

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUC CAPITAL CORPORATION  
Plaintiffs

and

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

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND  
Plaintiffs by Counterclaim

and

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

**FACTUM OF THE DEFENDANT, KEVIN BAUMANN  
(MOTION RETURNABLE JULY 11, 2018)**

June 29, 2018

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Defendant herein

AND TO: **JOHN DOE #1-10**

Defendants herein

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUC CAPITAL CORPORATION  
Plaintiffs  
and

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GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP, ANSON  
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AIMF GP, ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM  
SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE  
LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY MCFARLANCE, DARRYL  
LEVITT, RICHARD MOLYNEUX, AND JOHN DOES #1-10  
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GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL  
ROSEN, B.C. STRAGEY LTD. D/B/A. BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A  
BLACK CUBE and PSY GROUP INC.  
Defendants to the Counterclaim

**FACTUM  
OF THE DEFENDANT KEVIN BAUMANN  
(Motion to strike the Statement of Claim, returnable July 11, 2018)**

**PART I – THE FACTS AND OVERVIEW**

1. The plaintiffs commenced this action against 22 defendants by serving its statement of claim on or about November 7, 2017.

2. On or about June 15, 2018, Mr. Baumann served a Demand for Particulars in accordance with Justice Hainey's Endorsement dated May 23, 2018.
3. On or about June 25, 2018, a follow up letter was sent to the plaintiff requesting answers to Mr. Baumann's demand for particulars.
4. To date, the plaintiffs have failed to supply answers to Mr. Baumann's demand for particulars.
5. The statement of claim fails to comply with the rules of pleadings for the causes of action asserted.
6. The plaintiffs have failed to plead the causes of action with sufficient particularity as required under the *Rules of Civil Procedure*.
7. The plaintiffs' claim discloses no cause of action, is scandalous, frivolous, vexatious and an abuse of process, and should be struck out against the defendant, Mr. Baumann.

## **PART II – THE LAW AND ARGUMENT**

### **Rules of Pleadings and Demand for Particulars, Rules 25.06 and 25.10**

8. Rule 25.06 states that every pleading shall contain a concise statement of material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.  
*Rules of Civil Procedure, 25.06(1)*
9. The function of particulars is to limit the generality of pleadings and to define the issues which must be tried and as to which discovery must be given.

*Sleep Clinic London Inc. v. Merchea, 2012 ONSC 3004 at para. 32;*

### **Entire Case is Premised on Unspecified Allegations against Multiple Defendants**

10. The plaintiffs' claims and allegations against Mr. Baumann are vague, unspecified and unparticularized. The allegations are divided into a number of groups of defendants (the "Wolfpack Defendants", the "Guarantor

Conspirators”, the “Conspirators”, etc.). The allegations are broad and impossible to determine allegations against any particular defendant.

11. It is impermissible for the plaintiffs to lump the defendants together with broad allegations. Each defendant is entitled to know the specific complaints made against it and is entitled to particulars of the acts or omissions which are claimed to support that cause of action.

*Cerqueira v. Ontario*, 2010 ONSC 3954, at para. 44

### **Failure to Properly Plead Defamation**

12. An action for defamation requires pleading with particularity. The plaintiffs must, at a minimum describe (with “reasonable certainty, clarity, particularity and precision”):

- a. The alleged defamatory words;
- b. Who, between the multiple defendants, the plaintiffs allege uttered the alleged defamatory words;
- c. To whom were the allegedly defamatory words spoken; and
- d. When were the allegedly defamatory words spoken.

13. In absence of particulars, the claim of defamation must be struck out.

*Lysko v. Braley et al.* [2006] 79 O.R. (3d) 721 at para. 87-114

### **Failure to Properly Plead Conspiracy**

14. An action for conspiracy to perform an unlawful act requires pleading with particularity the following:

- a. The defendants acted in combination;
- b. The defendants committed an unlawful act (i.e. tort, breach of statute);
- c. The defendants knew or should have known that injury to the plaintiffs was likely to occur from their misconduct; and
- d. The defendants’ misconduct in furtherance of the conspiracy caused harm to the plaintiffs.

15. All parties to the conspiracy must be identified and their relationship with each other described; the agreement entered into by the alleged conspirators including the purpose or object of the alleged conspiracy; and lastly, with clarity and precision, the overt acts which are alleged to have been done by each alleged conspirator.
16. The plaintiff should also provide particulars of the injury and damage it has suffered as a result of the conspiracy.

*Normart Management Limited v. West Hill Redevelopment Company Limited et al.*  
1998 37 J.R. (3d) 97

*Lauer v. Canada (Attorney General)*, 2017 F.C.A. 74 at para. 24

*Would v. Western Coal Corporation*, 2012 ONSC 5184, para. 295-303

17. Claims for conspiracy have been struck out where they are bald and overly speculative. It is inappropriate to lump some or all of the defendants together into a general allegation that they conspired.

*Would v. Western Coal Corporation*, supra at para. 301

18. The plaintiff has failed to plead with particularity the alleged agreement, has lumped the defendants together, and has failed to provide particulars of the unlawful acts committed by each defendant.

**No Cause of Action under sections 126.1 and 1216.2 of the *Securities Act***

19. Sections 126.1 and 126.2 of the *Securities Act*, prohibit conduct that is regulated by the Ontario Securities Commission through enforcement proceedings. These sections do not create civil liability and therefore must be struck from the statement of claim.

*Securities Act*, R.S.O. 1990, CHAPTER S.5, s. 126.1 and 126.2

20. Statements made to judicial bodies or quasi-judicial bodies are protected by absolute privilege. The Ontario Securities Commission is a quasi judicial body, with the ability to initiate enforcement proceedings against companies pursuant to the *Securities Act*. As such, any statements made by Mr. Baumann to the Ontario Securities Commission (of which there is no



evidence) are protected by the defence of absolute privilege and as such the corresponding paragraphs in the Statement of Claim are bound to fail.

*Fraleigh v. RBC Dominion Securities Inc.*, [2009] O.J. No. 5120, 99 O.R. (3d) 290 et al., at para. 31

### **No Claim for Unjust Enrichment**

21. The plaintiffs have failed to properly plead the requisite elements for unjust enrichment. A claim for unjust enrichment requires that the defendant receive a benefit, that the plaintiff suffered a loss corresponding in some way to the benefit, and that there be no juristic reason for the benefit and the loss.

*Kerr v. Baranow*, 2011 SCC 10, at para. 31-32, 36-43


22. The claim for unjust enrichment pertains to West Face's shorting of Callidus' stock. There is no such allegation against Mr. Baumann, and no particulars of how Mr. Baumann was enriched.
23. In any event, short selling is not unlawful.
24. Furthermore, the plaintiffs' allegations of defamation and unlawful conspiracy against Mr. Baumann are improperly pleaded and therefore do not constitute absence of a juristic reason and therefore the plea for unjust enrichment must be struck.

### **PART III – ORDER REQUESTED**

The Defendant, Mr. Baumann respectfully requests:

- a. An order striking out the statement of claim and dismissing the action as against the Defendant, Kevin Baumann;
- b. In the alternative, an order for particulars of paragraphs 1(g), 37, 41, 43, 49, 51, 57, 58, 61, 63, 64, 65, 68, 69, 74, 77, 79, 81, 82, 114, 116, 125 and 129 of the statement of claim;
- c. The costs of this motion, and of the action; and
- d. Such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 29<sup>th</sup> day of June 2018:

A handwritten signature in black ink, appearing to read 'Andrew Burns', positioned above a horizontal line.

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Andrew Burns  
Lawyer for the Defendant,  
Kevin Baumann

# TAB A

## SCHEDULE “A”: AUTHORITIES CITED

1. *Sleep Clinic London Inc. v. Merchea*, 2012 ONSC 3004 at para. 32
2. *Cerqueira v. Ontario*, 2010 ONSC 3954, at para. 44
3. *Lysko v. Braley et al.* [2006] 79 O.R. (3d) 721 at para. 87-114
4. *Normart Management Limited v. West Hill Redevelopment Company Limited et al.* 1998 37 O.R. (3d) 97
5. *Lauer v. Canada (Attorney General)*, 2017 F.C.A. 74 at para. 24
6. *Gould v. Western Coal Corporation*, 2012 ONSC 5184, at para. 295-303
7. *Fraleigh v. RBC Dominion Securities Inc.*, [2009] O.J. No. 5120, 99 O.R. (3d) 290 et al., at para. 31
8. *Kerr v. Baranow*, 2011 SCC 10, at para. 31-32, 36-43

# TAB B

## **SCHEDULE “B”: STATUTORY AUTHORITIES CITED**

### **Rules of Civil Procedure (Ontario), R.R.O. 1990, Reg. 194**

#### **RULE 25 PLEADINGS IN AN ACTION**

##### ***RULES OF PLEADING — APPLICABLE TO ALL PLEADINGS***

###### ***Material Facts***

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

### **Securities Act, R.S.O. 1990, CHAPTER S.5**

#### ***Fraud and market manipulation***

**126.1** (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
- (b) perpetrates a fraud on any person or company. 2010, c. 26, Sched. 18, s. 33.

#### ***Attempts***

(2) A person or company shall not, directly or indirectly, attempt to engage or participate in any act, practice or course of conduct that is contrary to subsection (1). 2013, c. 2, Sched. 13, s. 3.

#### ***Misleading or untrue statements***

**126.2** (1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative. 2002, c. 22, s. 182; 2004, c. 31, Sched. 34, s. 4 (1); 2010, c. 26, Sched. 18, s. 34.

*Same*

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1. 2004, c. 31, Sched. 34, s. 4 (2).

**THE CATALYST GROUP INC. et al.**  
Plaintiffs

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

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**FACTUM OF THE DEFENDANT,  
KEVIN BAUMANN  
(MOTION RETURNABLE JULY 11, 2018)**

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