

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**AFFIDAVIT OF ANTHONY GRIFFIN
(sworn March 7, 2015)**

I, Anthony Griffin, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am one of four Partners of the Defendant/Responding Party West Face Capital Inc., a privately-held Toronto-based investment management firm with assets under management of approximately \$2.2 billion.¹ I have been a Partner of West Face since the Fall of 2006, shortly after West Face was founded. I was the Partner who initially had primary responsibility for the WIND transaction (discussed below), and continued to be involved throughout the transaction. I was also the Partner with primary responsibility for West Face's research regarding Callidus Capital Corporation. As such, I have personal knowledge of the information set out in this Affidavit, except

¹ Unless otherwise indicated, all dollar figures are in Canadian dollars.

where such knowledge is based on information from others, in which case I have stated the source of the information and believe it to be true.

2. I am swearing this Affidavit in response to the motion by the Plaintiff/Moving Party The Catalyst Capital Group Inc., seeking two forms of relief against West Face. First, Catalyst seeks an injunction restraining West Face from participating in the management and/or strategic direction of WIND Mobile Corp., a company in which West Face has invested more than \$150 million and in which funds controlled by West Face hold a 35.42% equity interest. Catalyst specifically seeks to enjoin West Face from participating in the advanced wireless services spectrum auction (the "**AWS-3 auction**")² that was recently conducted by Industry Canada. Second, Catalyst seeks an order authorizing an Independent Supervising Solicitor (an "**ISS**") to attend West Face's premises and create a forensic image of all of West Face's electronic devices, for the stated purpose of identifying whether West Face has misused any confidential information belonging to Catalyst.

3. Catalyst alleges that West Face misused confidential information disclosed to West Face by the Defendant/Responding Party Brandon Moyse. Mr. Moyse was a former junior employee of Catalyst who worked at West Face as a junior member of West Face's investment team for a three and a half week period in June and July 2014. On this motion, Catalyst alleges that Mr. Moyse disclosed, and that West Face has

² The AWS-3 auction is the auction of spectrum licenses for Advanced Wireless Services in the bands 1755-1780 MHz and 2155-2180 MHz (AWS-3). This is not to be confused with the auction of spectrum licenses for Broadband Radio Services (BRS) in the 2500-2690 MHz Band.

misused or will misuse, confidential information belonging to Catalyst and relating to three subjects:

- (a) the acquisition of WIND in September 2014 by a syndicate of investors that included West Face;
- (b) the AWS-3 auction recently conducted by Industry Canada, in which WIND participated; and
- (c) Callidus, a publicly-traded company owned 59.5% by Catalyst, and in particular the identity of companies to which Callidus has lent money.

4. None of these allegations is true. Catalyst has not identified any confidential Catalyst information in any way related to WIND, the AWS-3 auction, or Callidus that has been disclosed to West Face by Mr. Moyse. Further, as described below, the ISS appointed pursuant to a previous order of the court has conducted a review of Mr. Moyse's electronic devices, and found no evidence that Mr. Moyse disclosed to West Face any Catalyst confidential information in any way related to WIND, the AWS-3 auction, or Callidus.

Overview

5. West Face's interest in WIND dates back to at least November 2009, almost five years before Mr. Moyse joined West Face as a junior associate, and almost three full years before he was employed by Catalyst. Critically, the necessary deal elements for a successful bid to acquire WIND, including price, were not confidential to any particular bidder. Rather, VimpelCom Ltd. (WIND's principal equity-holder who controlled the sale process) and its financial advisor, UBS Investment Bank, had made it clear to all

interested purchasers, including West Face, that VimpelCom required an enterprise value of \$300 million and a transaction structure that minimized the regulatory risks that could prevent or delay closing.

6. Before Mr. Moyse joined West Face on June 23, 2014, West Face had already engaged in negotiations with VimpelCom to acquire WIND, had formulated a strategy to acquire WIND in concert with others, and had assembled the majority of the critical deal components that ultimately allowed it to participate successfully in the acquisition of WIND:

- (a) we had been in contact with Anthony Lacavera and Tennenbaum Capital Partners, both of which would ultimately form critical parts of the successful investor syndicate that acquired WIND as described below;
- (b) we had accepted VimpelCom's demand for an enterprise value in the range of \$300 million for WIND; and
- (c) we knew from our communications with VimpelCom's financial advisor UBS that VimpelCom wanted to sell its entire interest in WIND quickly, while minimizing risk of regulatory approval.

7. Tennenbaum and Mr. Lacavera ultimately proved critical in assisting West Face and its partners to structure a transaction that was satisfactory to VimpelCom.

8. Mr. Moyse worked at West Face as a junior associate for three and a half weeks, from June 23, 2014 to July 16, 2014. Before he even arrived at the firm, West Face implemented a confidentiality wall to ensure that Mr. Moyse did not disclose any confidential Catalyst information he may have possessed to West Face relating to WIND or the AWS-3 auction.

9. Specifically with respect to WIND, during the short period in which Mr. Moyse worked for West Face, West Face was pursuing the WIND transaction with another strategic partner that ultimately declined to participate. In other words, while Mr. Moyse was at West Face, we were pursuing what proved to be a dead end, and even so, Mr. Moyse had no involvement in those negotiations.

10. On July 16, 2014, Mr. Moyse agreed to an interim consent order (the "**July 16 Consent Order**") precluding him from working at West Face. At that time, Mr. Moyse was immediately placed on indefinite leave by West Face. Since then, Mr. Moyse has performed no work for West Face and has had no involvement in any investment analysis or decision-making at West Face.

11. One week after Mr. Moyse was placed on leave by West Face, Greg Boland, West Face's CEO, was informed by UBS that VimpelCom had granted another party (which we now know to be Catalyst) exclusive rights to negotiate a binding agreement to acquire WIND. By that time, Mr. Moyse was on leave from West Face, and West Face was shut out from negotiations. However, Catalyst failed to reach a definitive agreement with VimpelCom to acquire WIND during its exclusivity window, which expired on August 18, 2014. As described below, Catalyst's failure to do so was entirely its own doing, and was in no way attributable to West Face, Mr. Moyse, or any alleged disclosure of confidential information.

12. After Catalyst's exclusivity period expired on August 18, 2014, West Face and its partners, including Tennenbaum and Mr. Lacavera, moved swiftly to conclude a deal with VimpelCom. West Face had been working on-and-off with those partners for

months before Mr. Moyse ever joined West Face, and Mr. Moyse had already been on indefinite leave from West Face for over one month by that point. The first phase of the WIND transaction closed on September 16, 2014, less than one month later, on a basis consistent with the previously disclosed deal parameters demanded by VimpelCom and UBS.

13. Mr. Moyse remains on indefinite leave from West Face today, and therefore was on leave for the entire period of the negotiation and consummation of the WIND transaction. No members of West Face's WIND deal team communicated at all with him about WIND during this period, and he played no role whatsoever in the WIND transaction.

14. Not content with this result, Catalyst has now attacked West Face on multiple fronts. It makes a bald allegation that the WIND acquisition was achieved as a result of West Face obtaining and misusing unspecified confidential information belonging to Catalyst. It has alleged that West Face misused further unspecified confidential Catalyst information on WIND's behalf in the AWS-3 auction, an allegation that would now appear to be not only incorrect but also moot, as WIND has been reported to have been the only bidder on spectrum set aside for new entrants in Ontario, Alberta and British Columbia, based on comments made by the Honourable James Moore, Federal Minister of Industry. Catalyst has also alleged that West Face misused unspecified confidential information of Catalyst relating to its subsidiary Callidus.

15. Catalyst makes these allegations in the face of the ISS's conclusion that there is no evidence on Mr. Moyse's electronic devices that he disclosed Catalyst confidential

information to West Face concerning WIND, the AWS-3 auction, or Callidus. Dissatisfied with that result, Catalyst now also attacks the conclusions of the ISS.

16. To repeat, none of Catalyst's allegations about misuse of confidential information is true. In fact, Catalyst has not and cannot specify what confidential WIND, AWS-3 auction, or Callidus information Mr. Moyses is alleged to have disclosed to West Face, let alone how that information could have given West Face an advantage.

17. West Face, WIND, and WIND's other investors will be seriously damaged if West Face is enjoined from participating in the management and/or strategic direction of WIND and its affiliates and related parties, and particularly in respect of the AWS-3 auction. Spectrum auctions only occur infrequently when deemed appropriate by Federal authorities. West Face currently has two nominees to WIND's ten member board of directors, and plays an important role in providing strategic advice, direction and support to WIND, as it continues to challenge Canada's three incumbent national wireless service providers. Furthermore, as an investment manager, West Face has a fiduciary duty to manage its investments, including WIND, in the best interests of its many third-party investors. As the owner of 35% of WIND's equity, West Face is the natural lead investor for the current syndicate of investors of WIND. Enjoining West Face from participating in the management and/or strategic direction of WIND would prevent West Face from fulfilling this duty, and would harm West Face and its investors.

18. Granting the requested injunction would also interfere with Industry Canada's stated policy of encouraging the growth and viability of a fourth national wireless service provider (and WIND is currently the only solvent national challenger to the three

incumbent national wireless providers). Wireless spectrum is the lifeblood of a wireless business like WIND, and it is essential that West Face, as the largest equityholder of WIND, be able to participate in that process.

19. Catalyst alleges in paragraph 90 of James Riley's Affidavit that West Face might harm "Catalyst's contingent interest in Wind". While there is no basis for Catalyst's claim that it is the beneficial owner of West Face's interest in WIND, to the extent that Catalyst now claims a constructive trust over West Face's interest in WIND, Catalyst's and West Face's interests are aligned. West Face has managed and will continue to manage its investment in WIND to maximize shareholder value.

20. Catalyst also appears to be trying to weaken WIND and disadvantage West Face by disseminating its allegations on this motion against West Face through the media. A National Post article dated November 24, 2014 quotes from Catalyst's Statement of Claim and quotes unnamed "people familiar with the sales process" for WIND, and based on my discussions with West Face's WIND deal team, none of them spoke to the media.³ As explained in more detail below, Catalyst even appears to have arranged for the court file (which it claimed on the earlier motions included its confidential information) to be unsealed and open for public view so that third parties, including the media, could review its allegations on this motion in order to disseminate them against West Face more broadly. Further, Catalyst has repeated its allegations in this motion to investors in West Face managed funds and others who do business with West Face,

³ A copy of the National Post article dated November 24, 2014 is attached as Exhibit "1".

and encouraged them to withdraw their investments from investment funds managed by West Face and cease doing business with West Face.

About West Face

21. West Face is a Toronto-based investment management firm. It was founded in 2006. West Face employs 38 staff in Toronto (including two part-time employees), and manages a number of investment funds and accounts covering a broad range of investment strategies. West Face currently manages approximately \$2.2 billion in assets on behalf of third parties that have invested in funds managed by West Face.

22. West Face is led by its Chief Executive Officer, Greg Boland, along with three other Partners: Peter Fraser, Thomas Dea, and me. The four Partners have, on average, over twenty years of experience in the financial industry and draw on a deep network of strong relationships to provide a unique pipeline of investment opportunities.

23. As part of its business, West Face monitors and researches potential investments for the funds that it manages, including potential investments in privately-owned entities like WIND and publicly-traded entities like Callidus.

Background to the WIND Transaction

WIND and the Regulatory Environment

24. WIND is a Canadian wireless telecommunications provider that was originally formed in 2008 pursuant to a joint venture between two parties: (1) AAL Corp., which was the holding company of Mr. Lacavera and the owner of Globalive Communications

Corporation, a Canadian telecommunications provider; and (2) Orascom Telecom Holding S.A.E., a large Egyptian multi-national telecommunications company.

25. Due to regulatory restrictions on foreign ownership of Canadian telecommunications operators that existed at the time, AAL held a majority of the voting interests in WIND even though Orascom held a majority of the total equity interests. In 2008, WIND paid \$442 million for the rights to use a portion of wireless spectrum for a wireless telecommunications service in an auction held by Industry Canada. In December 2009, WIND commenced operations, providing mobile data and voice services in the Greater Toronto and Hamilton Area in Ontario, and in Calgary, Alberta.

26. Since that time, WIND has expanded into Ottawa and parts of southern Ontario, as well as Edmonton, Alberta, and Vancouver, Abbotsford, and Whistler, British Columbia. As of December 2014, WIND is Canada's fourth largest mobile operator, and the only solvent national challenger to the three incumbent national wireless companies (Rogers, Bell and Telus).

27. In 2011, VimpelCom acquired the majority shareholder of Orascom, giving VimpelCom a controlling interest in Orascom and, indirectly, Orascom's investment in WIND. VimpelCom is a publicly-traded mobile telephone operator headquartered in the Netherlands. Orascom and VimpelCom have also loaned significant funds to WIND to fund spectrum acquisitions, the build-out of WIND's network, and general operating needs. Through the combination of its debt, equity, and voting interests in WIND, VimpelCom effectively controlled WIND's access to capital, a significant control lever

given WIND's early stage of development, the capital requirements of the wireless industry, and the competitive nature of that industry.

28. Notwithstanding 2012 amendments that loosened certain restrictions on foreign control of smaller telecommunications service providers like WIND, foreign ownership of the wireless industry in Canada remains heavily regulated. Indeed, regulatory concerns had already prevented VimpelCom from carrying out a reorganization in 2013. VimpelCom therefore had experience with the challenges in Canada of regulatory approval for changes in ownership of WIND, and we at West Face knew that minimizing or eliminating any such risk would be crucial to a successful bid for VimpelCom's interests in WIND.

West Face Attempts to Acquire WIND Beginning in 2013

29. West Face and its partners have a long-standing interest and expertise in the telecom sector. Among other things, West Face or predecessor companies had previously invested in U.S. and Canadian telecom companies including Lightsquared, Clear Wire, TerreStar Corp., Cleveland Unlimited, Broadview Communications, DBSD N.A. (successor to ICO Global), Cogeco, Microcell Communications, and Rogers Communications. I believe that we would be a natural source of financing or investment for a telecom company like WIND.

30. I am informed by Tom Dea that West Face first explored making investments in debt securities of WIND in 2009. West Face met with the principals of WIND and their investment bankers Genuity Capital, entered into a non-disclosure agreement, received

a management presentation, and presented a term sheet to WIND's ownership.⁴ Ultimately, West Face's offer was not acceptable. WIND solicited West Face's interest in alternative financing, but West Face was not interested and discussions went no further.

31. On November 4, 2013, I received a telephone call from Mr. Lacavera. I understand that Mr. Lacavera had received my name from Bruce MacDonald, a contact of Mr. Boland's at RBC. Mr. Lacavera advised that VimpelCom was interested in selling its debt and equity interests in WIND and in arranging for the repayment of WIND's third party debt. Following this conversation and subsequent conversations with VimpelCom's agent UBS, West Face delivered an expression of interest to VimpelCom and AAL.⁵ On December 7, 2013, West Face entered into a confidentiality agreement with VimpelCom and Orascom (by then known as Global Telecom Holdings S.A.E.) to obtain access to VimpelCom's virtual data room and conduct financial due diligence on WIND.

32. Shortly after entering into the confidentiality agreement with VimpelCom and Orascom, West Face received access to the data room and then participated in a management presentation from WIND on December 18, 2013. By April 2014, discussions between West Face and VimpelCom had progressed to the point that West Face retained counsel and began to prepare term sheets for a transaction involving WIND. In late April 2014, West Face originally proposed a combination of debt

⁴ A copy of the now-expired non-disclosure agreement with Globalive dated November 4, 2009 is attached as Exhibit "2". A presentation by Globalive dated December 24, 2009 is attached as Exhibit "3".

⁵ A copy of West Face's expression of interest dated November 8, 2013 is attached as Exhibit "4".

refinancing and equity investment that would allow VimpelCom to retain minority ownership of WIND. However, on May 1, 2014, West Face was advised by Jonathan Herbst or Francois Turgeon of UBS that VimpelCom was interested only in an outright sale of VimpelCom's debt and equity interests in WIND.

33. From this point forward, it was clear that the three essential deal elements for a successful bid to acquire WIND were as follows:

- (a) a deal that could close quickly, without material representations and warranties by the vendor;
- (b) a purchase price targeting an enterprise value of \$300 million; and
- (c) a transaction structure that allowed for the full exit of VimpelCom without any risk related to regulatory approval.⁶

34. On May 4, 2014, West Face sent VimpelCom a revised term sheet to address VimpelCom's required deal terms. This term sheet included a purchase of 100% of WIND's equity, based on the enterprise value that had been communicated to interested parties by VimpelCom and its agents. After accounting for the repayment or refinancing of approximately \$160 million owed to WIND's third party lenders, VimpelCom would receive approximately \$140 million for its debt and equity interests. This offer was, in fact, slightly higher than the price that West Face's investor group would ultimately pay, and the offer had been made to VimpelCom almost two months before Mr. Moyse began working at West Face.

⁶ VimpelCom's \$300 million asking price was common knowledge to the interested parties and, indeed, had even been referred to by the press in the Summer of 2014. For example, see the July 31, 2014 article from the Globe and Mail attached as Exhibit "5".

35. VimpelCom did not accept West Face's offer for a variety of different reasons unrelated to price, but indicated that it was willing to negotiate further. To this end, West Face requested that its counsel, Davies Ward Phillips & Vineberg LLP, also be given access to VimpelCom's virtual data room in order to conduct legal due diligence. Also around this early May time period, West Face hired a U.S. telecom consulting firm to advise West Face regarding WIND's business.

36. By June 12, 2014, and before Mr. Moyse joined West Face, West Face was considering two possible options for financing a transaction to acquire WIND:

- (a) raising \$100 million in debt through an investment bank, \$100 million of senior equity contributed by West Face, and \$100 million of subordinate equity from Mr. Lacavera and other investors with whom he had relationships; or
- (b) joining a syndicate led by Tennenbaum, which at that time also included two other prominent U.S. private equity firms that did not ultimately participate in the purchase of WIND (the "**Tennenbaum Syndicate**").

37. While neither of these options ultimately resulted in a deal for WIND, the combination of relationships with Tennenbaum and Mr. Lacavera, the strategies to meet the conditions for a successful acquisition imposed by VimpelCom, the outlines of the agreements developed, and the significant due diligence conducted by that date, including the engagement of a third party consultant, all proved critical in completing the transaction several months later. Notably, all of this was accomplished before Mr. Moyse even started working at West Face and without any involvement by or information from him.

38. After considering its options, West Face determined that it did not, at that time, want to become a fourth member of the Tennenbaum Syndicate and instead, on June 19, 2014, decided to make another proposal to VimpelCom for the acquisition of 100% of WIND's equity based on an enterprise value of \$311 million. During the period of June 20 to 22, 2014, West Face prepared a share purchase agreement for delivery to VimpelCom's financial advisor, UBS, and a list of outstanding legal due diligence items following its initial review. I emailed the draft agreement and supplemental due diligence request list to Francois Turgeon of UBS on the morning of Monday, June 23, 2014.⁷

Mr. Moyse's Hiring By West Face

39. In the meantime, I am informed by Mr. Dea that Mr. Moyse had contacted West Face in January 2014 seeking employment in response to a West Face press release announcing the launch of its Alternative Credit Fund. The communication between Mr. Moyse and West Face was initiated by Mr. Moyse and not by West Face. West Face happened to need a junior associate at the time of Mr. Moyse's contact because a previous potential hire had chosen to pursue a different opportunity. Mr. Dea met with Mr. Moyse in March 2014, reviewed his résumé, and checked Mr. Moyse's references (with respect to Catalyst, Mr. Dea spoke only to former Catalyst employees).

40. Contrary to paragraph (h) of Catalyst's Amended Notice of Motion, Mr. Dea has advised me, and I believe, that Mr. Dea did not ask Mr. Moyse to send "samples of his work at Catalyst". Rather, Mr. Dea asked Mr. Moyse to provide him with some writing

⁷ A copy of this email, and Mr. Turgeon's response, is attached as Exhibit "6".

samples to demonstrate his written communication skills, and instructed him to redact any confidential information as necessary. Mr. Dea's request for writing samples from Mr. Moyse was not out of the ordinary and is a hiring practice that West Face has made use of in the past. Confidentiality is a common concern in the finance industry and Mr. Dea assumed that Mr. Moyse would not breach any confidentiality obligations.

41. I did not play a significant role in Mr. Moyse's hiring, and primarily left the matter in Mr. Dea's hands. I understand from Mr. Dea that the particular writing samples that Mr. Moyse provided did not play a material role in his hiring. Rather, Mr. Dea relied on Mr. Moyse's academic background in advanced mathematics, his demonstrated ambition and hard work, and a strong reference from a former employer of Mr. Moyse who was a friend of Mr. Dea.

42. West Face verbally offered Mr. Moyse a position as a junior associate, which Mr. Moyse verbally accepted on or around May 19, 2014. Mr. Moyse notified Catalyst that he was resigning on or around May 24, 2014. On May 28, 2014, Mr. Moyse told us that he had non-competition and confidentiality covenants with Catalyst, and gave us a redacted copy of his employment contract with Catalyst.⁸ On May 30, 2014, counsel to Catalyst wrote to counsel to West Face and Mr. Moyse objecting to Mr. Moyse's new position at West Face.

⁸ A copy of Mr. Moyse's redacted Catalyst employment contract is attached as Exhibit "7", and a copy of his West Face employment contract is attached as Exhibit "8".

West Face Implements a Confidentiality Wall in Response to Catalyst Complaints

43. During the course of communications between counsel in advance of Mr. Moyse starting to work for West Face, counsel to Catalyst (Lax O'Sullivan Scott Lisus LLP) advised counsel to West Face (Dentons Canada LLP) that Catalyst was particularly concerned about Mr. Moyse's work on a "telecom deal". As set out in Dentons' letter dated June 19, 2014 to Lax O'Sullivan, West Face had implemented a confidentiality wall as set out in a memo dated June 19, 2014.⁹ Pursuant to this confidentiality wall: (1) Mr. Moyse was forbidden from communicating with anyone at West Face about the ongoing WIND negotiations, and vice versa; and (2) West Face's IT group restricted access to all WIND-related documents so that Mr. Moyse could not access them.¹⁰

44. There was no need to restrict West Face's WIND deal team members from accessing any documents created by Mr. Moyse while at West Face because he had been clearly instructed that he would have no involvement with WIND-related matters and would thus not be creating any WIND-related documents. Such a restriction would have prevented WIND deal team members from accessing work done by Mr. Moyse on subjects entirely unrelated to WIND. Further, and with no disrespect to Mr. Moyse, at no time did I consider seeking his views on WIND-related matters. We had been deeply engaged in the matter since 2013, he was a junior associate, and, because he had just

⁹ A copy of Dentons' June 19, 2014 letter is attached as Exhibit "9". A copy of West Face's confidentiality wall memo dated June 19, 2014 is attached as Exhibit "10".

¹⁰ A copy of an email from West Face's Chief Compliance Officer, Supriya Kapoor, to Mr. Moyse enclosing the confidentiality memo is attached as Exhibit "11". A copy of an email from West Face's Head of Technology, Chap Chau, dated June 20, 2014, confirming that Mr. Moyse had been excluded from the computer directory containing WIND-related documents is attached as Exhibit "12".

been hired, he had no track record on which I could assess his competence for an important and high profile matter such as WIND, even in the absence of the confidentiality wall.

45. The confidentiality wall memo was circulated to everyone at West Face who was working on the WIND transaction and others, namely:

- (a) Greg Boland – Partner, Chief Executive Officer, and Co-Chief Investment Officer
- (b) Peter Fraser – Partner and Co-Chief Investment Officer
- (c) Thomas Dea – Partner
- (d) Tony Griffin – Partner
- (e) Yu-Jia Zhu – Vice-President
- (f) John Maynard – Chief Operating Officer and Chief Financial Officer
- (g) Stephen Miller – Chief Financial Officer, Funds
- (h) Nora Nestor – Tax Controller
- (i) Alex Singh – General Counsel and Secretary

46. In addition to the confidentiality memo, I am informed by Mr. Dea that he verbally informed the entire investment team at West Face that Mr. Moyse was not to be told anything about the WIND transaction. Further, once Mr. Moyse began working, the West Face WIND deal team only met in private, behind closed doors, and away from the trading floor area where Mr. Moyse sat.

47. To the best of my knowledge, neither Mr. Moyle nor anyone else at West Face has breached these confidentiality obligations as they relate to WIND.

No Disclosure by Mr. Moyle of WIND-related Information

48. As described above, Mr. Dea did receive, and circulate to the other West Face Partners and Yu-Jia Zhu,¹¹ writing samples from Mr. Moyle attached to an email dated March 27, 2014, which were marked as "Confidential" and "For Internal Discussion Purposes Only". As I mentioned previously, reviewing a potential employee's writing samples was not an unusual hiring practice at West Face.

49. In hindsight, it was a mistake for Mr. Dea to forward the March 27, 2014 email and it was a mistake for me and the other recipients to not immediately delete it. However, I am informed by Mr. Dea, Mr. Boland, Mr. Fraser and Mr. Zhu that none of them paid much attention to the contents of the writing samples. Mr. Dea scanned them, but did not find them noteworthy. Mr. Zhu read the memos, but recalled that they just summarized public information and did not provide any novel insight into the companies addressed in the writing samples. Mr. Boland does not recall even opening the writing samples, as he deferred the hiring decision of a junior associate to Mr. Dea. I believe I opened one of the attachments relating to a company called Homburg. Mr. Fraser has informed me that while he recalls opening the attachments, he only recalls that one was related to a company called Homburg. I do not recall opening the other attachments. In any event, none of the attachments related to WIND, the AWS-3 auction, the wireless telecommunications sector, or Callidus.

¹¹ Mr. Zhu has been involved in prior recruiting of analysts and associates.

50. I ultimately deleted my copy of the March 27, 2014 email in response to instructions I received from West Face's counsel, Andy Pushalik of Dentons. So did the other recipients of the email. The copy of the March 27, 2014 email has been provided to me for the purpose of swearing this Affidavit.¹² I understand that Catalyst no longer treats the contents of the March 27, 2014 email as confidential since, as described in more detail below, Catalyst appears to have requested or at least consented to the court staff unsealing the court file where a copy of the email and its attachments had been filed as Exhibit "L" of Mr. Dea's July 7, 2014 Affidavit.¹³

No Use of Catalyst Information Disclosed

51. West Face did not and has not used or relied on any of the writing samples attached to the March 27, 2014 email, other than to evaluate Mr. Moyse's job application. Moreover, I am advised by Mr. Singh, West Face's in-house counsel at the time, that prior to Mr. Moyse commencing work, Mr. Singh conveyed to Mr. Moyse that West Face takes matters of confidentiality very seriously and that, if Mr. Moyse wished to work at West Face, he was not to provide West Face with any information related to Catalyst's business. To the best of my knowledge, Mr. Moyse has not made any further disclosures of any of Catalyst's information.

52. Of the four writing samples, only one – concerning Arcan Resources Ltd. – addressed a company that was being followed by West Face and ultimately became the

¹² A copy of the March 27, 2014 email, including its attachments, is attached as Exhibit "13".

¹³ Indeed, in his email of March 27, 2014, Mr. Moyse explicitly stated that the writing samples regarding NSI, Rona, and Arcan Resources were based solely on public information. In addition, I note that, by March 27, 2014, Catalyst's interest in Homburg was public knowledge due to Catalyst's involvement in Homburg's CCAA proceedings.

subject of a transaction by West Face. That transaction was directed by me and was independent of Mr. Moyses's analysis for Catalyst. I had been following Arcan for several years and, at my direction, West Face had taken a position in two different series of Arcan's unsecured debentures between September 2012 and July 2013. While West Face had exited those positions by March 2014, I was already familiar with Arcan's business and financial circumstances long before Mr. Moyses's employment at West Face.

53. On June 23, 2014 (Mr. Moyses's first day as an employee of West Face) at 4:22 p.m., Arcan announced a strategic transaction with Aspenleaf Energy Limited pursuant to which Aspenleaf and Arcan would complete a plan of arrangement.¹⁴ I concluded that the debentureholders should be able to negotiate a better deal for themselves than had been proposed under the plan of arrangement, and that if they could do so, the debentures would rise in value.

54. At 10:41 p.m. that evening, either forgetting or never having noticed that Mr. Moyses had provided Mr. Dea with a writing sample relating to Arcan from his time at Catalyst, I set out my analysis of Arcan in an email to Mr. Moyses.¹⁵ Because he had just started at West Face that day and likely had little or no work, I thought he could get involved in the Arcan transaction if my investment proposal was approved. The next day, on my recommendation, West Face made an investment in Arcan's unsecured debentures, and continued to build that position over the next several days.

¹⁴ A copy of the press release announcing the deal is attached as Exhibit "**14**".

¹⁵ A copy of this email is attached as Exhibit "**15**".

55. While I sent Mr. Moyses my analysis, he never gave me information or analysis about Arcan of which I was not already aware. I now understand that at some time between June 24 and 26, 2014, Mr. Moyses performed a financial analysis of Arcan's proposed deal with Aspenleaf and summarized Arcan's financials. He did not do so at my request, and I was not at the time provided with a copy of his analysis nor was I informed of its contents. I am informed by Mr. Singh and believe that in or around that time, Mr. Singh asked Mr. Moyses what he was working on, and when Mr. Moyses advised that he was performing a financial analysis of Arcan's proposed deal, Mr. Singh determined that Mr. Moyses's work was on a company that he had analyzed while at Catalyst, and told him to stop all work on the project, which he did. I only learned of Mr. Moyses's analysis in preparing this Affidavit.

56. In summary, the Arcan opportunity arose from a new transaction that was not announced until after Mr. Moyses had left Catalyst. West Face's decision to invest was based on my analysis of this new transaction and not on any work Mr. Moyses had performed at Catalyst or at West Face.

57. As it turned out, West Face lost money on the investment it made in Arcan debentures during this period. In short, West Face has derived no advantage from trading in Arcan's debentures, let alone from any of Mr. Moyses's analysis, which I never saw nor used.

Mr. Moyses's Brief Period of Employment at West Face

58. As set out above, Mr. Moyses began working at West Face on June 23, 2014, and approximately three and a half weeks later he was put on indefinite leave. Mr. Moyses

has not done any work for West Face since then. He has remained on a leave of absence due to these proceedings.

59. During his brief period of active employment with West Face, Mr. Moyse was the most junior member of West Face's investment team (other than West Face's summer intern, Alex Goston). As such, he was not informed of the positions held by West Face funds, was not a member of West Face's investment committee, and did not participate in senior management meetings or have the authority to make any investment decisions.

60. Much of Mr. Moyse's three and a half week period at West Face was spent in orientation and training in order to acclimatize him to the West Face working environment. Based on my recollection of Mr. Moyse's time at West Face and the work I asked him to do for me during this period, as well as on conversations with the other West Face Partners, I believe that during his brief time at West Face, Mr. Moyse's work was limited to performing some preliminary analyses on several potential investments that have nothing to do with WIND, the AWS-3 auction, or Callidus. In that regard, I have set out my knowledge and information of the work Mr. Moyse performed while at West Face in Appendix "A".

61. During his three and a half weeks at West Face, Mr. Moyse kept a physical notebook in which he took handwritten notes during meetings and phone calls. This notebook includes notes on a number of West Face projects or potential deals. I have reviewed a copy of Mr. Moyse's notebook and to the best of my knowledge, it contains

no confidential information belonging to Catalyst. Rather, it relates entirely to either public information, or information that was generated internally at West Face.¹⁶

62. In addition, together with our responding motion materials, West Face intends to deliver to counsel to Catalyst a USB drive containing all non-privileged emails found on West Face's email server that were sent to or from (including by way of "cc" and "bcc") Mr. Moyse's West Face email address or his known personal email addresses. These emails will be redacted only where necessary as a result of: (a) West Face's confidential information; and (b) personal confidential information belonging to Mr. Moyse such as banking passwords and other private information. West Face is also willing to produce to the ISS a USB drive containing documents created, modified or accessed by Mr. Moyse that can be retrieved from his West Face computer or West Face's computer servers, so that the ISS may determine whether they contain any information relating to WIND, the AWS-3 auction, or Callidus.

63. For the purposes of this motion, more important than the work Mr. Moyse did do while at West Face is the work he did not do. Mr. Moyse did not work on anything related to WIND (which was subject to a confidentiality wall as described above), the AWS-3 auction, or Callidus. Indeed, as described below, the AWS-3 auction was not even commenced until January 2015, some five months after Mr. Moyse was placed on indefinite leave.

¹⁶ Copies of the pages from Mr. Moyse's notebook are attached as Exhibit "16". West Face confidential information in the notebook has been redacted, none of which relates to WIND, the AWS-3 auction, or Callidus.

The Preservation of Mr. Moyse's Records

64. Catalyst ultimately commenced this action on June 25, 2014. Immediately upon commencing the action, Catalyst brought a motion seeking to enforce the restrictive covenants in Mr. Moyse's contract, including the non-competition provision and the confidentiality provision.

65. Under the terms of the July 16 Consent Order, Mr. Moyse was placed on indefinite leave and was denied all access to West Face's facilities. His computer access was terminated and his physical access cards were taken back from him on July 16, 2014. His work station was not re-assigned to any other person. Based on my discussions with West Face personnel, since July 16, no one at West Face has had any communications with Mr. Moyse, other than in respect of human resources matters and in response to personal trading approvals sought by Mr. Moyse from West Face's compliance department. I also understand that non-material emails were sent to Mr. Moyse's West Face email address, to which Mr. Moyse no longer had access, as part of mass emails to West Face employees or subsets thereof (for example, emails regarding fire drills, compliance training, daily market updates sent by West Face summer intern Alex Goston, the office holiday party, etc.)

66. Mr. Moyse and West Face also consented to an order to preserve and maintain all records in their possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to their activities since March 27, 2014, and/or that relate to any of the other matters raised in this action, except as otherwise agreed to by Catalyst. Mr. Moyse agreed to turn over his personal computer and electronic devices

to his legal counsel so that a professional forensic firm agreed by the parties could create images of the data stored on the devices. The images were to be held in trust by Mr. Moyses's counsel pending the outcome of the interlocutory motion.

67. Given the allegations regarding breach of confidence made on the motion, the court file in the matter was also sealed (at Catalyst's request) pending the outcome of the interlocutory relief motion.

Mr. Moyses Played No Role in WIND Negotiations While at West Face

68. At the time that Mr. Moyses joined West Face, West Face was in fact beginning to explore a joint bid for WIND with a potential strategic partner. I am informed by West Face Partner Peter Fraser and believe that West Face made initial contact with this potential strategic partner through a pre-existing relationship with a board member of that company. West Face pursued this option throughout the three and a half weeks that Mr. Moyses was working at West Face, without any input from or discussion with Mr. Moyses.

69. Negotiations with this company continued through to July 18, 2014, two days after Mr. Moyses stopped working for West Face. On that day, the company advised West Face that it was withdrawing from the transaction for a number of reasons, including regulatory concerns, differences of opinion on the proposed business plan, timing of the transaction, and lack of board support. This demonstrated again the challenging regulatory environment in which the WIND negotiations were occurring.

70. In summary, during the time Mr. Moyses was at West Face, we had pursued what turned out to be a dead end, and we were no closer to a WIND transaction than when he joined the firm. Even so, and as described above, Mr. Moyses had no involvement in this or any other aspect of the potential WIND transaction as pursued by West Face.

Catalyst Wins the Right to Negotiate Exclusively with VimpelCom

71. At this time, West Face explored alternative financing options, including by reviving its former discussions with the Tennenbaum Syndicate, as well as discussions with other potential partners. As described above, West Face's discussions with Tennenbaum had pre-dated Mr. Moyses's employment at West Face. Before discussions with Tennenbaum could advance however, on July 23, 2014 (a week after Mr. Moyses went on leave), I learned from Mr. Boland that VimpelCom had granted another bidder an exclusive negotiating period to conclude a binding agreement for the acquisition of WIND. Mr. Riley has now disclosed in paragraph 44 of his February 18, 2015 Affidavit that Catalyst was the other bidder in question. This period of exclusivity was extended several times, ultimately to August 18, 2014.

72. During the period of exclusivity, VimpelCom was forbidden to, and in fact did not, negotiate with West Face. While we continued to work on refining our proposal, we could not receive any feedback from VimpelCom or its advisors nor could we receive any further information from WIND management as to whether our proposals would be satisfactory to VimpelCom. We had no insight into the status of Catalyst's negotiations and no ability to influence the outcome of these negotiations.

73. Ultimately, and despite having the benefit of an exclusive negotiating period, Catalyst was not able to conclude a deal with VimpelCom. Catalyst's period of exclusivity expired on August 18, 2014. Based on paragraph 45 of Mr. Riley's February 18, 2015 Affidavit, I understand that an inability to address VimpelCom's regulatory concerns of the kind I have already discussed, and which were widely known to all bidders from late 2013, was the reason Catalyst was unable to proceed. As described above, the wireless industry is a heavily regulated one in which Industry Canada exercises significant regulatory discretion. As will be described below, West Face and its fellow syndicate members were able to develop a structure that materially reduced or eliminated the regulatory risk to VimpelCom. Mr. Moyses had nothing to do with the development of this structure or how it was implemented. As noted above, he had been on indefinite leave from West Face since July 16, 2014. Further, and also as described above, West Face had the pieces of what ultimately became the winning bid long before Mr. Moyses began working at West Face on June 23, 2014.

74. On February 20, 2015, West Face's counsel Jeff Mitchell (of Dentons) wrote to Catalyst's counsel requesting that Catalyst produce the documentation substantiating Mr. Riley's assertion at paragraph 46 of his Affidavit that Catalyst and VimpelCom had been able to negotiate the terms of the potential sale of WIND to Catalyst subject to one exception. Mr. Mitchell reiterated this request in an email and letter sent February 26, 2015. That day, Catalyst counsel Andrew Winton (of Lax O'Sullivan) communicated Catalyst's refusal to produce the documents relating to its negotiations with VimpelCom

on the basis that such documents are not relevant to Catalyst's motion. Mr. Mitchell responded to Mr. Winton's letter on February 27, 2015.¹⁷

New Investor Syndicate Reaches Agreement to Acquire WIND

75. By early August 2014, Tennenbaum, West Face and LG Capital Investors (collectively, the "**New Syndicate**") began work on a proposal that would avoid the need for regulatory approval prior to the full exit of VimpelCom by leaving AAL in place as the majority owner of the voting shares of WIND, with the New Syndicate providing a majority of the financing to buy out VimpelCom. The New Syndicate would take non-voting shares and thereby largely assume the regulatory risk itself. WIND's existing third party debt would be refinanced by another investment firm with which Tennenbaum had a relationship.

76. The risk of this approach to the new investors was that AAL would have full voting control of WIND until regulatory approval was obtained, despite only contributing approximately 25% of the equity funding for the transaction. While AAL would commit to support a post-closing reorganization that would allow the New Syndicate members to acquire their proportionate shares of the voting interests in WIND, the reorganization would require regulatory approval. If that approval was denied, the members of the New Syndicate would have been required to remain in a non-voting equity position.

77. The advantage of this two-stage approach was to meet VimpelCom's need for a transaction that carried no regulatory risk to VimpelCom and that permitted VimpelCom

¹⁷ Copies of these pieces of correspondence are attached as Exhibits "**17**", "**18**", "**19**" and "**20**".

to receive its consideration immediately upon signing of the purchase agreement, rather than waiting until after regulatory approval had been obtained. These advantages were only possible with the participation of AAL. West Face's relationships with AAL and Mr. Lacavera went back to at least November 2009, and had been more recently rekindled through my conversation with Mr. Lacavera on November 4, 2013, not from anything Mr. Moyse did or said. The New Syndicate submitted this proposal to VimpelCom on August 7, 2014, though we learned at that time that VimpelCom would not consider the proposal while it was engaged in exclusive negotiations.

78. However, also on August 7, 2014, AAL advised the New Syndicate that it had entered into a support agreement with VimpelCom and was required to cease discussions with the New Syndicate.¹⁸ The deal remained in Catalyst's hands at that time, and we believed that our chances of proceeding with the transaction were essentially nil.

79. The exclusivity period expired on August 18, 2014, and the New Syndicate moved quickly to get a deal done. On August 21, 2014, VimpelCom agreed with West Face that it would not enter into another exclusivity arrangement with any party until August 25, 2014. West Face's understanding was that the New Syndicate needed to present an acceptable deal structure by that time if it wanted to be considered for exclusive negotiations on that date.

80. On August 23, 2014, West Face's counsel delivered a revised proposal on behalf of the New Syndicate that addressed certain concerns raised by VimpelCom with the

¹⁸ A copy of Mr. Lacavera's email to this effect is attached as Exhibit "21".

transaction structure in the New Syndicate's proposal from August 7, 2014. On August 25, 2014, West Face's counsel delivered to VimpelCom's counsel an executed conditional financing commitment letter on behalf of the New Syndicate, AAL and two other investors who would be co-investing with AAL.¹⁹ VimpelCom thereafter granted exclusive negotiating rights to the New Syndicate, and further negotiations continued. In particular, VimpelCom remained concerned that, notwithstanding the proposed two-stage transaction, Industry Canada would take the position that approval was required for the first stage. To alleviate VimpelCom's concerns, the New Syndicate gave a representation that no regulatory approval was required to close the first phase of the transaction (whereby VimpelCom would be paid), and also agreed to indemnify VimpelCom in the event this representation was wrong. Ultimately a definitive purchase agreement was signed and the transaction closed on September 16, 2014.²⁰

Events Subsequent to the July 16 Consent Order

81. The interlocutory motion was ultimately heard on October 27, 2014 by Mr. Justice Lederer. The court issued its decision on November 10, 2014 (the "**November Decision**"), granting an interlocutory injunction enjoining Mr. Moyse from disclosing any confidential information belonging to Catalyst, or competing with Catalyst until December 22, 2014 (being the date six months after he left employment with Catalyst), and directing the ISS to review the image of Mr. Moyse's personal electronic devices.

¹⁹ A copy of this letter is attached as Exhibit "**22**".

²⁰ A copy of a press release announcing the deal is attached as Exhibit "**23**".

82. Following the November Decision, the parties negotiated and agreed to a protocol pursuant to which Mr. Moyse's forensic images were to be reviewed by the ISS. The protocol was signed by the parties on or about December 12, 2014 (the "**ISS Protocol**").²¹

83. As indicated in the ISS Protocol, West Face was not involved in the process leading up to the preparation of the ISS report. The only time that West Face was to become involved was if the ISS found in its report that Catalyst's confidential information was transferred to West Face, in which case West Face was entitled to disclosure of that portion of the report, and was entitled to seek further orders from the court for further productions of the report.

84. The ISS Protocol contemplated that a draft report would be prepared by the ISS, for comment by Mr. Moyse. Before receiving even a draft report from the ISS, on January 13, 2015, Catalyst served the original Notice of Motion for this motion. At that time, the motion was based on the number of "hits" resulting from the very general search terms that Catalyst had put forward.

85. On February 6, 2015, we received a copy of Catalyst's Amended Notice of Motion in which it alleges that Mr. Moyse has acted in contempt of the July 16 Consent Order. West Face had no involvement in the imaging of Mr. Moyse's hard drive or his use of his home and personal devices, and until reading the allegations contained in Catalyst's Amended Notice of Motion, had no information or knowledge of the assertions being made against him.

²¹ A copy of the ISS Protocol is attached as Exhibit "**24**".

86. On February 10, 2015, after it had served its motion materials, Catalyst's counsel provided a redacted version of the draft ISS report to our counsel. It appears from the draft ISS report that Catalyst's assertion that there were an "unexplainably large number of 'hits'" referenced in its Amended Notice of Motion and stated as the basis for the claim of misuse of confidential information is not accurate. In fact, it appears from the ISS report that the ISS advised Catalyst as early as December 16, 2014 that the ISS was concerned that Catalyst's list of proposed search terms "might generate an excessively large number of 'hits'", because the keywords were insufficiently distinctive and as such might return large volumes of irrelevant or duplicative data.²²

87. The final ISS report was issued on February 17, 2015.²³ The ISS reviewed Mr. Moyse's hard drive, his smartphone and his iPad. The ISS found no evidence that Mr. Moyse had provided any of Catalyst's confidential information to West Face concerning WIND, the AWS-3 auction, or Callidus. The only evidence that the ISS found that Mr. Moyse had provided any kind of "confidential information" to West Face was an email in which Mr. Moyse provided West Face with his Catalyst employment contract, referred to in paragraph 42 of the ISS report. The ISS report also acknowledged at paragraph 43 that Mr. Moyse had previously sworn that he sent an email to West Face on March 27, 2014 (referred to above). Both of these transmissions occurred before Mr. Moyse was employed by West Face, were disclosed on the prior injunction motion, and they do not include any information about WIND, the AWS-3 auction or Callidus.

²² A copy of the redacted version of the draft ISS report is attached as Exhibit "**25**".

²³ A copy of the final ISS report is attached as Exhibit "**26**".

No Access to or Misuse of Catalyst Confidential Information in Spectrum Auction

88. In or around January 2014, Industry Canada announced that it would hold the AWS-3 auction in 2015. In December 2014, WIND announced that it planned to bid in the AWS-3 auction, and in addition would consider the purchase of spectrum from other companies that had excess capacity.

89. Industry Canada indicated that a significant portion of the spectrum put up for auction would be reserved for smaller wireless providers, such as WIND, rather than the existing major wireless providers (Rogers, Bell and Telus). As such, the AWS-3 auction represented a significant opportunity for WIND to increase its presence in the Canadian marketplace, and missing this opportunity would have caused an unrecoverable loss in competitive position.

90. On February 5, 2015, Industry Canada released the initial list of qualified bidders that had provided the \$65 million entry deposit for the AWS-3 auction. The qualified bidders were as follows:

- (a) Bell Mobility Inc.;
- (b) Bragg Communications Inc.;
- (c) Mobilicity;²⁴
- (d) MTS Inc.;

²⁴ While Catalyst is a creditor of Mobilicity, it cannot and does not control or otherwise make management decisions for Mobilicity. In fact, a recent endorsement in Mobilicity's CCAA proceedings explicitly notes that Catalyst's counsel expressed concern about being excluded from the process that led to additional debtor-in-possession financing by Mobilicity's ad hoc group of lenders – a group that excludes Catalyst. A copy of this endorsement is attached as Exhibit "27".

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- (e) Rogers Communications Partnership;
- (f) Saskatchewan Telecom;
- (g) TBay Tel;
- (h) Telus; and
- (i) WIND Mobile.

91. In the result, it has been reported that WIND was the only bidder for spectrum set aside for new entrants in Ontario, Alberta, and British Columbia, and was able to obtain this AWS-3 spectrum for the reserve price set by Industry Canada. Any Catalyst strategy or confidential information therefore could not have been relevant since WIND apparently did not, in the result, have to compete with any other bidder.²⁵

92. Neither West Face nor any of its Partners or employees have accessed or used any confidential Catalyst information in relation to WIND's participation in the AWS-3 auction. The draft AWS-3 auction rules, which were necessary for developing an auction strategy, were only released on July 28, 2014. The final rules were released on December 18, 2014, and the auction itself commenced in January 2015. Mr. Moyse tendered his resignation to Catalyst on May 16, 2014, and was placed on indefinite leave with no business contact with anyone at West Face on July 16, 2014. Therefore he was not at either Catalyst or West Face when the draft rules came out, let alone many months later when the final rules were released and the auction began.

²⁵ A copy of the results of the AWS-3 auction from Industry Canada's website, and an article from the *Globe and Mail* reporting on these results, are attached as Exhibits "28" and "29" respectively.

93. Moreover, during the brief period that he worked in West Face's offices, Mr. Moyse had no involvement in the AWS-3 auction for the very simple reason that West Face did not yet own any interest in WIND. There was no point in developing a strategy for the spectrum auction until the WIND acquisition was complete, which did not happen until months after Mr. Moyse's departure on paid leave.

Harm to West Face From Injunctive Relief Sought

94. Catalyst seeks an injunction prohibiting West Face, or any entity related to West Face, from participating in the "management and/or strategic direction" of WIND, including specifically with respect to the AWS-3 auction. This relief would harm both West Face and WIND.

95. As the largest investor in WIND, West Face offers strategic advice and direction to WIND. In addition, West Face designates two of the ten seats on the board of directors of WIND. Greg Boland, West Face's CEO, currently sits on the board. West Face's other nominee is Peter Rhamey, a telecommunications consultant. As the appointee of two board members and the single largest shareholder, West Face plays an important role in WIND's governance and strategic direction.

96. To use the words of Catalyst's Mr. Riley in paragraph 4 of his Affidavit filed in Mobilicity's CCAA proceedings, the AWS-3 auction was a "unique, one-time, extremely valuable opportunity".²⁶ Given the limited opportunities to participate in a Canadian

²⁶ A copy of this Affidavit is attached as Exhibit "30".

spectrum auction, enjoining West Face from providing strategic direction to WIND could interfere with WIND's ability to compete in the Canadian wireless industry.

97. The unique opportunity presented by the AWS-3 auction means that interfering with West Face's participation poses a particularly imminent threat to WIND. WIND cannot effectively build and improve its business without additional spectrum. Moreover, anything that weakens WIND will strengthen its competitors, irrevocably interfering with the dynamics of future competition. Industry Canada's has emphasized the need for a fourth wireless service provider to compete in Canada, and WIND is currently the leading national contender for that role.²⁷ If WIND's ability to participate in a spectrum auction were interfered with, it could irreparably harm WIND's ability to fulfil that role.

98. West Face will be damaged immeasurably by being enjoined from managing a company into which we have invested a significant amount of the capital from our investment funds. In the case of WIND, West Face is not a passive investor. A significant amount of the value that West Face provides in respect of this particular investment is its active consultation in respect of the strategic decisions to be made by WIND. Granting the requested injunction could impair West Face's ability to deliver this value to the third party investors that have invested funds in the investment vehicles managed by West Face.

²⁷ A screen-shot of Industry Canada's "Canada Wireless Policy" webpage emphasizing "more choice" for Canadian wireless services is attached as Exhibit "31".

99. Mr. Riley alleges at paragraph 90 of his February 18, 2015 Affidavit that Catalyst's contingent interest in WIND must be protected from West Face. West Face denies any such contingent interest. In any event, even assuming that Catalyst had a contingent interest, both parties' interests would be aligned – West Face wants to maximize WIND's value in the same way that Catalyst claims to want to do.

Callidus Capital Corporation

100. Callidus is a publicly traded company. It went public in April 2014 following an initial public offering. Catalyst (directly and/or through funds managed by Catalyst) owns approximately 59.5% of Callidus' outstanding common shares.²⁸ Until its IPO, Callidus' loan book had been 100% funded by Catalyst through a participating debenture.²⁹

101. Callidus is a niche lender to distressed, and typically private, borrowers. It advertises itself as a "specialty debt fund that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources".³⁰

102. According to its IPO prospectus, Callidus' loans are "generally structured as demand, first lien (senior secured) facilities, on a fully collateralized basis",³¹ and

²⁸ A copy of a Callidus press release dated December 23, 2014 disclosing Catalyst's interest in Callidus is attached as Exhibit "**32**".

²⁹ This information is set out on page 5 of Callidus' IPO prospectus dated April 15, 2014 (the "**IPO Prospectus**"), a copy of which is attached as Exhibit "**33**". IPO Prospectus, p. 5.

³⁰ A copy of the "About Callidus" page of Callidus' public website is attached as Exhibit "**34**".

³¹ IPO Prospectus, p. 1.

generally range in size from \$5 to \$50 million (with its largest loan commitment being approximately \$75 million).³² Unlike conventional lenders, however, Callidus' credit facilities have few, if any, financial covenants. In that regard, Callidus' IPO prospectus provided that Callidus' loans have "limited or no covenants",³³ and virtually every one of Callidus' press releases in 2014 contained the following passage:

[Callidus] 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 company's assets, its enterprise value and borrowing needs.³⁴ (emphases added)

103. Based on Callidus' public disclosure, West Face understood that the typical Callidus borrower had limited to no access to capital markets or traditional lending institutions. West Face understood this to be the reason why Callidus has been able to lend at gross yields of approximately 20%.³⁵ Historically, based on my experience, loans to such risky borrowers at such high rates of interest suffer a relatively high rate of default and, sometimes, impairment of principal.

³² IPO Prospectus, p. 2.

³³ IPO Prospectus, p. 1.

³⁴ See, for example, Callidus' press releases dated May 14, August 14, November 6, November 24, and December 23, 2014, copies of which are attached as Exhibits "**35**" to "**39**".

³⁵ See, for example, IPO Prospectus, pp. 1, 4, 21, 24, 28.

The Questionable Premium Trading Value of Callidus' Shares

104. For its April 2014 IPO, Callidus offered its shares to the public at a price of \$14.00 per share. At that time, Callidus' shares began trading on the Toronto Stock Exchange.

105. Almost immediately after its IPO, Callidus' shares began to rise in market value and, by the Fall of 2014, were trading at a significant premium to their IPO price. Even more significantly, Callidus' shares were trading at a substantial premium to their book value based on the assets and liabilities reported in Callidus' financial statements. For example, as at September 30, 2014, Callidus' share price was \$22. As at that date, Callidus' most recently released financial statements³⁶ reported shareholders' equity (a common measure of book value) of \$381 million and 48.69 million shares outstanding, resulting in a book value of \$7.83 per share. The quoted share price of \$21.65 therefore represented a ratio between market price and book value, or P/B multiple, of 2.81.

106. In other words, Callidus' shares were trading at more than twice their value if one were simply to take the book value disclosed in Callidus' financial statements. It appeared to me that this gap between book value and market value meant that the market perceived intangible value in Callidus' continuing ability to generate high yield loans that would not default. It therefore made sense to examine whether publicly-available information was consistent with Callidus being able to do so.

³⁶ Being Callidus' second quarter financial statements for the three and six months ended June 30, 2014 and June 30, 2013, which are attached as Exhibit "40".

107. Throughout 2014, Callidus disclosed tremendous growth in its loan portfolio. For example:

- (a) on May 14, 2014, Callidus disclosed in a press release that, as at May 8, 2014, it had: (i) gross loans receivable of \$480 million, with an aggregate committed amount of \$588 million; and (ii) 22 loan commitments, with an average loan amount funded of \$21 million. In the same press release, Callidus also disclosed that in the first quarter of 2014 (ended March 31, 2014), it had gross yields (*i.e.*, interest rate received before accounting for any losses) of 20.4% and an Adjusted EBITDA³⁷ margin of 79%;³⁸
- (b) on August 14, 2014, Callidus disclosed in a press release that, as at August 13, 2014, it had: (i) gross loans receivable of \$605 million, with an aggregate committed amount of \$755 million; and (ii) 26 loan commitments, with an average loan amount funded of \$23 million. In the same press release, Callidus also disclosed that in the second quarter of 2014 (ended June 30, 2014), it had gross yields of 20.8%, and an Adjusted EBITDA margin of 79.4%;³⁹
- (c) on November 6, 2014, Callidus disclosed in a press release that as at November 4, 2014, it had: (i) gross loans receivable of \$684 million, with an aggregate committed amount of \$856 million; and (ii) 30 loan commitments, with an average loan amount funded of \$23 million. In the same press release, Callidus also disclosed that in the third quarter of 2014 (ended September 30, 2014), it had gross yields of 20.0%, and an Adjusted EBITDA margin of 80.4%;⁴⁰ and

³⁷ Earnings Before Interest, Taxes, Depreciation and Amortization, a common measure of cash flow.

³⁸ See Callidus' press release dated May 14, 2014, a copy of which is attached as Exhibit "35".

³⁹ See Callidus' press release dated August 14, 2014, a copy of which is attached as Exhibit "36".

⁴⁰ See Callidus' press release dated November 6, 2014, a copy of which is attached as Exhibit "37".

- (d) On February 17, 2015, Callidus disclosed in a press release that as at January 31, 2015, it had gross loans receivable of \$893 million, with an aggregate committed amount of \$1.1 billion. In contrast to previous press releases, Callidus did not provide an update on its number of loan commitments, average loan amount, gross yields or Adjusted EBITDA margin.⁴¹

108. To put the growth of Callidus' loan book even more starkly, Callidus stated in a press release that as of December 31, 2013 it had \$381 million of gross loans receivables.⁴² A little over one year later, as of January 31, 2015, Callidus has claimed that its gross loan commitments totalled \$1.1 billion, with \$893 million advanced and outstanding.⁴³ This represents an increase of \$512 million (134%) from December 31, 2013.

109. Looking further back, both Callidus' gross loans receivables and EBITDA had more than quadrupled since 2011, based on statements made in its public disclosure.⁴⁴ Yet Callidus had disclosed gross yields averaging more than 20% throughout this tremendous growth period.

110. In addition to these objective performance metrics, Callidus claimed in its IPO prospectus not to have "realized losses on principal on Callidus-originated loans".⁴⁵ Callidus went even further in its November 24, 2014 press release, in which it stated

⁴¹ See Callidus press release dated February 17, 2015, a copy of which is attached as Exhibit "41".

⁴² See Callidus' press release dated November 24, 2014, a copy of which is attached as Exhibit "38".

⁴³ See Callidus press release dated February 17, 2015, a copy of which is attached as Exhibit "41".

⁴⁴ In 2011, Callidus' gross loans receivable were approximately \$154 million and its EBITDA was approximately \$14.7 million. See IPO Prospectus, p. 37.

⁴⁵ IPO Prospectus, p. 1.

that "no loans in Callidus' loan portfolio are non-performing and there have been no realized loan losses" over the period from December 31, 2013 to November 24, 2014.⁴⁶

Similarly, in a conference call with investors on November 7, 2014 regarding Callidus' third quarter results, Mr. Glassman, Callidus' Executive Chairman and CEO, stated:

So IFRS is a bit annoying. Technically, under IFRS, you have to allocate the [loan loss] provision on a loan-by-loan basis. So – and I think we went through this in the IPO, but just to remind people, we set up a separate watch list, which is the stuff that although performing – **because we don't have a single loan in the portfolio that's not performing, and just to remind again everybody, performing means current in interest and all obligations – so we don't have a single loan in our book that is nonperforming...**⁴⁷
(emphasis added)

111. In other words, Callidus claimed that it was rapidly adding extremely high-yield loans without suffering any defaults, or indeed any non-performance. Based on my experience with high-yield borrowers, Callidus' disclosure seemed too good to be true, and attracted our attention for a deeper review of Callidus (and in fact, as set out below, this was our view even before Mr. Glassman made the above-quoted statements).

112. As at November 25, 2014, Callidus' shares were trading at \$21.60 per share, yet the average analyst target price for Callidus' shares was \$28.89 per share, and 7 out of 7 analysts following Callidus recommended buying Callidus shares. Moreover, these same analysts predicted earnings-per-share ("EPS") growth of 100% through 2016.⁴⁸

Based on our review of Callidus' publicly disclosed financial information as summarized

⁴⁶ A copy of Callidus' November 24, 2014 press release is attached as Exhibit "**38**".

⁴⁷ A copy of the transcript from Callidus' November 7, 2014 call with investors is attached as Exhibit "**42**".

⁴⁸ Screen-shots from Bloomberg showing analysts' target price and predictions of Callidus' growth are attached as Exhibit "**43**".

above, we believed that the investing community was excessively optimistic and this created an investment opportunity for West Face that was worth investigating further.

The Impetus Behind West Face's Research into Callidus

113. West Face had been monitoring Callidus' trading since its IPO. By September 2014, West Face's view was that the valuation at which the company was trading appeared to be exceedingly optimistic. Indeed, Callidus' trading multiples⁴⁹ appeared to be much higher than those of what West Face viewed as Callidus' most highly comparable businesses – even those businesses with stronger origination channels, higher levels of portfolio diversification, longer portfolio durations, and lower risk of material loan impairments than Callidus.⁵⁰ Moreover, these comparable businesses generally provide investors with attractive dividend yields, whereas Callidus had publicly disclosed its intention to not declare or pay dividends in the foreseeable future.⁵¹

114. While Callidus had consistently disclosed successful objective performance measures of its loan portfolio (such as the tremendous growth of its gross loans receivable, consistently high gross yields and Adjusted EBITDA, etc.), a review of Callidus' public disclosure (including its IPO prospectus) provided limited information about the actual composition of Callidus' loan portfolio.

⁴⁹ For example, the P/B multiple discussed above.

⁵⁰ In West Face's view, the most closely comparable companies to Callidus are U.S. business development companies, such as American Capital, Apollo Investment Corporation, and Ares Capital Corporation. In some ways, Callidus may also be compared to specialty finance companies such as Accord Financial, Carfinco, and Chesswood Group Limited.

⁵¹ IPO Prospectus, at pp. 56.

115. For example, readers of Callidus' public disclosure had little information about the identities of Callidus' borrowers or the terms of the loans extended by Callidus. Callidus also did not report on the performance of individual borrowers, the degree to which the loan book or specific loans were over-collateralized by assets, or whether interest service payments were being met out of cash flow or by added funding draws under the Callidus facilities. Furthermore, because Callidus' loans have limited to no financial covenants, the quality of the assets against which Callidus' loans are secured is crucial to the strength of their loan book. By calling itself an "asset-based lender", Callidus was essentially representing that its loans were collateralized by its borrowers' most liquid assets (for example, accounts receivable and inventory).⁵² However, there was also little disclosure about exactly what collateral was backing Callidus' loans.

116. As a result of this dearth of information, investors had very little information on which to base an assessment of the risks associated with Callidus' business or loan portfolio. To put Callidus' lack of disclosure in perspective, U.S. business development companies ("**BDCs**") (arguably Callidus' closest comparables) typically disclose, on a quarterly basis and for each of their loans outstanding: the name and industry of the borrower, interest rate, maturity date, book value, and estimated fair value of the investment.⁵³

⁵² See Callidus' IPO Prospectus, p. 31.

⁵³ Samples of U.S. BDC disclosures are attached as Exhibit "**44**" and "**45**".

117. For these reasons, West Face questioned the premium trading value of Callidus' shares following the IPO. West Face decided to investigate why Callidus' shares were trading at such a premium and, more importantly, whether this premium was justified.

118. West Face believed that a detailed review of Callidus' business might illuminate whether its shares warranted such a high valuation by market analysts and in the public trading markets. That said, based on its experience in the industry, West Face was skeptical that this premium was warranted. Accordingly, another Partner at West Face, Peter Fraser, a Co-Chief Investment Officer of West Face along with our CEO Greg Boland, made the decision in October 2014 to begin short selling Callidus' shares on the basis of his (and West Face's) belief that Callidus' share price would decline due to what we perceived as its excessive valuation. After deciding to take a short position in Callidus, West Face pursued more detailed research into Callidus in order to determine whether to increase or reduce its short position. To be clear, the research was commenced and performed solely for investment purposes based on what we perceived to be unsustainable claims about tremendous high-yield loans growth without any material losses. West Face has previously done this kind of research on many potential investment targets.

119. West Face's first step in its research was to try to understand as much as possible of the specific composition of Callidus' loan book through public sources of information. More precisely, West Face sought to learn, through publicly available resources:

- (a) who were the borrowers to whom Callidus had extended credit?

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- (b) what were the typical terms on which Callidus was lending (for example, commitment size, term to maturity, interest rates, covenants, etc.)?
- (c) what collateral was backing the Callidus loans?
- (d) how were the businesses of the borrowers performing, and specifically, were there any signs of problems or non-performance amongst these borrowers? and
- (e) were the loans rolling off at their stated initial maturity dates, or rolling over at the same or different rates of interest?

120. I was the Partner at West Face tasked with primary responsibility over West Face's research into Callidus, the conclusions of which are summarized in a PowerPoint document (the "**Callidus Analysis**").⁵⁴ All of the analysis in the Callidus Analysis is based on facts that West Face obtained from publicly available information.

West Face's Research into Callidus

121. Callidus' IPO prospectus served as the starting point for West Face's research. The prospectus stated that, as at December 31, 2013, Callidus' loan book consisted of 19 loans. The prospectus summarized these loans in a chart showing the industry of the borrower, the origination date of the loan, the amount of the facility, and the amount drawn on that facility. Notably, this chart did not indicate the names of Callidus' end borrowers – instead it simply referred to them as "Company A", "Company B", etc.⁵⁵

⁵⁴ A copy of the Callidus Analysis is attached as Exhibit "**46**".

⁵⁵ A copy of this chart is attached as Exhibit "**47**".

122. We then resorted to other public sources of information to determine whether we could identify Callidus' end borrowers, and whether we could match those borrowers to the loans disclosed by Callidus in the IPO prospectus. While some of our research tools were proprietary and confidential to West Face, they all relied on public sources of information. Some were as simple as Google and Bloomberg. Others included searches of government records, public websites and promotional materials. The precise sources searched are as follows:

- (a) the website of the Office of the Superintendent of Bankruptcy Canada, and in particular the CCAA records list (a list of all companies that have been granted protection under the CCAA since September 18, 2009);⁵⁶
- (b) websites of major Canadian and U.S. law firms who represented Callidus or one of its borrowers in a transaction and mentioned a transaction involving Callidus by name;
- (c) websites of various accounting and advisory firms who typically serve as monitors or trustees in bankruptcy;
- (d) the case dockets of ongoing bankruptcy proceedings; and
- (e) public registries of security interest registrations maintained by various government agencies in Canada and the United States.

123. West Face's research methodology was based on its own internal methods, but none of it was based on confidential information of Callidus or anyone else.

124. As a result of our extensive research, we believe that we have been able to identify a total of 40 end borrowers of loans made by Callidus, 14 of which we

⁵⁶ <http://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/h_br02281.html>.

understand are still outstanding, and nine of which we believe match the loans disclosed by Callidus in its IPO prospectus. I have summarized West Face's research, and in particular the public sources of information about Callidus' loans, in Appendix "B".

125. As one can see from the Appendix, while West Face identified 40 suspected loans made by Callidus, we have only very limited information with respect to most of these loans. Indeed, for many of the loans, West Face's knowledge is limited to the name of the borrower only and the existence of some type of security agreement or interest (there are also likely dozens of loans that West Face was not able to identify).

126. On the other hand, for a few of the loans identified by West Face, West Face was able to obtain more detailed information. Of these, six were of particular interest: those being the loans to Xchange Technology, Arthon Industries, Leader Energy, North American Tungsten, Esco Marine, and Deepak International. Notwithstanding Callidus' representations that it had yet to suffer a loss of principal and that, in November 2014, none of its loans were non-performing, West Face found public information about these loans that raises significant concerns about the ability of the borrowers to ultimately repay their debts to Callidus.

127. The circumstances surrounding each of these six loans are set out in Appendix "C" of my Affidavit. In brief, however, these loans appear to be non-performing and/or insufficiently collateralized, and it appears very unlikely that they will be repaid in full. In aggregate, these six loans comprise 17.7% of Callidus' loan book as at February 11, 2015, and West Face estimates that, as of that date, Callidus could have had an impairment on these loans of up to \$70 million, and definitely greater than zero.

128. Finally, West Face's research into Callidus had nothing to do with Mr. Moyse. As the Partner responsible for our Callidus research, I had no communications of any kind with Mr. Moyse about Callidus, and to the best of my knowledge, neither did anyone else at West Face. I am informed by Andrew Carlson of Davies Ward Phillips & Vineberg LLP, counsel to West Face, and believe that a search for the term "Callidus" in any of the over 1,000 emails sent or received by Mr. Moyse at his West Face email address retrieved only one email message.⁵⁷ As one can see, this email was sent by Alex Goston, a summer intern at West Face, to a number of individuals at West Face, including Mr. Moyse, on the day Mr. Moyse ceased working at West Face (July 16, 2014), and the only reference to Callidus in that email was public information about Callidus' market capitalization and stock price movement. The only reason why Callidus happened to be referenced in Mr. Goston's email is because, as part of his responsibilities as West Face's summer intern, Mr. Goston was tasked with sending out a daily email summarizing daily financial market news, including the top and bottom five performing North American stocks (in terms of price movement). Callidus happened to be one of the best performing stocks on that day.

Unsealing of Court File and Attacks on West Face and its Principals

129. As part of the July 16, 2014 Consent Order, the court file in this matter was ordered to be sealed until the conclusion of the injunction application. In fact, to the best of my knowledge the court file remained sealed following the conclusion of the injunction application on November 10, 2014. West Face never took any steps to

⁵⁷ A copy of this email is attached as Exhibit "48".

unseal the court file. However, I am informed by Ben Iscoe of Dentons, counsel to West Face, and believe that the index to the court file indicates that the court file was subsequently unsealed in January 2015, with reference to a Mr. Andrew Winton. Mr. Winton is one of Catalyst's external lawyers.⁵⁸

130. Soon after the unsealing of the court file, a series of newspaper articles began to appear in the *National Post* and the *Globe and Mail* quoting from Catalyst's Notice of Motion and repeating the allegations to which I have responded in this Affidavit.⁵⁹ Neither West Face nor its counsel advised the media of the unsealing of the court file, suggested the media consult the court file, or otherwise instigated this newspaper coverage of the litigation. Instead, I am informed by Jeff Mitchell of Dentons, counsel to West Face, and believe that West Face received inquiries from the press about Catalyst's motion, and responded as indicated in the articles. Specifically, West Face denied the allegations and stated its belief that the relief had been sought against West Face for an improper purpose.

131. On February 9, 2015, counsel to Catalyst Rocco Di Pucchio (of Lax O'Sullivan) wrote to our counsel Mr. Mitchell (of Dentons) alleging that our counsel's quoted comments in the press denying Catalyst's most recent allegations, and stating our belief that the motion had been intended to harm West Face, were false and defamatory. Mr.

⁵⁸ A copy of the court index is attached as Exhibit "**49**".

⁵⁹ Copies of these articles are attached as Exhibit "**50**".

Di Pucchio demanded an apology and retraction in relation to a newspaper article principally devoted to repeating Catalyst's allegations against West Face.⁶⁰

132. Interference with the business of West Face, and not protection of confidential information, appears to be Catalyst's goal in bringing this motion. My belief about the motivation behind Catalyst's motion has been reinforced by my understanding from conversations that Greg Boland has had with other financial market participants that Newton Glassman of Catalyst has been repeatedly attacking the character and reputation of West Face and its principals. Mr. Glassman has stated that the Partners of West Face are untrustworthy and lack integrity, that investors should withdraw their investments from our funds, and on at least one occasion has directed individuals to review the court file in order to read Catalyst's Notice of Motion.

Catalyst's Demand to Image all West Face Devices

133. In its Amended Notice of Motion, Catalyst seeks an order allowing it to image all of West Face's electronic devices for inspection and review by the ISS. I am informed by Chap Chau, West Face's director of IT, that there are 122 distinct corporate-owned devices and likely in excess of 50 personally-owned devices used by West Face personnel. Accordingly, if granted, Catalyst's requested order would require the imaging of over 172 different devices, including desktop computers, laptop computers, computer servers, and both company-owned and employee-owned phones and tablets.

⁶⁰ A copy of Mr. Di Pucchio's letter is attached as Exhibit "51". Our counsel's reply is attached as Exhibit "52".

Conclusion

134. Mr. Moyses only worked at West Face for approximately three and a half weeks, from June 23, 2014 until July 16, 2014, and played a very limited role at the firm. He played no role in West Face's actions with respect to WIND, the AWS-3 auction, or Callidus. In fact, West Face's interest in WIND pre-dated Mr. Moyses's arrival by five years, to November 2009, and West Face was thoroughly engaged in a potential WIND transaction before Mr. Moyses's arrival at West Face. The deal that West Face was pursuing during the time Mr. Moyses worked for West Face ultimately proved to be a dead end, and following Mr. Moyses's departure Catalyst had several weeks of exclusive negotiations with VimpelCom for the purpose of reaching an agreement to acquire WIND. Mr. Moyses could have had nothing to do with West Face's strategy for the AWS-3 spectrum auction, since the New Syndicate did not even acquire WIND until several months after Mr. Moyses's departure and Mr. Moyses has not been involved in West Face's business since July 16, 2014. West Face's research into Callidus arose not because of any input from Mr. Moyses, but because Callidus' rapid escalation in stock price and claims about an unimpaired loan book attracted, and ultimately could not withstand, West Face's scrutiny.

135. During Mr. Moyses's brief employment as a junior associate, West Face was aware of the dispute between Catalyst, Mr. Moyses, and West Face, and took steps to ensure that Mr. Moyses did not have any involvement in any files in which Catalyst was known to be involved, including WIND and Callidus. West Face did not access or use any confidential information belonging to Catalyst of any kind, including without limitation information relating to WIND, the AWS-3 auction, and/or Callidus.

136. I make this Affidavit in response to Catalyst's motion for an injunction and for no other purpose.

SWORN before me at the City of)
Toronto in the Province of Ontario)
this 7th day of March, 2015)
)
)

Commissioner for Taking Affidavits,
etc.

ANTHONY GRIFFIN

APPENDIX "A"

1. Based on my recollection of Mr. Moyses's time at West Face and the work I asked him to do for me, on conversations with the other West Face Partners, and a review of Mr. Moyses's emails by counsel to West Face, I believe that during his brief time at West Face, Mr. Moyses's work was limited to keeping West Face's "deal pipeline" document updated and performing preliminary analyses about potential investment opportunities. Based on a review of Mr. Moyses's West Face emails, I am advised by Andrew Carlson (of Davies), counsel to West Face, and believe that Mr. Moyses worked on the following matters while at West Face:

- (a) Arcan Resources, discussed above;
- (b) Unicaja, a Spanish savings bank providing retail banking services;
- (c) NCSG Crane & Heavy Haul Corporation ("**Northern Crane**"), a privately held Canadian-domiciled rental and services company providing mobile cranes, tractors, trailers, a line of hydraulic platform trailers, and specialty cranes;
- (d) CCC Investment Banking, a Canadian investment bank exploring financing options for an oil and gas services company whose name was not provided to West Face;
- (e) Covenant Surgical Partners, a privately-held owner and operator of surgery centers based in Nashville, Tennessee;
- (f) The Peregrine Trust (also referred to as the "**Buffalo Mine**" matter), a trust domiciled in British Columbia seeking a bridge loan for perfecting rights in an above-ground feed stock of gold, silver, and platinum group metals.

- (g) Seven Generations Energy, a privately held Canadian-domiciled oil and gas exploration and production company;
- (h) TransOcean, a publicly-traded provider of offshore contract drilling services for energy companies with a market capitalization of over US\$15 billion; and
- (i) Canadian International Oil Corp. ("**CIOC**"), another privately held Canadian-domiciled oil and gas exploration and production company.

2. As set out in the body of my Affidavit, West Face intends to deliver Mr. Moyse's West Face emails to counsel to Catalyst. That said, I will provide here a brief summary of Mr. Moyse's work on each of the foregoing matters.

3. I described Mr. Moyse's work on Arcan in the body of my Affidavit.

4. In regard to Mr. Moyse's work on Unicaja, on his first day at West Face, I invited him to join me on a conference call regarding an offering of Unicaja shares. Mr. Moyse participated on that conference call, and the following day, he emailed me his thoughts on the offering.

5. Mr. Moyse's work on Northern Crane began on or around Monday, July 7, 2014. At the time, Northern Crane was seeking financing through a secured credit facility. I sent an email to Mr. Moyse asking him to get the details on the transaction. That same day, Mr. Moyse provided to me a summary of the transaction, along with various reference materials, and an indicative term sheet.

6. Mr. Moyse's work with respect to CCC Investment Banking also began on or around Monday, July 7, 2014. On that day, Mr. Dea asked Mr. Moyse to call the Vice

President of CCC Investment Banking on his behalf to learn more about the proposed deal. A few hours later, Mr. Moyse provided Mr. Dea with his summary and analysis on CCC Investment Banking's proposal for financing an oil and gas services company.

7. Mr. Moyse' work on Covenant began on or around Tuesday, July 8, 2014. Mr. Dea emailed Mr. Moyse and asked him to look into a debt offering being made by the company. That same day, Mr. Moyse provided Mr. Dea with his analysis on the Covenant debt offering by reply email.

8. Mr. Moyse's work on the Buffalo Mine also began on or around Tuesday, July 8, 2014. Mr. Dea asked Mr. Moyse to retrieve some basic information on the project. On Thursday, July 10, 2014, Mr. Moyse provided Mr. Dea with a summary of the Buffalo Mine Project. As part of his work on this matter, Mr. Moyse was asked by representatives of the Buffalo Mine to create an account with Box.com, a company that provides online file storage and sharing services, in order to access the documents relevant to this project.⁶¹

9. Mr. Moyse's work on Seven Generations began on or around Thursday, July 10, 2014. Mr. Moyse was asked to track down the company's offering documents with respect to a debt offering it had made in 2013, and to prepare an analysis of comparable companies in the oil and gas sector, which he did. I used some of the information gathered by Mr. Moyse to prepare a term sheet with respect to a possible debt investment in Seven Generations by West Face.

⁶¹ Copies of Mr. Moyse's emails relating to his Box.com account are attached as Exhibit "53".

10. Mr. Moyse's work with respect to TransOcean began on or around Monday July 14, 2014, two days before he stopped working at West Face. On that day Mr. Dea sent an email to Mr. Moyse asking him to start a new project looking at a short position of TransOcean. Among other things, Mr. Dea asked Mr. Moyse to review quarterly reports, presentations, and conference calls of major oil companies for certain indications of risk in the industry, as well as certain information on TransOcean itself.

11. Mr. Moyse's work on CIOC began on or around July 15, 2014. I wanted Mr. Moyse to perform a side-by-side comparison to Seven Generations. I do not believe Mr. Moyse performed any substantial work on this file prior to his departure.

12. As described in the body of my Affidavit, during his three and a half weeks at West Face, Mr. Moyse kept a physical notebook in which he took handwritten notes during meetings and phone calls. This notebook includes notes on the Arcan, Unicaja, Covenant, and Seven Generations files discussed above, as well as notes of various other West Face projects or potential deals that were part of West Face's deal "pipeline".⁶² I do not believe Mr. Moyse performed any material work on any of those other projects.

⁶² Copies of the pages from Mr. Moyse's notebook were previously attached as Exhibit "16".

APPENDIX "B"

13. The following is a summary of the 40 Callidus end borrowers / loans that West Face identified using publicly available resources, together with the public information that West Face relied upon in identifying each loan:

1. *Loan to DEP Distribution Exclusive Ltée*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with DEP Distribution Exclusive Ltée, a wholesale seller of CDs and audio/video cassettes and related products, on or around December 11, 2007.⁶³
2. *Loan to Total Security Management Services Inc.*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Total Security Management, a company providing protective/security services and training, on or around June 2, 2008.⁶⁴ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in Total Security Management, and that the document pursuant to which this interest was obtained was executed on or around April 21, 2008.⁶⁵
3. *Loan to Entertainment World Holdings Inc.*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Entertainment World Holdings, a seller of vending machines, on or around May 5, 2008.⁶⁶
4. *Loan to TPS Sports Group Corporation*: West Face learned of Callidus' loan to TPS Sports Group by searching on the public website Globe24h

⁶³ A print-out from CIPO's website showing this information is attached as Exhibit "**54**".

⁶⁴ A print-out from CIPO's website showing this information is attached as Exhibit "**55**".

⁶⁵ A print-out from the USPTO's website showing this information is attached as Exhibit "**56**".

⁶⁶ A print-out from CIPO's website showing this information is attached as Exhibit "**57**".

CaseLaw,⁶⁷ a website that advertises itself as the largest database of Canadian case law. Specifically, through searches of this website, West Face retrieved the case of *Asset Engineering LP v. Pagotto*, which expressly refers to the loan by Callidus.⁶⁸

5. *Loan to Satpanth Capital Inc. (formerly Bedford Furniture Industries Inc.):* Through Google site searches of CIPO's website, West Face learned that Callidus registered two security agreements with bed/mattress company Satpanth Capital, the first on or around January 9, 2009, and the second on or around July 21, 2011. The CIPO website also indicated that Callidus assigned its security to another company on October 5, 2011.⁶⁹ Based on information from Bloomberg, West Face understands that Satpanth Capital is now doing business as King Koil Sleep Products.⁷⁰
6. *Loan to Magnussen International Corp.:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Magnussen International, a home furniture company, on or around April 22, 2009.⁷¹ The CIPO website also indicates that TD Bank registered a security agreement with Magnussen International on or around June 3, 2010. Given that this was evidence that Magnussen had obtained a loan from a more conventional lender, West Face concluded that the company's loan from Callidus had been refinanced on or around that date;
7. *Loan to Blockbuster Canada Co.:* West Face learned of Callidus' loan to Blockbuster Canada through the public disclosure of its parent company, Blockbuster Inc. Specifically, through searches of the SEC's EDGAR

⁶⁷ <<http://caselaw.canada.globe24h.com>>.

⁶⁸ A copy of this case is attached as Exhibit "**58**".

⁶⁹ A print-out from CIPO's website showing this information is attached as Exhibit "**59**".

⁷⁰ A print-out from Bloomberg showing this information is attached as Exhibit "**60**".

⁷¹ A print-out from CIPO's website showing this information is attached as Exhibit "**61**".

database, West Face retrieved a copy of Blockbuster Inc.'s Form 8-K dated May 14, 2009 setting out the key information about Callidus' loans. This disclosure stated that, on May 8, 2009, Blockbuster Canada had signed a credit facility with Callidus, which provided for a single advance non-revolving loan of \$25 million, and a single advance non-revolving loan of up to \$10 million.⁷² West Face also retrieved a copy of Blockbuster Inc.'s Form 8-K dated October 5, 2009, which stated that, on October 1, 2009, the company had issued a series of senior secured notes and used the net proceeds to repay what West Face understood to be the Callidus facilities.⁷³

8. *Loan to Great Slave Helicopters Ltd. (a subsidiary of the Discovery Air group of companies):* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Great Slave Helicopters Ltd., a charter helicopter company, on or around May 27, 2009.⁷⁴ In financial statements released shortly before Callidus registered its security interest with CIPO, Great Slave Helicopter's parent company, Discovery Air, announced that on April 9, 2009, it had obtained a new credit facility consisting of a demand operating line of credit to a maximum of \$15 million, with increased availability of up to \$25 million during the company's peak operating period. The company also disclosed that this facility bore an interest rate of 18%, had an initial term of 14 months, and was secured by first and second charges over certain accounts receivable and inventories.⁷⁵ That Callidus was the lender of this loan was essentially confirmed through a press release made by Discovery Air dated August 1, 2012. The press release announced that

⁷² A copy of Blockbuster Inc.'s Form 8-K dated May 14, 2009 is attached as Exhibit "**62**".

⁷³ An excerpt from Blockbuster Inc.'s Form 8-K dated October 1, 2009 is attached as Exhibit "**63**".

⁷⁴ A print-out from CIPO's website showing this information is attached as Exhibit "**64**".

⁷⁵ An excerpt from Discovery Air's financial statements dated April 30, 2009 are attached as Exhibit "**65**".

Discover Air had secured a new facility of up to \$25 million with CIBC, which "replace[d] Discovery Air's demand operating facility with Callidus Capital Corporation".⁷⁶

9. *Loan to Active Control Technology Inc.:* West Face learned of Callidus' loan to Active Control Technology, a mining services company, through the company's press releases. Specifically, on June 17, 2009, Active Control Technology, issued a press release on the CNW newswire website,⁷⁷ announcing, among other things, that it had signed a term sheet with Callidus for a revolving credit facility of up to \$2,250,000.⁷⁸
10. *Loan to Infinity Rubber Technology Group Inc.:* West Face learned of Callidus' loan to rubber manufacturer Infinity Rubber through at least two public sources:
 - (i) One, a press release dated January 27, 2012 published on Bloomberg. Among other things, this press release described the history of an ongoing strike of United Steelworkers union members at Infinity Rubber's manufacturing plant in Toronto. The press release stated that Infinity Rubber's initial acquisition of the plant from Bilrite (which occurred during a CCAA process) "was financed with a high-interest mortgage from Callidus Capital Corporation, a company specializing in high-risk loans for those who can't get bank credit";⁷⁹ and
 - (ii) Two, a press release dated March 8, 2012 published on the United Steelworkers website,⁸⁰ which also referred to the ongoing strike.

⁷⁶ A copy of this press release is attached as Exhibit "66".

⁷⁷ <www.newswire.ca>.

⁷⁸ A copy of this press release is attached as Exhibit "67".

⁷⁹ A copy of this press release is attached as Exhibit "68".

⁸⁰ <www.usw.ca>.

Among other things, this press release referred to a refinancing by BMO that had enabled the company to "repay an 18% loan it had previously negotiated with Callidus Corporation Inc. [*sic*]"⁸¹

11. *Loan to Synergex Corp.:* West Face learned of Callidus' loan to Synergex through two public sources. First, in a press release dated September 9, 2009, Synergex announced that it had executed a term sheet with Callidus for a \$20 million credit facility.⁸² Second, an article dated July 14, 2010 published on the RTT News website⁸³ stated that Synergex's subsidiary, Synergex Logistics Corp., had opened a new credit facility in the amount of \$3 million after having "paid out its asset based lender, Callidus Capital Corp."⁸⁴ West Face also learned through a Synergex press release dated January 3, 2012 and published on the Market Wired website⁸⁵ that certain other Synergex subsidiaries had made an assignment in bankruptcy.⁸⁶
12. *Loan to Encore Sales (formerly UWG Global Inc.):* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Encore Sales (then UWG Global Inc.) on or around May 12, 2008.⁸⁷ West Face learned many more details about this loan through the orders made and materials filed in Encore Sales' bankruptcy proceedings. These materials were (and remain) available to download from the public website of Farber Financial Group.⁸⁸ Among other details, these materials, and in particular the First Report of the

⁸¹ A copy of this press release is attached as Exhibit "**69**".

⁸² A copy of this press release is attached as Exhibit "**70**".

⁸³ <www.rttnews.com>

⁸⁴ A copy of this article is attached as Exhibit "**71**".

⁸⁵ <www.marketwired.com>

⁸⁶ A copy of this press release is attached as Exhibit "**72**".

⁸⁷ A print-out from CIPO's website showing this information is attached as Exhibit "**73**".

⁸⁸ <<http://www.farberfinancial.com/insolvency-engagements/bid/213397/Encore-Sales>>. A screenshot of this website is attached as Exhibit "**74**".

Proposal Trustee dated September 30, 2011, stated that: (i) Callidus was Encore Sales' principal secured creditor pursuant to a loan agreement dated December 15, 2009, and (ii) on August 3, 2011, Callidus made demand for payment of the outstanding indebtedness in the amount of approximately \$16 million.⁸⁹

13. *Loan to Roadtrek Motorhomes Inc.:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Roadtrek Motorhomes Inc., a designer and manufacturer of motorhomes, on or around April 26, 2010, and that this security agreement was removed on or around June 29, 2011.⁹⁰ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in Roadtrek, and that the document pursuant to which this interest was obtained was executed on or around December 29, 2009.⁹¹ West Face also learned through a press release published by the Gowlings law firm on April 15, 2011 that Roadtrek had completed a recapitalization transaction that involved the establishment of two credit facilities.⁹²
14. *Loan to Educator Supplies Ltd.:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Educator Supplies Ltd., on or around August 13, 2010.⁹³
15. *Loan to Terrace Bay Pulp Inc.:* West Face learned of Callidus' loan to Terrace Bay through the following public sources of information:

⁸⁹ An excerpt from this report is attached as Exhibit "75".

⁹⁰ A print-out from CIPO's website showing this information is attached as Exhibit "76".

⁹¹ A print-out from the USPTO's website showing this information is attached as Exhibit "77".

⁹² A copy of this press release is attached as Exhibit "78".

⁹³ A print-out from CIPO's website showing this information is attached as Exhibit "79".

- (i) First, West Face learned of the loan through a press release dated September 24, 2010 published on the website of the Aird & Berlis law firm. This press release stated, in part, that Aird & Berlis had represented Callidus in a \$30 million loan to Terrace Bay, which had been in CCAA proceedings since March 2009, and that the financing closed on September 15, 2010;⁹⁴ and
 - (ii) Second, knowing that Terrace Bay had been involved in CCAA proceedings in 2009, West Face was able to locate the webpage maintained by Terrace Bay's court-appointed monitor, Ernst & Young Inc. ("EY"), regarding Terrace Bay's CCAA proceedings.⁹⁵ This webpage contained links to copies of all of the orders made and materials filed in Terrace Bay's 2009 CCAA proceedings, as well as all of the orders made and materials filed in Terrace Bay's subsequent 2012 CCAA proceedings. These materials were (and remain) available to download from EY's public website.
16. *Loan to T. Litzen Sports Limited (formerly Performance Sports, Inc.):* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with sports equipment company T. Litzen Sports Limited on or around November 18, 2010, and later assigned this agreement to another company on or around July 6, 2011.⁹⁶ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in T. Litzen Sports, and that the document pursuant to which this interest was obtained was executed on or around September 29, 2010. The website also indicated that Callidus later

⁹⁴ A copy of this press release is attached as Exhibit "**80**".

⁹⁵ <<http://documentcentre.eycan.com/Pages/Main.aspx?SID=102>>. A screen-shot of this website showing all of the documents available to download is attached as Exhibit "**81**".

⁹⁶ A print-out from CIPO's website showing this information is attached as Exhibit "**82**".

assigned this security interest through a document executed on or around April 15, 2011.⁹⁷

17. *Loan to Tabi International Corporation*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Tabi, a retail women's clothing store chain, on or around January 19, 2011.⁹⁸ West Face learned further details of Callidus' loan to Tabi through the materials filed in connection with Tabi's bankruptcy. These materials were (and remain) available to download from the public website of Farber Financial Group.⁹⁹ Among other details of the loan, the First Report of the Proposal Trustee and Proposed Receiver dated February 17, 2011 stated that Callidus "advanced to Tabi a demand loan in a maximum amount of \$5,000,000" pursuant to a loan agreement dated October 4, 2010.¹⁰⁰
18. *Loan to Pon Bicycle I B.V.*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with the then-current owner of Cervelo brand bicycles (now Pon Bicycle) on or around February 13, 2012.¹⁰¹ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in the then-current owner of Cervelo, and that the document pursuant to which this interest was obtained was executed on or around October 6, 2010. The USPTO website also indicated that this security interest was released by Callidus on or around December 21, 2011.¹⁰²

⁹⁷ A print-out from the USPTO's website showing this information is attached as Exhibit "83".

⁹⁸ A print-out from CIPO's website showing this information is attached as Exhibit "84".

⁹⁹ <<http://www.farberfinancial.com/insolvency-engagements/bid/213412/Tabi-International-Corporation>>. A screen-shot of this website is attached as Exhibit "85".

¹⁰⁰ A copy of this report is attached as Exhibit "86".

¹⁰¹ A print-out from CIPO's website showing this information is attached as Exhibit "87".

¹⁰² A print-out from the USPTO website showing this information is attached as Exhibit "88".

19. *Loans to Forefront Innovative Technologies Inc. ("FIT") and Forefront Automation Inc. ("FAI")*: West Face learned of Callidus' loans to FIT and its subsidiary FAI through publicly filed reports of Schonfield Inc., the companies' trustee in bankruptcy. Schonfield's report on FIT stated that Callidus was the senior secured creditor of FIT, pursuant to a general security agreement dated October 15, 2010. The report also stated that as at March 1, 2011, Callidus was owed approximately \$4 million on its loan to FIT, that the amount owing to Callidus as at FIT's bankruptcy was approximately \$975,000, and that there was no expectation of full recovery of this amount to Callidus. Similarly, Schonfield's report on FAI stated that Callidus was also a senior secured creditor to FIT's subsidiary FAI, and was owed approximately \$1.4 million at the time of bankruptcy, with no expectation of full recovery to Callidus. Both reports were obtained through searches on Schonfield's public website.¹⁰³
20. *Loan to Sher-wood Hockey Inc.*: Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with hockey equipment company Sher-wood Hockey Inc. on or around August 29, 2014.¹⁰⁴ West Face learned more about this loan through a press release dated September 9, 2014 published on the CNW newswire website announcing that Sherwood Athletics Group Inc. had acquired all of the assets and liabilities of Sher-wood Hockey Inc. from "Callidus Capital Inc."¹⁰⁵ Based on this information, West Face believed that this was the loan identified as being to "Company B" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Sports Supplies Manufacturing". West Face also believed that this was the same loan referred to in note 17 of the notes to Callidus' consolidated financial statements appended to its IPO prospectus. This note stated that during

¹⁰³ <<http://www.schonfeldinc.com/>>. Copies of these reports are attached as Exhibit "89".

¹⁰⁴ A print-out from CIPO's website showing this information is attached as Exhibit "90".

¹⁰⁵ A copy of this press release is attached as Exhibit "91".

2011, Callidus received 100% of the common shares of a borrower in exchange for a loan valued at \$12.6 million, and that the borrower "distributes athletic equipment" and was "being held for sale".¹⁰⁶ Furthermore, note 18 of the notes to Callidus' third quarter 2014 financial statements, released in November 2014, provided that the assets of this borrower "were sold to a third-party in September 2014 for an amount equivalent to the carrying value...". This announcement corresponded quite closely to the announcement made by in the CNW press release.¹⁰⁷

21. *Loan to Kaptor Group entities:* West Face learned the concerning details of Callidus' loan to certain entities within the Kaptor Group from three sources of information:

- (i) One, an article published on the Weil Bankruptcy Blog referring to a January 5, 2012 judgment in the case of *Callidus Capital Corp. v. Carcap Inc.*, in which Callidus was successful in its application to appoint a receiver over a member of the Kaptor Group;¹⁰⁸
- (ii) Two, the website maintained by Crowe Soberman, the court-appointed receiver of certain Kaptor Group entities that had gone bankrupt.¹⁰⁹ All of the orders made and materials filed in this bankruptcy proceeding were (and remain) available to download from this website. Among other details of Callidus' loan, these materials indicated that on September 1, 2011, Callidus agreed to extend up to \$15 million of credit to two Kaptor Group companies, namely CarCap Inc. and Car Equity Loans Corp. These companies

¹⁰⁶ IPO Prospectus, Appendix "D", at p. 32.

¹⁰⁷ An excerpt from Callidus' third quarter financial statements is attached as Exhibit "92".

¹⁰⁸ A screen-shot of this webpage is attached as Exhibit "93".

¹⁰⁹

<https://www.crowehorwath.net/soberman/services/advisory/corporate_recovery_and_turnaround/court_mandated_files_management_centre/kaptor_and_insignia/2025610_ontario_limited_kap tor_financial_inc_and_insignia_trading_inc.aspx>. A screen-shot of this webpage is attached as Exhibit "94".

were placed into receivership on December 14, 2011 and their assets were sold by order of the court on March 13, 2012. The proceeds of sale were used to repay Callidus in full;¹¹⁰ and

(iii) Three, a report on Callidus published by Dundee Capital Markets on August 27, 2014.¹¹¹

22. *Loan to Natura World Inc.:* West Face learned of Callidus' loan to mattress manufacturer Natura World through the orders made and materials filed in connection with Natura World's Notice of Intention to Make a Proposal pursuant to the BIA. These materials were (and remain) available to download from the website of Farber Financial Group.¹¹² In particular, the First Report of the Proposal Trustee dated January 5, 2012 disclosed that in or around December 2011, Natura World's then secured creditor assigned its debt and security to Callidus, and that the company filed for protection from its creditors on December 16, 2011. The report listed the debt to Callidus as being approximately \$6,096,000.¹¹³ Based on this information, West Face believed that this was the loan identified as being to "Company D" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Mattresses Manufacturer";

23. *Loan to Steels Industrial Products Ltd.:* West Face learned of Callidus' loan to Steels through the orders made and materials filed in connection with Steels' CCAA proceedings. These materials were (and remain) available to download from the website of Alvarez & Marsal Canada Inc.,

¹¹⁰ See, for example, the excerpt from the Affidavit of Robert Grossman sworn April 2, 2012 in support of the appointment of Crowe Soberman as receiver, an excerpt of which is attached as Exhibit "95".

¹¹¹ A copy of this report is attached as Exhibit "96".

¹¹² <<http://www.farberfinancial.com/insolvency-engagements/bid/213396/Natura-World-Inc>>. A screen-shot of this website is attached as Exhibit "97".

¹¹³ An excerpt from this report is attached as Exhibit "98".

who was appointed as Steels' monitor.¹¹⁴ In particular, the Second Report of the Monitor dated May 1, 2012 indicated the terms on which Callidus was prepared to extend a \$12 million facility to Steels as debtor in possession financing.¹¹⁵ The court approved this financing in its order dated May 4, 2012, and Callidus was subsequently paid out following the court's approval and vesting order of July 30, 2012.¹¹⁶

24. *Loan to Dynetek Industries Ltd:* West Face learned about Callidus' loan to Dynetek Industries through a press release dated March 29, 2012 published on the CNW newswire website.¹¹⁷ Through the press release, Dynetek announced, among other things, that on March 23, 2012 it had closed a transaction with Callidus to refinance its previous credit facility held by a Canadian chartered bank. According to the release, the Callidus facility included a \$7.0 million demand revolving loan, a \$0.7 million demand non-revolving loan, and a \$1.3 million demand non-revolving bridge loan.¹¹⁸ On September 17, 2012, Dynetek announced in a press release that it had been acquired by Luxfer, a global materials technology company, pursuant to a plan of arrangement. West Face concluded that the loans from Callidus were terminated and/or repaid at that time.¹¹⁹
25. *Loan to Bluberi Gaming Technologies Inc.:* Through Google site searches of CIPO's website, West Face learned that Callidus registered security agreements with video game company Bluberi Gaming on or around October 29, 2012 and November 28, 2013.¹²⁰ Based on this information, West Face believed that this was the loan identified as being to "Company

¹¹⁴ <<https://amdoc-web.sharepoint.com/steels/pages/index.aspx>>.

¹¹⁵ An excerpt from this report is attached as Exhibit "99".

¹¹⁶ Copies of these orders are attached as Exhibit "100".

¹¹⁷ <www.newswire.ca>

¹¹⁸ A copy of this press release is attached as Exhibit "101".

¹¹⁹ A copy of this press release is attached as Exhibit "102".

¹²⁰ A print-out from CIPO's website showing this information is attached as Exhibit "103".

F" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Gaming Technology". In that chart, Callidus also reported the origination date of the loan as August 31, 2012 and the amount outstanding as approximately \$35.9 million.

26. *Loan to Xchange Technology Group LLC:* Through Google site searches of CIPO's website, West Face first learned that Callidus registered a security agreement with Xchange Technology on or around November 20, 2012.¹²¹ West Face learned concerning details about Callidus' loan to Xchange Technology through the orders made and materials filed in its receivership proceedings. These materials were (and remain) available to download from the website of Duff & Phelps,¹²² who acted as the company's receiver. Based on the information available to West Face, West Face believed that this was the loan identified as being to "Company G" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Computers and Accessories". Additional details about this loan are set out in Appendix "C".
27. *Loan to Viceroy Homes Limited:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Viceroy Homes Limited on or around April 7, 2014.¹²³ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in Viceroy Homes and that the document pursuant to which this interest was obtained was executed on or around December 21, 2012. The USPTO website also indicated that Callidus released this security interest through a document executed on or around March 10, 2014.¹²⁴ Based on Viceroy Homes' business, West Face

¹²¹ A print-out from CIPO's website showing this information is attached as Exhibit "**104**".

¹²² <<http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx?caseId=895>>. A screen-shot of this website is attached as Exhibit "**105**".

¹²³ A print-out from CIPO's website showing this information is attached as Exhibit "**106**".

¹²⁴ A print-out from the USPTO's website showing this information is attached as Exhibit "**107**".

believed that this was the loan identified as being to "Company K" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Custom Home Engineering and Manufacturer". In that chart, Callidus also reported the origination date of the loan as December 21, 2012, and the amount outstanding as approximately \$5.6 million.

28. *Loan to St. Raymond Veneers Inc. / The Penrod Company:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with St. Raymond Veneers on or around February 7, 2013, and that this registration was removed on or around January 10, 2014.¹²⁵ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in St. Raymond Veneers Inc. and that the document pursuant to which this interest was obtained was executed on or around December 31, 2012.¹²⁶
29. *Loan to C&C Wood Products Ltd.:* Through Google site searches of CIPO's website, West Face learned that Callidus entered into a security agreement with C&C Wood Products on or around February 14, 2013.¹²⁷ West Face believed that this was the loan identified as being to "Company M" on the chart in Callidus' IPO prospectus, which stated that this borrower was part of the "Lumber Industry". Callidus has also published the details of its loan to C&C on the case studies section of its public website, indicating that it had provided C&C with \$35 million in senior credit facilities.¹²⁸
30. *Loan to Leader Energy Services Ltd.:* Callidus disclosed the details of its loan to Leader Energy on the case studies section of its public website.¹²⁹

¹²⁵ A print-out from CIPO's website showing this information is attached as Exhibit "**108**".

¹²⁶ A print-out from the USPTO's website showing this information is attached as Exhibit "**109**".

¹²⁷ A print-out from CIPO's website showing this information is attached as Exhibit "**110**".

¹²⁸ A print-out from this section of Callidus' website is attached as Exhibit "**111**".

¹²⁹ A print-out from this section of Callidus' website is attached as Exhibit "**112**".

Callidus' loan to Leader Energy was also referred to in the August 27, 2014 report by Dundee Capital Markets.¹³⁰ Based on Leader Energy's business as a provider of well completion services (including coiled tubing and nitrogen services), West Face concluded that this was the loan identified as being to "Company O" on the chart in Callidus' IPO prospectus, which stated the industry of the borrower as "Coiled tubing and Nitrogen services". Moreover, knowing of the existence of this loan, West Face reviewed Leader Energy's public disclosure documents, and believed it found more information about this loan in Leader Energy's interim financial statements for the first quarter of 2014. In particular, note 8 to these financial statements provided, among other things, that in March 2013, Leader Energy finalized a credit facility with a "Canadian asset-based lender", with an initial term of 12 months with an option to extend for an additional six months, and an interest rate of 18%. Note 13 to these financial statements indicated that in May 2014, Leader Energy and its lender had combined certain loans into a single facility due September 6, 2014 with an outstanding balance of approximately \$11.6 million.¹³¹ More recently, Leader Energy disclosed in its interim financial statements for the third quarter of 2014 that the amounts outstanding as at September 30, 2014 amounted to approximately \$14.4 million.¹³² Additional details about this loan are set out in Appendix "C".

31. *Loan to Quality One Wireless, Inc.:* Through searches on the USPTO website, West Face learned that Callidus has a security interest in Florida-based wireless equipment and service provider Quality One Wireless, Inc., and that this interest was obtained on or around October 7, 2013.¹³³

¹³⁰ The Dundee report was previously attached as Exhibit "96".

¹³¹ Excerpts from Leader Energy's first quarter 2014 financial statements are attached as Exhibit "113".

¹³² An excerpt from Leader Energy's third quarter 2014 financial statements is attached as Exhibit "114".

¹³³ A print-out from the USPTO's website showing this information is attached as Exhibit "115".

Based on this information, West Face believed that this was likely the loan identified as being to "Company Q" on the chart in Callidus' IPO prospectus, in which Callidus identified the borrower as being a "Wireless Service provider";

32. *Loan to the Arthon Industries Limited:* West Face learned of Callidus' loan to Arthon Industries through the orders made and materials filed in its CCAA proceedings. These materials were (and remain) available to download from the website of A&M, who was appointed as monitor.¹³⁴ Based on the information available to West Face, West Face believe this to be the loan identified as being to "Company S" on the chart in Callidus' IPO prospectus, in which Callidus identified the borrower's business as part of the "Mining and Construction Industry". Additional details about this loan are set out in Appendix "C".
33. *Loan to Smardt Inc.:* Through Google site searches of CIPO's website, West Face learned that Callidus registered a security agreement with Smardt Inc., a seller of air conditioning and refrigeration chillers, on or around February 10, 2014.¹³⁵ Through searches of the USPTO website, West Face learned that Callidus recorded a security interest in Smardt, and that the document pursuant to which this interest was obtained was executed on or around January 31, 2014.¹³⁶
34. *Loan to North American Tungsten Corporation Ltd. ("NTC"):* Callidus' loan to NTC was referred to in the Dundee Report.¹³⁷ West Face learned the details of Callidus' loan to NTC through NTC's public filings on SEDAR. In particular, NTC's financial statements for the three and nine months ended

¹³⁴ <<http://www.alvarezandmarsal.com/arthon-industries-limited-et-al>>. A screen-shot of this website is attached as Exhibit "**116**".

¹³⁵ A print-out from CIPO's website showing this information is attached as Exhibit "**117**".

¹³⁶ A print-out from the USPTO's website showing this information is attached as Exhibit "**118**".

¹³⁷ The Dundee report was previously attached as Exhibit "**96**".

June 30, 2014 and 2013 provided that, on May 14, 2014, the company had executed an \$11 million loan with Callidus.¹³⁸ More recently, NTC's financial statements for the three months ended December 31, 2014 and 2013 indicated that, on December 30, 2014, the company extended the maturity date of the Callidus loan to May 31, 2016, and borrowed additional funds of \$3.65 million (raising the total balance to approximately \$13.3 million).¹³⁹ Additional details about this loan are set out in Appendix "C".

35. *Loan to Manor Resources, LLC.*: Through reverse searches on the USPTO website, West Face learned that Callidus obtained a security interest in Manor Resources, LLC on or around August 18, 2014.¹⁴⁰ Callidus also disclosed the amount of its loan to Manor Resources on the case studies section of its public website, stating that it had provided Manor Resources with an operating line of credit of US\$10 million.¹⁴¹
36. *Loan to Great Lakes Aviation, Ltd.*: West Face learned of Callidus' loan to Great Lakes Aviation through searches on the SEC's EDGAR database. Specifically, through these searches West Face obtained the company's recent Form 8-K, which stated that Great Lakes Aviation had entered into a loan agreement with Callidus on December 22, 2014, pursuant to which Callidus agreed to make available (i) a \$25 million single advance term loan facility, (ii) a revolving loan facility with availability of up to \$6 million and (iii) a second revolving loan facility with availability of up to \$4 million. Further details about the loan are set out in the Form 8-K.¹⁴²

¹³⁸ An excerpt from these financial statements is attached as Exhibit "**119**".

¹³⁹ An excerpt from these financial statements is attached as Exhibit "**120**".

¹⁴⁰ A print-out from the USPTO's website showing this information is attached as Exhibit "**121**".

¹⁴¹ A print-out from this section of Callidus' website is attached as Exhibit "**122**".

¹⁴² An excerpt from the company's Form 8-K is attached as Exhibit "**123**".

37. *Loan to Netricom Inc.:* Callidus disclosed the details of its loan to Netricom on the case studies section of its public website.¹⁴³ Specifically, Callidus stated that it provided a \$28 million senior asset-based credit facility for Netricom's acquisition of Prestige Telecom of Montreal. West Faced also learned of Callidus' loan to Netricom through the public website of investment bank Thornhill Investments.¹⁴⁴ The website stated that in January 2012, the "acquisition of Prestige Telecom by Netricom [was] completed with the purchase of Callidus' position and the bank refinancing at cheaper cost".¹⁴⁵
38. *Loan to Esco Marine:* West Face learned of Callidus' loan to Esco Marine Inc. through an article published on the Trade Winds News website. The article indicated that Callidus has commenced a proceeding against Esco in Southern Texas for \$31 million, accusing it and several related companies and executives of "misappropriating collateral on a bridge loan".¹⁴⁶ More recently, West Face retrieved a news article about Callidus' lawsuit from the KRGV.com website.¹⁴⁷ West Face learned additional information about this loan from the documents filed in the Texas proceedings. Additional details about this loan are set out in Appendix "C".
39. *Loan to Midwest Asphalt:* West Face learned of Callidus' loan to Midwest Asphalt through an article dated January 28, 2015 published on SW

¹⁴³ A print-out from this section of Callidus' website is attached as Exhibit "**124**".

¹⁴⁴ <<http://thornhillinvestments.com/en/news>>.

¹⁴⁵ A print-out from this webpage is attached as Exhibit "**125**". Additional articles related to Prestige Telecom's financial woes are attached as Exhibit "**126**".

¹⁴⁶ A copy of this article is attached as Exhibit "**127**".

¹⁴⁷ A copy of this article is attached as Exhibit "**128**".

News Media's website.¹⁴⁸ This article stated that Midwest Asphalt had completed a \$17.6 million balance sheet recapitalization with Callidus.¹⁴⁹

40. *Loan to Deepak International:* Finally, West Face first learned of Callidus' loan to Deepak International through Callidus' public filing on SEDAR. Specifically, on February 17, 2015, Callidus filed a document purporting to clarify the terms of the guarantee and indemnity obligations of certain of its funds. In this filing, Callidus referred to a loan by Callidus to Deepak International, and indicated that the current outstanding balance of this loan was approximately \$2.6 million. Callidus also disclosed that the terms of this loan provide for interest and fees to accrue and that no cash flow is expected from the borrower until the completion of construction of some kind of facility.¹⁵⁰ West Face learned additional information about this borrower through an article posted on CBC news' website on the same day. That article stated that Deepak International had purchased two empty diamond cutting and polishing plants in Yellowknife, based on the financing received from Callidus. The article also indicated that Deepak International is being sued by the company who arranged for the financing by Callidus.¹⁵¹ Additional details about this loan are set out in Appendix "C".

¹⁴⁸ <<http://www.swnewsmedia.com>>.

¹⁴⁹ A copy of this article is attached as Exhibit "**129**".

¹⁵⁰ A copy of Callidus' February 17, 2015 public filing is attached as Exhibit "**130**".

¹⁵¹ A copy of this article is attached as Exhibit "**131**".

APPENDIX "C"

1. In this Appendix, I set out the details of six Callidus loans which in West Face's view are cause for concern to Callidus' investors.

Xchange Technology Group

2. As set out in Appendix "B", West Face learned the details of Callidus' loan to Xchange Technology through the orders made and materials filed in Xchange Technology's receivership proceedings. These materials remain available to download from the website of Duff & Phelps,¹⁵² who acted as the company's receiver. From these materials, West Face learned the following facts.

3. Callidus advanced a one year loan of \$22 million to Xchange Technology in October 2012. In February and May 2013, before maturity of the loan, Xchange Technology ran two separate capital raising processes with KPMG and Canaccord Genuity in an attempt to refinance the Callidus loan. Both processes failed. Notably, of the 56 parties contacted in the Canaccord process, only one party proceeded to the due diligence stage, and passed on the opportunity shortly thereafter. Subsequently, the company's founder offered to purchase the company for total consideration of \$17 million, which Callidus rejected. This amount would not have permitted Xchange Technology to repay 100% of the principal amount due to Callidus, let alone accrued interest.¹⁵³

¹⁵² <<http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx?caseId=895>>. A screen-shot of this website was previously attached as Exhibit "105".

¹⁵³ See the Report of Duff & Phelps as Proposed Receiver dated October 25, 2013, a copy of which is attached as Exhibit "132".

4. 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.¹⁵⁴ In his Affidavit filed in support of Callidus' application, Callidus Vice-President Craig Boyer testified that, as part of its review of Xchange Technology's operations, Duff & Phelps prepared a liquidation analysis illustrating "that Callidus will incur a substantial shortfall on its advances ... should [Xchange Technology's] business and assets be liquidated".¹⁵⁵ Following its appointment as receiver, Duff & Phelps carried out the sales process. Of 88 prospective purchasers identified by Duff & Phelps, only three executed a confidentiality agreement and gained access to the data room, and no offers were submitted by any of those prospective purchasers.¹⁵⁶

5. Callidus served as the stalking horse and "credit bid" on Xchange Technology in November 2013 (the purchase price to be paid was to be the Callidus debt less \$3 million, plus priority payables).¹⁵⁷ At the time, Callidus was owed approximately \$38 million, and Duff & Phelps reported that the Xchange group was "presently not generating sufficient cash flow to service its obligations to Callidus" and that "Callidus has continued to provide advances to the [Xchange Technology] debtors over the last several months".¹⁵⁸ Around the same time period, Triangle Capital, the second lien

¹⁵⁴ Report of Duff & Phelps as Proposed Receiver dated October 25, 2013.

¹⁵⁵ See the Affidavit of Craig Boyer sworn October 25, 2013, at para. 56, an excerpt of which is attached as Exhibit "**133**".

¹⁵⁶ See the First Report of Duff & Phelps as Receiver dated November 19, 2013, pp. 4 – 5, a copy of which is attached as Exhibit "**134**".

¹⁵⁷ First Report of Duff & Phelps as Receiver dated November 19, 2013, pp. 5 – 7.

¹⁵⁸ First Report of Duff & Phelps as Receiver dated November 19, 2013, p. 9.

creditor of Xchange Technology whose debt was subordinate to Callidus', wrote down their investment of \$6.4 million to \$0.¹⁵⁹

6. In April 2014, Callidus completed its IPO, which was led by Canaccord Genuity (the same firm that had led Xchange Technology's refinancing process in May 2013). Callidus made no disclosure in its IPO prospectus about the difficulties regarding this loan, which by that time made up approximately 10% of Callidus' loan book.

7. The transaction still had not closed as at November 7, 2014, when Callidus Executive Chairman and CEO Newton Glassman stated that Callidus did not have a single non-performing loan in its portfolio.

8. Based on a Receiver's Certificate dated January 2, 2015, it appears that the transaction has now been completed.¹⁶⁰ Callidus now presumably owns 100% of the equity and is holding the asset for sale, yet as of the date of swearing this Affidavit, Callidus had not made any additional disclosure regarding this specific loan.

Arthon Industries

9. As set out in Appendix "B", West Face learned the details of Callidus' loan to Arthon Industries through the orders made and materials filed in its CCAA proceedings. These materials remain available to download from the website of Alvarez & Marshall

¹⁵⁹ See Triangle Capital Corporation Form 10-K filed February 26, 2014, p. 67, an excerpt of which is attached as Exhibit "**135**".

¹⁶⁰ A copy of the Receiver's Certificate dated January 2, 2015 is attached as Exhibit "**136**".

("A&M"), who was appointed as monitor for Arthon.¹⁶¹ These materials, and in particular the monitor's reports, set out the following facts.

10. Arthon Industries is the primary holding company for the operating entities of the Arthon Group.¹⁶² While Arthon Industries has a number of subsidiaries and affiliated entities, its four main operating subsidiaries are: (1) Arthon Contractors; (2) Arthon Equipment; (3) Coalmont Energy; and (4) 84% of Sandhill Materials.¹⁶³ According to the principal of Arthon Industries, Arthon Contractors is the "active construction arm of the Arthon Group",¹⁶⁴ Arthon Equipment is the owner of the equipment used (and leased) by Arthon Contractors,¹⁶⁵ Coalmont Energy has the rights to operate a coal mine near Tulameen, British Columbia (the "**Coalmont Mine**"),¹⁶⁶ and Sandhill Materials has an acquired title to a major deposit of natural aggregate materials (primarily gravel and sand) in the process of development in Kitimat, BC.¹⁶⁷

¹⁶¹ <<http://www.alvarezandmarsal.com/arthon-industries-limited-et-al>>. A screen-shot of this website was previously attached as Exhibit "**116**".

¹⁶² See the Affidavit of Kerry Ning Leong sworn November 28 2013, para. 15, a copy of which is attached as Exhibit "**137**".

¹⁶³ See, for example, the Second Report of the Monitor dated December 17, 2013, paras. 5.1 to 5.2, and Appendix "D" thereto, a copy of which is attached as Exhibit "**138**". See also the Affidavit of Kerry Ning Leong sworn November 28 2013, paras. 3 to 11.

¹⁶⁴ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 16.

¹⁶⁵ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 17.

¹⁶⁶ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 18.

¹⁶⁷ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 11.

11. In 2013, Arthon experienced a number of difficulties. Among others, there was a spill of filtercake slurry material from the Coalmont Mine, which resulted in the halt of development of the mine.¹⁶⁸

12. At the time, the primary secured lender to Arthon was HSBC. Various HSBC facilities were secured and cross-collateralized within the Arthon Group. In late October 2013, HSBC served notices of its intention to enforce its security on the Arthon Group.¹⁶⁹ As a result, various entities within the group, including Arthon Industries, were forced to apply for CCAA protection. A&M was appointed as monitor for these entities on November 29, 2013.¹⁷⁰

13. In December 2013, Arthon's \$47 million loan from HSBC was assigned to Callidus, and Arthon and Callidus entered into a forbearance agreement.¹⁷¹ Callidus also agreed to provide \$5 million in interim financing.¹⁷² Around the same time, MNP was retained to manage a sales process for the Coalmont Mine,¹⁷³ and HSBC agreed to provide a \$10 million letter of credit in favour of Callidus, to be drawn upon if the Coalmont Mine and related assets of Coalmont Energy were sold for anything less than

¹⁶⁸ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 62.

¹⁶⁹ Affidavit of Kerry Ning Leong sworn November 28 2013, para. 25.

¹⁷⁰ Second Report of the Monitor dated December 17, 2013, para. 1.

¹⁷¹ Second Report of the Monitor dated December 17, 2013, paras. 7.4 to 7.11. See also Third Report of the Monitor dated February 25, 2014, paras. 1.4(b) and 6.1, a copy of which is attached as Exhibit "139".

¹⁷² Second Report of the Monitor dated December 17, 2013, para. 7.7 to 7.9; Third Report of the Monitor dated February 25, 2014, paras. 6.1 to 6.8.

¹⁷³ Second Report of the Monitor dated December 17, 2013, para. 8.1; Third Report of the Monitor dated February 25, 2014, paras. 1.4, and 7.1 to

net proceeds of \$10 million.¹⁷⁴ Concurrently, Great West Equipment was retained to manage a parallel sales process to sell approximately 100 pieces of heavy equipment owned by Arthon, on a consignment basis. The equipment had been rendered "redundant" as a result of the inactivity of the Coalmont Mine.¹⁷⁵

14. According to the Third Report of the Monitor dated February 25, 2014, 77 potential purchasers/investors were contacted by MNP with respect to the sales process of the Coalmont Mine, and non-binding letters of intent were received from certain interested parties.¹⁷⁶ However, A&M had conducted an analysis of possible asset values, and concluded that: "the two key assets that will impact the exposure of Callidus and HSBC are the Coalmont Mine and the Sandhill property" and that "it does not appear likely that [the Coalmont Mine] will generate sufficient proceeds to retire the claims of both HSBC and Callidus".¹⁷⁷ It appeared de minimis value was attributed to Arthon Contractors. Notably, by that time Callidus' advances to the Arthon Group totalled approximately \$56.8 million.¹⁷⁸

15. Arthon failed to negotiate a sale of the Coalmont Mine, and in April 2014 advised A&M that it planned to "revise the focus of its immediate restructuring efforts away from a sale of all or part of the Coalmont Mine".¹⁷⁹ Instead, the company turned its attention

¹⁷⁴ Second Report of the Monitor dated December 17, 2014, para. 7.5

¹⁷⁵ Second Report of the Monitor dated December 17, 2014, paras. 9.1 and 9.2; Third Report of the Monitor dated February 25, 2014, paras. 7.7 to 7.9.

¹⁷⁶ Third Report of the Monitor dated February 25, 2014, para. 7.2.

¹⁷⁷ Third Report of the Monitor dated February 25, 2014, para. 8.10.

¹⁷⁸ Supplement to the Third Report of the Monitor dated February 26, 2014, para. 3.1, attached as Exhibit "**140**".

¹⁷⁹ Fourth Report of the Monitor dated April 11, 2014 at para. 1.6, attached as Exhibit "**141**".

to: (i) preserving the Coalmont Mine for potential operation or sale at a later date; (ii) continuing to sell the redundant equipment; and (iii) pursuing a refinancing and/or sale of all or part of Sandhill Materials.¹⁸⁰

16. In that regard, in May 2014 the Arthon Group presented analyses to A&M indicating that Sandhill Materials would garner more value for its stakeholders if it was further developed rather than sold immediately in its then-undeveloped state. The company further advised that it was in advanced negotiations for the pre-sale of a large volume of aggregates to an international organization looking to develop a liquid natural gas terminal in Kitimat, British Columbia.¹⁸¹ However, at the same time, A&M concluded that the "nature of the assets of Sandhill [Materials] pose significant challenges in estimating realizations that may be achieved depending upon the monetization approach and timelines adopted".¹⁸² By that time, equipment sales totalled \$5.6 million, and (following repayments to Callidus from the proceeds of such equipment sales), total amounts due to Callidus were approximately \$48.2 million.¹⁸³

17. The Arthon Group subsequently engaged MNP to assist with developing and monetizing Sandhill Materials. According to the Sixth Report of the Monitor dated July 22, 2014, MNP had identified 51 prospective investors, customers or purchasers, and had received confidentiality agreements from 11 parties (although letters of intent were

¹⁸⁰ Fourth Report of the Monitor dated April 11, 2014, at para. 1.6.

¹⁸¹ Fifth Report of the Monitor dated May 6, 2014, at paras. 6.4 to 6.9, attached as Exhibit "142".

¹⁸² Fifth Report of the Monitor dated May 6, 2014, at para. 6.19.

¹⁸³ Fifth Report of the Monitor dated May 6, 2014, at paras. 7.2 and 9.8 to 9.9.

not yet due).¹⁸⁴ While equipment sales totalled approximately \$6 million for the 25 pieces sold by that date, the company indicated that it would consider reducing the list prices of the equipment in order to expedite further sales and meet the scheduled principal repayments provided for in the forbearance agreement with Callidus. As at July 22, 2014, total amounts due to Callidus were approximately \$52.5 million.¹⁸⁵

18. Around the same time, Callidus drew down on the \$10 million letter of credit issued by HSBC as a result of the failed sales process for the Coalmont Mine.¹⁸⁶

19. Progress on MNP's efforts to develop and monetize Sandhill Materials was largely redacted from the Seventh Report of the Monitor dated October 29, 2014, although it appeared to West Face that some progress had been made on the pre-sale of aggregates. More concerning, however, was the status of equipment sales. By the end of October 2014, the equipment sales process had resulted in total net proceeds of \$6 million, on sales of 28 pieces of equipment. The company advised that it would no longer focus on sales of equipment.¹⁸⁷ Total amounts due to Callidus at that time were approximately \$44.6 million, although a further advance of \$10 million to Sandhill Materials was being negotiated.¹⁸⁸

20. In summary, in the Fall of 2014, Callidus had approximately \$45 million due from the Arthon Group (with another \$10 million advance being negotiated), yet the group's

¹⁸⁴ Sixth Report of the Monitor dated July 22, 2014, at paras. 6.3 to 6.4, attached as Exhibit "**143**".

¹⁸⁵ Sixth Report of the Monitor dated July 22, 2014, at paras. 6.15 to 6.17.

¹⁸⁶ Seventh Report of the Monitor dated October 29, 2014, at para. 8.5, attached as Exhibit "**144**".

¹⁸⁷ Seventh Report of the Monitor dated October 29, 2014, at paras. 6.10 to 6.12.

¹⁸⁸ Seventh Report of the Monitor dated October 29, 2014, at paras. 8.3 to 8.6.

only assets of value were two development stage projects: the Coalmont Mine and Sandhill Materials. As set out above, the sales process for the Coalmont Mine had failed, and Sandhill Materials required approximately \$25 to \$30 million in additional capital to develop.¹⁸⁹ By that time, Callidus had not made any disclosures regarding impairment of this loan.

21. More recently, in the Eleventh Report of the Monitor dated January 27, 2015, A&M reported that Arthon's debt to Callidus totalled \$53.8 million at the time.¹⁹⁰

Leader Energy Services

22. As set out in Appendix "B", West Face learned the details of Callidus' loan to Leader Energy from a variety of public sources, including Callidus' own website and Leader Energy's public disclosure. A review of the history of Callidus' loan to Leader Energy gives cause for concern.

23. According to its public website, Leader Energy provides well completion services in the Canadian energy sector.¹⁹¹ This sector has been adversely affected by the recent precipitous decline in oil prices. Moreover, a review of Leader Energy's financial statements indicates that the company has generated little cash flow and EBITDA over the last several years.

¹⁸⁹ According to a District of Kitimat Investment Summary prepared by the district's Economic Development Department, a copy of which is attached as Exhibit "**145**".

¹⁹⁰ Eleventh Report of the Monitor dated January 27, 2015, at paras. 1.7 and 4.11, attached as Exhibit "**146**".

¹⁹¹ <<http://www.leaderenergy.com//index.php>>.

24. On March 6, 2013, Leader Energy announced in a press release that it had "entered into a credit facility with a private Canadian asset-based lender". The release stated that the credit facility included a demand revolving facility of up to \$4 million, and a one year demand non-revolving loan of up to \$12 million. The release also noted that while the facility carried a "significantly higher borrowing cost than a conventional bank facility", it had "no financial covenants".¹⁹² This information matched the other public sources of information set in Appendix "B", and West Face concluded that this was the loan from Callidus.

25. On October 31, 2013, Leader Energy announced in a press release that it had obtained an additional \$1 million demand non-revolving single advance loan repayable January 31, 2014 from its "current lender". The company also announced that the terms of its demand revolving facility (of up to \$4 million) and its demand non-revolving loan (of up to \$12 million) had been extended for an additional six months to September 6, 2014.¹⁹³

26. In March 2014, Leader Energy announced that it had increased the size of its demand revolving facility from \$4 million to \$5 million.¹⁹⁴

27. On August 28, 2014, Leader Energy released its financial and operating results for the second quarter of 2014. According to its press release, the company was actively selling assets, and was being sued for \$7 million following its default on a lease

¹⁹² A copy of this press release is attached as Exhibit "**147**".

¹⁹³ A copy of this press release is attached as Exhibit "**148**".

¹⁹⁴ A copy of this press release is attached as Exhibit "**149**".

of a vacant facility in Alberta. The company also announced that it had combined its \$1 and \$12 million facilities into a demand non-revolving single advance term loan, and that the balance outstanding on this loan was \$11.4 million, due September 6, 2014. Leader Energy further disclosed that it was "over advanced" on its demand revolving facility by approximately \$0.85 million and was "working with its lender on a six-month extension".¹⁹⁵

28. On February 19, 2015, Leader Energy filed a Notice of Intention to Make a Proposal pursuant to the BIA.¹⁹⁶ To my knowledge, Callidus has not provided any further disclosure on these facilities. In particular, Callidus has offered no information on when or how its outstanding and overdue loans to Leader Energy might be paid, nor has it disclosed any impairment or default on these loans.

North American Tungsten

29. As set out in Appendix "B", West Face learned the details of Callidus' loan to North American Tungsten through the latter company's public filings on SEDAR. These materials provide as follows.

¹⁹⁵ A copy of this press release is attached as Exhibit "**150**".

¹⁹⁶ A copy of this press release is attached as Exhibit "**151**".

30. North American Tungsten is engaged in tungsten mining. Its primary assets are the Cantung mine in the Northwest Territories and the Mactung mineral property in Yukon.¹⁹⁷

31. According to the company's most recently filed technical report on the Cantung mine (dated September 19, 2014), the mineral reserves of the Cantung mine support a mine life through to only 2017-2018.¹⁹⁸ The mine also faces significant reclamation liabilities related to anticipated closure costs of the mine.¹⁹⁹

32. The Mactung property is a pre-development asset that has only recently passed its environmental assessment from the Yukon Environmental and Socio-economic Assessment Board. To date, North American Tungsten has been unable to develop strategic alternatives to finance the estimated capital cost of over \$400 million to develop the project based on an April 2009 technical report.²⁰⁰ The company has not conducted an updated feasibility study since April 2009.

33. North American Tungsten has historically not generated any free cash flow and its only operating asset, the Cantung mine, is approaching the end of its economic life. While Callidus' loan is secured, the security is over all assets of the company *excluding* the Mactung property, certain accounts receivable, and all mining and mineral leases,

¹⁹⁷ See, for example, North American Tungsten's Unaudited Interim Consolidated Financial Statements for the Three and Nine Months Ended June 30, 2014 and 2013, excerpts of which are attached as Exhibit "**152**".

¹⁹⁸ See North American Tungsten Technical Report on the Cantung Mine, Northwest Territories (NI 43-101), at pp. 16-26 to 16-27, excerpts of which are attached as Exhibit "**153**".

¹⁹⁹ North American Tungsten Technical Report on the Cantung Mine, Northwest Territories (NI 43-101), at pp. 20-1 to 20-2.

²⁰⁰ See North American Tungsten Technical Report on the Mactung Property, Yukon (NI 43-101), at p. 1-10, excerpts of which are attached as Exhibit "**154**".

claims and tenures.²⁰¹ In West Face's experience, North American Tungsten's assets over which Callidus has security would not realize full book value on a liquidation of the company.

Esco Marine

34. As set out in Appendix "B", West Face learned the concerning details of Callidus' loan to Esco Marine through public court proceedings between Callidus and Esco. These materials provide as follows.

35. Esco is a marine yard based in Brownsville, Texas. It specializes in recycling metals and the proper disposal of obsolete maritime vessels. According to Callidus' motion materials, Callidus and Esco entered into a loan agreement on June 30, 2014, pursuant to which Callidus agreed to lend up to a maximum of \$34 million. The loan took the form of a borrowing base facility in conjunction with several other facilities. Because Esco was in severe financial distress, a "Blocked Account" was set up, into which Esco was obligated to deposit all funds from all sources. All funds deposited into the Blocked Account would be the property of Callidus.²⁰²

36. On the closing date of the loan, Callidus refused to advance \$3.5 million of the total loan amount. Callidus also refused to advance amounts based under a borrowing

²⁰¹ North American Tungsten's Unaudited Interim Consolidated Financial Statements for the Three and Nine Months Ended June 30, 2014 and 2013, at p.9.

²⁰² See Callidus' Motion for Temporary Restraining Order and Preliminary Injunction, pp. 1-4, a copy of which is attached as Exhibit "**155**".

base facility. According to Esco, this meant that it could not pay down the overdue payables, making it difficult for Esco to pay essential operating expenses.²⁰³

37. Eventually, in November 2014, Esco resorted to diverting funds away from the Blocked Account in order to pay amounts due to critical vendors and employees. Callidus alleges that this act constituted theft, and in December 2014, Callidus filed a temporary restraining order and preliminary injunction against Esco in order to protect its collateral.²⁰⁴

38. There are essentially two versions of the truth being alleged in the lawsuit: (a) Esco alleges that Callidus premeditatedly refused to advance the full loan amount in order to accelerate Esco's insolvency; (b) Callidus alleges that Esco was misappropriating funds.

39. As of February 11, 2015, Callidus' borrowing base facility had a collateral deficit of \$6 million, which has consistently grown more negative week to week.²⁰⁵ Esco also currently has a negative shareholders' equity balance, which means that the net book value of its assets is less than debt outstanding to Callidus based on a Duff & Phelps report dated August 27, 2014.²⁰⁶ In a liquidation, we are highly confident that Esco would be sold at a discount to the net book value of its assets, which would result in impairment in the Callidus loan.

²⁰³ See Esco's Response to Plaintiff's Motion for Preliminary Injunction, at p. 5, a copy of which is attached as Exhibit "156".

²⁰⁴ Callidus' Motion for Temporary Restraining Order and Preliminary Injunction, pp. 1-4

²⁰⁵ See Callidus' Supplemental Update Regarding Plaintiff's Motion for Preliminary Injunction, a copy of which is attached as Exhibit "157".

²⁰⁶ A copy of the Duff & Phelps report is attached as Exhibit "158".

40. Regardless of which party's allegations are correct, it is apparent that Esco is in extreme financial distress. Indeed, Callidus itself has alleged that Esco is incapable of paying a monetary judgment.²⁰⁷

Deepak International

41. As set out in Appendix "B", West Face first learned of Callidus' loan to Deepak International through Callidus' recent public disclosure on February 17, 2015, as well as the CBC article which referred to the lawsuit against Deepak by the financial advisor who brokered the Callidus loan. West Face has since learned the following additional facts about this loan.

42. On January 7, 2013, the Government of the North West Territories ("**GNWT**") granted Deepak International with "Approved NWT Diamond Manufacturer" ("**ANDM**") status. This enabled Deepak to purchase a portion of the territory's rough diamond production. At the same time, Deepak was in the process of acquiring two GNWT-owned buildings in Yellowknife and the lease of related airport lands as the site of its diamond manufacturing operations.²⁰⁸

43. According to the Statement of Claim filed against Deepak by its financial advisor Chippingham Financial Group, on April 21, 2014, Callidus and Deepak sign a term sheet providing for a loan of up to \$20.5 million.²⁰⁹

²⁰⁷ See Callidus' Emergency Motion for Reconsideration of Order Denying Temporary Restraining Order, p. 3, attached as Exhibit "**159**".

²⁰⁸ A copy of a news article reflecting this information is attached as Exhibit "**160**".

²⁰⁹ A copy of this Statement of Claim is attached as Exhibit "**161**".

44. After 18 months, in June 2014, Deepak finally closed on acquiring the buildings in Yellowknife for \$1.9 million.²¹⁰

45. As set out in Appendix "B", on February 17, 2015, Callidus disclosed that it was owed \$2.6 million by Deepak and that "no cash flow is expected ... until construction of a facility is completed".²¹¹

46. After more than 2 years after ANDM status was received, there is currently no timeline for when construction will begin, much less when the company will start to produce cash flow. The state of Deepak's website also suggests that the company may not have any operations.²¹²

²¹⁰ A copy of a CBC news article disclosing this information is attached as Exhibit "162".

²¹¹ A copy of Callidus' February 17, 2015 public filing is attached as Exhibit "130".

²¹² A screen-shot of this website is attached as Exhibit "163".

THE CATALYST CAPITAL GROUP INC.
Plaintiff/Moving Party

BRANDON MOYSE and
WEST FACE CAPITAL INC.
Defendants/Responding Parties

Court File No. CV-14507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF ANTHONY GRIFFIN
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