda of his sponsors, past or present) against my clients. Should the story nevertheless progress to publication, my clients intend to carefully review the contents of same, and wish to notify you that they will not hesitate to pursue all appropriate legal remedies available to them.

105. A copy of the article is attached to my Affidavit as Exhibit “**47**”. SIRF’s questions to the Catalyst Parties, emails to Dan Gagnier, and Mr. Moore’s letter dated March 21, 2018 are attached to my Affidavit as Exhibits “**68 to 70**”.

106. Later, on November 27, 2018, Livesey and Mr. Boyd published an article titled: “Newton Glassman and Other People’s Money”, which discussed a number of topics, including Catalyst’s and Callidus’s performance issues and their various lawsuits, including this one.

107. Again, the article notes that SIRF posed questions via email to Catalyst’s spokesperson Dan Gagnier. Instead of responding to the substance of the questions, Mr. Gagnier replied with allegations and the threat of another lawsuit. As quoted in the article:

The Southern Investigative Reporting Foundation posed questions via email to Catalyst spokesman Dan Gagnier.

His reply in full: "Catalyst declines to comment. Please be aware that virtually all of your questions and statements are factually inaccurate or fanciful creations that are readily reconciled by actually doing some research of the public record and/or court filings. Instead of parroting a pack of lies fed to you to advance the agenda of others, it would behoove you and SIRF to adhere to even the most basic of journalistic principles, integrity and decency. Failure to do so exposes you and SIRF to legal liability."

108. A copy of this article is attached to my Affidavit as Exhibit "50".

109. The Catalyst Parties did, in fact, later amend their Claim in this proceeding to allege in paragraph 177 of their Claim that both the "Newton Glassman's Legacy of Ashes" and "Newton Glassman and Other People's Money" articles published by SIRF were part of Livesey's alleged "continued efforts to have disparaging articles published about" the Catalyst Parties.

D. The Catalyst Parties Have Repeatedly Sought to Engage the Media in the Public Debate Surrounding Them

110. While repeatedly threatening legal proceedings and actually bringing legal proceedings against West Face and others for participating in public discourse pertaining to conduct engaged in by the Catalyst Parties, the Catalyst Parties themselves have repeatedly publicized or sought to publicize information or positions concerning these debates (in addition to the examples set out above).

(i) **The *Financial Post* Was Made Aware of the Whistleblower Action Before West Face Was**

111. For example, the Claim in this Whistleblower Action was first issued on Tuesday, November 7, 2017, by the Lax O'Sullivan law firm, and specifically by Rocco DiPucchio as lead counsel.

112. Despite the Claim being issued on Tuesday, November 7, 2017, it was not served on West Face or me that day. Nor was a copy provided to our counsel at the Davies firm, even though they had been in regular contact with counsel to Catalyst, including Mr. DiPucchio, for several years. Rather, West Face first learned of the Whistleblower Action at approximately 9:22 a.m. on Wednesday, November 8, when we were contacted by Barbara Shecter, a business journalist at the *Financial Post*. Ms. Shecter emailed West Face's investor services address asking for comment on this new Claim. Mr. Panet responded to Ms. Shecter's email at 9:34 a.m., and advised that her email was the first West Face had heard about the Claim. He told her that West Face would be interested in commenting once we had had a chance to review it.

113. Nevertheless, at 10:02 a.m., **before** West Face had been served or obtained a copy of the Claim, the *Financial Post* published an article about Catalyst's latest Claim, titled: "Catalyst Capital files \$450-million lawsuit accusing Anson Funds, West Face of short selling 'conspiracy'". The subtitle said: "Lawsuit claims 'Wolfpack Conspirators' worked with group of borrowers who had defaulted on loans to Callidus". The article went on to describe and repeat baseless but damaging allegations made against West Face by Catalyst and Callidus in the Whistleblower Action.

114. West Face ultimately was able to provide a statement to the *Financial Post* about the Claim, but only **after** the *Financial Post* had already published the first version of its story. The later version, with West Face's comment included, is attached to my Affidavit as Exhibit "**42**". A copy of Mr. Panet's email correspondence with Ms. Shecter reflecting the above-noted facts is attached as Exhibit "**71**".

115. West Face first obtained a copy of the Claim at approximately 12:45 p.m. on November 8, 2017, after sending an agent to the Court Office to obtain a copy of the Claim from the court file. I am informed by Mr. Milne-Smith and believe that the Plaintiffs' counsel at Lax O'Sullivan provided Mr. Milne-Smith with a copy of the issued Claim a few hours later, in response to an explicit request for it by Mr. Milne-Smith.

116. West Face's press release in response to the Whistleblower Action is attached as Exhibit "**72**".

117. Based on these events, I have no doubt that Ms. Schecter was advised of the Claim by the Catalyst Parties and/or their counsel, and that this occurred before the Catalyst Parties had served West Face or provided a copy of the Claim to our counsel. I believe the Catalyst Parties engaged in this course of conduct deliberately and for the purpose of ensuring that, at least in the short term, the "public debate" surrounding their latest accusations against West Face would be one-sided in nature.

(ii) The Catalyst Parties Sought to Induce Christie Blatchford Into Publishing a Negative Article About Justice Newbould

118. The Catalyst Parties, in a further and widely covered effort to sway the ongoing public debate in their favour, attempted to induce Christie Blatchford of the *National Post* to publish an article impugning the conduct and integrity of Justice Newbould.

119. In that regard, West Face and I rely on this motion on the Affidavit of Christie Blatchford sworn May 21, 2019, and the Affidavit of Philip Panet sworn May 21, 2019. Those Affidavits are filed separately in support of the relief sought by West Face and me on this motion.

(iii) Catalyst Publishes an “Open Letter” in *The New York Times* and *USA Today*

120. After journalists Lawrence Delevingne and John Tilak of Reuters published a Special Report on Catalyst and Glassman titled: “Private equity star’s picks shine, until cash-out time”, on March 23, 2018, Catalyst took out full page advertisements, including in both *The New York Times* and *USA Today*, in which they published an “open letter” to Reuters, alleging that Reuters had failed to respect its own principles in publishing the story, and otherwise arguing that Catalyst had produced superior results and value for its investors.

121. A copy of the Reuter’s article is attached to my Affidavit as Exhibit “45”. A copy of a photograph of Catalyst’s advertisement / open letter as published in *The New York Times* is attached to my Affidavit as Exhibit “73”. A copy of a photograph of Catalyst’s advertisement / open letter as published in *USA Today* is attached to my Affidavit as Exhibit “74”.

122. While Catalyst has not, to my knowledge, sued Reuters over its publication of the article of March 23, 2018, Catalyst and Callidus allege in paragraph 177 of the Claim that the Defendant Livesey is somehow responsible for Reuters' publication of that article.

E. The Whistleblower Action Has No Merit Against Me and West Face

(i) Overview

123. In their Fresh as Amended Statement of Claim dated July 19, 2019 (previously defined as the "**Claim**") in this Whistleblower Action, the Plaintiffs allege that West Face and I participated in a conspiracy to harm them (the "**Alleged Whistleblower Conspiracy**"). I deny that allegation categorically. We did no such thing.

124. In the following sections of this Affidavit, I provide evidence refuting the specific allegations in the Claim concerning me and West Face and our supposed involvement in the Alleged Whistleblower Conspiracy. By way of summary:

- (a) West Face and I did not participate in the Alleged Whistleblower Conspiracy and did not otherwise conspire together or agree with any of the other Defendants to the Whistleblower Action to cause harm to Catalyst and/or Callidus in any way;
- (b) West Face and I were not sources for the article titled: "Canadian Private-Equity Giant Accused by Whistleblowers of Fraud" published by *The Wall Street Journal* on August 9, 2017 (previously defined as the "**Article**");

- (c) West Face and I did not participate in the alleged “wave of short attacks” on Callidus’s shares that allegedly were made in connection with the publication of the Article on August 9, 2017, and never induced or encouraged any of the other Defendants to participate in the alleged “wave of short attacks”. In fact, West Face did not hold a short position in Callidus on August 9, 2017 and had not been short Callidus shares for more than **two years** preceding the publication of the Article on August 9, 2017;
- (d) West Face and I have never funded any of the Guarantors in their respective defences to litigation brought against them by Callidus; and
- (e) West Face and I never retained Bruce Livesey, or any other journalist, to write a false or disparaging article about Catalyst, Callidus, or their principals.

125. To be clear, I explicitly deny the allegations in paragraphs 87, 90, and throughout the Claim that by December 2016, or at any other time, West Face and/or I entered into the Alleged Whistleblower Conspiracy to cause harm to Catalyst, Callidus, and/or their principals. We did no such thing.

F. West Face and I Played No Role in the Publication of the Article by the Wall Street Journal

126. Contrary to the specific allegation in paragraph 184 of the Claim, West Face and I did not cause or participate in the publication of the Article.

127. West Face and I were not sources for the Article published by the *Wall Street Journal* and played no role in its publication whatsoever, including no role in the Article's content or the timing of its publication near the end of the trading day on August 9, 2017.

128. Contrary to the specific allegation in paragraphs 145 and 148 of the Claim, West Face and I did not contact Copeland with the intention or objective of having him write a story about Catalyst and/or Callidus, nor did West Face I "direct" Copeland to interview McFarlane or anyone else for that matter. More generally, neither I nor West Face have ever had any control or direction over what stories journalists working for *The Wall Street Journal* or any other publication choose to write about or when, nor how they go about investigating their stories. Neither I nor any of the West Face Partners have ever spoken to Copeland.

129. I was contacted by Jacquie McNish, also of *The Wall Street Journal*, sometime earlier in 2017, and she asked whether I could corroborate the existence of investigations by the OSC and Toronto Police into Catalyst and/or Callidus, and I told her that I could not. Again, I repeat what I set out above – neither I nor anyone at West Face was a source for the Article, and played no role in its publication.

130. Contrary to the specific allegations in paragraph 156 of the Claim: (i) West Face and I had no communications with Copeland or any other Defendant about the "timing of the story"; and (ii) we did not encourage Copeland to publish the Article "near the end of the trading day on August 9". On the contrary, West Face and I played no role in and had no advance knowledge of, the timing of the publication of the Article.

131. As I understand the Plaintiffs' Claim, the timing of the Article's publication near the end of the trading day on August 9 is alleged to have been a particularly good opportunity for short sellers in Callidus to profit from the alleged resulting drop in Callidus's share price. As described herein, that theory has no application whatsoever to West Face. Neither West Face nor I were short Callidus shares on August 9, 2017, or at any time since June 2015, more than two years before the publication of the Article on August 9, 2017.

132. More generally, I have no reason to believe that the Article written by Copeland and published by *The Wall Street Journal* is not accurate, or that anyone other than its authors and *The Wall Street Journal* are responsible for its publication.

G. West Face and I Did Not Participate in a Short Attack Against Callidus

133. As I have noted repeatedly, West Face and I did not participate in the alleged "short attack" against Callidus in August 2017, either directly or indirectly through the Defendant Bruce Langstaff. We had no desire to take a short position in Callidus's shares as a result of the Veritas Action, even though we continued to believe throughout 2017 that Callidus's shares were overvalued and that shorting the stock would have been a good investment.

134. Contrary to the specific allegation in paragraph 65 of the Claim, West Face and I did not "in or about mid to late 2016", or at any time leading up to the publication of the Article in August 2017, seek to "induce" or otherwise encourage any of the Guarantors or any other Defendant to take a short position in Callidus or to otherwise participate in the

alleged “wave of short attacks against Callidus”. In fact, West Face and I had no foreknowledge of the alleged “wave of short attacks against Callidus”.

135. Contrary to the specific allegation in paragraphs 78 and 80 of the Claim, West Face and I did not encourage or induce the Anson Defendants to “support [the alleged] planned short attack” or otherwise participate in the Alleged Whistleblower Conspiracy in any way. Nor did West Face or I disclose to Kassam, Puri and/or Spears, or Anson, the “identity of the Guarantors” or the alleged “coordination between the Guarantors”. Moreover, contrary to the specific allegation in paragraph 79 of the Claim. I have never met or even spoken with Kassam, and I have no knowledge of his alleged “animus” against Glassman. I have also never had any discussions with Puri, Spears, or anyone else at Anson.

136. To the best of my knowledge, information and belief, including based on direct one-on-one communications with each of my Partners, West Face had no communications with any of the Anson Defendants about Catalyst, Callidus, and/or their principals prior to the commencement of the Whistleblower Action.

137. Contrary to the specific allegation in paragraph 81 of the Claim, West Face and I did not encourage the Defendant Nathan Anderson and/or his company Clarityspring to participate in the Alleged Whistleblower Conspiracy nor in the “upcoming wave of short attacks against Callidus”.

138. Contrary to the specific allegations in paragraphs 90, 158 and 159 of the Claim, West Face and I did not take short positions in Callidus “through [the Defendant Bruce] Langstaff”, either directly or indirectly, and Langstaff did not otherwise “assist” West Face

or me to take short positions in Callidus shares. As set out above, West Face did not participate in a short attack against Callidus as alleged, and had not been short Callidus shares at any time during the two years preceding the publication of the Article on August 9, 2017. As I will discuss further below, Bruce Langstaff and I are friends, and would on occasion discuss public information about Callidus. However, as I have already explained, West Face and I had no interest in shorting Callidus after having been sued in the Veritas Action because of the one and only time that we did, in fact, short Callidus.

139. Contrary to the specific allegation in paragraph 88 of the Claim, the Alleged Whistleblower Conspiracy did not “present an opportunity” to West Face and/or me of any sort, whether to (i) “continue [our] short attacks against Callidus”, (ii) “make risk-free profits”, and/or (iii) damage Catalyst and/or Callidus.

140. It is hard for me to believe that Catalyst and Callidus had a *bona fide*, good faith basis to make the allegations that they did against both West Face and me in the Whistleblower Action. Rather, their allegations of misconduct against us appear to have been invented from whole cloth, and asserted as part of a continuing and relentless vendetta that Glassman and others at Catalyst and Callidus (including Riley and De Alba) have waged for years in the period following our acquisition of WIND in September 2014. Catalyst and Callidus have sued us repeatedly, and in doing so have made false allegation after false allegation. They seem determined to seek vengeance against us by shrouding the business of West Face in controversy and scandal, and will not stop until they are finally forced by a Court to do so.

H. West Face and I Did Not Fund the Guarantors' Litigation Against Callidus

141. Contrary to the specific allegation in paragraphs 44, 57 and 89 of the Claim, West Face and I did not fund, either directly or indirectly, any of the Guarantors' litigation proceedings against Callidus.

142. Moreover, contrary to the allegations in paragraphs 48 and 104(a) of the Claim, and as alleged in paragraph 18 of our Defence and Counterclaim, West Face and I did not, either directly or through our external lawyers, introduce any of the Guarantor Defendants to a U.S. lawyer for the purpose of filing a RICO complaint against Catalyst and/or Callidus.

143. Rather, I am informed by my litigation counsel at Davies, Matthew Milne-Smith, and believe that in or about March 2016, the Defendant Darryl Levitt contacted Mr. Milne-Smith about potentially retaining him to pursue a claim against Callidus. I am further informed by Mr. Milne-Smith and believe that Mr. Levitt ultimately chose to retain different counsel. I am further informed by Mr. Milne-Smith and believe that in or about November 2016, Mr. Levitt asked Mr. Milne-Smith to refer him to a U.S. lawyer.

144. Neither West Face nor I had any involvement in any of these interactions. Indeed, we were not aware of them at the time they occurred.

I. West Face and I Did Not Retain Bruce Livesey or Any Journalist to Write an Article About the Catalyst Parties

145. Contrary to the specific allegations in paragraphs 63 and 133 of the Claim, West Face and I did not, "in or about late 2015" or at any other time, "retain" or otherwise "engage" the Defendant Bruce Livesey, an investigative journalist, to write a "false and

disparaging” or “negative” article regarding Catalyst, Callidus, and/or their principals. West Face and I never retained Livesey or any other journalist at any time to write any type of article about any of the Catalyst Parties.

146. Contrary to the specific allegations in paragraphs 86 and 133 of the Claim, West Face and I never provided Livesey with any “financial incentives” or “compensate[ion]” of any kind.

147. Contrary to the specific allegation in paragraph 135 of the Claim, West Face and I did not “work with Livesey” to contact different news outlets to publish Livesey’s story. Livesey never provided a draft of any of his stories to us, and we made no effort to assist him in publishing any of them in any news outlet.

148. I first met Livesey on September 6, 2016, at West Face’s office. I am informed by Panet and believe that that was also the first day he met Livesey. I have been informed by each of the Partners at West Face (Peter Fraser, Thomas Dea, and Anthony Griffin) and believe that none of them has ever met or spoken with Livesey.

149. Livesey and I arranged this meeting after he had called me to introduce himself and advise me that he was an investigative journalist who was working on a story about me and West Face, including about our ongoing legal proceedings with Catalyst and Callidus.

150. At the time of my meeting with Livesey on September 6, 2016, West Face had already succeeded in having all of Catalyst’s claims and allegations in the Moyse Action dismissed by Justice Newbould. As set out above, Justice Newbould had released his

Reasons for Judgment on August 18, 2016. The very next day (August 19, 2016) Catalyst advised the national news media of its intent to appeal Justice Newbould's Decision, including on the basis that Justice Newbould's Decision exhibited bias.

151. I therefore did not view Livesey's interest in a possible story about me, West Face, and/or the Catalyst Parties to be out of the ordinary or nefarious. As set out above, I have been the subject of multiple features in the business press before and articles of that nature are an almost inevitable consequence of participating in the public markets. Also, as set out above, the Moyse Action had been repeatedly reported on by the national media.

152. Nevertheless, I was hesitant to meet with Livesey to discuss West Face and its legal proceedings with Catalyst for at least two reasons. First, I viewed the Catalyst Parties as being extremely aggressive and litigious (they had already sued West Face three times by that point) and I believed that the Catalyst Parties would likely sue West Face again if Livesey attributed to me anything that was not completely based in objective, verifiable fact, or fair comment or opinion about such facts. Second, I had never met Livesey before and had no reason to trust or rely upon him.

153. I therefore only agreed to meet with Livesey on the basis that if he wrote a story about me and/or West Face, no quote or statement would be attributed to me without my permission. I did not want any quote or statement to be attributed to me unless I believed it to be completely true and accurate. I also wanted to make sure that nothing I said to Livesey during our discussions would be misunderstood, mischaracterized or taken out of context.

154. At my meeting with Livesey on September 6, we discussed my background and experience in the financial industry, including my experiences investing in Stelco and Maple Leaf. We also discussed West Face's investment in WIND and Catalyst's lawsuits against West Face in the Moyse Action and Veritas Action. To the extent that we discussed the Catalyst Parties, I discussed only public information, including for example Justice Newbould's public findings in the Moyse Action.

155. Livesey sent me an email on the evening of September 6, 2016 saying: "Terrific meeting you today" and asking me for a list of my contacts in the industry who could give him more background about me. I provided him such a list by email. Copies of my emails with Livesey are attached as Exhibits "75" and "76". Later, on September 13, 2016, at Livesey's request, I sent him a summary of West Face's major investments over the years. A copy of my email to this effect is attached as Exhibit "77";

156. Livesey, Panet and/or I had further calls and meetings over the ensuing weeks as Livesey sought more information for his story. However, throughout this period, and as set out above:

- (a) West Face and I were not part of any Alleged Whistleblower Conspiracy to harm the Catalyst Parties;
- (b) West Face and I were not "short" Callidus stock, nor had we been short for over a year at that point, and were unaware of any "upcoming wave of short attacks"; and

- (c) we at no time retained or engaged Livesey to write anything, let alone anything we believed or understood to be false about the Catalyst Parties.

157. Contrary to the specific allegation in paragraph 64 of the Claim, West Face and I did not “direct” Livesey’s investigation in any way. Neither I nor West Face had any control or direction over the story Livesey was writing. As far as I knew, I was simply a subject of a potential story, who had been contacted by the author consistent with responsible journalism practices.

158. Ultimately, Livesey asked me for a quote to summarize West Face’s view of Catalyst’s lawsuit against West Face in the Moyse Action and whether that dispute could have been avoided. After some back and forth between Livesey, myself, and Panet, we agreed that Livesey could quote me as follows:

We’ve acted ethically and legally at all times, and the judge confirmed that in his decision [last summer]. And in contrast, he made serious findings of credibility against the principals of Catalyst. Glassman still can’t accept Catalyst’s failure to acquire WIND Mobile in 2014. Instead, he has cast aspersions on West Face, used a young former employee as cannon fodder in this litigation and, incredibly, publicly accused the trial judge of bias after losing the case. The judge dismissed Catalyst’s first case in its entirety. The same result will ultimately happen to the rest of the Catalyst litigation.

159. Attached to my Affidavit as Exhibit “78” is the email dated October 18, 2016 in which this quotation appears.

160. As one can see, the quotation I provided to Livesey was not about whistleblower complaints against the Catalyst Parties or about them being subject to fraud, police or regulatory investigations. Rather, I was focussed on defending West Face and ensuring

that any public story about West Face and the Catalyst Parties would present my side of the debate – namely, that West Face had been vindicated publicly by Justice Newbould in his recent Reasons for Judgment, whereas Catalyst and its principals (who had made the allegations against West Face) had been held to be lacking credibility.

161. In any event, the Plaintiffs admit in their pleading in the Whistleblower Action that Livesey never, in fact, published any kind of story about them prior to the publication of the Article by *The Wall Street Journal* on August 9, 2017. I am not aware of whether Livesey ever published the sole quotation I provided him.

162. Throughout my communications with him, Livesey appeared to be a thoughtful and diligent investigator. He followed up with both me and Panet numerous times for the purposes of “fact-checking” his story and/or otherwise ensuring that he was reaching reasonable conclusions from the publicly-available evidence. We were later contacted by a separate professional “fact checker” who was working for *Canadian Business* magazine, who we understand was “double fact-checking” every element of Livesey’s story. Emails reflecting this fact are attached to my Affidavit as Exhibit “79”.

163. Moreover, to the best of my knowledge, information, and belief, Livesey was conducting his investigation in good faith. Livesey advised us that he was going to give the Catalyst Parties the opportunity to provide their own input into whatever story he ultimately determined to publish. I had and have no reason to believe that he did not do so.

164. In fact, as alluded to above, I note that in the context of publishing the articles titled: “Newton Glassman’s Legacy of Ashes” and “Newton Glassman and Other People’s

Money” referred to above, Livesey and his co-author of those articles, Roddy Boyd, did submit questions to the Catalyst Parties.

165. Contrary to the specific allegation in paragraph 86 of the Claim, I did not “ke[ep] Livesey informed” of the Alleged Whistleblower Conspiracy as time passed. West Face and I had no knowledge of any Alleged Whistleblower Conspiracy and, given the litigious nature of the Catalyst Parties, we had no interest in picking another fight with them.

J. Communications with Other Defendants

166. My communications with the other Defendants were relatively limited (and were non-existent as regards some Defendants, such as the Anson Defendants) and in any event were entirely proper in nature. West Face and I have never communicated with any of them for an improper purpose, and had no communications with any of them in furtherance of the Alleged Whistleblower Conspiracy or any other conspiracy to harm the Catalyst Parties.

167. Once one understands that West Face and I were not part of the Alleged Whistleblower Conspiracy, did not participate in the alleged “wave of short attacks”, had no input into or responsibility over the Article published by the *The Wall Street Journal*, and never retained or engaged Livesey or any other journalist to write a negative article about the Catalyst Parties, all that essentially remains of the Plaintiffs’ allegations is that West Face and I and our internal and external counsel (such as Mr. Panet at West Face and Mr. Milne-Smith at Davies) occasionally communicated with other Defendants in actions commenced by the Catalyst Parties.

168. In that regard, as stated in paragraphs 14 and 15 of our Defence and Counterclaim, from time to time, West Face and/or I communicated with other parties that have also been sued by the Catalyst Parties for the purpose of learning about: (a) the status of ongoing litigation commenced by Catalyst and Callidus; and (b) the businesses of Catalyst and Callidus, which were the subject matter of the litigation between us. There was nothing remotely untoward or improper about any of this.

169. As set out above, West Face had a short position in Callidus during the period from October 2014 to April 2015. The Plaintiffs then sued West Face (and Veritas) for defamation in June 2015 in the Veritas Action. The Veritas Action put Callidus and Catalyst, their dealings with each other, their dealings with Callidus's borrowers, and their performance, squarely in issue.

170. The Veritas Action remains pending. We have therefore continued to attempt to gather information about Catalyst and Callidus for the completely proper purpose of defending ourselves in that action. Indeed, the principals of Callidus's borrowers, including for example the Defendant McFarlane, are potentially relevant witnesses to the Veritas Action, and we may well intend to call them to testify at trial. In the circumstances, the vast majority of these communications are common interest and litigation privileged. However, we are willing to make a limited waiver of that privilege over communications with other Defendants to this action for the two years preceding publication of *The Wall Street Journal* Article on August 9, 2017, provided that other Defendants also consent to any waiver of their corresponding privilege, and that this does not constitute a broader waiver of litigation privilege in general. I and West Face want to ensure that we proceed fairly and on a level playing field.

K. The Whistleblower Complaints

171. Another core aspect of the Whistleblower Action is found in the Catalyst Parties' allegations in paragraphs 77, 90, 98, 99, 111, 115, 116 and throughout the Claim that the whistleblower complaints that were filed with the OSC and SEC about Callidus (defined in the Claim as the "**Complaints**") were "false", not *bona fide*, or otherwise only made in furtherance of the Alleged Whistleblower Conspiracy.

172. West Face and I have no reason to believe that any of the Complaints referred to in the Claim are false or otherwise not *bona fide* complaints by the parties who made them. West Face and I also have no reason to believe that they were made as part of any Alleged Whistleblower Conspiracy.

173. Contrary to the specific allegations in paragraphs 77, 90, 98, West Face and I did not "encourage", "assist" or agree with any of the co-Defendants to file false or otherwise improper Complaints. Furthermore, West Face and I did not "review, comment on or approve" any of the Complaints prior to their submission.

174. I understand that it is the Catalyst Parties' onus on this motion to prove that its proceeding has "substantial merit". In my view, such substantial merit could only be shown if the Catalyst Parties prove on this motion that:

- (a) the Complaints were, in fact, false or otherwise not *bona fide*;
- (b) the Catalyst Parties were not engaged in fraud or any of the other conduct alleged in the Complaints; and

- (c) West Face and/or I somehow participated in the preparation or filing of the Complaints.

175. Based on the precipitous decline in Callidus's share price in the more than two years since the whistleblower Complaints allegedly were made, the significant provisions and write-offs Callidus has had to take against its loan portfolio, and Callidus's own valuations disclosed in the course of its recent going-private transaction indicating that the company was virtually worthless, I have no reason to believe that any of the Complaints about Callidus were false. Indeed, it would appear that Callidus had not complied with its statutory disclosure obligations in the period before and after the *Wall Street Journal* article was published. For example, the OSC's website lists four deficiencies for Callidus between May 3, 2017 and August 13, 2018 on its "Refilings and Errors List". These include a revision to comply with IFRS accounting standards, and three successive revisions in relation to unrecognized yield enhancements, culminating in Callidus being compelled to "discontinue[] disclosure of unrecognized yield enhancements in light of comments expressed by the OSC." Unrecognized yield enhancements reflected Callidus disclosing higher values for portfolio companies based on its own subjective assessment of the business. A copy of the OSC's "Refilings and Errors List" in respect of Callidus is attached to my Affidavit as Exhibit "80".

176. In fact, based on the Catalyst Parties' public disclosures, including Callidus's Management Discussion and Analysis that was released as part of its audited 2018 financial statements, I believe that a key document relevant to these issues is the "Strategic Review & Remediation Plan" submitted by Callidus's former CEO, Patrick Dalton, to the Board of Directors of Callidus. Davies has specifically requested production

of this document from Callidus in the context of the ongoing litigation. A copy of Mr. Milne-Smith's letter dated April 4, 2019 in this regard is attached to my Affidavit as Exhibit "81". That document has never been provided by the Catalyst Parties to West Face or its counsel.

L. The Harm to the Catalyst Parties

177. As set out above, I understand that one issue on this motion is whether the harm suffered by the Plaintiffs as a result of the expression in the public interest made by the Defendants is "sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression".

178. In respect of that issue, I attach the Affidavit of David Sutin sworn September 12, 2019, in which Mr. Sutin, the Chair of Callidus's Special Committee of independent directors, gave evidence in the context of an application by Callidus for the approval of a plan of arrangement that has resulted in Callidus being taken private. A copy of Mr. Sutin's Affidavit (with Exhibits) is attached to my Affidavit as Exhibit "82". Mr. Sutin's evidence, as well as the draft Management Information Circular that he attached to it, makes clear that Callidus had been the author of its own misfortune. Mr. Sutin's Affidavit discloses that Callidus failed as a public company because of a host of internal factors, and not because of anything done by West Face, me, or any of the other Defendants to the Catalyst Parties' serial litigation. According to Callidus's Management Information Circular, Callidus's Special Committee's recommendation to the minority shareholders to support Callidus's going-private transaction at \$0.75 per share was based on consultation with its financial and legal advisors and careful consideration of, among other things, the valuation of Callidus prepared by Blair Franklin Capital Partners Inc. and the opinion

prepared by MPA Morrison Park Advisors Inc., to the effect that the consideration was fair, from a financial point of view, to the minority shareholders of Callidus.

179. A copy of the final Management Information Circular of Callidus dated October 4, 2019 (without Appendices) is attached to my Affidavit as Exhibit “83”. A copy of the original version of the valuation of Blair Franklin that Callidus filed on SEDAR on September 24, 2019 as part of the September 24, 2019 version of the Circular is attached to my Affidavit as Exhibit “84”. A copy of a revised version of the valuation of Blair Franklin is attached to my Affidavit as Exhibit “85”. A copy of the fairness opinion of MPA Morrison Park Advisors is attached to my Affidavit as Exhibit “86”.

180. I have no doubt that the claims asserted by Catalyst and Callidus in this proceeding against West Face and me are completely meritless. I also have no doubt that Catalyst and Callidus had no good faith basis to make these claims, or to assert misconduct against West Face or me in this proceeding. These claims appear to have been made as part of an ongoing, relentless vendetta to punish West Face and me for our successful acquisition of WIND and profitable short sale of Callidus shares, both of which occurred in the Fall of 2014, and to intimidate and silence us from criticizing or even commenting publicly about Catalyst, Callidus and their principals, and to otherwise shift public perception *vis-à-vis* the Catalyst Parties.

181. It is in the obvious commercial interests of the Catalyst Parties to continue to shroud West Face and me in controversy and in scandal, in their efforts to dissuade investors from dealing with or investing with us. They seek to keep the Sword of Damocles hanging over our heads as long as they possibly can. Their strategy has

caused very real and continuing harm to West Face and to me. I implore this Court to put an immediate end to the meritless claims that Catalyst has asserted against West Face and me and to do so at the earliest possible date.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 8th day of November, 2019



Commissioner for Taking Affidavits

(or as may be)

Maura O'Sullivan
(LSO# 77098R)



GREGORY BOLAND

THE CATALYST CAPITAL GROUP INC. et al. Plaintiffs	-and-	WEST FACE CAPITAL INC. et al. Defendants	-and-	CANACCORD GENUITY CORP. Third Party
WEST FACE CAPITAL INC. et al. Plaintiffs by Counterclaim	-and-	THE CATALYST CAPITAL GROUP INC. et al. Defendants to the Counterclaim		

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF GREGORY BOLAND
(sworn November 8, 2019)**

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

This is Exhibit "1" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

MAURA O'SULLIVAN
(LSO# 77098R)

RULE/LA RÈGLE 26.02 (_____)
 THE ORDER OF Justice Hainey
L'ORDONNANCE DU
DATED / FAIT LE July 18, 2019

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

C. Irwin
REGISTRAR / CLERK
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
ONTARIO
SUPERIOR COURT OF JUSTICE

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form **18B** prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date November 7, 2017

Issued by

"S. Slaunwhite"

Local Registrar

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AND TO: NATHAN ANDERSON
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10017

AND TO: KEVIN BAUMANN

AND TO: JEFFREY MCFARLANE

AND TO: DARRYL LEVITT

AND TO: RICHARD MOLYNEUX

AND TO: GERALD DUHAMEL

AND TO: GEORGE WESLEY VOORHEIS

AND TO: BRUCE LIVESEY

AND TO: AND JOHN DOES #4-10

CLAIM

1. The Plaintiffs claim against the Defendants, on a joint and several basis, for the following:
 - (a) General and aggravated damages in the amount of \$450,000,000 for defamation, injurious falsehood, the tort of causing loss by unlawful means (intentional interference with economic relations), and civil conspiracy; and, in addition, for breach of the duty of loyalty, duty of honesty and fair dealing, and fiduciary duty as against the defendant, Bruce Langstaff;
 - (b) In the alternative, an accounting of any and all gains from transactions in Callidus Shares (defined *infra*) and the derivative securities thereof on or after August 9, 2017, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
 - (c) A Declaration that the Defendants defamed the Plaintiffs;
 - (d) An order requiring the Defendants to:
 - (i) disclose in writing the means by which they obtained and/or the persons who provided them with any confidential documents of the Plaintiffs, including the documents referred to in paragraph 84 herein;

- (ii) deliver to counsel for the Plaintiffs any and all such confidential documents, and any and all copies thereof, in their possession, power or control and to permanently destroy any electronic copies thereof; and
- (iii) deliver a written declaration setting out the details of any and all circulation by them to any third parties of any of the confidential documents of the Plaintiffs, including any information derived therefrom, and warranting that they have delivered up any and all such confidential documents, in accordance with sub-paragraph 1(d)(ii) above;
- (e) A Declaration that the Defendants breached s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5 (the "*Securities Act*");
- (f) A Declaration that the Individuals Defendants (defined *infra*) are personally liable for the unlawful actions carried out by or through the corporations and/or other entities that are named as Defendants;
- (g) Special damages for costs associated with the "investigation" of the willful misconduct of the Defendants, or some of them;
- (h) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
- (i) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) The costs of this action, plus the applicable taxes; and

(k) Such further and other relief as to this Honourable Court may seem just.

(A) THE PLAINTIFFS

2. The Plaintiff, The Catalyst Capital Group Inc. (“Catalyst”), is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.
3. The Plaintiff, Callidus Capital Corporation (“Callidus”), is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.
4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.
5. In April 2014, Callidus made an initial public offering (“IPO”) of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 2/3rds of the issued and outstanding shares of Callidus.
6. The shares of Callidus trade on the Toronto Stock Exchange under trade symbol CBL.TO (the “Callidus Shares”).

(B) THE DEFENDANTS

7. The Defendant West Face Capital Inc. (“West Face”) is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. West Face competes with Catalyst in the special situations for control investment industry. One of the principals of West Face is the Defendant Gregory Boland (“Boland”).
8. West Face and Boland are vicariously liable for the acts or omissions of one another. In the alternative, West Face and Boland acted as agent for each other.
9. The Defendant M5V Advisors Inc. carrying on business as Anson Group Canada (“Anson Canada”), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.
10. The Defendant Admiralty Advisors LLC (“Admiralty”) is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales.
11. The Defendant Frigate Ventures LP (“Frigate”) is a limited partnership organized pursuant to the laws of Texas. At all relevant time, Frigate was a registered investment fund manager with the Ontario Securities Commission that engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate.
12. The Defendant Anson Investments LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

13. The Defendant Anson Capital LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.
14. The Defendant Anson Investment Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.
15. The Defendant AIMF GP is the general partner to Anson Investment Master Fund LP. At all relevant times, AIMF GP has engaged in securities transactions, including short sales.
16. The Defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.
17. The Defendant ACF GP is the general partner to Anson Catalyst Master Fund LP. At all relevant times, it has engaged in securities transactions, including short shares.
18. The parties described in paragraphs 9-17 above are a family of hedge funds that carry on business as the Anson Group (“the “Corporate Anson Defendants”). Those funds claim to be focussed on long-short, market-neutral and opportunistic investment strategies.
19. The Defendants Moez Kassam (“Kassam”) and Adam Spears (“Spears”) are principals of the Corporate Anson Defendants. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (Kassam, Spears and Puri are together, the “Individual Anson Defendants”). At all material times, under Kassam’s active direction and control, the Corporate Anson Defendants’ principal investment strategy has been to engage in short selling activities of

publicly listed stocks. The resulting trading activity includes the illicit short selling of the publicly traded stock of Callidus pleaded in this Action.

20. The Individual Anson Defendants and the entities that comprise the Corporate Anson Defendants (collectively, the “Anson Defendants”) at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and the Corporate Anson Defendants are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and the Corporate Anson Defendants acted as agent for the others.
21. The Defendant ClaritySpring Inc. (“Clarity”) is a Delaware incorporated company that is based in New York. Clarity's principal is the Defendant Nathan Anderson (“Anderson”).
22. Clarity and Anderson are vicariously liable for the acts or omissions of one another. In the alternative, Clarity and Anderson acted as agent for each other.
23. The Defendant George Wesley Voorheis (“Voorheis”) is an individual residing in Toronto, Ontario. He is a lawyer and activist investor, and was the person named as John Doe #1.
24. The Defendant Bruce Livesey (“Livesey”) is an individual residing in Toronto, Ontario. He is a freelance journalist and was the person named as John Doe #2.
25. West Face, Boland, Voorheis, Livesey, the Anson Defendants, Clarity and Anderson are hereinafter referred to collectively as the “Wolfpack Conspirators”.
26. The Defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity Corp. (“Canaccord Genuity”). Langstaff was a Managing Director, Canadian Equity Sales,

from November 18, 2013 until he was terminated by Canaccord Genuity effective September 26, 2017. While employed Canaccord Genuity, the Plaintiffs were clients of Langstaff. Canaccord Genuity owed ongoing fiduciary, statutory and contractual duties to act honestly, in good faith and in the best interests of the Plaintiffs and not to engage in any activity harmful to the Plaintiffs. While employed by Canaccord Genuity, Langstaff owed the same duties to the Plaintiffs.

27. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ”) and resides in New York, New York. Copeland is a Defendant to a separate proceeding, *The Catalyst Capital Group Inc. v. Dow Jones and Co. et. al.* Court File No. CV-17-586094 (the “Dow Jones Action”) in which damages for defamation are claimed in relation to, among other things, the publication of the Article (defined *infra*).
28. The Defendants Boland, Kassam, Spears, Puri, and Anderson, are hereinafter referred to collectively as the “Individual Defendants”.
29. The Defendant Kevin Baumann (“Baumann”) is an individual residing in Red Deer, Alberta. Baumann was the President of Alken Basin Drilling Ltd. (“Alken Basin”), a borrower of Callidus.
30. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America. McFarlane was the CEO of Exchange Technology Group LLC (“XTG”), a borrower of Callidus.
31. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario. Levitt was an officer of Fortress Resources LLC (“Fortress”), a borrower of Callidus.

32. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario. Molyneux held an indirect interest in Fortress.
33. Defendant Gerald Duhamel (“Duhamel”) is an individual residing in Drummondville, Quebec. Duhamel was the President of Bluberi Gaming Technologies Inc. (“Bluberi”), a borrower of Callidus, and was the person named as John Doe #3.
34. Baumann, McFarlane, Levitt, Duhamel and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.
35. John Doe 4-10 are parties that participated in the Conspiracy (defined *infra*) and whose identities are presently unknown to the Plaintiffs. The Plaintiffs will substitute the actual names of these parties after they are discovered.

(C) WOLFPACK CONSPIRATORS TARGET CALLIDUS FOR A SHORT-SELLING STRATEGY

36. Short-selling is an investment strategy whereby an investor borrows shares in a publicly traded corporation and then sells the borrowed shares to third parties. A short sale strategy anticipates that the shares will decline in value, at which point the investor will buy back shares at the lower price and return them to the party from which it originally borrowed shares. Selling borrowed shares in this fashion is known as “selling short”. This activity may also be undertaken on what is known as a “naked short” basis, in which a party bets that the stock will go down in price without actually borrowing the stock or finding out if there is available stock to borrow in order to short it. Without an inventory of stocks to borrow, naked shorting can leave a stock open to market manipulation.

37. If the shares ultimately decline in value as anticipated, the difference between the higher price at which the investor sold the shares and the lower price at which the investor bought them back represents a profit to the short-selling investor.
38. If, instead of declining in value as anticipated by the investor, the shares appreciate in value, then the short-selling investor loses money on the investment. At some point, in order to cap its losses, the investor will buy back the shares at a higher price and return them to the lender. Because, in theory, the potential price of any stock is unlimited, the potential loss on a short-selling strategy is infinite.
39. The acts of the Defendants described herein amount to an unlawful conspiracy in that, at some point prior to the publication of the Article (defined *infra*) on August 9, 2017, the Defendants, with or without the John Doe Defendants: i) maliciously and intentionally or otherwise, entered into an agreement to injure the Plaintiffs or, alternatively, the predominant purpose of their acts as a whole was to cause injury to the Plaintiffs; ii) the Defendants used unlawful means — specifically, acts or a combination of acts that amount in law to actionable defamation, injurious falsehood, breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations, including, but not limited to National Instrument 81-102 and unjust enrichment (each set out more specifically below) — with the knowledge that their actions were directly aimed at the Plaintiffs for the purpose of causing injury to the Plaintiffs and destroying their business; iii) caused the stock price of Callidus to drop; and (iv) in fact has caused significant damages to the Plaintiffs' business and caused the Plaintiffs to suffer damages as a result of their conduct.

40. The amendments now being made to the Plaintiffs' claim herein set out the additional material facts regarding the Conspiracy that the Plaintiffs have become aware of as of the date of the amendments. The Plaintiffs expressly reserve their right to make or seek to make additional amendments with respect to other material facts and information ascertained by them, when appropriate to do so. These amendments respond to the decision of the Honourable Justice Wilton-Siegel dated January 9, 2019, with respect to certain motions brought by some of the Defendants, as the scope of such amendments remains in dispute between the Plaintiffs and the Moving Parties on those motions.

(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST

41. Several of the parties that received loans from Callidus were required to have their principals execute personal guarantees as a term and condition of the loan. When several of the borrowers subsequently defaulted on their loans, Callidus took steps to enforce the personal guarantees.
42. In particular, Callidus commenced actions to enforce personal guarantees against the following persons (together, the "Guarantors"):
- (a) Baumann in respect of a loan to Alken Basin;
 - (b) Andrew Levy ("Levy") and Richard Jaross ("Jaross") in respect of a loan to Esco Marine;
 - (c) Levitt in respect of a loan to Fortress;

- (d) Gary Smith (“Smith”) in respect of a loan to Fortress;
- (e) Molyneux in respect of a loan to Fortress; and
- (f) McFarlane in respect of a loan to XTG.

(the “Guarantee Actions”)

- 43. In or around mid-2015, the Guarantors, and especially Baumann and Levy, started contacting each other to discuss and coordinate their responses to the Guarantee Actions.
- 44. Baumann also offered some of the Guarantors, including Levy and Jaross, substantial funding to fight the Guarantee Actions. The funding offered by Baumann was not, in fact, coming from Baumann himself, but from the Wolfpack Conspirators.
- 45. In addition, in or about November 2015, another borrower of Callidus, Bluberi Gaming Technologies Inc. (“Bluberi”) filed for protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “CCAA Proceeding”). At or around this time, Bluberi’s President, Gerald Duhamel, became connected with the other Guarantors and agreed to join the Conspiracy and otherwise provide his support, information, and advice to them in their concerted action against the Plaintiffs.
- 46. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and the CCAA Proceeding and to do so in substantially the same fashion and/or with defences worded in substantially the same way.
- 47. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus.

48. The Guarantors had difficulty retaining counsel to represent them in a RICO action against Callidus. Boland and West Face, through their external legal counsel, attempted to assist the Guarantor Conspirators by referring them to legal counsel in the United States to enable them to commence a RICO action against Callidus which would attract significant adverse publicity.
49. Due to difficulties they faced retaining counsel to commence a RICO action, the Guarantors decided instead to defend the Guarantee Actions on the spurious basis of “fraudulent inducement” (or its equivalent) and to file specious counterclaims against Callidus.
50. The Guarantors thought that by defending each of the Guarantee Actions in a coordinated manner, they would have an opportunity to make it difficult for Callidus and Catalyst to succeed or embarrass Callidus and Catalyst with allegations of “fraudulent inducement” or its equivalent. The Guarantors also believed their coordinated attacks would force Callidus and Catalyst into discussing some alternative resolution.
51. The plea of fraudulent inducement is a defence typically seen in the United States pursuant to which a borrower will claim that it was induced to change its economic position in return for a promise by the lender that it will do something that the lender has no actual intention to do.
52. Such a plea was made by Smith, Levy and Jaross in connection with the Guarantee Actions against them in the United States courts. Smith was unsuccessful and his subsequent appeal was withdrawn in settlement of his case by payment of US\$10,000 to Callidus. Levy and Jaross were unsuccessful in all of the defences they asserted in the proceeding against them

with the exception that the judge hearing the summary proceeding ordered a factual hearing into the fraudulent inducement issue. Before this happened, Levy and Jaross settled with Callidus and they acknowledged in the settlement that they would likely not have succeeded in their remaining plea of fraudulent inducement.

53. Similarly, Levitt and Molyneux made an exaggerated claim for \$150,000,000 against Callidus, essentially on the basis of purported fraud. When confronted with the fact that they had no such claim, they reduced the damages being sought from \$150,000,000 to \$1,000,000.
54. Baumann has made similar claims implying fraud against Callidus.
55. The actions of the Guarantors demonstrate a significant degree of coordination of their activities with a view to causing economic harm to Callidus and Catalyst.
56. The Guarantors that were primarily responsible for the coordination efforts were Levitt and to a lesser, but still important, degree, Baumann and McFarlane. While Levitt served as the overall “puppet master” of the Guarantors, Baumann also reached out to the other Guarantors and, as noted above, made the offer to fund the Levy and Jaross litigation in the amount of at least US\$250,000.
57. Catalyst and Callidus allege that funding did occur to support the Guarantors in the Guarantee Actions through several undisclosed “angels”, including the Wolfpack Conspirators. In many cases, the funders sought to keep their involvement secret through the use of non-disclosure agreements.

58. In addition to these coordinated activities, Levitt, Langstaff or McFarlane created an alter ego on Twitter known as “William Struth @Glasgow Skeptic”. William Struth was a former manager of the Glasgow Rangers football club who passed away in 1956. His image appears on the Twitter feed created by Levitt, Langstaff or McFarlane in order to mask his identity.
59. Through this alter ego, Levitt, Langstaff or McFarlane published false statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt, Langstaff or McFarlane are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public. These tweets were re-tweeted by the other Defendants through other aliases including “@stopthescandal”; “@LRenard3”; “@AlderLaneeggs”; “@ReganFCU”; “@DKellyFCU”; “@LexLexlucifer2”; “@KevinBa15422460”; “@DumpsterFire69”; and @ClarityToast”. The false statements spread through these tweets included:
- (a) Catalyst investors are “going to lose a lot of their money ... Chatter already in the industry (February 3, 2017);
 - (b) Callidus’ financial statements are “sublime works of fiction” (February 8, 2017);
 - (c) Catalyst is “another likely fraud that Canadians should watch out for” (March 4, 2017);
 - (d) Glassman is “Canada’s Madoff” (March 4, 2017);
 - (e) Catalyst is the “Mozart of misleading disclosure” (April 20, 2017);

- (f) “Fallout” from Callidus “will be painful” for Callidus’ auditors, valuers and other service providers (May 1, 2017);
- (g) Callidus is a “dying business” (May 4, 2017);
- (h) “If you work for Catalyst Capital, you’re not going to see a penny of carry for all your heartache. Don’t wait for the endgame” (May 7, 2017);
- (i) “If you work at [Callidus], you still need to plan an exit. If you’re an officer or director, you really need a lawyer” (May 9, 2017);
- (j) “... one wonders if Hilco Appraisal Services and [Callidus] operate at arm’s length” (May 15, 2017);
- (k) “The word is out – take [Callidus’] money and your business is gone” (May 15, 2017)”
- (l) “Do you still work at Catalyst? Do you still think your carry is worth one thin dime? You still need to leave. You still need a lawyer” (June 15, 2017);
- (m) “It would be easier for a camel to pass through the eye of a needle than for [Callidus] to attract a third party buyer” (June 20, 2017);
- (n) “There’s life after Callidus. First get out. Then, blow the whistle” (July, 26, 2017);
- (o) “McNish again proving her chops with [Callidus] fraud story in WSJ” (August 9, 2017);

(p) “Temperature rising at [Callidus] ... - do you know who your whistleblowers are?” (August 14, 2017); and

(q) A photograph of a pack of wolves with the caption “The scariest beasts are the ones that roam your mind” (September 28, 2017).

60. The use of an alias to publish false statements about a target company is a frequent tool used by short sellers and other miscreants seeking to spread false news and manipulate market participants, including those third parties identified in paragraph 193 below, or other events.

61. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST

62. By September 2016, Boland and West Face had a strong animus against Catalyst and Callidus, and against Newton Glassman (“Glassman”), Catalyst’s principal, because of prior and ongoing litigation between Catalyst and Callidus against West Face and Boland. Specifically, Boland and West Face took great exception to the fact that Catalyst and Callidus had instituted and was continuing to prosecute claims against them to assert the rights and protect the interests of Catalyst and Callidus. Specifically, Boland and West Face were aggravated by the fact that Catalyst instituted and was continuing a lawsuit against West Face and Brandon Moyse (former Catalyst employee that joined West Face), for the misuse of Catalyst’s confidential information to acquire “Wind Mobile”. They were

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

63. Initially, in or about late 2015, West Face and/or Boland retained Livesey, an investigative journalist, to write a false and disparaging article regarding Catalyst's principal, Newton Glassman, and Callidus/Catalyst. West Face intended to use the article to cause damage to Catalyst and Callidus and to launch a short attack.
64. As pleaded below, Livesey's efforts failed. However, during the course of Livesey's "investigation", he was directed by Boland and West Face to speak to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

65. As described below, in or about mid to late 2016, after learning of the Guarantor's coordination from Livesey, West Face contacted the Guarantors to induce their participation in a wave of short attacks against Callidus. By this time, West Face and Boland had decided to do whatever they could to harm Catalyst, Callidus and Glassman. They devised and implemented a plan to harm them, after their efforts to engage Livesey to publish a disparaging article about Catalyst, Callidus and Glassman had not succeeded at that time in attracting any mainstream media publication interest.
66. As a result, Boland and West Face contacted:
- (a) The Guarantor Conspirators, namely Baumann, McFarlane, Levitt and Molyneux, who were facing personal guarantee collection actions by Callidus in Canada;
 - (b) Levy and Jaross, who were facing collection proceedings by Callidus in Texas based on a guarantee Levy and Jaross had signed to support a loan from Callidus to a U.S. company operating in Brownsville Texas, known as Esco Marine; and
 - (c) Duhamel, the President of Bluberi, a borrower of Callidus that had filed for CCAA protection in November 2015, and who subsequently began communicating with the other Guarantors and agreed to conspire to harm the Plaintiffs and otherwise provide his support, information, and advice to the Guarantors in their concerted action against them.
67. In or about mid to late 2016, Boland and West Face also identified and contacted the following additional persons who also had an animus against Catalyst, Callidus and Glassman to induce them to conspire to injure them:

- (a) Anderson and Anderson's company Clarity;
 - (b) Kassam and the other Anson Defendants (as defined herein); and
 - (c) Voorheis, a lawyer and activist investor.
68. Boland and West Face engaged in a series of meetings, telephone conversations and written communications with the above persons for the purpose of inducing and securing their agreement to conspire to harm the Plaintiffs and to implement the Conspiracy.
69. For example, in September 2016, Boland contacted Levy to describe his and West Face's plan and to induce Levy and the Guarantor Conspirators to conspire to injure the Plaintiffs. On or about September 26, 2016, Boland had a lengthy conversation with Levy, during which Boland related his animosity towards Catalyst, Callidus and Glassman, impugned their integrity and their business practices, and accused them of fraud. Boland also advised Levy that the largest investors in the Catalyst managed funds included two significant institutions based in the United States, and that Callidus had marketed and sold part of its Initial Public Offering in the United States. Boland communicated these specific facts to Levy to make sure that Levy and the Guarantor Conspirators believed that Catalyst and Callidus were subject to the oversight of the U.S. Securities and Exchange Commission ("SEC"). Boland did so because part of the plan he had devised included making complaints about Catalyst and Callidus to the SEC as further described below.
70. Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would

undermine the credibility of any complaints authored by them, and would confirm their plan to harm Catalyst, Callidus and Glassman in any way possible.

71. In fact, as Boland and West Face had anticipated and intended, Levy immediately spread the information he had received on September 26, 2016 from Boland to, among others, Levitt, Molyneux, Baumann, McFarlane, Jaross, Duhamel and his partner/associate, Marie-Claude Lapierre.
72. As a result of the above-noted conversation with Levy, and additional communications shortly thereafter, Boland and West Face were able to confirm that Baumann, McFarlane, Levitt and Molyneux, Jaross and Levy were still working together against Callidus. Boland and West Face also became aware that the above named individuals were personally very antagonistic to Catalyst, Callidus and Glassman, that they were desperate to avoid and deflect the guarantee claims against them, that they had coordinated their defences to the Guarantee Actions, and that they were willing to conspire with Boland and West Face to injure the Plaintiffs and implement the Conspiracy.
73. Boland also knew that Voorheis held a very strong personal animus towards Catalyst, Callidus and Glassman because of a bitter dispute which had arisen between Glassman and Voorheis in the Hollinger – Conrad Black legal proceedings over 10 years previously.
74. Boland contacted Voorheis to induce him to conspire to harm Glassman, Catalyst and Callidus. Voorheis readily agreed. Boland then introduced Voorheis to Levitt, McFarlane, Molyneux, Baumann, Jaross, Levy and/or Duhamel. From that time onwards, Voorheis remained in close contact with these individuals to assist and be part of the plans to harm Catalyst, Callidus and Glassman.

75. Indeed, following his discussion with Boland, Levy reported to the Guarantor Conspirators that he intended to call Voorheis, who he was told was apparently “closer to striking”.
76. The following day, on or about September 27, 2016, Levy did contact Voorheis and advised Voorheis of the allegations and information from Boland about the potential jurisdiction of the SEC over Catalyst and Callidus. Voorheis advised Levy that he had decided that he too intended to strike out at Glassman, Catalyst and Callidus.
77. During October-November 2016, with encouragement and additional assistance from Boland and West Face, the Defendants Levitt, McFarlane, Molyneux and Baumann, as well as Levy, Jaross, Duhamel and Voorheis, remained in close communications with each other regarding the Conspiracy. As a result, they agreed and decided to make allegations and file false complaints with the OSC and SEC alleging fraud and similar criminal and quasi-criminal misconduct against Catalyst, Callidus and Glassman, and to harm them by disparaging them in whatever way they could. This included making false allegations, including that under Catalyst’s direction, Callidus had and was continuing to operate a criminal “loan to own” business, that Callidus’ business practices were to trick and mislead its borrowers and prospective borrowers, that Callidus frequently made fraudulent misrepresentations to its borrowers, that Callidus often failed or refused to live up to its legal obligations, and that Catalyst, Callidus and Glassman were dishonest and untrustworthy. These false allegations were repeatedly made in furtherance of the Conspiracy to whoever would listen, and enabled the Defendants to achieve their intended purpose of causing economic harm to the Plaintiffs and illicit unlawful gains through the short attack of Callidus Shares. The Defendants knew or ought to have known that these

allegations were false as many of the very same allegations had already been advanced by some of the Guarantor Conspirators in litigation with Callidus and rejected by the Courts.

78. Around the same time, West Face, Boland and/or Voorheis also encouraged the Anson Defendants to support its planned short attack. Amongst other things, West Face, Boland and/or Voorheis disclosed to Kassam, Puri and Spears the identity of the Guarantors and their knowledge of coordination between the Guarantors.
79. Kassam held an animus against Glassman because of a business dispute between Catalyst and the Corporate Anson Defendants regarding the Corporate Anson Defendants' use of the name "Catalyst". In addition, Kassam was and is a business colleague and personal friend of Boland and from time to time the Corporate Anson Defendants and the West Face have collaborated in making joint investments in businesses and corporate entities, including engaging in coordinated short selling and other investments in such enterprises.
80. At the inducement of Boland and West Face and Voorheis, Kassam caused and directed the Corporate Anson Defendants, Puri, and Spears to participate in the conspiracy to harm Catalyst and Callidus, and subsequently directed, controlled and participated in the decisions by the Corporate Anson Defendants, Spears, Puri, and himself to be part of the Conspiracy, to approve, assist and participate in the acts in furtherance of the Conspiracy, and ultimately engage in the illicit and wrongful short selling in Callidus Shares pleaded herein.
81. In late 2016, West Face, Boland and Voorheis also made contact with Anderson and Clarity, a firm that specializes in providing information to hedge funds, wealth managers

and others in the financial services industry, and encouraged Anderson and Clarity to participate in the Conspiracy and in the upcoming wave of short attacks against Callidus.

82. As a result, Anderson and his company Clarity were induced to and agreed to conspire with the others to harm Catalyst and Callidus. In or about November 2016, Anderson was introduced to Levitt, Molyneux, McFarlane, Baumann, Levy and Duhamel.
83. To facilitate the preparation, sharing and dissemination of false information and allegations accusing Catalyst, Callidus and Glassman of serious misconduct, fraud and other criminal or quasi-criminal wrongdoing, the Wolfpack Conspirators and the Guarantor Conspirators, among other things:
 - (a) Established a data room where such false information were shared and allegations were repeated; and
 - (b) Provided Anderson and Clarity with access to a Dropbox facility containing the false information and allegations to facilitate their continuing participation in the Conspiracy.
84. In addition, to further discredit and cause harm to the Plaintiff, in the latter part of 2016, Baumann wrongfully procured a highly confidential list of all of Callidus' borrowers and loan accounts and other private and confidential Callidus documents. This information constitutes material non-public information concerning Callidus, a public issuer. These confidential documents containing material non-public information were then openly shared on or about December 2, 2016 amongst the Defendants, either directly or through

the use of the Dropbox facility referred to above, and/or other means known to the Defendants but not to the Plaintiffs.

85. Instead of immediately returning this material non-public information to Callidus when they knew or ought to have known that it was wrongfully obtained by Baumann, the Defendants used the material non-public information contained therein in furtherance of the Conspiracy, including the short attack which occurred in August 2017, in violation of applicable securities laws.
86. Throughout this period, Boland kept Livesey informed of the plan and progress of the Conspiracy to harm the Plaintiffs. At the direction of and with financial incentives from West Face and/or Boland, Livesey frequently communicated with the Guarantor Conspirators and the other Wolfpack Conspirators to provide his support, assistance, encouragement and advice to them in their concerted actions against the Plaintiffs, spread false and disparaging statements about the Plaintiffs, and continued his efforts to have disparaging articles about Catalyst, Callidus and Glassman published in the media.
87. Thus, by December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into a conspiracy with the intention to cause economic harm to Callidus and Catalyst (the "Conspiracy").
88. For the Wolfpack Conspirators, the Conspiracy presented an opportunity to continue their short attacks against Callidus, which would allow them to make risk-free profits and, in the process, damage Catalyst and Callidus.

89. For the Guarantor Conspirators, the Conspiracy presented an opportunity to cause serious economic harm to Callidus and Catalyst through trying to frustrate the enforcement of substantial personal guarantees against each of them. Additionally, the Wolfpack Conspirators and others, the identity of whom the Plaintiffs are currently unaware, offered to (and did) fund the Guarantors' defences in the Guarantee Actions.
90. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they would spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators and Anderson/Clarity would file false "whistleblower" complaints against Callidus through the Ontario Securities Commission ("OSC") and/or the SEC to "confirm" the rumours (the "Complaints"). Third, once the false whistleblower Complaints were filed, the Wolfpack Conspirators and the Guarantor Conspirators would work together to leak the existence and the substance of the allegations contained in the Complaints to the media and to the police in order to generate media interest. Fourth, the Wolfpack Conspirators, either directly or indirectly, would take short positions in Callidus Shares, through the co-conspirator, Langstaff at Canaccord and others. Fifth, the Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Anderson would cause a false and defamatory media report about the Complaints to be released near the end of a trading day, which would cause the price of Callidus Shares to rapidly decline. Finally, the Wolfpack Conspirators would close out their naked or other short positions at a substantial profit, all at the expense of Callidus' market value and its shareholders. This plan was in fact executed.

91. In furtherance of the Conspiracy, the Defendants frequently communicated with each other and met in person to discuss and implement the Conspiracy. These communications included discussions about and agreements to make allegations about Catalyst and Callidus that included the following:
- (a) Callidus had falsely overstated the credit worthiness of its loan portfolio and had issued false statements about its loans to the public at large;
 - (b) Catalyst had entered into numerous fraudulent related party transactions;
 - (c) Catalyst and Callidus had engaged in money-laundering schemes; and
 - (d) Catalyst and Callidus were guilty of fraudulent lending practices

The full particular of the places, dates, times, content of these communications and meetings to implement and carryout the Conspiracy are not known to the Plaintiffs. The Defendants were keenly conscious of the need for secrecy around their activities. For example, on December 31, 2016, Levitt cautioned Levy that “we have to be discrete about what we are doing”.

92. The Conspiracy required very sophisticated coordination and perfect timing under the hand of the Wolfpack Conspirators. This pattern has been honed through repetition in other situations.
93. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff, and Copeland took steps to hide details of the Conspiracy in order to avoid detection and make it difficult to learn about the Conspiracy after the harm was done to the Plaintiffs. In particular, some of

the Wolfpack Conspirators and Guarantor Conspirators compelled at least some of the Guarantors to sign nondisclosure agreements to prevent them from disclosing information relating to the Conspiracy.

94. Some or all of the Defendants also used encrypted and self-destructing messaging applications, such as “Confide”, to communicate in an effort to avoid leaving any trace of their activities. “Confide” is reputed to be an application, available online, which serves as a “confidential messenger” to enable users to communicate with each other “with the same level of privacy and security as the spoken word” and gives its users the “comfort” of sending “encrypted, self-destructing and screenshot-proof messages” with the knowledge that their “private communications will now truly stay that way.”
95. The full particulars of the details of the Defendants’ use of “Confide” to communicate with each other are currently unknown to the Plaintiffs. The Plaintiffs have knowledge however that on April 12, 2017, Levitt suggested to Langstaff that they should continue their communications about the Plaintiffs using “Confide” so that they could “chat [about the Plaintiffs] confidentially with encrypted and disappearing messages”. While employed by Canaccord Genuity, Langstaff agreed to do so and he and Levitt communicated about the Plaintiffs using Confide on dates and times known to them, and not currently known to the Plaintiffs.
96. As a registrant with the OSC and the SEC and as an employee of Canaccord Genuity (a registrant with the OSC and the SEC), Langstaff’s use of “Confide” to conceal his communications with Levitt was in violation of (i) the applicable rules, regulations, and policies of the securities regulators; (ii) the standards and practices of the investment dealer

and brokerage industry; and (iii) Canaccord Genuity's own rules, policies and code of conduct.

(F) CONSPIRATORS ABUSE WHISTLEBLOWER PROGRAMS

97. The next step of this very sophisticated attack required use of the OSC's "whistleblower" program. The "whistleblower" program, started in July 2016, permits persons with information about an alleged securities-related violation to report it to the OSC. The program offers anonymity to complainants and a financial reward in the event the complaint results in a penalty. The intent of the program is to encourage persons with information of alleged unfair, improper or other abusive practices in relation to Ontario securities laws to come forward and make anonymous complaints about such matters without fear of reprisal.
98. In furtherance of the Conspiracy, and with information from and at the direction of the Wolfpack Conspirators, the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) as well as Anderson, with the assistance of the Wolfpack Conspirators agreed to file false whistleblower Complaints with the OSC and/or the SEC relating to Callidus and Catalyst. These four "Complainants" coordinated their complaints in order to portray different alleged issues with Callidus' continuous disclosure and matters relating to Catalyst to the OSC and the SEC.
99. Prior to making false "whistleblower" complaints with the OSC and the SEC, in the third week of November 2016, Levitt (with the knowledge, approval and direct involvement of West Face, Boland, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the

Guarantors) contacted Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC.

100. Levitt told Watson that Catalyst, Callidus and Glassman had been guilty of serious offences, including but not limited to fraudulent business and lending practices, penal offences in respect of Callidus's financial affairs, and other criminal or quasi-criminal misconduct. These allegations were wholly false.
101. These communications were made with the intention that the false allegations would be conveyed by Watson to other counsel within the OSC's Enforcement Branch and with the law enforcement authority known as the Joint Serious Offences Team ("JSOT"), and that the OSC and JSOT would immediately institute an investigation and commence proceedings against the Plaintiffs.
102. Plaintiffs plead that the above communications and allegations made to Watson and JSOT are separate and outside the scope of the OSC whistleblower program. Indeed, Watson declined to attend the December 7, 2016 meeting with OSC personnel regarding the whistleblower complaint, referred to below, as he knew that his participation in that process would taint the entire "whistleblower" process.
103. In furtherance of the Conspiracy, in late 2016, Boland had further discussions with the Guarantor Conspirators in which he supplied them with false information that they could use in fabricating their allegations to the OSC and the SEC. For example, Boland and West Face provided Levy with copies of their Statement of Defence in the Veritas Action. They did so with the intention that Levy would pass on the allegations of misconduct and impropriety made in their Statement of Defence to Levitt, Molyneux, McFarlane,

Baumann, Anderson and Duhamel, and that they would use those allegations to disparage Callidus, including in the intended communications to the OSC and JSOT which formed part of the Conspiracy. In fact, Levy did so, and the false allegations were used for the very purposes as planned by Boland and West Face, and agreed to by Levitt, Molyneux, McFarlane, Baumann and Anderson.

104. Boland and West Face provided additional assistance the Guarantor Conspirators, Duhamel and Levy in the plan to harm Catalyst. This included:

- (a) On or about November 30, 2016, Boland and West Face authorized and directed their external counsel, Matthew Milne-Smith of Davies (“Milne-Smith”), to introduce Levitt to a class action litigator in the United States for the purpose of filing a RICO action against Catalyst and Callidus. Milne-Smith had discussions and exchanged correspondence with Levitt on this subject. In so doing, Boland and West Face knew there was no basis for any such action. However, they hoped and intended that the corrupt practices which would be alleged in such an action would become public knowledge and that this would advance their plan to harm Catalyst, Callidus and Glassman by whatever means possible;
- (b) On or about December 3, 2016, Boland and West Face authorized and directed West Face’s internal counsel, Philip Panet (“Panet”), to advise Levitt of a specific section of Callidus’s 2015 MD&A referring to a loan with McFarlane’s company, XTG. This was done to set the stage for false allegations conveyed by Boland to Levy, referred to below, about this loan. Panet had discussions and exchanged correspondence with the Guarantor Conspirators as instructed;

- (c) On or about December 3, 2016, Boland personally contacted Levy and falsely told Levy that Catalyst had improperly and fraudulently moved the XTG loan onto unsuspecting investors who held units in the latest limited partnership fund managed by Catalyst;
- (d) On a date unknown to the Plaintiffs, Boland also authorized and directed Milne-Smith to assist the Guarantor Conspirators by providing them with, amongst others, a West Face “research report” which West Face used in the illicit short selling attack on Callidus Shares in 2015-2016 which is the subject of the Veritas Action. Milne-Smith, in turn, was in contact with the Guarantor Conspirators to provide this and other information to them; and
- (e) On January 20, 2017, Panet provided Levitt with a copy of a document which contained details about one of Callidus’ borrowers which was then promptly provided (to Panet’s knowledge) to the other Guarantor Conspirators and Anderson/Clarity.

105. The above steps and communications were undertaken by Boland and West Face in furtherance of the Conspiracy and with the knowledge and intention that the false allegations and the assistance provided would be:

- (a) Shared among Livesey, Voorheis, Duhamel, Anderson, Clarity, the Anson Defendants, and the Guarantors; and

- (b) Used by the Guarantor Conspirators and Anderson in their communications with the SEC, OSC Enforcement Staff, JSOT, and in the planned meeting with the OSC Staff to file their whistleblower complaint.
106. In fact, the false information and allegations made by Boland and West Face were used in furtherance of the Conspiracy.
107. To the knowledge of and with the agreement, assistance and support of the Wolfpack Conspirators and the Guarantor Conspirators, on or about December 7, 2016, Levitt met with OSC personnel. Among other things, he followed a carefully scripted “playbook” and showed them a powerpoint presentation which falsely alleged that Catalyst, Callidus, and Glassman had been guilty of serious misconduct, fraud and other criminal and quasi-criminal wrongdoing.
108. The false Complaints were reviewed, commented on and approved by each of the Wolfpack Conspirators and Guarantor Conspirators prior to submission to the OSC.
109. All of the above steps were taken with the knowledge, participation and consent of the Wolfpack Conspirators and the Guarantor Conspirators for the purpose of (i) persuading the OSC (and JSOT) to commence criminal or quasi-criminal proceedings against Catalyst, Callidus and Glassman, and (ii) to enable them to leak the contents of their false complaints to the media and to the police in furtherance of their purpose to harm the Plaintiffs and to enable the illicit short selling gains to be realized as part of the Conspiracy.
110. In addition, as described below, the Guarantor Conspirators, acting in concert with and at the direction of each of the Wolfpack Conspirators, supplied information relating to the

existence and the substance of the Complaints, to WSJ reporters in New York and Toronto to encourage and induce them to publish false media articles, as described below.

111. The Wolfpack Conspirators and the Guarantor Conspirators did so knowing and intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud by Callidus and Catalyst would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints (falsely) alleging fraud would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares and cause third parties, including those identified in paragraph 193 below, to believe that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were the subject of to “investigation” by the securities regulators and the police; and (v) these steps, events and consequences would give them or their co-conspirators an opportunity to engage in profitable short selling of Callidus Shares, all which was in furtherance of the Conspiracy.
112. Catalyst pleads and the fact is that the Complaints, which were filed in or around late 2016 and early 2017, also falsely alleged that Callidus and Catalyst were in the same line of business, which allegedly created a conflict of interest. In addition, the Complaints falsely alleged that Callidus and Catalyst had engaged in illegal accounting practices with respect to loans that related to the Guarantors.
113. The Complaints falsely and maliciously state or imply that:
 - (i) Callidus misled its shareholders;

- (ii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
 - (iii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.
114. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.
115. The intention and purpose of the Complaints was to enable the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff to spread rumours within the financial industry that Callidus and Catalyst were the subject of *bona fide* OSC whistleblower complaints and subject to “investigations” by the OSC and the Toronto Police in order to undermine the public confidence in both firms. They were designed to feed the Bay Street rumour mill.
116. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were part of the Conspiracy to harm Callidus and Catalyst and to enable the Wolfpack Conspirators, the John Does, and Langstaff to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.
117. In 2017, the Wolfpack Conspirators and the Guarantor Conspirators continued to intensify their overt acts against the Plaintiffs to cause economic harm to them.
118. Between December 2016 and February 2017, Anderson continued to receive and exchange information with the Wolfpack Conspirators and the Guarantor Conspirators about the Plaintiffs. Anderson also communicated with them about their allegations and the “next steps” in the Conspiracy. The purpose was to enable the Wolfpack Conspirators and the Guarantor Conspirators to coordinate their continuing implementation of the Conspiracy

and to facilitate the filing of false complaints with the SEC, which was something that Anderson, Voorheis and Boland had been tasked with accomplishing. Particulars of some of these communications include the following:

- (a) On December 20, 2016, Voorheis, McFarlane, Levitt and Anderson had a conference call to discuss their shared interest in “seeing [Newton Glassman] face justice”;
- (b) On January 20, 2017, the Guarantor Conspirators and Levy/Molyneux had a conference call with Anderson to receive an update from him, and to receive his instructions on “next steps”;
- (c) On February 15, 2017, Levitt and Duhamel arranged for a conference call with Anderson so that Anderson could answer “some questions”;
- (d) On February 16, 2017, McFarlane reached out to Anderson and Levitt and provided website links to two media reporters. This was done further to Anderson’s instructions to the Guarantor Conspirators to come up with names of reporters who would be interested in publishing a story based on the submission of the false complaints to the authorities and regulators that the Conspirators had prepared or were preparing;
- (e) On February 24, 2017, McFarlane again reached out to Anderson and Levitt and identified another Catalyst portfolio company as one that “would be very vulnerable to some of the concerns that may form an SEC complaint”; and

- (f) On February 28, 2017, McFarlane provided Anderson with contact information for management of two of Callidus' borrowers so that Anderson could reach out to them directly.
119. In addition, on February 13, 2017, Levitt was directed by one or more of the Wolfpack Conspirators and the Guarantor Conspirators to contact Marc Cohodes ("Cohodes"), a known short seller based in the United States. This contact was made to obtain assistance in formulating false allegations against Callidus, and to facilitate the implementation of the Conspiracy. The Wolfpack Conspirators and the Guarantor Conspirators remained in contact with Cohodes throughout 2017 and up to and including 2019 for the purposes of causing economic harm to the Plaintiffs. Cohodes was and is closely associated with the Anson Defendants and invests money with them, and therefore stood to benefit financially from the participation of the Anson Defendants in the Conspiracy.
120. On February 27, 2017, Boland and Levy had another telephone call, this time to discuss Callidus' claim against its former employee, Craig Boyer ("Boyer"). Levy reported on this call to the Guarantor Conspirators and Duhamel.
121. By early March 2017, Voorheis was also still actively assisting the Wolfpack Conspirators and the Guarantor Conspirators, including by (a) making attempts to elicit information helpful to their false allegations from and related to Boyer, and (b) assisting in the coordination of the Conspiracy and the filing of the complaint to the SEC. Particulars of some of these steps include the following:
- (a) On March 2, 2017, McFarlane spoke with Voorheis and reported on the conversation to Levy. McFarlane reported that Voorheis said that he "made contact

with Boyer's lawyer". Voorheis provided Boyer's lawyer with false information about the XTG loan. In that same report, McFarlane advised Levy that Anderson had "been in Toronto for the last 2 days" and that McFarlane had asked Anderson to call him with an update. While in Toronto, Anderson met with Boland and Voorheis, amongst others;

- (b) On March 3, 2017, in response to a request for any news or development from Levitt, McFarlane responded that he would "stay in close contact with Wes so all our efforts are coordinated. Their stock is down about a dollar for the week-high of \$19.12 and around \$18.20 right now." The need for close co-ordination expressed by McFarlane was because the planned public disclosure to the media of the false whistleblower complaints had to coincide with the short selling being implemented by Anderson, Boland, West Face, Voorheis, Langstaff, the Anson Defendants, and others. McFarlane had previously warned the Guarantor Conspirators against personally taking a short position in Callidus in order to keep the activities of the group as covert as possible; and
- (c) On March 22, 2017, McFarlane travelled to Toronto to meet in person with Voorheis to discuss the precise implementation of the Conspiracy. McFarlane's trip to Toronto also included meetings with Langstaff, who through his employment as a broker-dealer at Canaccord was assisting the Defendants with their short-selling attack, and with John Tilak, a Toronto based reporter with Thomson Reuters.

122. Throughout this period, the Anson Defendants were also involved in numerous discussions with Cohodes, Langstaff and other third parties known to the Defendants regarding the

Conspiracy against the Plaintiffs. These communications and meetings were attended by senior executives of the Corporate Anson Defendants, including Kassam, Spears and Puri, during which discussions were held and meetings were conducted with Cohodes and other persons known to the Anson Defendants, including the following:

- (a) An exchange of messages in May 2016 between Kassam and Langstaff whereby Langstaff, while employed by Canaccord Genuity, asked Kassam to provide him with the email address of Cohodes; declared that “[Callidus] must be stopped”; and instructed Kassam to “short” Callidus;
- (b) In the same message exchange, Kassam provided Langstaff with Cohodes’ email address told Langstaff to “Call ADAM [Spears] tmrw” as it would be “Best he [Spears] make the intro” to Cohodes. Langstaff in reply said “No problem. Hat tip to [S]pears on this one – wouldn’t have happened without him”;
- (c) A meeting in December 2016, between the Anson Defendants and others in which plans were discussed to file a number of whistleblower complaints against several Canadian companies in order to legitimize short-selling activities that were to be undertaken by the Anson Defendants in conjunction with the Wolfpack Conspirators and the other John Does;
- (d) A meeting by Kassam and Cohodes on or shortly before January 9, 2017, which Cohodes referred to as being “a perfect meal after a great day with members of the conspiracy”;

- (e) A meeting at the Corporate Anson Defendants' offices at 155 University Avenue in Toronto, in or about February 2017 during which Spears stated that "Glassman had made himself a target", that Anson had received disparaging allegations about Catalyst and Callidus from Langstaff at Canaccord, and discussed "working up a fraud complaint" against the Plaintiffs. Langstaff and Canaccord were described by Spears to be friends of Boland;
- (f) A meeting on or about March 5, 2017, at an unknown place, when Spears alleged that according to Langstaff, Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices. Spears also alleged that Langstaff and possibly one other person was a source for this "intel";
- (g) An exchange of messages on March 23, 2017 whereby Kassam asked Langstaff, a day after Langstaff had met with McFarlane who had spoken to Anderson and was advised that Anderson was 2-3 weeks away from filing an SEC complaint, whether "[Langstaff]" had any draft for [Kassam]";
- (h) In the same message exchange, Langstaff advised Kassam that "I don't have [a draft] yet" but went on to state he did "have something new though", namely Langstaff alleged that there was "an undisclosed related party transaction that hides a loss". Langstaff was referring to certain previously disclosed transactions relating to XTG which were later the subject of widespread false allegations made by the conspirators;
- (i) A follow up meeting between Kassam and Langstaff arranged in June 2017;

- (j) A dinner meeting at Barbarians restaurant in Toronto on or about July 14, 2017, attended by Kassam, Spears, Puri, Cohodes and approximately 10 other people whose identities are known to the Anson Defendants, during which the allegations referred to above were discussed as well as the SEC complaint that had been recently filed against Catalyst and Callidus by Anderson and other members of the Conspiracy, the attempts to cause Reuters to publish false articles about the Plaintiffs, and the next steps that would be taken in furtherance of the Conspiracy.
123. While employed by Canaccord Genuity, Langstaff also engaged in numerous acts and communications with the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes in furtherance of the Conspiracy. Particulars of these acts and communications include the following:
- (a) On March 24, 2017 Langstaff told Levitt that a loan in Callidus' portfolio known as the "Leader [Energy] loan" was a "dismembered corpse" and that Callidus was getting ready to "stuff" this loan into another borrower with whom Callidus had a business relationship, in order to "hide the loss";
- (b) On March 28, 2017, Langstaff and Levitt discussed how best to make and substantiate fraud allegations against Catalyst and Callidus which they and their co-conspirators were and were intending to disseminate;
- (c) On March 29, 2017, Langstaff told Levitt that Callidus was probably about to take steps to "tap the guarantee on Blueberi" and of his conversation with the principal of Blueberi, "Gerrard" (Duhamel), about steps that Duhamel had taken or was about to take to disparage Catalyst and Callidus;

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

- (k) On May 3, 2017, Langstaff represented to Levitt that “Glassman had violated TSX rules”; that with “one good swat at [Glassman]” the conspirators “might get [Glassman] to lose control and that he was “trying” to make this happen;
 - (l) On May 12, 2017, Langstaff received from Levitt numerous documents including materials which the Guarantor Conspirators delivered to JSOT, to be used and distributed by Langstaff to “get some media traction” in furtherance of the Conspiracy;
 - (m) On May 15, 2017, Langstaff told Levitt that he suspects that Hilco, a well-known and independent appraiser retained by Callidus to value Esco Marine and Bluberi, was “on the take from Callidus” to enable Callidus to “call in the loan[s]”; and
 - (n) On June 3, 2017, Langstaff was told by Levitt that he supposedly had “evidence of ... money laundering” by Callidus and that “Reuters [was] working hard now”.
124. The communications between Langstaff and the Wolfpack Conspirators, the Guarantor Conspirators and Cohodes also included material information which was not publicly known at the time of their communications, but which was being shared to assist in the circulation of disparaging allegations about the Plaintiffs, in furtherance of the Conspiracy. The sharing and circulation of such non-public material information for the above purposes occurred through and as a result of numerous communications among Levitt, Langstaff, and the other Defendants. Particulars of these communications include the following:
- (a) On March 28, 2017, communications by Levitt to Langstaff regarding (i) a PwC valuation of Bluberi obtained by Callidus, and (ii) future legal proceedings which

had been described by Gerry Duhamel to Levitt, in which the PwC valuation was going to be disclosed by him; and

- (b) On May 3, 2017, communications by Levitt to Langstaff regarding evidence that was sealed and subject to a protective order, which had supposedly been considered by a District Court Judge in Texas, and who Levitt falsely alleged had found that Callidus had been guilty of fraud in its dealings with one of its borrowers, Esco Marine.

125. During the course of the numerous acts and communications by Langstaff with the Wolfpack Conspirators and the Guarantor Conspirators, Langstaff:

- (a) Shared information with Boland, who he referred to as his “friend” with the other participants in the Conspiracy;
- (b) Received documents and communications from and made by, or prepared at the direction of, his fellow participants in the Conspiracy, which disparaged the Plaintiffs;
- (c) Circulated materials which he believed would further help the Conspiracy to succeed; and
- (d) Encouraged the other participants in the Conspiracy by praising them for their efforts and by inciting their continued participation in the Conspiracy.

126. In furtherance of the Conspiracy, Langstaff breached his duties of loyalty, honesty and fair dealing, fiduciary and other duties owed to the Plaintiffs as particularized in paragraph 191

below, and also engaged in improper activity with the predominate purpose of harming the Plaintiffs. Langstaff was reprimanded by Canaccord Genuity on August 9, 2017 for divulging information to a short seller of a stock of another client in breach of Canaccord Genuity's Confidentiality & Non-Disclosure Policy. Langstaff was terminated by Canaccord Genuity the following month on September 26, 2017.

127. In addition, as a result of these meetings and other communications among them, by the third week in April 2017, the Wolfpack Conspirators and the Guarantor Conspirators had prepared and distributed further written materials falsely accusing Catalyst, Callidus and Glassman of criminal wrongdoing, which the Conspirators intended to provide to the SEC, JSOT, and the Toronto Police Service. Like the allegations contained in the other materials which had previously been prepared, circulated and utilized by the Complainants when they met with the OSC in December 2016, the allegations in this documentation were false.
128. In or about mid-April 2017, some or all of the Wolfpack Conspirators and Guarantor Conspirators had also contacted the Toronto Police Service for the purpose of making false allegations of criminal offences against Catalyst, Callidus and Glassman. These contacts were made by the Wolfpack Conspirators and Guarantor Conspirators to Gail Regan and Dianne Kelly of the Toronto Police Service. The purpose was to harm Catalyst, Callidus and Glassman and to make it possible to allege to the media that an active criminal investigation into frauds allegedly committed by Catalyst, Callidus and Glassman was underway by the responsible authorities. In furtherance of this element of the Conspiracy, the Wolfpack Conspirators and Guarantor Conspirators remained in contact with Regan and Kelly throughout April – May 2017, including but not limited to direct contacts on or about June 5, May 30, June 14-15 and July 6, 2017. These contacts and communications

included the preparation and delivery to the Toronto Police Service of a document entitled “Callidus Fraud” and a request in early July 2017 that a formal fraud investigation be commenced.

129. The Toronto Police Service cautioned the Defendants about making any public reference to any “investigation” by the Toronto Police Service and ultimately, the Toronto Police Service confirmed to them that no investigation of Callidus or Catalyst would be commenced. However, none of this stopped the Wolfpack Conspirators and Guarantor Conspirators from relaying that false information to the media, as described below.
 130. By this time, the Wolfpack Conspirators and Guarantor Conspirators had also filed, with the direct assistance and participation of Anderson, a false complaint with the SEC and OSC alleging that Catalyst, Callidus and Glassman were guilty of serious criminal misconduct.
 131. The above acts were all in furtherance of the Conspiracy, including the plan by the Conspirators to persuade the financial media to publish false stories alleging that Catalyst, Catalyst and Glassman were the subject of active fraud investigation by the Toronto Police Service and by JSOT.
- (G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST**
132. In or about spring 2017, the Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting newly identified journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

133. As pleaded above, initially, Boland and West Face had engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. West Face and Boland agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.
134. As a result, Livesey drafted a story based on information fed to him by one or more of the Wolfpack Conspirators and the Guarantor Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.
135. West Face and Boland worked with Livesey to contact different news outlets including, Bloomberg, BuzzFeed, Canadian Business Magazine and the Globe and Mail newspaper, with the goal of convincing these organizations to print Livesey's freelance negative story about Callidus, Catalyst and their principals. However, these outlets chose not to publish the Livesey freelance story.
136. Having been frustrated by the failure of the above failed attempts, the Wolfpack Conspirators and the Guarantor Conspirators then sought to create another "story" that Callidus was under "investigation" by the authorities based on the submission of the false Complaints. In order to interest news outlets with this "story", they disclosed the substance of the Complaints. The Wolfpack Conspirators and the Guarantor Conspirators intended to create the appearance of a credible news story about alleged nefarious practices and fraudulent practices at Callidus and Catalyst.
137. Callidus and Catalyst have positively denied any such "investigation", and no such investigation was ever commenced.

138. The Wolfpack Conspirators and the Guarantor Conspirators approached Reuters in June 2017 and advised, with the existence of the Complaints, and encouraged Tilak and a New York based Reuters reporter, Lawrence Delevigne, to publish a negative story about Callidus and Catalyst, including falsehoods that active criminal investigations about the Plaintiffs and their businesses were actively underway by regulatory authorities, JSOT and the Toronto Police Services.
139. In this regard, Livesey offered to be a source for the story and provided false information for the negative story that the Wolfpack Conspirators and the Guarantor Conspirators had encouraged Tilak and Delevigne to write. Livesey also provided Tilak and Delevigne questions to be asked of Catalyst, Callidus and Glassman that were based on patently false information from the Wolfpack Conspirators and Guarantor Conspirators designed to push a disparaging story about Catalyst, Callidus and Glassman.
140. Reuters decided not to publish this false story. Reuters did not publish the story despite the Wolfpack Conspirators' and the Guarantor Conspirators' best efforts to entice it to do so by alleging, among other things, that:
- (a) Catalyst had misled its investors about the valuation of assets held in Catalyst's investment portfolios;
 - (b) Callidus had misled its borrowers about loans extended to them by Callidus;
 - (c) Callidus' misconduct included criminal fraud in relation to its borrowing practices;
 - (d) Both Catalyst and Callidus had engaged in false and deceptive accounting practices in relation to a loan which had been extended to XTG;

- (e) Catalyst was under active investigation for fraud and other criminal misconduct in connection with the above matters by the OSC, JSOT and by the Toronto Police Service; and
 - (f) Callidus was also under active investigation for fraud and other criminal misconduct in connection with the above matters by JSOT and the Toronto Police Service.
141. In addition, in or about late June or early July, 2017, one or more of the Wolfpack Conspirators and the Guarantor Conspirators also alleged that:
- (a) At least three separate “whistleblower” complaints had been filed with the OSC;
 - (b) One of the whistleblower complaints had been filed by the defendant Baumann and stated that Catalyst and Callidus had engaged in false and deceptive accounting practices with respect to XTG;
 - (c) Another whistleblower complainant stated that Callidus had misled its borrowers about their loans and had misled its shareholders about the value of Callidus’ assets, and,
 - (d) Another whistleblower complainant stated that Catalyst had misled its investors about the value of the investments in its portfolios.
142. At times known to the Defendants but not to the Plaintiffs, one or more of the Wolfpack Conspirators and the Guarantor Conspirators continued to communicate with Reuters and to make allegations about Catalyst and Callidus, including the following:

- (a) Catalyst's valuation procedures were flawed and improper and had been used to create an appearance of high but inaccurate returns in the Funds managed by Catalyst;
 - (b) Catalyst's practices of using aggressive, inflated valuations had the effect of generating elevated fees for the benefit of Catalyst and Newton Glassman;
 - (c) Glassman had been unfairly and improperly enriched by such practices and fees;
 - (d) Catalyst's loan guarantees to Callidus had not been properly disclosed and created improper conflicts of interest; and
 - (e) Catalyst and Callidus continued to be under active criminal investigation by JSOT and the Toronto Police Service.
143. Prior to approaching Reuters, the Wolfpack Conspirators and the Guarantor Conspirators had also sought to approach other reputable news organizations, whose identities are known only to them, in 2017, with the existence of the Complaints and encouraged those organizations to publish negative stories about Callidus and Catalyst. Those organizations also decided not to publish their stories.
144. After being rejected by these credible media outlets, the Wolfpack Conspirators and the Guarantor Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.
145. As a result of these continuing failures, in late July or early August 2017, the Wolfpack Conspirators and the Guarantor Conspirators contacted a different reporter, the Defendant

Copeland of the WSJ, with the intention of having Copeland write a story that would insinuate that Callidus and Catalyst were under “investigation” by both the OSC and the Toronto Police for fraud.

146. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Wolfpack Conspirators and the Guarantor Conspirators to further the Conspiracy.
147. The Wolfpack Conspirators and Guarantor Conspirators agreed that the Guarantor Conspirators and Anderson would disclose information relating to the fact and substance of the Complaints to Copeland, knowing and/or intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud and other improprieties by Catalyst and Callidus would immediately be published and given widespread publicity; (iii) the publication of the existence and substance of the Complaints would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares; and (v) these steps, events and consequences would give them or some number of them an opportunity to engage in profitable short selling of Callidus Shares, all of which was in furtherance of the Conspiracy.
148. Copeland was directed by the Wolfpack Conspirators and the Guarantor Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint fully expecting that Copeland would publish those statements in the WSJ. Specifically, McFarlane detailed to Copeland that Callidus and Catalyst engaged in allegedly nefarious accounting practices concerning a loan that Callidus extended to XTG. McFarlane had

filed a Complaint regarding these accounting practices but, in doing so, maliciously made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. The words uttered by McFarlane meant and were understood to mean that Callidus and Catalyst conducted business in an unethical manner, engaged in improper accounting practices, were dishonest, lacked integrity, and ought not to be trusted.

149. Similar conversations occurred with Baumann, Molyneux, Levitt, Duhamel and Anderson during which, or as a result of which the following false and defamatory statements were made to Copeland on the direction, encouragement, inducement of and in consultation with the Wolfpack Conspirators and the other Guarantor Conspirators:

- (a) Catalyst and Callidus are under active investigation by the Toronto police department and various regulators, including the OSC and the Alberta Securities Commission, regarding accounting irregularities, securities fraud and other criminal misconduct.

These words meant and were understood to mean that the Plaintiffs,

- (i) operate their businesses in a manner that is contrary to applicable law and regulation;
- (ii) are involved in fraudulent activity of the type public authorities ought to be concerned with; and
- (iii) conduct business in a dishonest and unethical manner.

- (b) Callidus and Catalyst failed to decrease the valuations of their loan collateral when companies in the Callidus portfolio ceased making interest payments or only made partial payments.

The words meant and were understood to mean that Callidus and Catalyst engaged in unethical accounting and other business practices so as to apply economic pressure on borrowers, for the unfair advantage of Callidus and Catalyst.

- (c) Callidus and Catalyst engaged in fraud by misleading borrowers about deal terms in order to withhold funds from borrowers at critical times and to allow the debt to balloon in order to assume control and ultimately ownership of borrowers.

These words meant and were understood to mean that Callidus and Catalyst illegitimately exercised their control over the cash flow of borrowers to artificially create a situation of economic distress enabling them to wipe out equity holders.

- (d) Catalyst misled its investors about the valuation of assets held in Catalyst's investment portfolios to collect fees and other payments to which it was not entitled and that Callidus had misled its borrowers about loans extended to them by Callidus.

These words meant and were understood to mean that,

- (i) Catalyst misled investors in the funds it managed in order to collect management and other fees to which it was not lawfully entitled; and

- (ii) Callidus misled its borrowers about the terms of the loan agreements they were entering into and how Callidus' rights under those loans would be exercised.
- (e) Callidus and Catalyst falsely certified that their financial statements were prepared in accordance with IFRS and, in particular, that they failed to conduct an appropriate impairment analysis on the assets of the Callidus borrowers and Catalyst funds despite disclosures in their financial statements that such analysis had been done.

These words meant and were understood to mean that Catalyst and Callidus made material misrepresentations in their financial statements and that their financial disclosure ought not to be trusted.

150. During the course of writing the article requested by the Wolfpack Conspirators and the Guarantor Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.
151. Despite Copeland's refusal to disclose the subject of the article, Callidus and Catalyst agreed to meet with Copeland and his colleague, Jacquie McNish ("McNish"), to clarify the information and facts that Copeland indicated he would be relying on for the article.
152. The meeting between Copeland, McNish and representatives of Callidus and Catalyst took place on August 8, 2017. During that meeting, Callidus and Catalyst provided detailed information of the accounting surrounding XTG and confirmed that all of this information was available on the public record. This information flatly contradicted information that

had been provided to Copeland and McNish by the Wolfpack Conspirators and the Guarantor Conspirators. Copeland disclosed that there had been four different whistleblower complaints to the OSC concerning Callidus and Catalyst, three of which had been filed by Guarantors.

153. During the meeting with Callidus and Catalyst, Copeland did not take any notes about any of the responses provided by Callidus and Catalyst including detailed explanations provided regarding the accounting practices surrounding XTG.
154. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.
155. Despite receiving information that refuted the basis for their story, and without making any further inquiries or conducting appropriate diligence, Copeland and McNish decided to publish it anyway. Copeland and McNish drafted the story in a manner that strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behavior concerning XTG, and that they were under "investigation" by the authorities for that and other matters. They also falsely reported that company representatives had declined to offer a comment. Copeland and McNish acted maliciously.
156. On August 9, 2017, in furtherance of the Conspiracy, Copeland, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff were in communication about the timing of the story. They encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised them that he would do so and he did. Copeland did so with the knowledge, intention and purpose of harming the Plaintiffs and benefitting himself, the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff.

(H) WEST FACE, ANSON AND JOHN DOES EXECUTE WAVE OF SHORT ATTACKS

157. On or about August 9, 2017, in furtherance of the Conspiracy, the Wolfpack Conspirators and one or more of the John Doe Defendants took short positions in Callidus Shares, either directly or indirectly.
158. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions through Langstaff at Canaccord Genuity and others, who are known to the Defendants but unknown to the Plaintiffs.
159. Langstaff and others, who are known to the Defendants but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. While employed by Canaccord Genuity, Langstaff, in furtherance of the Conspiracy, assisted the Wolfpack Conspirators and the John Doe Defendants to take short positions in Callidus Shares, either directly or indirectly.
160. In a typical “short”, the investor borrows a company's stock from another investor, on the theory that the company's share value will decline over a period of time as described in paragraphs above.
161. On or about August 9, the Wolfpack Conspirators took “naked short” positions. This means that the Wolfpack Conspirators took a short position, betting that Callidus' stock price would decline, without actually borrowing the stock from another investor. In other words, in addition to betting that Callidus' stock price would decline, the Wolfpack Conspirators bet that they could purchase Callidus Shares to cover their short positions from the market directly without having to first borrow them.

162. This type of short is extremely risky because it requires the short selling investor to purchase the stock to cover his or her short position. The investor bets that he or she can purchase the stock for a lower price at the end of the day than it could have at the open of the market. This bet is very risky when shorting a stock that has a low trading volume, like Callidus, because the investor may not be able to purchase the stock to cover its short position, which leaves it exposed to serious losses if the share price increases. In the case of Callidus, the strategy is even more risky because Catalyst and its related funds own more than 2/3rds of Callidus Shares and they are not made available for borrowing.
163. In addition to naked shorts, the Wolfpack Conspirators and the John Doe Defendants took other positions, the particulars of which are only known to them, to simulate a short position and profit from the damaging effects of the Article.
164. As at August 8, 2017, the average daily trading volume of Callidus's stock was (a) for the preceding 60 day period, 64,737 shares, (b) for the preceding 30 day period, 63,999 shares, and (c) for the preceding 10 day period, 48,224 shares.
165. The Wolfpack Conspirators, however, knew as a result of their activities that, at the end of the day on August 9, there would be sufficient trading volume to cover their short position.
166. At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on thewallstreetjournal.com (the "Article"). The headline of the Article was "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*". The Article was hidden behind a "pay wall", meaning that only those people who subscribe to the WSJ could see the full text of the Article. Those who were not subscribers only saw the headline and first paragraph of the Article, which read as follows:

TORONTO -- At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

167. The headline and first paragraph of the Article contained the word “fraud” two separate times. The thrust of the Article was exactly what the Wolfpack Conspirators, the Guarantor Conspirators and Langstaff intended — it impressed upon the general public, including the third parties identified in paragraph 193 below, that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.
168. In addition to publication online on thewallstreetjournal.com, a revised version of the Article was published in the August 10, 2017 print edition of the Wall Street Journal under the headline “Top Buyout Firm Scrutinized on Loans”.
169. The Article was also published on the Dow Jones Newswire and other means that caused immediate dissemination of the Article in its entirety, including the references to Catalyst and Callidus, to other market participants.
170. Just prior to the publication of the Article on August 9, 2017 and the close of market at 4:00 pm EDT the same day, the trading in Callidus stock revealed that the Article had the exact effect intended by the Wolfpack Conspirators. A significant number of those persons holding Callidus Shares divested them after 3:30 pm EDT which, in turn, led to a sharp decline in Callidus' stock price. Due to stock market rules that prohibit Callidus from being in the market after 3:30pm through its Normal Course Issuer Bid, the broker administering

that bid could not provide support for the stock price. These rules were known to the Defendants.

171. Simultaneous with the publication of the Article at 3:29 p.m. and within the span of a single minute (3:29:00 – 3:29:59), the volume spiked with 13,000 shares traded, dropping the price from \$14.92 to \$14.73 on multiple individual trades. Significantly, in the preceding 30 minutes prior to 3:29 p.m., only 3,100 shares had traded in total.
172. Over the next 30 minutes (3:30 p.m. – 4:00 p.m., the close of the trading day), over 157,400 shares traded, dropping the price by the end of the trading day to \$13.41.
173. The timing of the sell-side trading activity reflected at 3:29 p.m. was designed to cause the share price to begin to decline to exaggerate the negative pressure anticipated to be caused by the Article. The timing was part of the scheme of the Wolfpack Conspirators and the John Doe Defendants to ensure that the share price was dramatically reduced in the last 30 minutes of the trading day and to ensure a disorderly sell-off by panicked investors.
174. During the chaotic sell-off, the Wolfpack Conspirators and the John Doe Defendants were able to purchase Callidus Shares to cover their naked (and other) short positions. Because of the decline in Callidus' share price, they were able to significantly profit. The short paid out because the share price was lower when they eventually purchased the Callidus shares than it was when they earlier secured the naked short (and other simulated short positions). Langstaff profited from the short selling trading that was executed directly or indirectly through him, or in the alternative, assisted other members of the Conspiracy to profit as pleaded.

175. The Defendants' short and distort attack was successful — beginning on August 9, 2017 through August 14, 2017, Callidus' share priced declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).
176. Shortly after the above short-attack, the Anson Defendants including Kassam retweeted on September 27, 2017, Cohodes' tweet that included the following: "This is One of the Greatest Things I have ever Seen; ... Happy to be a member of such fine Wolves".
177. In addition, following the short-attack, Livesey continued his efforts to have false and disparaging articles about Catalyst, Callidus and Glassman published in the media. These include an article entitled "A private equity star's picks shine... until cash-out time" by Tilak and Delevigne on March 23, 2018 that contained a distorted photograph of Glassman taken by one of the Guarantor Conspirators at a Callidus shareholders meeting and shared with Tilak and Delevigne; a follow-up article entitled "Callidus shares tumble after Reuters report on Catalyst valuations" on March 26, 2018. Livesey himself wrote disparaging articles published by Southern Investigative Reporting Foundation on April 11, 2018 and November 27, 2018 entitled "Newton Glassman's Legacy of Ashes" and "Newton Glassman and Other People's Money". Livesey has continued his efforts to have disparaging articles published about Catalyst, Callidus and Glassman, including with Institutional Investors and Bloomberg.

(I) ARTICLE IS FALSE AND DEFAMATORY

178. The Article contains the following false and defamatory statements of and concerning the Plaintiffs:
- (a) The Article's headline and first and second paragraphs state:

“Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers

Authorities looking into complaints that Catalyst inflated value of assets, deceived borrowers

...

TORONTO—At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.”

...

Catalyst Capital Group Inc., one of Canada’s largest private-equity firms, is accused in the complaints of artificially inflating the value of some of its assets and deceiving borrowers about the terms of loans it made. The complaints have prompted officials at the Ontario Securities Commission, the country’s leading securities regulator, to make inquiries and question people familiar with Catalyst, according to the people and documents.”

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
- (ii) Callidus and Catalyst are engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal wrongdoing
- (iv) Callidus and Catalyst are engaged in fraudulent activities in relation to Callidus's loan portfolios;
- (v) Callidus and Catalyst have violated Ontario Securities law; and

- (vi) Callidus and Catalyst have made false and misleading representations to investors;
- (b) A photograph of a Toronto Police car is published immediately after the headline of the Article along with a photo caption that states: “A unit of the Toronto Police Service has begun its own inquiries into Catalyst”. The third paragraph of the Article states: “A unit of the Toronto Police Service that specializes in financial crimes has separately begun its own inquiries, a departmental spokeswoman said”.

These words meant and were understood to mean that:

- (i) Catalyst and Callidus are engaged in criminal conduct;
- (ii) Catalyst and Callidus defrauded investors; and
- (iii) Callidus and Catalyst are under “investigation” for fraud or other illegal activity by the OSC and/or the Toronto Police Service;
- (c) The six, ninth, twelfth, and twenty-sixth to twenty-seventh paragraphs of the Article state:

“...Catalyst mostly invests in high-interest loans to financially distressed firms such as casino game makers of biopharmaceutical companies, and sometimes takes control of the businesses if the loans aren’t paid

...

Some but not all of the filers of Catalyst whistleblower complaints have worked at companies that borrowed money from Mr. Glassman’s firms, and later had their businesses seized, said people familiar with the matter.

...

...Callidus’s lending practices are also a subject of the whistleblower complaints, according to the people and documents.

....

One of those borrowers is Jeff McFarlane.

Mr. McFarlane is the former chief executive of computer distributor Xchange Technology Group, known as XTG. He said his company began borrowing from Callidus in late 2012 after the lender purchased its \$11.6 million loan from a U.S. bank.

Within a year, Xchange was in insolvency proceedings. Callidus purchased the company for about \$34 million, according to court documents.

When Callidus went public in 2014, Catalyst, its majority shareholder, agreed to cover future losses on loans including Xchange.

In September 2015, Callidus recorded the Xchange investment as an asset for sale at C\$66.9 million in a quarterly earnings report.

Then in March 2016, Catalyst transferred C\$101 million to Callidus for Xchange, “an amount equal to the total outstanding principal plus accrued and unpaid interest,” filings show.

In December 2016, Catalyst told its investors that the Xchange stake was only worth a fraction of what it had paid that March, triggering losses on two of its funds, according to one of the whistleblower complaints and documents reviewed by the Journal.

McFarlane confirmed he filed one of the whistleblower complaints. His complaint, and one other, alleges that Catalyst funds overpaid Callidus to acquire the Xchange investment, and Catalyst delayed and underreported potential losses. ‘I have serious concerns about the integrity of Callidus’s accounting around XTG,’ Mr. McFarlane said.’

These words meant and were understood to mean that:

- (i) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (ii) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers;

- (iii) Callidus and Catalyst improperly “seize” companies to whom loans have been made;
 - (iv) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
 - (v) Callidus and Catalyst improperly caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
 - (vi) Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
 - (vii) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
 - (viii) Callidus and Catalyst overvalued XTG, to the detriment of the funds managed by Catalyst;
 - (ix) Callidus and Catalyst caused Callidus to mislead its shareholders or investors;
 - (x) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
 - (xi) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.
- (d) The nineteenth and twenty-eight paragraphs of the Article state that the Plaintiffs:

“...sometimes file multiple lawsuits against borrowers believed to have violated the terms of their loans.

...

Last month, the Court of Appeal for Ontario found Mr. McFarlane responsible for a personal guarantee on Xchange’s debts that was far less than Callidus was seeking in a civil suit.

These words meant and were understood to mean that:

- (i) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers; and
- (ii) Callidus and Catalyst dealt with McFarlane unfairly or unjustly by pursuing him in a Guarantee Action.

179. The impact of the Article was exactly what the Defendants intended — it impressed upon the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent activities by Callidus and Catalyst.
180. The statement made in the Article particularized in paragraph 178 above, and the statements made to Copeland by the Guarantor Conspirators and Anderson particularized in paragraphs 148-149 above are, collectively, the “Defamatory Words”. The plain meaning of the Defamatory Words taken together is that the Plaintiffs act fraudulently with misstated financial statements, carry on nefarious business practices, and lack integrity in their business dealings. This is spurious, false, malicious, and damaging to the Plaintiffs' reputation and good will.
181. The Wolfpack Conspirators acted in concert with the Guarantor Conspirators and Copeland to publish the Defamatory Words.

182. Each of the Wolfpack Conspirators, Guarantor Conspirators, and Copeland participated in a common design to publish the Defamatory Words including but not limited to:
- (a) Agreeing to the Conspiracy as particularized in paragraph 90 above,
 - (b) Discussing and agreeing to the words to be used in the Complaints and ultimately the Article as particularized in paragraphs 92, 100-103, and 107-109 above;
 - (c) Sharing of information, advice, and strategies for the purpose of and in furtherance of the conspiracy as particularized in paragraphs 86, 98-100, and 103-109 above;
 - (d) Approving of and directing the disclosure of the existence and substance of the Complaints to Copeland for the purposes of republication in the Article as particularized in paragraph 143-147 above; and
 - (e) Making false and defamatory statements to Copeland, either directly in the case of the Guarantor Conspirators or indirectly in the case of the other Conspirators, as outlined in paragraphs 148-149 above.
183. The full extent of the Defendants' individual knowledge and participation in the Conspiracy and in the publication of the Defamatory Words is known to them and not known to the Plaintiffs.
184. The Wolfpack Conspirators, Guarantor Conspirators, and Copeland published the Defamatory Words complained in pursuit of their vendetta and vengeance against the Plaintiffs and to profit from short selling stocks in Callidus. Participating in the publication

of defamatory statements about the Plaintiffs with the internationally renowned WSJ was clearly designed to embarrass the Plaintiffs and seriously injure their reputations.

185. The Defendants' publication of the Defamatory Words have and will continue to cause serious damage, loss and injury to the Plaintiffs, who relies on their good reputation to carry on business.

(I) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS

Breaches of the *Securities Act*

186. The Defendants' unlawful short attack was intended to, and did, drive down the price of Callidus Shares to artificially low levels. Although the full details of the Defendants' conduct in this regard are known only to them, such conduct includes, without limitation:
- (a) Providing tip-offs and previews to selected investors of the Defendants' intention to disseminate false negative information into the market concerning Callidus, and of the planned timing of such dissemination;
 - (b) The concerted accumulation of open short positions in advance of the publication of the Article so as to take advantage of market price declines when the Article was published;
 - (c) Encouraging selected investors to do the same;
 - (d) The Defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
 - (e) The Defendants' efforts to ensure publication of the Article; and

- (f) The Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.
187. By participating in the short attack, each Defendant, directly or indirectly, engaged or participated in a course of conduct relating to the Callidus Shares that they knew and intended, or reasonably ought to have known, would result in or contribute to an artificially low price for the Callidus Shares, in violation of section 126.1 of the *Securities Act*.
188. Additionally, each Defendant, directly or indirectly, made a statement or statements that they knew or reasonably ought to have known was misleading or untrue, or that failed to state a fact that was necessary to make the statement not misleading, and that would reasonably be expected to have a significant effect on the market price or value of the Callidus Shares, in violation of section 126.2 of the *Securities Act*.
189. The Defendants' breaches of the *Securities Act* are “unlawful acts” that, in part, form the basis of the civil conspiracy claim, as pleaded above.

Breaches of Duties by Langstaff

190. The Plaintiffs were clients of Langstaff since late 2013.
191. In the course of delivering advice and providing services to the Plaintiffs, Langstaff gained intimate knowledge of and was entrusted with the Plaintiffs' business and financial information and affairs. Langstaff a duty of loyalty, duty of honesty and fair dealing, and fiduciary duties and obligations to the Plaintiffs, including the following duties to:
- (a) Act honestly, in good faith and in the best interests of the Plaintiffs;

- (b) Avoid any conflict of interest between the Plaintiffs and Canaccord Genuity or between the Plaintiffs and other clients of Canaccord Genuity;
 - (c) Comply with Canaccord's policies including its Code of Business Conduct and Ethics, Conflicts Policy, Group and Operating Policies and Confidentiality & Non-Disclosure Policy, and to comply with regulatory and accepted standards of practice recognized by the securities and investment community in Canada;
 - (d) Refrain from engaging in or agreeing, assisting or encouraging others to engage in activities that were intended to harm the Plaintiffs;
 - (e) Refrain from disparaging the business and affairs of the Plaintiffs;
 - (f) Refrain from falsely accusing or expressing opinions that the Plaintiffs or their personnel were guilty of dishonest conduct;
 - (g) Not to falsely allege that Callidus business was a fraud and to advise that short-selling of Callidus shares should be undertaken on the strength of this allegation;
 - (h) Not to engage in the conspiracy against Catalyst and Callidus pleaded in this Action;
192. Langstaff repeatedly breached these duties by engaging in a course of conduct as pleaded herein, in concert with the other Defendants, with the specific purpose of causing harm to the Plaintiffs for his and the other Defendants' benefit. As pleaded above, Langstaff, among other things:

- (a) Gave advice to Kassam, another client of Canaccord Genuity, to “short” Callidus;
- (b) Disparaged Callidus by describing it as a “fraud” to Kassam;
- (c) Falsely alleged to the conspirators that Catalyst and Callidus had circulated false valuations about their assets and were guilty of fraud by selling assets at inflated prices;
- (d) Falsely alleged that Callidus engaged in an undisclosed related party transaction to hide losses;
- (e) Discussed with Levitt how best to make and substantiate fraud allegations against Catalyst and Callidus which they and the other conspirators were intending to disseminate;
- (f) Falsely alleged that independent appraisers of Callidus were “on the take”;
- (g) Met with members of the conspiracy including West Face and Boland, a friend and clients of Langstaff, to “help” and further advance the conspiracy to harm the Plaintiffs;
- (h) Received material non-public information about steps to be taken by the conspirators against Callidus and Catalyst including future lawsuits to be commenced against them and the planned short-attack;
- (i) Facilitated and executed the short selling trading to the harm of the Plaintiffs; and
- (j) Concealed his activities by using encrypted self-destructing messaging apps to communicate with the conspirators.

Causing loss by unlawful means/ intentional interference

193. By participating in the Conspiracy and the publication of the Defamatory Words, the Defendants deceived third parties into believing that Callidus and Catalyst were engaged in fraudulent activity, carried out unethical accounting and business practices, took unfair advantage of investors and borrowers, misled investors and were subject to “investigation” by the OSC and the Toronto Police. These third parties had actionable claims against the Defendants by reason of their conduct pleaded herein, and include but are not limited to the following persons: (i) investors in funds managed by Catalyst that held Callidus shares whose stock depreciated as a result of the Defendants’ conduct; (ii) investors that sold shares in Callidus as a result of reading the Defamatory Words or in response to the resulting sell-off of Callidus shares due to the Defendants’ implementation of the Conspiracy; (iii) service providers such as appraisers engaged to appraise and alleged to have falsely valued borrowers’ assets for the benefit of Callidus and Catalyst; and (iv) auditors, audit committee members and the independent directors of Callidus and Catalyst that are responsible for and allegedly failed to detect the supposed fraudulent activities carried out by the Plaintiffs.
194. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors, directors and auditors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares, lost revenues, loss of goodwill, as well as impairment of their ability to conduct and grow their business, implement strategic plans, and secure capital. In addition, the market manipulation of the Defendants caused significant harm to Callidus in the form of a loss in market capitalization.

195. The conduct of the Defendants in implementing the Conspiracy as described above, was directed at and intended to harm, punish and discredit the Plaintiffs. As described above, the purpose and effect of the Defendants' activities were to damage the reputations, and undermine and destroy the business of, and otherwise cause harm to the Plaintiffs. The Defendants knew that harm would come to the Plaintiffs as a result of their conduct. By deceiving market participants and investors into believing that the Plaintiffs are dishonest, fraudulent and untrustworthy, and by engaging in an improper short attack, the Defendants deliberately tarnished and harmed their reputations in the financial, investing and business communities.
196. As a result of the Defendants' implementation of the Conspiracy as described above, the Plaintiffs have suffered significant damages. Among other things, the Defendants have impaired Callidus' ability to raise and retain invested capital, attract and keep employees, attract and grow its loan portfolio and make investments in other companies. This has led directly to the significant erosion of the equity value of Callidus from 2017. This is because the Defendants' conduct has:
- (i) deterred potential borrowers from doing any business with Callidus in light of the false allegations that Callidus engaged in fraudulent transactions, unethical accounting and unfair business practices with a view to wiping out equity ownership and taking control of borrowers;
 - (ii) scared away potential employees who could have helped grow and develop the Callidus' business; and

- (iii) made it extremely difficult for Callidus to access third party capital necessary for the growth of its business.

197. In the alternative to damages to compensate Callidus and Catalyst for having caused them loss by unlawful means, the Defendants are liable to pay restitution, disgorgement or to otherwise account for any and all ill-gotten gains obtained as a result of their conduct.

Personal Liability of the Individual Defendants

198. The Individual Defendants completely dominated and controlled the corporate entities among the Defendants and caused them to engage in the tortious and unlawful conduct described above. The role of the Individual Defendants in this regard extended beyond the nature and scope of their roles as officers and directors of the corporate Defendants and include direct personal involvement, improper intentions, and wrongful acts. In addition, the conduct alleged involved malice and dishonesty in which the Individual Defendants sought to use the corporate entities among the Defendants to obtain significant personal financial benefits. As the Individual Defendants caused the corporate entities within the Defendants to direct wrongful things to be done, this is an appropriate case to pierce the corporate veil and impose personal liability on the Individual Defendants. In the alternative, the corporate entities among the Defendants acted as agents for the Individual Defendants, who ultimately profited from the unlawful conduct.

199. In addition, or in the further alternative, the defamatory and otherwise unlawful conduct that was carried out by the Individual Defendants constituted independent wrongful acts that were contrary to the best interests of the corporate entities among the Defendants. In

these circumstances, they are personally liable for the damages they caused, separate and apart from the liability of the corporate entities.

Liability of the John Doe Defendants

200. John Doe Defendants 4-10 are persons or entities whose names are not known to the Plaintiffs, but who:

- (i) participated in the Conspiracy;
- (ii) were aware of the contents of the Article prior to its publication and broadcast;
- (iii) knew or ought to have known that the Article contained false and defamatory assertions about Callidus and Catalyst that would cause the market price of Callidus Shares to decline and otherwise cause damage to Callidus and Catalyst;
- (iv) decided thereby to take short positions in Callidus's Shares, and did so; and
- (v) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Callidus's Shares had declined.

201. John Doe Defendants 4-10 are jointly and severally liable for the wrongs committed by the Defendants.

Punitive Damages

202. The Plaintiffs claim that an award of punitive damages is appropriate, having regard to the high-handed, wilful, wanton, reckless, contemptuous and contumelious conduct of the

Defendants. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiffs for punitive damages.

203. The Plaintiffs are entitled to damages equal to the cost of the “investigation” of the Defendants' misconduct undertaken by Callidus and Catalyst which resulted in sworn statements, discovery of emails and other facts and evidence which form the basis on which this Action is based.

(J) SERVICE EX JURIS

204. The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

205. The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

206. The Plaintiffs propose that this action be tried at Toronto.

November 07, 2017^m
DATE: ~~July 18, 2019~~^m

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Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al
Plaintiffs

and

WEST FACE CAPITAL INC. et al.
Defendants

Court File No. CV-587463-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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This is Exhibit "2" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

MAURA O'SULLIVAN
(LSO# 77098R)

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

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF _____
 L'ORDONNANCE DU _____

DATED / FAIT LE _____

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

Levitt
 REGISTRAR
 SUPERIOR COURT OF JUSTICE

"A. Stanojevic"
 GREFFIER
 COUR SUPÉRIEURE DE JUSTICE

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
 CORPORATION**

Plaintiffs

and

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

Defendants

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

Defendants to the Counterclaim

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

TO THE DEFENDANT(S) TO THE COUNTERCLAIM

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

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

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

If you are not already a party to the main action, instead of serving and filing a Defence to Counterclaim, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

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

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SECOND FRESH AS AMENDED STATEMENT OF DEFENCE

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

A. OVERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Parties to the Claim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12 -

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

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

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

- 13 -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECOND FRESH AS AMENDED COUNTERCLAIM

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

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

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

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

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

A. OVERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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B. The Parties to the Counterclaim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Background to the Callidus Defamation: Callidus Was Overvalued

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The Conspiracy

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

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

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

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

F. The Black Cube Campaign

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. The Defamation Campaign

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

(ii) False and Defamatory Allegations to Catalyst Investors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Buyout That Wasn't

The Truth Behind the Esco Marine Purchase and K2 & Associates

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

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

Connecting The Dots

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

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

The Big Game

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

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

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

How Hilco Connects

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

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

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

In Conclusion

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

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

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

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

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

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

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

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

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

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

West Face Capital – Time to Face the Music

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

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

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

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

Lack of Compliance

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

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

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

Profit through management fees, no returns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wolfpack’s Corruption

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Company Desperate to Maintain a False Image

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

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

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

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

Riddled with Manipulation and Falsified Reports

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

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

Activist Investing to Suit Their Own Needs

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

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

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

Wise Investors Should Look Elsewhere

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Further False and Defamatory Communications to Catalyst Investors

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

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

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

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

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

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

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

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

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

H. Conspiracy

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

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

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

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

- (b) carry out the Black Cube Campaign.

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

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

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

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

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

I. Unlawful Means Tort

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

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

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

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

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

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

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

J. Inducing Breach of Confidence and Fiduciary Duty

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

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

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

K. Damages

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

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

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

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

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

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

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

L. The Catalyst Defendants Are Vexatious Litigants

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

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

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

M. Service Outside Ontario

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

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

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~~September 30, 2019~~ AB.

December 29, 2017

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Counterclaim, West Face Capital Inc. and
Gregory Boland

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TO: SERVICE LIST

THE CATALYST CAPITAL GROUP INC. et al
Plaintiff

-and-

West Face Capital Inc. et al.
Defendants

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

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

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

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

This is Exhibit "3" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

News from globeandmail.com

Meet the new smartest guys on the Street

Tuesday, May 02, 2006

DEREK DeCLOET

Most investors think risk is a four-letter word. For Greg Boland, it's a beautiful thing.

Bankruptcy plays don't faze him. Accounting scandal? The messier, the better. Hated companies, orphaned stocks that everyone else has given up on -- he's all for them. He is the investing world's equivalent of a guy who enjoys car wrecks.

"There are people out there who are really, really smart, but can't stand risk and volatility in their lives," he says. "If I gave you an investment that did this" -- he waves his finger up and down in a zigzag pattern -- "it would technically have a lot of risk because it's got lots of volatility. But at the end of the day . . . risk aversion is usually not a wealth maximizing strategy."

He ought to know the value of a strong stomach. Mr. Boland, operating under an investment vehicle called **Sunrise Partners**, was one of the mystery men behind Stelco's restructuring, a high-wire act full of politics and tactics that several times looked like it might fail. The partnership bought 18 per cent of the Hamilton steel company in bankruptcy court for \$27.3-million.

One month later, that stake is worth almost \$100-million, and he thinks it will be worth a lot more once the new Stelco proves it's much better than the old. Investors will get a taste next week when the company reports its first set of post-bankruptcy financial results.

So far, it looks like the trade of the decade, but outside of Bay Street, almost nothing is known about the man behind it. Mr. Boland, 41, whose official title is chief executive officer of **West Face Capital**, has stayed almost completely out of the public eye, until now.

The Stelco play, it turns out, is a pretty good illustration of an investing style that's worked. The hedge fund says it has 25-per-cent returns, compounded annually, since it began in 1998 (the figure is unaudited), while running, on average, about \$400-million during that span.

It's a long way from his days at Palmerston, an upscale Toronto restaurant where Mr. Boland waited tables in the mid-1980s. One evening, the place was full of big Canadian financiers raising money for the University of British Columbia's portfolio management foundation, which lets finance students learn by managing millions of dollars. For a computer geek who had dabbled in the stock market, the idea clicked, and he went off to Vancouver in search of a degree in computer science and finance.

But if investing were as simple as building spreadsheets, the Forbes billionaires' list would be full of mathematicians. It's as much art as science, and the Stelco case turned out to be a fine, though unusual, example of the art. Dozens of investors, including Mr. Boland's friend and former trading partner Roland Keiper, anointed "The Smartest Guy on Bay Street" in 2004 by Report on Business Magazine, calculated that Stelco's existing equity still had value, even in bankruptcy protection.

The arithmetic said they were right; tactically, they had it wrong. "What was clear to everybody was there was a massive increase in enterprise value," Mr. Boland says. But he and his partners -- Tom Dea, a former Onex deal man, and Peter Fraser, who had been a senior guy at BMO Nesbitt Burns -- figured the shareholders were playing a game where the rules were stacked against them.

"We said, we have two choices. We can get involved in the [old] stock -- and then we've got a butter knife and everybody else has got an Uzi," Mr. Boland says. "Or we can just go in through the official process" and bid to buy Stelco's new equity in the restructuring.

Few of West Face's investments are as high profile as Stelco, but many of them are just as hairy. The firm bought convertible debt and ultimately became a large shareholder in Saskatchewan Wheat Pool after it ran into financial trouble in the early part of the decade, reasoning that control of the company would have to be wrested from farmers (it was). "It was completely off the radar screen. I honestly think we were the only guys paying attention to it who wasn't a bondholder," Mr. Boland says.

The firm also made a killing by buying CP Ships stock when it plunged in an accounting scandal. They hired a shipping consultant to go through CP's fleet -- "they don't quote ships on the Internet" -- and learned the entire company was worth less than its boats, even though there was an international shortage of cargo ships. Sure enough, CP was taken over last year.

A lot of people expect something similar will happen to Stelco as the global steel industry consolidates. If you go up against the smartest guy on Bay Street and beat him, do you get to claim the title?

vox@globeandmail.com

THE GLOBE AND MAIL

This is Exhibit "4" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.

A handwritten signature in blue ink, consisting of a large, stylized initial 'M' followed by a long, sweeping horizontal line.

Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

ROB MAGAZINE

How an activist investor shook up a Canadian brand

**JACQUIE MCNISH** >

PUBLISHED FEBRUARY 23, 2012

UPDATED MAY 3, 2018

0 COMMENTS ← SHARE



In a Toronto meeting room bearing the name "TOP DOGS," two alpha business chiefs are singing each other's praises.

"He is smart as hell!" "Scary bright!" "Accomplished!"

That's Michael McCain talking. He has been chief executive officer of Canada's largest food processing company, Maple Leaf Foods for 13 years. Tall and broad-shouldered with a wavy

crown of steel-wool hair, the 53-year-old is an effusive communicator who frequently leans into the table as he drives home a point.

Basking in the CEO's praise a chair away is Greg Boland, hedge fund owner and Maple Leaf shareholder. Lean and sinewy, Boland, 47, lets McCain do most of the talking while he balances his chair on its hind legs. On the few occasions that Boland interjects, he is economical with words and delivers them in a quiet monotone. "Michael, to his credit, listens."

Breaking into a wide smile, McCain enthuses, "We are more the same than we are different." Counting fingers, he rhymes off similarities: "analytical," "objective," "results-oriented," "Type A," "adventurous." He stops mid-stream when asked if he shares Boland's passion for rock climbing.

"No way," McCain yelps in mock fear. Recalling a photograph of Boland hanging from a stiletto-peaked Italian mountain, he wags a finger at his partner, "You silly bastard, don't do that."

It's a good bet McCain uttered the same warning a year and a half ago. But it wouldn't have been with a smile. These two have waged an unusual but telling corporate war that ended with a truce that left the outnumbered McCain in charge.

In August, 2010, Boland's fund, West Face Capital, put Maple Leaf in its crosshairs, acquiring a 10% stake in a company that had disappointed investors for years.

McCain's executives and directors knew they were under attack: Boland was an activist with a record of shaking up companies. Sure enough, in the following weeks, Maple Leaf became the object of withering private and public critiques, culminating in West Face launching a proxy contest days before Christmas, 2010.

The peaceful outcome in what is normally a battle to the death speaks to the effectiveness of the latest chapter of the activist playbook. The days of "greenmail" and "raiders" are gone. A new generation of shareholder rebels are applying enormous financial clout, shareholder support and a good supply of patience to awaken the management of slumbering corporate giants. It's an American phenomenon; Boland is an outlier. But American activists are pointing their lances toward Canada too. New York hedge fund owner Bill Ackman recently brought his roughhouse tactics north to shake up management at industry slowpoke Canadian Pacific Railway Ltd. "This is about restoring the balance of power back to the owners. The activist acts as the tip of the spear and is willing to take the body blows," says Ackman.

There was a time when Greg Boland was paid to defer to the elite.

It was the late 1980s, and the first-year science student at the University of Toronto was paying his way through school as a waiter at Palmerston, a top-tier restaurant that was making a star of chef Jamie Kennedy. One night Boland was asked to serve a private party of businessmen who had gathered to raise funds for a portfolio management program at the University of British Columbia's Sauder School of Business. Boland was captivated by the war stories recounted by investment legends like Milton Wong.

When the guests told Boland that the Sauder program trained students by giving them university endowment money to invest, "I thought, 'Holy shit, this is really cool,'" Boland recalls. "I liked the tangibility and the practicality of it as opposed to the theoretical stuff you normally get in school." Within months, Boland enrolled at Sauder.

Growing up as one of two children of a divorced mother in Ottawa, Boland spent most of his spare time racing down ski hills: "It hooked me mentally and physically." But he was good with math too—and, later, software code. The combination—"a thrill-seeking puzzle solver," in Boland's own words—pointed the way ahead.

The cold calculations that come with both math and advanced skiing made Boland a perfect fit for the portfolio management program at Sauder. His computer skills put him at the forefront of an emerging style of investment strategy: quantitative analysis. What most impressed teachers was Boland's Zen-like confidence in going against the grain. "It was quite apparent early on that he was an independent thinker," says Rob Heinkel, a Sauder finance professor. "He was very hard-working, always very calm, not cocky or smug. What distinguishes Greg is his gut feel. When he locks on to an idea, he goes with it. He has conviction."

Boland quickly embraced new trading technology, writing his own investment computer models by the time he graduated. His skills landed him a place on the most profitable trading desk on Bay Street: RBC Dominion Securities Inc. hired him in 1991 and placed him alongside Roland Keiper, the sharpest eye on the Street for undervalued or overpriced securities. Specializing in junk bonds and arbitrage trades, the small team racked up massive profits for RBC and pocketed millions of dollars for themselves by shorting stocks or spotting undervalued securities. Big wins included bets against Royal Trustco Ltd. and Newcourt Credit Group Inc. before the financial giants toppled.

Boland specialized in distressed debt, a grim and emotionally charged corner of the capital markets where corporate bonds and debentures are sold at deep discounts. While other investors thumped tables to get concessions on troubled bonds, Boland remained coolly focused on solutions. "He is completely able to divorce his emotions from investments. I've never seen anyone like him, who can keep his ego out of the investment process," says Jim Doak, a portfolio manager who worked alongside Boland in the late 1990s.

Boland's success attracted imitators, meaning the "pretty easy money" he had been making became more elusive. Casting about for new ways to profit from troubled companies, Boland wanted to use RBC's investment clout to push for management and strategic fixes at struggling companies. But there was a problem with that sort of aggressiveness: RBC's shared bloodlines with the Canadian establishment. Boards were populated by RBC clients; if Boland got tough, he'd soon tread on the wrong toes. "I was very constrained at RBC," he says—a characteristic understatement.

In 1998, Boland left the cavernous trading floor at RBC Securities to set up a one-man desk at Enterprise Capital, an investment boutique founded by Jim Doak and Jim MacDonald, former Scotia Capital investment stars. At Enterprise, Boland effectively ran his own fund for his core client, Greenwich, Connecticut-based Paloma Partners LLC.

Leaving RBC meant Boland had more freedom to push for change at ailing companies. It also gave him more flexibility and money to feed his thrill-seeking side. "Greg did not have the same Germanic call of duty as the rest of the Street," says Doak, who marvelled at Boland's "James Bond lifestyle" of arriving late at the office and disappearing for long stretches in search of adventure.

Boland's idea of relaxing is defying death. He clambers up knife-sharp rock peaks with bare hands, heli-skis down avalanche-prone mountains, loops through the skies in aerobatic airplane manoeuvres and wind-surfs swells in Hawaii. Boland says the duress of extreme sports fortifies his trademark confidence. He calls this the "calm loop"; the more you believe you can do it, the greater the chances you can. Or, to put it the other way, "If you are perched on a steep mountain in Alaska and think about falling, you will."

Boland can get away with his James Bond act because most of his investments are long-term plays that seldom require minute-by-minute attention. Still, he ensures he is a phone call away with satellite-linked communication devices he packs for every trip. Several years ago, Boland was nearing the Sun Gate of Machu Picchu after a daylong trek up the Andes, when his phone

began ringing. While his companions toured the magnificent Incan ruins, he discussed investments over the shoe-box-sized device.

Shortly after setting up his own desk, Boland cemented his reputation as a daring investor by making a bet that many initially dismissed as lunacy. TVX Gold Inc. was heading for the abyss in the late 1990s after its mining project in Greece was shuttered. Boland snapped up a large stake in TVX bonds that were trading at a 60% discount. What he saw that others missed was TVX's portfolio of gold-mining options, which protected TVX if the price of gold fell and would yield huge profits if prices recovered. After gold prices levitated in 2001, Kinross Gold Corp. bought the bankrupt company. Boland quadrupled his money.

By the mid-2000s, Boland was ready to put down deeper stakes. He married and committed to a new, more absorbing business. In 2006, he founded a hedge fund that would agitate for change at underperforming companies. West Face Capital is named for the hostile side of a mountain—an apt metaphor for anyone tilting against Canada's business edifice.

Located off the Bay Street grid in a bland Bloor Street office tower, West Face's utilitarian space could be confused for a call centre. The small reception area doubles as a kitchen. A solitary bookshelf stores a worn copy of the Yellow Pages. Behind a glass partition, casually dressed men wearing headsets study computer screens. Of West Face's 30 employees, some trade securities, some monitor investments and others hunt for new opportunities.

Boland declines to identify his backers, other than to say it is a small group of international sovereign wealth funds and Canadian pension funds and endowments. He started the fund in 2006 with \$500 million; today, new investors and strong annual returns have increased West Face's assets under administration to \$2.5 billion. That gives Boland the means to buy big stakes in corporate weaklings. In little more than five years, he has successfully agitated for change at more than a dozen Canadian companies, including Stelco, ACE Aviation and UTS Energy, pocketing gains by pushing for new strategies, asset sales or lucrative takeovers.

This activism would not have been possible until recently, Boland says, because directors were too clubby. "Things are changing slowly in Canada. Now board members have a greater understanding of what their duties are to stakeholders."

But Canada still has its distinct issues, as American activist investors have discovered. Bill Ackman's quest for strategic change at Canadian Tire in 2006 was foiled by the Canadian capital-market oddity of multiple voting shares, which ensured that controlling owner Martha Billes could not be pushed around. David Einhorn at Greenlight Capital got lots of attention in

2005 when he compared auto parts czar Frank Stronach to Fidel Castro for damaging shareholder value at a Magna International subsidiary. But Greenlight's complaint that Stronach's self-enriching practices were oppressing shareholders only earned it legal bills after an Ontario court dismissed its lawsuit.

Paul Steep, a McCarthy Tétrault lawyer who represented Greenlight, says it has been difficult for shareholders to challenge companies in Canada because judges have been "far more deferential to corporate officers and directors" than their U.S. counterparts. With the arrival of more business-savvy judges and legally sophisticated shareholders, "our judges are becoming more attuned to the deficits of governance in Canadian business and less inclined to defer to directors," Steep says. Thus directors need to pay more attention when activists call.

Michael McCain was wrapping up a vacation at his Georgian Bay cottage in August, 2010, when he learned that West Face had just purchased 10% of Maple Leaf Foods. The news could not have come at a worse time. The company had just finished what McCain calls a "fight for survival," after a 2008 listeria outbreak at its Toronto meat-processing plant killed 23 people. Then came the global financial crisis and the resurgence of the loonie, which meant Maple Leaf's collection of aging plants could no longer count on a cheap currency to compete against larger and more efficient U.S. rivals. And there was more. The company was going through an ugly divorce with its biggest shareholder, Ontario Teachers' Pension Plan, and, toughest of all, Michael's father and mentor, company chairman Wallace McCain, was fighting a losing battle with pancreatic cancer.

"The coalescing of challenges," as Michael McCain calls it, meant the family was losing its grip on a company that he now concedes "had not delivered" to shareholders for years. Maple Leaf's stock price had been sinking since 2005, badly lagging such U.S. peers as ConAgra Foods Inc. and Sara Lee Corp .

McCain, who had pocketed nearly \$20 million in compensation in the three years leading up to 2010, was largely insulated from a shareholder backlash because of his family's unique shareholder partnership with Teachers'. Further securing his grip was a board that included some of his father Wallace's closest friends, many of them with shared roots in New Brunswick, home to the McCain french-fry empire. The board's lead director was Purdy

Crawford, now 80, whose status as dean of the Street was illustrated when he became a one-man task force on the asset-backed commercial paper meltdown in 2007. His friendship with Wallace dated back to college days. Joining him on the board are such pillars of the establishment as Geoff Beattie, CEO of the Thomson family's Woodbridge Co. Ltd. (which owns The Globe and Mail), and James Hankinson, former president of Canadian Pacific Ltd. Closely knit, influential and deeply connected, the board was untouchable.

Or so it appeared until the day in 2010 that the company unveiled a sweeping \$1.3-billion strategy focused on modernizing its sprawling network of meat-processing facilities. The hefty price tag was equivalent to 84% of Maple Leaf's total stock market value. After standing mute since 2005 while the company's stock price swooned 40%, investors balked. Maple Leaf had already spent hundreds of millions buying companies and modernizing facilities, yet its margins were still prosciutto-thin. "Shareholders had lost faith in the company," Boland declares.

But there was little frustrated investors could change so long as Teachers' continued to back the McCain family. The pension plan had handed effective control of Maple Leaf to the McCains under an agreement that tied its 35% stake to the McCain family, which owned a 30% interest. The agreement gave the McCains the right to nominate more directors, assuring the family control of the board.

By 2010, however, the bond with Teachers' was unravelling. A new pair of managers at the fund, Bill Royan and Wayne Kozun, had been given responsibility for the Maple Leaf investment. According to insiders, the two were adamant that the planned restructuring had to be more thoroughly analyzed before it was approved. When the recommendations fell on deaf ears, Teachers' announced it was pulling out of the agreement with the McCains. The move put the pension plan in a ticklish position. If it went public with its complaints or launched a proxy battle, it would be challenging conduct that it had tacitly approved for nearly 15 years.

solution to the sticky situation arrived in the summer of 2010 when Greg Boland paid a visit to Teachers' offices. The investor had had his eyes trained on Maple Leaf's limp stock for nearly a decade. What he saw in the widening delta between the pension plan and the company was an opportunity to pull the latter out of its slump. If Teachers' sold its stake, the McCain family would lose control and have little choice but to be more responsive.

By August, Teachers' was so desperate to extricate itself that it sold a third of its stake—10% of Maple Leaf Foods' shares—to West Face. In a stinging rebuke of the company, the fund sold at a 9% discount to the market price. For \$113 million or \$8.25 a share, Boland placed a maverick bet on a stock that the big money was fleeing.

McCain and his board did not see that the ground was shifting. Their first reaction, according to people close to the board, was to dismiss their new investor as a short-term opportunist who wanted to take advantage of turmoil to squeeze out a quick profit. Maple Leaf had a multiyear turnaround strategy in place; one investor was not going to thwart what they believed was in the long-term interests of the company.

Today, McCain offers a phlegmatic assessment of his rocky early days with Boland: "What's interesting is that first impressions are so often wrong: Activist shareholder comes in and just wants to come and flip it for a fast buck."

He adds, however, that West Face's first read of the company was just as wrong. This is what McCain calls activists' "mythology" about incumbent management. "He could come in and say management is entrenched and just cares about their jobs and is not interested in shareholder value. I think we both recognized that we were probably both not exactly on the mark on first impression," he says.

That is a polite way of saying West Face and Maple Leaf Foods were at loggerheads for months. West Face partner Tom Dea, who had teamed up with Boland in 2006 after a career as an Onex Corp. dealmaker, shouldered the task of telling McCain and his team in painstaking detail how they were mismanaging the company. According to people familiar with these private discussions in the fall of 2010, Dea did not sugar-coat his message—that Maple Leaf had not done its homework regarding its ambitious overhaul. He pointed to the unimpressive precedent of the company's makeover of its primary meat-processing plant in Brandon, and cited other management lapses. Maple Leaf responded to its impertinent new shareholder by tasking a special committee of directors and advisers to examine options.

As the months dragged on with little communication, Boland and his team concluded they were being stonewalled. "There was some distance," Boland says in his usual neutral style. The silence was interrupted on Dec. 3, 2010, when West Face issued a manifesto. It called for a meeting of shareholders to vote for a smaller board of new directors that would not be dominated by McCain family friends and associates. "The deficiencies of Maple Leaf in critical areas such as board independence and corporate governance are well known," West Face said.

In the American activist playbook, such proxy contests are a frontal attack on the credibility of corporate directors. Private investigators are hired to dig up dirt on directors, embarrassing details are leaked to the media and proxy advisers are hired to solicit support for activists' proposed slates of directors. The assault, if successful, leaves incumbent directors humiliated.

But Boland's approach was more nuanced. West Face took many of the standard steps at Maple Leaf. Investigators unearthed ties between the company and some of its directors—that, for instance, Purdy Crawford's daughter was employed as a manager at Maple Leaf. Organizations that employed two other directors had received donations or contracts from either Maple Leaf or the McCain family. These details, according to sources, were spelled out in a proxy circular that was prepared but not deployed.

Not only did West Face keep its powder dry, but the proxy vote that it had called for would not be binding. This was not a full-scale revolt, but rather a message to the board that it had to fix itself by adding more independent directors and doing a better job of scrutinizing the company's operations. The tactic goes to the heart of Boland's investment approach. Reflecting his training at manners-conscious RBC Securities and his desire to be seen as a positive influence in troubled companies, he is loath to engage in public feuds. Before Maple Leaf, he had launched only one other proxy contest—against Air Canada parent ACE Aviation, a fight that was called off after Boland was offered a seat on the board. The less blood spilled in a fight with West Face, the easier it would be to peacefully convince targets that change was necessary. "Constructive criticism of a company is tolerated today," Boland says. "It is up to us to be viewed as constructive and reasonable."

The soft-punch approach hit the mark at Maple Leaf. Two months after the December call for a vote, the activist and the target announced a ceasefire. The directors, in the end, had little choice. West Face's rallying cry had galvanized shareholders, and a quick survey of investors by Maple Leaf directors revealed that the hedge fund had enough support to win its proxy contest. On Feb. 3, Maple Leaf announced that Boland had agreed to join its board, and new independent directors would be appointed by the spring of 2012.

Over the next six months, Maple Leaf's embattled directors and executives got a lesson in the restorative power of allowing an activist inside the tent. Boland led his West Face team on what could be called a corporate colonoscopy. ("Apparently he likes them," quips McCain.) To analyze whether the planned billion-dollar overhaul made sense, Boland and his team visited

almost every meat processing facility, including—in a telling moment—a dusty crawl through some of the dungeon-like corners of the company's century-old Schneider factory in Kitchener, Ontario. They interviewed hundreds of employees and analyzed years of supply-chain data.

It is unusual for management to yield so much information, even to a director, because it leaves them vulnerable to second-guessing. But the more Boland asked "excruciatingly penetrating questions," the more McCain understood that his former adversary was an ally. "The last goddamned thing that I want is executing something that is flawed," McCain says. "If he can illustrate that it is wrong or make it better, frankly, I win." Most of all, McCain needed Boland's approval of a restructuring plan to reassure other shareholders that he was still the right CEO for the company.

Neither Boland nor McCain will discuss in detail how the largest infrastructure project in the company's history was altered as a result of the probe. But the \$560-million overhaul that was announced in October, 2011, is obviously less ambitious than the \$1.3-billion version McCain announced a year earlier. The new plan comes with the big human cost of 1,500 net job losses and the closure of eight plants and distribution centres, including the Schneider plant.

Perhaps the most surprising thing about the Maple Leaf announcement is that it was unveiled by McCain. Shareholders had grumbled for years about McCain's rich take-home pay and poor performance. It seemed inevitable that the CEO would head for the exits after Boland gained influence on the board. Boland credits McCain's survival to his flexibility: He listened, and he understood that he needed to demonstrate that his interests were aligned with shareholders'. "He really, really wants to do the right thing," says Boland.

The right thing was announced last summer. As part of family estate changes in the wake of his father's death in May, McCain parlayed his inheritance into a 30% stake in the company. "I'm all in," McCain says with a trace of weariness. "I do so with a very significant level of personal confidence because I believe very deeply in the people and history of this company."

It could be said that McCain is telegraphing his faith in something else: his newest director. He clearly regards Boland, his former adversary, as one of the company's more important assets. It is a conversion that Boland hopes will send a message to other companies.

"We are making a good case to directors that activist shareholders no longer have to be seen as pariahs."

HOW WEST FACE WINS

Stelco West Face made a gutsy bet on the steelmaker, buying an 18% stake at \$5.50 a share, issued as part of the company's bankruptcy reorganization in 2004. West Face supported a restructuring on a bet that the stock would soar with recovering steel prices. Less than a year later, Stelco was acquired by U.S. Steel Corp. for \$38.50 a share.

UTS Energy The oil sands producer's stock price collapsed nearly 90% in 2008. But West Face calculated UTS had more than \$6 a share in cash and asset value, and so bought a 15% stake, at less than \$1 a share. West Face pushed Total SA to make a takeover offer. UTS exits at \$3.60 a share.

Vector Aerospace When the maintenance company's largest shareholder made a low-ball offer that would have given him a majority position, West Face saw opportunity and acquired a 19% stake at less than \$7 a share. Betting that the sector was ripe for consolidation, West Face nudged the board to consider alternatives. The company was acquired in 2011 by European giant EADS for \$13 a share.

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EDITORIAL

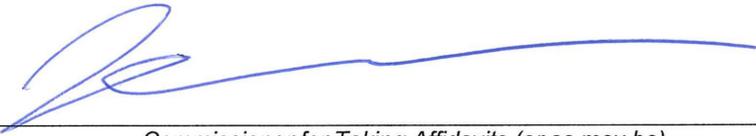


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Phillip Crawley, Publisher

This is Exhibit "5" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

Canada's top 25 most powerful business people

The real movers and shakers of Canada

Aug 15, 2013 CB Staff

[Gallery](#)

Canada's top 25 most powerful business people



1 / 26 Credit: Nikki Ormerod

The Top 25

Who really wields the most influence on the Canadian business scene these days? For the first time ever, Canadian Business has ranked the country's top 50 deal makers, influence pedlars and backroom operators. These 25 men and women topped the list.



2 / 26 Credit: Norm Betts / Bloomberg

25. Jim Pattison**CEO, Jim Pattison Group, Age 84**

There's a good chance at least some part of Pattison's empire affects your life. Maybe you've shopped at one of his grocery stores (he owns more than 125 under numerous brands), or you've bought a car at one of his dealerships. His outdoor advertising network has probably planted a few billboards in your face. Ever visited a Ripley's Believe it or Not! museum? That's Pattison's, too. As an employer of 22,000 Canadians, there's no doubt Pattison has the ear of politicians. He even hired Glen Clark, a former B.C. premier.



3 / 26 Credit: Daniel Ehrenworth

24. Heather Reisman

CEO, Indigo Books & Music Inc., Age 65

As one of only two Canadians on the steering committee of the Bilderberg Group, Reisman not only attends the secretive organization's annual confab, she also helps decide who else among the world's most rich and influential gets to go. As founder and CEO of Indigo, she controls nearly \$900 million in annual book and merchandise sales. She also sits on the board of Onex Corp., run by her husband Gerald Schwartz, oversaw the creation and sale of the Kobo e-book reader, and is currently plotting Indigo's global expansion.



4 / 26 Winnipeg Free Press - Ken Gigliotti / CP

23. Jeffrey Orr

CEO, Power Financial Corp., Age 54

Orr is tasked with running much of the vast financial empire controlled by the ailing Montreal billionaire Paul Desmarais and his sons, Paul Jr. and Andre. The family lured Orr away from his post atop BMO Nesbitt Burns and put him in charge of one of Power's divisions 12 years ago. He was promoted to CEO after four years, and has since focused his attention on methodically building Power's subsidiaries, collecting directorships on most of the subsidiary boards. Power, via Great West Lifeco, recently inked its first major deal in some time, with a \$1.75-billion acquisition of Irish Life.



5 / 26 Credit: Andrew Vaughan/CP

22. Paul Browning

President and CEO, Irving Oil Ltd., Age 45

New Brunswick's first family still holds an iron grip on most of its business empire. But at Irving Oil—the jewel in the family crown—an outsider reigns. Paul Browning, a veteran of GE and Caterpillar, became the company's second non-family leader in April. He now controls the largest oil refinery in Canada, as well as over 800 retail locations, and is leading the charge to route even more oil to the East Coast—a power move that could help define the next generation of Canadian oil and gas.



6 / 26

21. David Rosenberg

Chief Economist, Gluskin Sheff and Associates, Age 52

When he was chief economist for Merrill Lynch in 2005, Rosenberg was a lone voice warning of a coming collapse in the U.S. housing market. A few years later, he was hailed as a sage. At Gluskin Sheff and Associates, his daily Breakfast with Dave research note is now a must-read on Bay Street. Lately, Rosenberg has been long on Canada, decrying other economists and investors who argue the country is headed for trouble. Given his track record, it's a message worth paying attention to.



7 / 26 Credit: Markian Lozowchuk

20. Frank McKenna

Chair, Brookfield Asset Management Inc., Age 65

If Frank McKenna had a LinkedIn profile, it would take up half the Internet. To list just some of his affiliations: he is the deputy chair of the TD Bank Group, the chair of Brookfield Asset Management, a board member at Canadian Natural Resources and a regular at the Bilderberg Group. He is also former premier of New Brunswick, a former Canadian Ambassador to the United States, the owner of eight honorary doctorates, and the namesake of two university institutes. When he speaks, people—in both business and politics—listen.



8 / 26 Credit: Chris Woods

19. Greg Boland

CEO, West Face Capital, Age 48

Boland has become the homegrown face of a movement born in the United States, where an emboldened breed of activist investor has shaken up the corporate establishment. The democratization of corporate Canada is long overdue, Boland says. “Investor activism is a shareholder right; it’s only newsworthy because investors were quite lazy for so long,” he says. Three years ago he very publicly took on Maple Leaf Foods and CEO Michael McCain, which resulted in Boland getting a seat on the Maple Leaf board and marking a decisive victory for shareholder rights in Canada.



9 / 26 Credit: Aaron Harris/CP

18. Ian Telfer

Chair, Goldcorp Inc., Age 66

Vancouver-based Goldcorp is now the leader by market capitalization, and much of the credit goes to Telfer, an accountant by training who founded predecessor company Wheaton River Minerals. In 2010, Telfer was elected chair of the World Gold Council, the London-based market development body for the precious-metals industry. He also helped create the University of Ottawa's Telfer School of Management with a \$25-million gift in 2007.



10 / 26 Credit: Colin McConnell/Toronto Star via Getty Images

17. Jim Leech

CEO, Ontario Teachers' Pension Plan, Age 66

Leech guided the Ontario Teachers' Pension Plan to swift recovery after a disastrous 2008, when the fund lost almost \$20 billion. Last year, Teachers' recorded a 13% return, increasing assets to \$130 billion. Its extraordinary resources, combined with a longer investing horizon, made Teachers' capable of competing with buyout firms, which Leech called "a new brand of financial institution."

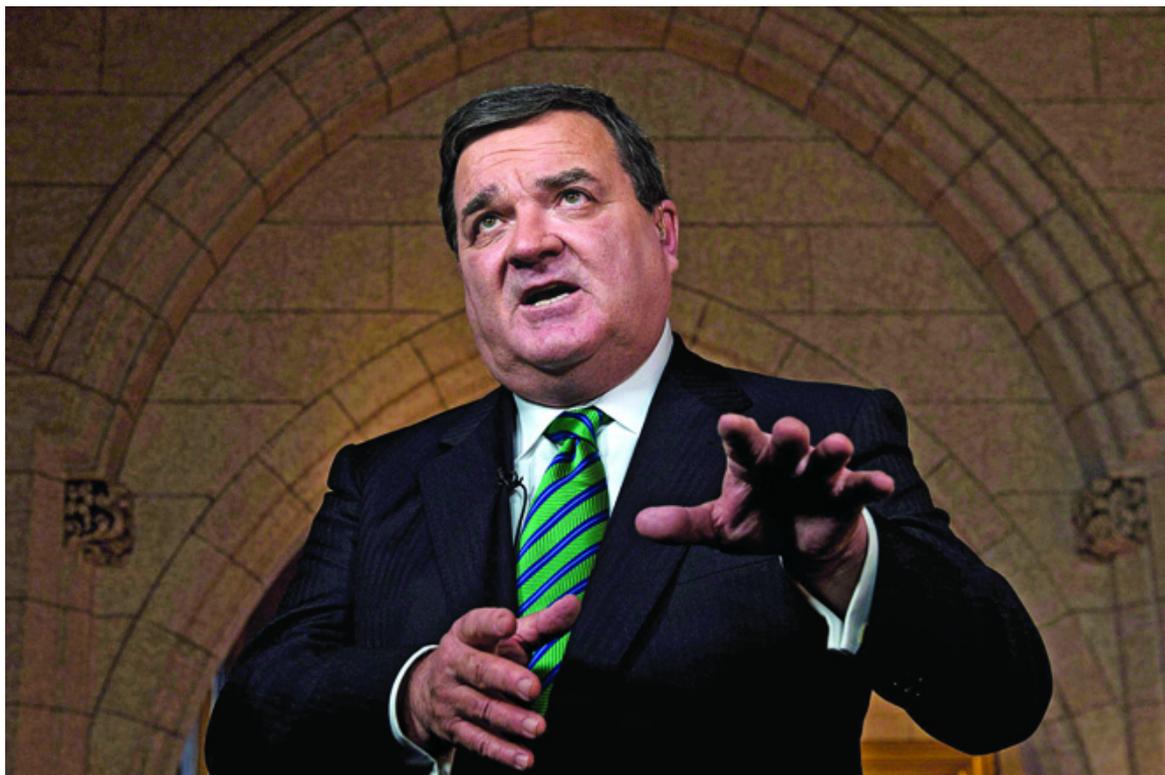


11 / 26 Credit: Ryan Remiorz/CP

16. Pierre Beaudoin

CEO, Bombardier Inc., Age 51

As head of one of Canada's only global industry powerhouses, Beaudoin wields plenty of influence in the transport business. He'll be an even bigger player once the company's new CSeries jet, which will compete against Boeing and Airbus, finally gets off the ground—a launch expected sometime next year.



12 / 26 Credit: Adrian Wyld/CP

15. Jim Flaherty

Federal Minister of Finance, Age 63

Since 2006, Canada has had five ministers of industry and five of international trade, but only one finance minister. Flaherty's longevity underscores his importance, and his influence might outstrip the prime minister's on the international stage (a European business magazine named him Finance Minister of the Year in 2009). He's also vowed to remain in his post until the deficit is eliminated, which means he still has years of suasion ahead of him.



13 / 26 Credit: Darren Calabrese/CP

14. David Thomson

Chair, Thomson Reuters Corp., Age 56

He's a bit on the reclusive side (perhaps ironic for a media mogul), but his fortune speaks for itself. The Thomsons are Canada's richest family, with a net worth in excess of \$20 billion, and David Thomson's influence is felt through a multinational empire including controlling stakes in Thomson Reuters and The Globe and Mail, as well as his part ownership of the Winnipeg Jets.



14 / 26 Credit: Nathan Denette/CP

13. Gerald Schwartz

CEO, Onex Corp., Age 71

Founder of one of the country's biggest private equity firms, Schwartz controls more than two-thirds of Onex Corp., which has been involved in auto parts, airlines, movie theatres and U.S. health care. Schwartz also helped wife Heather Reisman, CEO of Indigo, with the 2001 hostile takeover of Chapters.



15 / 26 Photo: Deborah Baic/The Globe and Mail/CP

12. Stephen Poloz

Governor, Bank of Canada, Age 57

Many expected insider Tiff Macklem to replace Mark Carney as governor of the Bank of Canada. Instead, the job went to Poloz, former CEO of Export Development Canada. Poloz has benefited from his predecessor's afterglow, but in comparing the state of the global economy to "postwar reconstruction," Poloz demonstrated a rhetorical flair that matched Carney's. He's shown little interest in lowering his position's profile.



16 / 26 Credit: Adrian Wyld/Canadian Press

11. Jean-Pierre Blais

Chair, Canadian Radio-television and Telecommunications Commission, Age 53

Blais is a career bureaucrat just one year into a new job, but he's already making a huge impact on Canada's telecoms. Blais has quickly signalled a consumer-focused tack for the CRTC: he rejected a \$3.4-billion merger between Astral and Bell (later approved, subject to a host of new conditions), and instituted a new wireless code that effectively banned three-year contracts. Next, the longtime Heritage Canada employee is set to overhaul the antiquated system that governs Canadian radio and TV. "Broadcasting," he has said, "will never be the same again."



17 / 26 Credit: Ontario Chamber of Commerce

10. Robert Prichard

Chair, Torys LLP, Age 64

On Bay Street, there are few powerbrokers as deeply entwined in the dual worlds of public and private business as Rob Prichard. He's held, by his own account, a few of the most high-profile gigs in Toronto, including chair of Metrolinx, the provincial transit agency tasked with building \$50 billion in new subways and LRT lines across Greater Toronto. He's also non-executive chair of Bay Street law firm Torys, heads the BMO board, and holds several other directorships. As head of U of T, he was credited with talking Paul Martin into rewriting the tax rules to allow gifts of stock to be eligible for charitable credits—a game-changing move that unlocked untold millions of philanthropic donations.

[Click here for the full profile](#)



18 / 26

9. Galen Weston Jr.

Executive Chair, Loblaw Cos. Ltd., Age 40

A decade ago, Galen Weston Jr. was known more for his parties than for his business sense. Today, he stands alone atop a retail behemoth. Engineering Loblaw's \$12.4-billion takeover of Shoppers Drug Mart, Weston climbed forever out of the shadow cast by his famous family. And if the Shoppers deal closes, he will control a company with unparalleled retail heft in Canada. He's not G2 anymore (a reference to his better-known father). He's just Galen Weston.

[Click here for the full profile](#)



19 / 26 Photo: Darren Calabrese/CP

8. Darren Entwistle

CEO, Telus Corp., Age 51

Telus may be the smallest of Canada's Big Three telcos, but Entwistle has been the collective's biggest voice, leading the charge in a PR blitz against Verizon's proposed move north. He took things a step further in late July, announcing Telus would be taking the federal government to court over clarity in Canada's wireless spectrum policy. If Verizon's Canadian ambitions are slowed, Entwistle will deserve the most credit.

[Click here for the full profile](#)



20 / 26 Credit: Chris Wattie/Reuters

7. Stephen Harper

Prime Minister of Canada, Age 54

Even the most ardent of Ottawa watchers are hard-pressed to say who advises the PM on business issues. Harper has handed the thorny implementation of the Canada Job Grant to Jason Kenney, but there's little doubt the strategy flowed from the Prime Minister's Office. We might add that it was Harper, not then-industry minister Christian Paradis, who announced the approval of the takeover of Nexen Energy by China's CNOOC late last year.

[Click here for the full profile](#)



21 / 26 Credit: Tony Fohse

6. Julie Dickson

Superintendent, Office of the Superintendent of Financial Institutions, Age 56

Five years after the financial industry's 2008 meltdown, Dickson's office enjoys a sterling reputation for its prudent regulation of a banking sector that swanned through the financial crisis with hardly a scratch. When she leaves her position next year, that legacy will be remembered. Dickson's high-level policy-making seems to emanate from an ultra-exclusive club called the "heads of agencies," including the governor of the Bank of Canada, the heads of the provincial securities commissions and senior Department of Finance officials.

[Click here for the full profile](#)



22 / 26 By Chris Hughes

5. Prem Watsa

CEO, Fairfax Financial Holdings Ltd., Age 62

When BlackBerry's stock touched new lows in January 2012, Prem Watsa stepped in, revealing a 5.12% stake, and taking a seat on the board of directors. Investors took note. This week, Watsa announced he's stepped down from the BlackBerry board (citing potential conflict of interest as the company undergoes a strategic review), but his investor influence in Canada is still unparalleled. He owns big stakes in William Ashley, Thomas Cook India, and Prime Restaurants (owner of East Side Mario's and Casey's) through Fairfax, which has a market cap of \$8.5 billion.

[Click here for the full profile](#)



23 / 26 Photo by 5of7: <http://www.flickr.com/photos/53936799@N05/>

4. Murray Edwards

Chair, Canadian Natural Resources Ltd., Age 53

Input from this influential, Regina-born billionaire lawyer was reportedly instrumental in shaping the foreign-ownership rules for oilsands companies that the Harper government hastily drafted in response to CNOOC's \$15-billion bid for Nexen last December. Edwards also chairs Ensign Energy Services, Mississauga-based Magellan Aerospace, and the Calgary Flames hockey club.

[Click here for the full profile](#)



24 / 26 Brookfield Asset Management CEO Bruce Flatt

3. Bruce Flatt

CEO, Brookfield Asset Management, Age 48

Flatt controls an international empire worth more than \$175 billion, including 300 million square feet of real estate worldwide, 100-plus malls, 50,000 apartments, 48 million square feet of industry property, and nearly 8000 acres of U.S. land just waiting to be developed. He's shown a knack for scooping up once-great, but now struggling, assets for pennies on the dollar, and Flatt's eye for value also extends to his personal life—his compensation package last year was \$5 million, yet he's been known to drive a Smart car.

[Click here for the full profile](#)



25 / 26 Courtesy of: RBC

2. Gordon Nixon

CEO, Royal Bank of Canada, Age 56

He's been the well-connected head of the country's largest bank for the past 11 years, but Nixon is also spearheading the launch of new stock exchange Aequitas, which hopes to rival the TMX and capitalize on investors' discontent with high-frequency trading.

[Click here for the full profile](#)



26 / 26 Credit: Hasnain Dattu

1. Mark Wiseman

President and CEO, Canada Pension Plan Investment Board, Age 43

Wiseman manages a portfolio worth \$183 billion—the largest pot of investable money in Canada. His decisions affect the fate of 18 million Canadians, and his role gives him enormous sway over the country’s biggest corporate players. Wiseman’s power is also growing. Within the next 20 years, CPPIB could control more than half a trillion dollars.

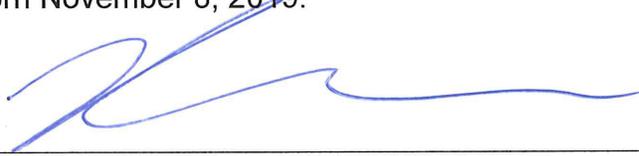
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This is Exhibit "6" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

Invest like a legend: Greg Boland

 theglobeandmail.com/report-on-business/rob-magazine/invest-like-a-legend-the-contrarian-greg-boland/article28387332/

January 25, 2016



Greg Boland

KOUROSH KESHIRI

Tim Shufelt

Published January 29, 2016 Updated March 25, 2017

Greg Boland finished 2015 by leading a group of shareholders in a deal to sell Wind Mobile to Shaw Communications for \$1.6-billion. That's hardly his first windfall – as head of West Face Capital, he has become one of Bay Street's shrewdest hedge fund managers.

What do your best investments have in common?

Our most successful ones have been large, concentrated investments in companies that have fallen on hard times for reasons that are maybe misunderstood by the broad market and where there is a reasonable amount of complexity. Maple Leaf Foods, Hudson's Bay, Stelco, UTS Energy—these were great companies that had very valuable assets but a great amount of investor pessimism.

How has your investment process evolved?

Being a contrarian and buying at the nadir of investor confidence has always appealed to me psychologically, I don't know why. The result is you often get some bumpy rides at the beginning. If you're trying to catch a falling knife, you can get a few nicks on the way down.

For the retail investor with a contrarian streak, where might you direct them?

If the energy sector generates a lot of restructured companies, post-restructuring equities are often pretty interesting—they've already cleansed their balance sheets, they've solved their problems, their enterprise values are compressed. But what generally happens with individual investors is that when you get through a period of distress, you're so beaten up that you're less likely to play offence.

Are investors too easily sold on trendy investments?

The types of investments that can be turned into narratives are very appealing. And when that narrative breaks down, and it becomes a complicated investment, it tends to get orphaned by the marginal investor. That can be when it gets most interesting—when the story can't be explained in an elevator pitch. We can spend hundreds of hours going through all the scenarios, but that's extremely labour-intensive. Unless you're doing an incredible amount of your own work, trying to pick stocks is really tough and probably prone to random results.

Are you influenced by any famous investing figures?

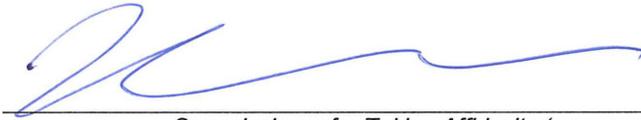
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Most of the famous deep-value investors—the Warren Buffetts and Seth Klarman. But you have to find your own way. You have to do something others aren't doing. One of the few ways you can get an edge is to get involved in a contrarian situation, do a lot of work and really understand the outcomes.

What was one of your worst investments?

With Connacher Oil and Gas, we invested at the tail end of an M&A cycle. We didn't have a large investment in it, but we lost 100% of our capital. We didn't anticipate the world changing as quickly as it did. It's a lesson you learn over and over again—how to quantify the worst-case scenario. In that case, we misquantified it.

This is Exhibit "7" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

Callidus Announces Shareholder Approval of Arrangement with Braslyn Ltd.

Toronto, ON – October 31, 2019. Callidus Capital Corporation (TSX: CBL) (“Callidus” or the “Company”) today announced the voting results of its special meeting (the “Meeting”) of holders of common shares (the “Shareholders”) held on October 31, 2019. At the Meeting, Shareholders passed a special resolution (the “Arrangement Resolution”) approving a statutory plan of arrangement (the “Arrangement”) under section 182 of the *Business Corporations Act* (Ontario) as contemplated by an arrangement agreement dated August 15, 2019 between Callidus and Braslyn Ltd. (the “Purchaser”) involving, among other things, the acquisition by the Purchaser of all of the issued and outstanding common shares in the capital of the Company (the “Shares”) other than Shares held by the Purchaser, certain investment funds managed by The Catalyst Capital Group Inc., FigCorp Ltd. (a company controlled by Newton Glassman) and James Riley.

The Arrangement Resolution required the approval of: (i) at least two-thirds of the votes cast by Shareholders; and (ii) at least a simple majority of the votes cast by Shareholders, excluding the votes cast by certain persons whose votes were required to be excluded pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“MI 61-101”).

Shareholders approved the Arrangement Resolution with approximately 99.07% of the votes cast at the Meeting in favour of the Arrangement (78.65% excluding the votes of certain persons in accordance with MI 61-101).

Callidus will be seeking a final order from the Ontario Superior Court of Justice (Commercial List) with respect to the Arrangement on November 4, 2019 and the Arrangement is expected to be completed on or around November 5, 2019.

About Callidus Capital Corporation

Established in 2003, Callidus Capital Corporation is a Canadian company that specializes in innovative and creative financing solutions for companies that are unable to obtain adequate financing from conventional lending institutions. Unlike conventional lending institutions who demand a long list of covenants and make credit decisions based on cash flow and projections, Callidus credit facilities have few, if any, covenants and are based on the value of the borrower's assets, its enterprise value and borrowing needs. Further information is available on our website, www.calliduscapital.ca.

Forward-Looking Statements

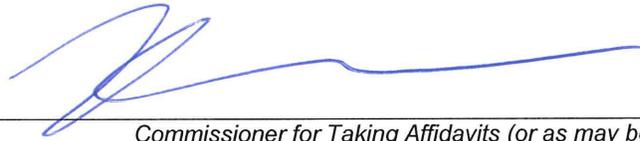
This press release contains forward-looking information within the meaning of applicable securities laws (“forward-looking statements”), including forward-looking statements relating to receipt of the final order from the Ontario Superior Court of Justice (Commercial List) and the completion of the Arrangement. Such forward-looking statements involve known and unknown risks, uncertainties, assumptions and other factors that may cause the actual results, performance or achievements to differ materially from the anticipated results, performance or achievements or developments expressed or implied by such forward-looking statements. Such factors include, but are not limited to, the risks, factors and assumptions discussed in the section entitled, “Risk Factors” in the Annual Information Form of the Company dated April 1, 2019 and in the section entitled “Risk Factors” in the amended and restated management information circular of the Company dated September 17, 2019 and other documents filed by the Company with the Ontario Securities Commission and other securities regulators across Canada. If any such risks actually occur, they could impact the potential

for discussion, agreement or completion of the Arrangement and/or materially adversely affect the Company's business, financial condition or results of operations. In that case, the trading price of the Company's common shares could decline, perhaps materially. Readers are cautioned not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. Forward-looking statements are provided for the purposes of providing information about management's current expectations and plans relating to the future. Readers are cautioned that such information may not be appropriate for other purposes. The Company does not undertake or accept any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements to reflect any change in the Company's expectations or any change in events, conditions or circumstances on which any such statement is based, except as required by law.

For further information, please contact:

Investor Relations | (416) 945-3240 | investor@calliduscapital.ca

This is Exhibit "8" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

Callidus Announces Completion of Plan of Arrangement

Toronto, ON – November 5, 2019. Callidus Capital Corporation (TSX: CBL) (“Callidus” or the “Company”) announced today that it has completed the previously announced plan of arrangement (the “Arrangement”) under Section 182 of the *Business Corporations Act* (Ontario) (the “OBCA”), pursuant to which Braslyn Ltd. (the “Purchaser”) acquired all of the issued and outstanding common shares in the capital of the Company (the “Shares”) other than Shares held by the Purchaser, certain investment funds managed by The Catalyst Capital Group Inc., FigCorp Ltd. (a company controlled by Newton Glassman) and James Riley for a purchase price of CAD\$0.75 per Share.

In addition, pursuant to the Arrangement: (i) each deferred share unit of Callidus outstanding immediately prior to the effective time of the Arrangement (whether vested or unvested) was deemed to be assigned and transferred by the holder thereof to Callidus in exchange for a cash payment equal to C\$0.75, less applicable withholdings; and (ii) each option to purchase Shares of Callidus was deemed to be assigned and transferred by the holder thereof to Callidus for no consideration (as the exercise price of each such option exceeded the consideration to otherwise be received).

Callidus intends to cause the Shares to cease to be listed on the Toronto Stock Exchange and has submitted applications to cease to be a reporting issuer under applicable securities laws and to cease to be an offering corporation under the OBCA.

About Callidus Capital Corporation

Established in 2003, Callidus Capital Corporation is a Canadian company that specializes in innovative and creative financing solutions for companies that are unable to obtain adequate financing from conventional lending institutions. Unlike conventional lending institutions who demand a long list of covenants and make credit decisions based on cash flow and projections, Callidus credit facilities have few, if any, covenants and are based on the value of the borrower's assets, its enterprise value and borrowing needs. Further information is available on our website, www.calliduscapital.ca.

Forward-Looking Statements

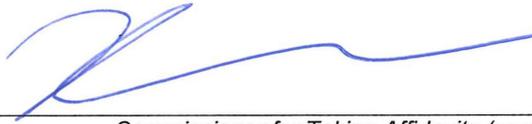
This press release contains forward-looking information within the meaning of applicable securities laws (“forward-looking statements”), including forward-looking statements relating to delisting from the Toronto Stock Exchange and ceasing to be a reporting issuer and offering corporation. Such forward-looking statements involve known and unknown risks, uncertainties, assumptions and other factors that may cause the actual results, performance or achievements to differ materially from the anticipated results, performance or achievements or developments expressed or implied by such forward-looking statements. Such factors include, but are not limited to, the risks, factors and assumptions discussed in the section entitled, “Risk Factors” in the Annual Information Form of the Company dated April 1, 2019 and in the section entitled “Risk Factors” in the amended and restated management information circular of the Company dated September 17, 2019 and other documents filed by the Company with the Ontario Securities Commission and other securities regulators across Canada. If any such risks actually occur, they could impact the potential for discussion, agreement or completion of the Arrangement and/or materially adversely affect the Company’s business, financial condition or results of operations. Readers are cautioned not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. Forward-looking statements are provided for the purposes of providing information about management’s current expectations and plans relating to the future. Readers are cautioned that such information may not be appropriate for other purposes. The Company does not undertake or accept any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements to reflect any change in the

Company's expectations or any change in events, conditions or circumstances on which any such statement is based, except as required by law.

For further information, please contact:

Investor Relations | (416) 945-3240 | investor@calliduscapital.ca

This is Exhibit "9" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.

A handwritten signature in blue ink, consisting of a large, stylized initial 'M' followed by a long, sweeping horizontal line that ends in a small upward tick.

Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

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BUSINESS

Wind Mobile ruling will rattle industry

By **Iain Marlow** in Toronto
Richard J. Brennan in Ottawa
Sat., Dec. 12, 2009 | 3 min. read



The federal cabinet on Friday overturned a CRTC ruling preventing Globalive Communications Corp. from launching Wind Mobile as Canada's fourth national wireless carrier – a decision with significant ramifications for both Canadian consumers and the country's strictly regulated industry.

Much in the industry will now change: from the crucial minutiae of cellphone bills, to the shape and structure of the \$16 billion sector that touches millions of Canadian lives, industry analysts say.

The quashing of the Canadian Radio-television and Telecommunications Commission decision from October, which determined Globalive was a foreign-controlled company and ineligible to launch, means big changes in the Canadian telecom sector, starting as early as next week – the earliest Globalive said it could launch in the Toronto and Calgary markets.

ARTICLE CONTINUES BELOW

"Our goal has always been greater competition in the telecommunications industry, which leads to lower prices, better service and more choice for consumers and business," Industry Minister Tony Clement said Friday in Ottawa.

For consumers, even those who don't sign up with Globalive, the decision is a clear win. Competition will spur incumbents and new entrants alike to provide cheaper, more robust cellphone packages in an industry previously dominated by only three national incumbents – Rogers Communications Inc., Telus Corp. and Bell Canada.

"It's a different landscape today and I think you're seeing that in the share prices today," Globalive chairman Anthony Lacavera said in an interview, referring to the pummeling the incumbents' stocks took on the TSX after Clement announced the decision. "The incumbents are going to do things to improve their customer service – big time. Now, suddenly, they are worried about losing their business."

Lacavera said the company, which will focus on high-end smartphones, will launch with the BlackBerry, but added he is in discussions to begin carrying Apple Inc.'s iPhone at a later date. He said the company will have a wide range of smartphones, from companies such as HTC Corp and the Chinese cell-maker ZTE Mobile. The entrepreneur added that an announcement on pricing plans and definite launch dates should occur in the next week.

ARTICLE CONTINUES BELOW

But analysts and critics pointed out that the dramatic decision also opens up the strictly-regulated Canadian telecom sector to potential foreign ownership, a taboo subject in Canada, where interfering with cultural content legislation can be a political powder keg. The Egyptian telecom giant Orascom Telecom Holding controls around \$700 million of Globalive's debt, of what Lacavera has said is a \$1.6 billion, 10-year business plan. Even Lacavera concedes that both incumbents and new entrants will likely start aiming for more foreign capital to fund innovation to compete in an era where smartphones, phone applications and data plans – as opposed to talk time, which generates more revenue – are the industry norm.

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"It does open a Pandora's box," said Michael Hennessy, senior VP for regulatory and government affairs at Telus. "By approving Globalive, without any changes at all to its ownership structure, they have set – perhaps unintentionally – a precedent that impacts telecom, broadcasting, and I suspect banking and airlines in this country. It's actually huge. They said it's not their intention to set a precedent. But what you intend to do, and what you do by varying a legal decision, are two very different things."

Liberal leader Michael Ignatieff said that lower costs for consumers should be a key component of Canadian telecommunications policy, but that the Conservative government has muddled the file by contradicting the CRTC.

"The story is a mess," Ignatieff told reporters in Montreal. "That is, the CRTC makes one decision and Clement makes another decision."

Lacavera, who was beaming on Friday at a news conference in Toronto, and Clement stressed the decision to overturn the CRTC ruling affects only Globalive, not other companies. But few seemed to buy that message.

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NDP MP Brian Masse (Windsor West) was explicit, saying the Conservative government has permitted a company to sidestep Canadian ownership rules, thereby guaranteeing the right of other companies to do the same. "At the end of the day, when you follow the trail it leads out of this country. That's the bottom line," Masse told the *Star*.

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Analysts also said Canada’s telecom sector cannot sustain this many players and mergers, or buyouts are likely. Bell and Telus were cited as the most obvious candidates for consolidation.

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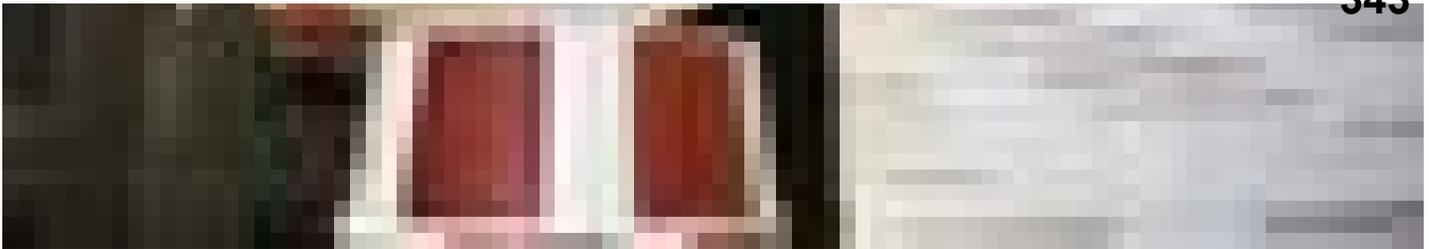


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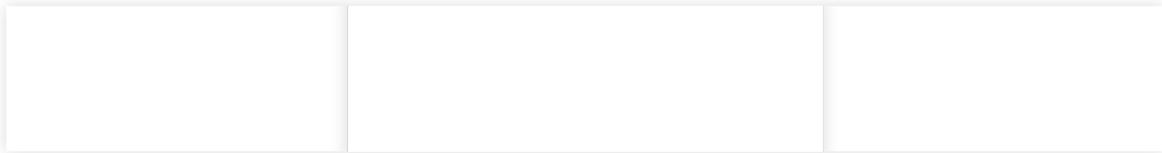
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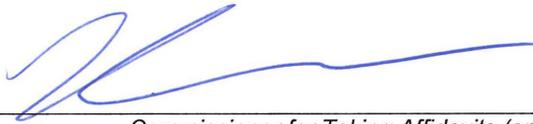


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This is Exhibit "10" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
(LSO# 77098R)**

Globalive wades into price battle; As its Wind Mobile service prepares to launch, Bell, Rogers and Telus are already using discount brands in effort to secure customers

The Globe and Mail (Canada)

December 14, 2009 Monday

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Section: REPORT ON BUSINESS: CANADIAN; TELECOMMUNICATIONS / WIRELESS; Pg. B1

Length: 744 words

Byline: GRANT ROBERTSON

Body

As Wind Mobile rushes to begin selling wireless phone service in Canada as early as today, the country's newest cellphone company is about to step into the first real price war the wireless industry has seen in nearly a decade.

Technicians with Wind Mobile's parent company, **Globalive Wireless Management Corp.**, spent the weekend readying their network for a launch in Toronto and Calgary this week, after getting federal approval on Friday to operate.

Test calls have been made across the network and it is expected Globalive will begin selling wireless plans in those two cities by mid-week at the latest, followed by Ottawa, Edmonton and Vancouver in the coming months.

The government granted Globalive special permission to launch last week, after scrutinizing the company's controversial ownership structure. Wind Mobile is getting most of its funding from Egyptian cellphone giant Orascom Telecom Holding SAE, which the Canadian Radio-television and Telecommunications Commission said in October was against federal ownership rules.

However, Industry Minister Tony Clement overruled the CRTC's decision, saying the government didn't share the same concerns about the ownership structure. He also repeated the government's desire to inject new competition into the industry.

Now, as Wind Mobile enters the market as Canada's fourth major cellphone player, it faces an aggressive response from phone incumbents **Bell Canada, Rogers Communications Inc.** and **Telus Corp.**

Each have used their discount brands in recent months to try to lock up cost-conscious consumers.

They have offered stripped-down, no frills plans, including talk and text packages for as little as \$15 a month. Telus's Koodo brand, Rogers' Fido and Bell's Solo Mobile have been the frontier in this price war.

How this will play out for consumers in the years ahead, though, is unclear. Globalive chairman Anthony Lacavera believes the strategies from the discount or "flanker" brands are not viable over the long-term.

Globalive wades into price battle; As its Wind Mobile service prepares to launch, Bell, Rogers and Telus are already using discount brands in effort to secure c....

"Some of the discounting that's going on in the flanker brands of the incumbents right now, that's not real pricing. That's not sustainable," Mr. Lacavera said.

"In the very next few days, there's going to be details of our plans and our phones out there. We will certainly have plans that will compete with them," Mr. Lacavera said. "But at the end of the day it is a business. And in order for us to be around for the long-term, we have to have, obviously, a long-term, profitable and viable business model."

Pressure will be on the newcomers to lower prices in a way that is meaningful for the average consumer, since the government could find itself embarrassed if cellphone plans don't drop substantially as a result of the market being opened up.

In its decision, the federal government said it believes more competition will lead to lower cellphone bills.

However, the deep discount market is not what these new companies or the incumbents necessarily want.

A much bigger battle will be fought over the mid-range and upper-end consumer. Wind Mobile, which will offer Blackberries but not the iPhone, is setting its sights on the more lucrative data and voice plans offered by the premium Bell, Telus and Rogers brands.

Such packages, which can result in monthly bills ranging from \$60 to more than \$200 for many consumers with an iPhone or Blackberry, come with fatter margins - and offer more opportunity to undercut without slashing too much into profits.

Similar strategies have been talked about by other new entrants coming to market, including **DAVE Wireless**, which also sees room to undercut the Big Three on mid-range plans. However, that company is keeping its start date and pricing plans secret, not wanting to provoke a response from the established companies.

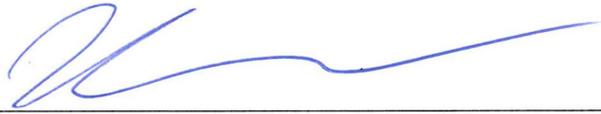
"If we go out and we announce our launch date publicly, we potentially expose ourselves to competitive threats and pressures," said Dave Dobbin, chief executive of DAVE Wireless, which may not launch until spring.

Such secrecy becomes a risky tactic for the new companies though, since consumers looking for a phone will be weighing whether to lock into a plan with an existing company now or hold off for potentially better deals from a new carrier.

When asked if Wind Mobile got the message from Ottawa last week that the government expects cellphone bills to be lower across the industry in the coming years, Mr. Lacavera said he did. "We've heard it loud and clear," he said.

Load-Date: December 14, 2009

This is Exhibit "11" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



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**MAURA O'SULLIVAN
(LSO# 77098R)**

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FINANCIAL POST

January 13, 2014

Wind Mobile withdraws from 700 MHz spectrum auction

By Christine Dobby

Wind Mobile is withdrawing from bidding in Canada's spectrum auction after failing to secure financial backing to participate from its foreign owner

Wind Mobile is withdrawing from bidding in Canada's spectrum auction after failing to secure financial backing to participate from its foreign owner.

How Canada's telecom war turned ugly¹

Last summer a simmering dispute over obscure regulations boiled over into all-out war as the country's cellphone titans took on the federal government and its efforts to entice a U.S. giant north.

The dialogue got heated as the three largest wireless carriers – ostensible rivals – joined forces to target Ottawa's policy on the industry.

Continue reading²

The move means that none of the new entrants with ambitions to serve three key Canadian provinces in Ontario, British Columbia and Alberta will be participating this time around – another blow to Ottawa's policy to encourage wireless competition in all areas.

Globalive Wireless Management Corp., which operates under the brand name Wind Mobile, registered to bid on the airwaves in the 700-megahertz frequency band last September, but its application was listed as "withdrawn" on Industry Canada's website Monday afternoon.

Financial backing from VimpelCom Ltd. was always uncertain and Wind Mobile's Canadian chief executive Anthony Lacavera said Monday the Amsterdam-based company decided against funding its participation in the auction.

Wind's withdrawal leaves just 10 registered bidders vying for cellular airwaves in the auction, which gets underway Tuesday.

Public Mobile has sold to Telus while Mobilicity is under court protection from its creditors and Wind's exit means none of the trio of new wireless entrants that launched after the 2008 auction will be in the running for new airwaves.

There are four prime blocks of 700 MHz spectrum up for grabs and the Big Three – BCE Inc., Rogers Communications Inc. and Telus Corp. – are limited to bidding on one block each in each of 14 geographic areas.

Wind's exit from the auction could present an opportunity for Quebecor Inc., which operates the Videotron wireless business in Quebec but could consider expanding to other parts of the country given the lack of competition in Ontario and the Western provinces.

Dvai Ghose, head of research at Canaccord Genuity, noted Monday that Videotron does not enjoy competitive advantages outside of Quebec – such as television and Internet services it could package with wireless service – and bidding outside its home province could stretch the company's balance sheet.

But Scotia Capital analyst Jeff Fan noted that Quebecor has the deepest pockets of the remaining bidders – which includes other regional players – and could take the chance to acquire the licences at a relatively cheap price.

Jake Enwright, press secretary for Industry Minister James Moore, said Monday evening in an email: "The outcome of the auction will be positive for consumers because high-quality spectrum will soon be available across Canada, providing Canadians with dependable, high-speed wireless services on the latest technologies.

"Whether to participate in the spectrum auction is up to the individual companies. We do not comment on their business plans."

Mr. Lacavera said the fact that Wind will not secure additional airwaves in this year's auction will not affect its ability to operate its network or serve its customers in the immediate term.

"Wind has emerged as the fourth carrier in Ontario, B.C. and Alberta, but we still have need of additional spectrum for LTE," he said in an emailed statement. "Today's development leaves us with a spectrum shortfall we must still address."

Wind built a third-generation network on its existing spectrum, which is in what is known as the AWS band of spectrum.

In order to upgrade to a more advanced LTE (long-term evolution or fourth-generation) network, it must either reallocate part of its existing spectrum and carefully migrate its customers to the faster network or acquire more airwaves.

When VimpelCom reported its third-quarter results in early November, it said Wind Canada had 637,000 subscribers.

At the time, VimpelCom's CEO Jo Lunder said the company was re-evaluating its options in Canada, including the extent to which it planned to participate in this year's spectrum auction.

Last June, VimpelCom withdrew an application for government approval of transfer of control of Wind Mobile Canada from Mr. Lacavera, who still retains two-thirds of the voting shares through his holding company AAL Corp.

VimpelCom spokesman Bobby Leach said in an emailed statement Monday evening the company decided not to back Wind's participation in the auction "at this time as we remain in discussions with the shareholder with majority voting rights and the government to craft a path forward to develop Wind Canada as a strong fourth player in Canada."

"We hope to have an opportunity in the future to perhaps re-apply and bid on spectrum, should the government decide to re-open another 700 MHz spectrum bid process," Mr. Leach added.

Wind will still have an opportunity to acquire spectrum in next year's auction for airwaves in the 2500 MHz frequency, which will begin next April, Minister Moore announced on Friday.³

Wind could also potentially acquire spectrum from fellow new entrant Mobilicity, which is running a court-supervised auction process to sell some or all of its assets.

Wind said it is taking part in the sale process but has not commented publicly on what it hopes to buy, however, Mobilicity's main asset is its spectrum, the same type of AWS airwaves Wind bought in 2008.

Even before Wind bowed out of the auction, industry analysts predicted it would be a dull affair and unlikely to bring in the same sort of revenue the government raised in the 2008 AWS auction, which attracted total bids of \$4.3-billion.

"We expect the 700 MHz auction to be a yawner," Mr. Ghose wrote Monday morning, adding he estimates BCE, Telus and Rogers will each spend about \$600-million to \$700-million.

When Industry Canada announced the auction last year, it said it hoped to take in at least \$897-million, the opening bid price for all of the licences.

Scotia Capital's Mr. Fan wrote last week he expects the auction to raise about \$1.8-billion.

In a media briefing Monday, a senior Industry Canada official said the government will not provide any updates during the auction and will publish the results five days after all rounds of bidding have concluded. Similar auctions internationally have taken two to seven weeks to conclude, the official said.

The auction will follow a package bidding format which the government says will eliminate the risk of bidders winning some but not all of the licences they require to meet their business case.

Once the results list is published, the provisional winners have ten days to pay 20% of their winning bid amounts and must pay the balance within 30 days.

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**MAURA O'SULLIVAN
(LSO# 77098R)**

TELECOMMUNICATIONS; Rules stifling investment, telecoms say; Wind Mobile defends Ottawa's wireless policies it says help smaller firms compete

The Globe and Mail (Canada)

June 18, 2014 Wednesday, Atlantic Edition

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Section: REPORT ON BUSINESS; Pg. B4

Length: 656 words

Byline: CHRISTINE DOY

Dateline: TORONTO

Body

TELECOM REPORTER

Canada's dominant telecom players faced off against upstart **Wind Mobile** Tuesday, warning shifting government policies are stifling investment in the wireless industry.

Wind, in turn, said the rules surrounding wireless competition are doing their job to help smaller firms compete.

Executives from **Telus Corp.**, **BCE Inc.** and **Rogers Communications Inc.** said policies mandating wholesale access to their national networks by smaller players with less coverage will stifle innovation rather than spur competition, adding the federal government's approach to the sale of wireless spectrum licences has left deals in limbo.

(BCE owns 15 per cent of The Globe and Mail.)

Wind released new operating numbers at an industry conference in Toronto intended to counter critics who have dismissed it as failing, and said the government's policies are necessary to support its continued growth.

Chief executive officer Tony Lacavera said the company now has 735,000 wireless customers and added 26,000 net subscribers in the first quarter of the year, while approaching break-even results on earnings before interest, taxes, depreciation and amortization.

Wind also said about 55 per cent of its subscriber base is now comprised of more-valuable postpaid customers, still less than figures posted by the major players but higher than some observers previously expected.

Analysts said the new details Wind shared indicate the company is making operational progress, although it still poses little real threat to the established players.

TELECOMMUNICATIONS; Rules stifling investment, telecoms say; Wind Mobile defends Ottawa's wireless policies it says help smaller firms compete

Mr. Lacavera told a lunchtime crowd that uncertainty over a path to full control of its Canadian asset prompted Wind's foreign owner VimpelCom Ltd. to write down the value of its investment in the country in March and withdraw its financial backing for the startup carrier to participate in this year's auction for cellular airwaves in the 700-megahertz frequency.

"It's no secret that ... financing has been hard to come by," Wind's chief regulatory officer Simon Lockie said during an earlier panel discussion. "We've been on a shoestring budget from a marketing perspective and despite all those constraints, we've been very successful."

Mr. Lockie said the government's policy that requires incumbents with large national networks to sell wholesale roaming access to competitors with limited regional coverage is crucial to Wind's ability to attract new investment and build up its network.

Although many believed that airwaves set aside for new entrants in the 2008 spectrum auction could be sold to the Big Three after a five-year moratorium expired, Ottawa has since indicated it will block such deals. As The Globe and Mail first reported in May, Telus has walked away from its \$350-million bid to buy Mobilicity - Ted Woodhead, senior vice-president of regulatory affairs for Telus, confirmed that publicly Tuesday - and Rogers said it is unclear what will happen to unused mobile spectrum it hoped to buy from Shaw Communications Inc. and Quebecor Inc.

Ken Engelhart, senior vice-president regulatory at Rogers, said he recognizes Ottawa has the legal power to block spectrum deals, but added he did not believe that was Industry Canada's original plan when it drafted the rules for the 2008 auction. Mobilicity and Wind launched after buying set-aside spectrum in that auction and Mobilicity, which is under creditor protection, has been unable to sell its licences to Telus.

"I certainly think from five years ago to today, there was a definite change in thinking as to what would happen with that new entrant spectrum," Mr. Engelhart said.

"I think the important thing is that we try and keep principles the same," he added, noting that means continuing to advance a model of competition among companies that invest in infrastructure rather than supporting wholesale reselling by players with no facilities of their own or little interest in putting further money into what basic networks they do own.

Load-Date: June 18, 2014

This is Exhibit "13" referred to in the Affidavit of Gregory Boland sworn November 8, 2019.



Commissioner for Taking Affidavits (or as may be)

**MAURA O'SULLIVAN
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WIRELESS

Money manager Glassman moving on two small wireless carriers

Wireless carrier Wind Mobile has been put up for sale by its Russian and Dutch owners.

JENNIFER ROBERTS/THE GLOBE AND MAIL

BOYD ERMAN > AND RITA TRICHUR >

PUBLISHED APRIL 13, 2013

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One of Canada's most successful private-equity investors is seeking to rescue two small, struggling wireless providers, Wind Mobile and Mobilicity, to create the strong fourth cellular

carrier that the federal government wants.

Newton Glassman, who manages private equity funds that are the top performers in Canada, is one of the bidders for Wind Mobile, which has been put up for sale by its Russian and Dutch owners, said two people familiar with the sale.

His firm, Catalyst Capital Group Inc., also controls a large block of bonds issued by Mobilicity, and is embroiled in a court battle with the company as part of a strategy to take control of the Vaughan, Ont.-based carrier, which is legally known as Data & Audio-Visual Enterprises Wireless Inc.

The emergence of the low-profile money manager comes as the federal government's goal of fostering a fourth national wireless competitor to Rogers Communications Inc., Telus Corp. and BCE Inc. is in crisis.

As reported in The Globe and Mail on Friday, the three main start-ups vying for that fourth slot have all been put up for sale as their owners tire of fighting the expensive battle to build networks and market share.

After more than three years in the market, Wind has about 600,000 subscribers, less than one-tenth of any of the big three. In addition to the Wind auction, Telus is in talks with Mobilicity, while Public Mobile, the smallest of the three, has hired bankers to seek new owners.

The incumbents would be the logical buyers for the start-ups and their valuable wireless spectrum if not for Ottawa's desire to keep the large carriers from further freezing out competition.

Other Canadian financiers have looked at the possibility and passed, including Fairfax Financial Holdings Ltd., which sources said has decided against pursuing a investment in Wind Mobile. Foreign interest has been muted, sources said.

Mr. Glassman may present a solution with a Canadian passport. He works from a downtown Toronto skyscraper, where his team specializes in buying distressed assets such as debt. Catalyst has invested in telecom over the years, including companies such as AT&T Canada and Call-Net Inc. Big wins on beaten-down purchases have generated returns that rank Catalyst's two most recent funds as the best performing in Canada, and at the top of the list of distressed funds globally, according to tracking firm Preqin.

Catalyst manages more than \$3-billion and could potentially call on the big investors in its funds to raise money if need be. Debt markets could also be a source of cash.

Mr. Glassman has a reputation as a tough, litigious fighter, which is not uncommon in the world of distressed debt. That reputation was said to spook Wind Mobile's owners initially, but relations are now said to be good. The key challenge facing him, said people familiar with the situation, is persuading the government that he has a long-term plan in the sector and is not simply looking to resell the spectrum later to a higher bidder.

Mr. Glassman declined to comment.

Other bidders for Wind Mobile are said to include Egyptian telecom magnate Naguib Sawiris, Wind's original financial backer. His investment firm, Accelerero Capital, was said to be partnering with AAL Corp., a holding company controlled by Wind Mobile CEO Anthony Lacavera. Sources have also said that incumbents, including Rogers and Telus, are also bidders for Wind Mobile. Mobicility is also a contender.

Mr. Glassman is moving to gain influence at Mobicility by launching a legal action to stop a recent \$75-million financing that gave Mobicility some breathing room. If that strategy is successful, Catalyst would be in a position to put forward its own refinancing plan. That strategy got a boost Thursday when an Ontario judge said Catalyst's legal application could proceed.

Should he succeed in gaining control of Mobicility, Mr. Glassman is said to be planning to participate in the coming spectrum auction, as well as eyeing Wind Mobile.

The issue is timing. The upstarts are looking to sell now before the government's next wireless spectrum auction. Although it begins on Nov. 19, potential bidders face more imminent deadlines – notably a June 11 date to declare themselves as participants.

"The best bid might be three to six months from now, not now," said one person involved in a sale process.

Already small carriers are warning they might not be able to raise the necessary money to put down deposits to secure status as bidders in the spectrum auction.

Wind Mobile is the brand name that is operated by Globalive Wireless Management Corp. It launched service in late 2009 after shelling out \$442-million for its wireless licences. Its parent

company, Orascom Telecom Holding SAE, is majority-owned by Amsterdam-based VimpelCom Ltd.

Orascom is in the process of buying out Wind Mobile's Mr. Lacavera to formalize control over the Toronto-based carrier in the wake of recent changes to the government's foreign investment rules for small telcos.

Regulatory approval of that deal is still pending. Industry Minister Christian Paradis is said to be reluctant to sign off on the transaction without firm assurances about Wind's eventual buyer. His office did not immediately respond to a request seeking comment.

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Plaintiffs Defendants Third Party
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs by Counterclaim Defendants to the Counterclaim

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GREGORY BOLAND
FOR ANTI-SLAPP MOTION
VOL. 1 OF 6**

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