

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF DRUMMONDVILLE

NO : 405-17-002571-185

SUPERIOR COURT
(Civil Division)

9354-9186 QUEBEC INC. (formerly Bluberi Gaming Technologies Inc.), a legal person duly incorporated, having its principal place of business at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

-and-

9354-9178 QUEBEC INC. (formerly Bluberi Group Inc.), a legal person duly incorporated, having its principal place of business at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

-and-

GÉRALD DUHAMEL, ex officio trustee of Fiducie Gérald Duhamel, residing and domiciled at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

-and-

GÉRALD DUHAMEL, ex officio trustee of Fiducie Familiale Gérald Duhamel OPCO, residing and domiciled at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

-and-

GÉRALD DUHAMEL, ex officio trustee of Fiducie Familiale Gérald Duhamel HOLDCO, residing and domiciled at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

-and-

GÉRALD DUHAMEL, residing and domiciled at 220 Antonio-Barrette Street, in the City and District of Drummondville, Province of Quebec, J2C 6J1

Plaintiffs

v

CALLIDUS CAPITAL CORPORATION, a legal person duly incorporated under the laws of Ontario, having its principal place of business at 181 Bay Street, Suite 4620, in the City of Toronto, Province of Ontario, M5J 2T3

and

CATALYST CAPITAL GROUP INC., a legal person duly incorporated according to the laws of Ontario, having its principal place of business at 181 Bay Street, Suite 4700, in the City of Toronto, Province of Ontario, M5J 2T3

and

NEWTON GERSHON ZEV GLASSMAN, domiciled for the purposes hereof at 181 Bay Street, Suite 4620, in the City of Toronto, Province of Ontario, M5J 2T3

and

DAVID M. REESE, domiciled for the purposes hereof at 181 Bay Street, Suite 4620, in the City of Toronto, Province of Ontario, M5J 2T3

and

JAMES RILEY, domiciled for the purposes hereof at 181 Bay Street, Suite 4620, in the City of Toronto, Province of Ontario, M5J 2T3

Defendants

MODIFIED APPLICATION ORIGINATING A PROCEEDING

(Action in damages - \$228,037,500.00)

IN SUPPORT OF THEIR APPLICATION, THE PLAINTIFFS ALLEGE AS FOLLOWS:

I. OVERVIEW

1. Plaintiff 9354-9186 Québec Inc., formerly known as Bluberi Gaming Technologies Inc. (“**Bluberi Gaming**”), is a Canadian gaming company that specialized in the development, sale and deployment of casino games, as appears from a copy of the extract of the Québec Registry of Enterprises in respect of Bluberi Gaming Technologies Inc. communicated as **Exhibit P-1**.
2. The voting shares of Bluberi Gaming are owned by a holding company, Plaintiff 9354-9178 Québec Inc., formerly known as Bluberi Group Inc. (“**BGI**”, and, together with Bluberi Gaming, “**Bluberi**” or the “**Company**”), as appears from a copy of the extract of the Québec Registry of Enterprises in respect of BGI communicated as **Exhibit P-2**.
3. The voting shares of another previously-related entity, Bluberi USA, Inc. (“**Bluberi USA**”), a corporation which was incorporated under the laws of the State of Delaware, U.S.A., were also previously held by BGI. Bluberi USA was established mainly for the purposes of Bluberi’s operations in the United States.
4. The entity that would become Bluberi Gaming was founded by Plaintiff Gérald Duhamel in 1994; by 2015 Bluberi employed 160 people, mostly in Drummondville, in game design, programming, engineering, manufacturing, sales, marketing, technical support and administration.
5. Defendant Callidus Capital Corporation (“**Callidus**”) became Bluberi’s operating lender in 2012, with a hypothec charging all of Bluberi’s movable and immovable property.
6. Defendants Newton Glassman (“**Glassman**”), David Reese (“**Reese**”) and James Riley (“**Riley**”) are directors and officers of Callidus, as appears from the Corporation Profile Report for Callidus communicated as **Exhibit P-3**.
7. As will be detailed below, the Defendants have engaged in what can be characterized as “predatory lending practices” in respect of the Plaintiffs, manifested by:
 - (a) repeatedly imposing changes, at the eleventh hour, to commercial terms already agreed upon, after having engineered months of overdraft and financially squeezing Bluberi, forcing it to agree under financial duress to terms it would not otherwise have accepted;
 - (b) Taking advantage of a “blocked account” arrangement, precluding or delaying payments to critical suppliers and utilities, accountants and financial advisors, as well as to gaming commissions for gaming licenses and fees, all of which caused significant damage to Bluberi’s operations and commercial relationships;

- (c) Taking inordinate amounts of time to provide authorizations or respond to urgent requests, frequently on the pretext that approval was required from Callidus' "credit committee," which also caused significant damage to Bluberi's operations and commercial relationships;
 - (d) Interfering directly in Bluberi's commercial operations despite Bluberi not having been declared formally in default; this included imposing upon Bluberi certain executives and outside financial advisors (at exorbitant cost), with no knowledge of Bluberi's business or market niche, to make decisions which were not in Bluberi's best interests, all in the guise of protecting Callidus' "investment"; and
 - (e) Rendering Bluberi unable to make debt repayments when due, which Callidus used as a pretext to impose increasingly onerous financial terms and conditions; this vicious circle caused a \$40 million loan to balloon to over \$130 million, thereby in effect rendering Bluberi beholden to Callidus.
8. Although the Plaintiffs did not know it at the time, the behaviour described above is consistent with the treatment that other borrowers have been subjected to by Callidus, which has been the product of what can be described as a "loan-to-own" strategy.
 9. Eventually, after much unsuccessful maneuvering, Callidus attempted to forcefully seize the shares of BGI in November 2015 in an attempt to acquire the Company for itself, prompting Bluberi to file proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**").
 10. The Superior Court granted Bluberi protection under the CCAA, but Callidus continued to oppose and impede the restructuring process at every turn. Ultimately, the inordinately large secured indebtedness engineered by Callidus and other tactics employed by Callidus made it impossible for Bluberi to formulate a plan of arrangement while still a going concern, and Bluberi was forced to liquidate its assets in the CCAA proceedings (the "**CCAA Proceedings**").
 11. Callidus made a "credit bid" for the assets of Bluberi Gaming, in an amount corresponding to its debt at the time (approximately \$91 million at the time the bid was entered), which no prospective purchaser could match, particularly on the abbreviated timeline demanded by Callidus.
 12. Callidus thus acquired almost all of the assets of Bluberi Gaming, which it proceeded to integrate into its existing casino operations, namely with Gateway Casinos & Entertainment Ltd. ("**Gateway**"), a Callidus-related company.
 13. The only asset Callidus was not able to acquire was Bluberi Gaming's litigious rights against Callidus, which the Superior Court permitted Bluberi Gaming to retain. Because Bluberi has no other assets, it requires litigation funding to pursue the present proceedings.

14. Bluberi has entered into a litigation funding agreement that was approved by the Superior Court in the CCAA Proceedings over the objections of Callidus and a (so-called) ad hoc group of creditors, who have appealed the decision of the Superior Court. That appeal is currently pending as at the date hereof.

II. THE PARTIES

(A) Plaintiffs

i. Bluberi entities

15. The entity that would become Bluberi Gaming was founded in 1994. Until 2012, much of its business was to sell technology and gaming content to third-party licensed gaming manufacturers/vendors, which would incorporate Bluberi technology into their own gaming cabinets¹ for use in casinos across North America. During this period, much of Bluberi's recurring revenue consisted of royalties collected by virtue of Bluberi's joint venture with American Gaming Systems ("**AGS**"), a manufacturer/vendor of gaming machines, to place machines containing Bluberi gaming software in various casinos in Native American casinos the United States.
16. By the end of 2004, there were 904 AGS cabinets with Bluberi games deployed in various casinos (referred to in the industry as the "installed base"); by the end of 2006, Bluberi's installed base was at approximately 6,000 machines. At the time, Bluberi was operating what are referred to as Class II games.² It would later migrate to Class III gaming, as set forth below.
17. Bluberi experienced sustained growth, with annual revenue growing from approximately \$1 million in 1997, to \$10 million in 2000 and then to over \$37 million in 2012, with a total of approximately \$320 million in revenue over the entire period.
18. Being in a highly competitive industry in constant technological progress and requiring significant investments in research and development, Bluberi systematically reinvested its revenues into research and development and into the training and development of a competent, highly-skilled workforce.

¹ The terms "gaming machine", "machine", "gaming unit", "unit", "gaming cabinet", and "cabinet" are used interchangeably, according to the context and in order to facilitate reading. They all refer to the same thing, i.e. what is colloquially referred to as a "slot machine" in casinos.

² The three-tiered class system was created pursuant to the *Indian Gaming Regulatory Act* (Pub.L. 100-497, 25 U.S.C. § 2701 et seq.) in the United States. The outcome of a Class II game is determined by the pattern generated from an electronic bingo game: the odds are a function of the patterns on the bingo card, and there is no strategy involved. The machine is connected to a central computer server whose function is to draw "bingo balls" randomly. This is in contrast to Class III games (table games like blackjack and poker, or slots and video games, where the result is determined by a random number generator located within a given machine itself). Class II requires much more sophisticated technology, as millions of calculations are made in a fraction of a second, applying numerous complex algorithms and formulae, all controlled by a central server located hundreds of kilometres away, to determine the outcome of bets placed or inputs made in hundreds or thousands of remote machines.

19. As such, between 2007 and 2012 alone, prior to dealings with Callidus, Bluberi had invested in excess of \$62 million in research and development.
20. By 2012, having seen the financial profitability and growth of full-service gaming manufacturers/vendors in the North American gaming industry, Bluberi Gaming made the strategic decision to evolve from a provider of content and technology to a full-service gaming manufacturer in its own right.
21. This evolution was intended to allow Bluberi to distribute Class II and Class III game titles directly to casinos, providing them with “turn-key” products and services (i.e. fully functioning cabinet units that included software, hardware and technical on-site and off-site support) in exchange for a share of revenue generated by the machines. Profit margins would be higher because they would no longer be divided with an intermediary like AGS.
22. Under the new business model, Bluberi would also generate revenue by selling machines to casinos outright (i.e. receiving a one-time payment rather than a share of profits generated by the machines on an ongoing basis).
23. In 2012, Bluberi sold back to AGS all of Bluberi’s interest in their joint venture for approximately \$26 million (the “**AGS Transaction**”), retiring existing debts and reinvesting the remaining proceeds into the Company.
24. In parallel, Bluberi had undertaken the process of securing financing to implement the strategic shift in its business model.
25. As much as Bluberi was growing and improving, Bluberi’s business growth strategy contemplated a quick ramp up and intensive development of high-quality and profitable games. To pursue this avenue, with a view to becoming a leader in the industry and properly implementing the shift in its business model from a gaming content provider to a manufacturer/vendor in the short term, Bluberi required additional capital.
26. Bluberi began canvassing the market, and sought the services of a broker, Synergis Capital Inc. (“**Synergis**”) to seek financing opportunities.
27. In this context, Callidus was introduced to Bluberi and Gérald Duhamel.

ii. Gérald Duhamel

28. Plaintiff Gérald Duhamel (“**Duhamel**”) is the president, secretary and sole director of both Bluberi Gaming and BGI, as reflected in Exhibits P-1 and P-2.
29. Duhamel is trustee and a beneficiary of Fiducie Gérald Duhamel, which holds the voting shares of BGI. Duhamel is also trustee and a beneficiary of Fiducie Gérald Duhamel OPCO, which holds the participating shares of Bluberi Gaming, and of Fiducie Gérald

Duhamel HOLDCO, which holds the participating shares of BGI, as appears from the organizational chart communicated as **Exhibit P-4**.

30. Duhamel holds degrees in philosophy and psychology with extensive experience in the field of gaming, having acquired significant experience over more than 20 years in the industry developing games.
31. Duhamel commercialized gaming products and software in over 70 casinos, obtaining licenses in 78 jurisdictions in the United States. He negotiated several major transactions with industry leaders, totalling over \$55 million.

iii. Other Plaintiffs

32. Fiducie Gérald Duhamel, Fiducie Familiale Gérald Duhamel OPCO and Fiducie Familiale Gérald Duhamel HOLDCO are all family trusts created pursuant to the *Civil Code of Québec* (“CCQ”).
33. Fiducie Gérald Duhamel holds 100% of the voting shares in former BGI.
34. Gérald Duhamel HOLDCO holds 100% of the participating shares in BGI.
35. Fiducie Familiale Gérald Duhamel OPCO holds 100% of the participating shares in Bluberi Gaming. BGI holds the voting shares in Bluberi Gaming.
36. Gérald Duhamel is a trustee of these three trusts and is a beneficiary of each of the three trusts.

(B) Defendants

i. Callidus Capital Corporation

37. Prior to its initial public offering in April 2014, Callidus had been wholly-owned by funds managed by Catalyst Capital Group Inc. (“**Catalyst**”), which, to the best of Plaintiffs’ knowledge, continues to own or control approximately 70% of Callidus’ outstanding common shares.
38. Callidus bills itself as an asset-based lender that offers “bridge financing” to companies in industries that are, among other things, in a period of high growth or strategic changes. Its website states: “Callidus is not a liquidator. Rather, we help our clients by: Providing greater liquidity ... [and] [s]upporting management ... [to] execute their plan for growth or turnaround”, as appears from various sections of the Callidus website, its investor presentations, and various press releases, communicated *en liasse* as **Exhibit P-5**.

39. Consistent with Callidus' representations to Bluberi during the pre-contractual phase, Callidus also says on its website, extracts of which are communicated *en liasse* as **Exhibit P-6**³ as well as other documentation that:

Unlike conventional lending institutions who demand a long list of covenants and make credit decisions based on cash flow and projections, Callidus credit facilities have few, if any, covenants and are based on the value of the borrower's assets, its enterprise value and borrowing needs.

40. Indeed, Callidus explained to Duhamel that it was dedicated to working collaboratively with its borrowers—many of whom were undergoing strategic shifts like Bluberi—to help them gain financial stability and achieve their goals.
41. This notion of “enterprise value” is also labeled by Callidus as the “airball lending concept”: namely taking as collateral a company's intangible, almost subjective value—primarily its “future value” and earning potential of the company (the “**Airball**”).
42. A cornerstone feature of the Callidus' credit facility agreements is the so-called “blocked account.” Although held in the name Bluberi (as defined in the Credit Facility Agreements, the “**Blocked Account**”), Callidus dictated the use of Bluberi's working capital and therefore indirectly controlled Bluberi's account. Indeed, under the terms of the credit facility agreements, Bluberi was compelled to deposit all receipts into the Blocked Account, and Bluberi had to obtain Callidus' consent prior to debiting any sums from said Blocked Account or paying suppliers. Callidus also had the authority to sweep the moneys held in the Blocked Account.
43. As described below, Callidus' control over Bluberi's working capital via the Blocked Account has effectively enabled it to dictate the material decisions made by the Company, including, *inter alia*, operational, financial business, strategic, marketing, and human resources decisions.
44. As for Callidus' business model, on numerous publications, including official filings required under Ontario securities regulations, Callidus describes its business as follows. The following is extracted from Callidus' Annual Information Form dated March 30, 2017 (the “**March 2017 Annual Information Form**”), for the year ended December 31, 2016 (at page 7), a copy of which is communicated as **Exhibit P-7**.

Callidus addresses an important gap in the lending markets by providing financing to borrowers whose perceived credit risk is too high for the lending criteria of traditional lenders, and whose capital requirements are too small to access high yield markets. Callidus also provides borrowers with access to capital to fund growth or acquisitions, without dilution to their equity ownership provided the borrowers perform as expected. When borrowers do not perform and the Corporation makes an accommodation, yield enhancements may be

³ <http://www.calliduscapital.ca/2018-03-26-Callidus-Capital-to-Host-Fourth-Quarter-2017-Financial-Results-Conference-Call>

granted to the Corporation. Yield enhancements can take many forms, including revenue royalty streams, periodic fee arrangements, warrants and limited equity participations. Additionally, Callidus can assist borrowers through challenging periods by working with the operators and drawing on the extensive experience of the Corporation's management team. Callidus seeks to work with borrowers that are likely to improve their financial stability and gain the ability to repay the funding Callidus has advanced through loan commitments from traditional lenders or otherwise. (Emphasis added)⁴

45. In a November 4, 2016 earnings call (third quarter results call), Glassman concluded by explaining to shareholders and investors Callidus' approach as follows:

I want to make a final comment about our business in general. With renewed capital markets attention on Callidus, I believe it is useful for people to better understand what we do and how we do it. Callidus is an alternative lender. We have no interest in owning or operating businesses. We are not structured to own or run our borrowers. We extend credit to distressed borrowers in the mid-market space. We are very cognizant to the risks and therefore we take extensive measures to protect the interest of our shareholders through the structure of our loan agreements, the collateral we're willing to accept, intensive borrower due diligence during the underwriting process, and constant daily extensive monitoring and oversight processes that are maintained during the term of the loans. (Emphasis added)

as appears from a transcript of the November 4, 2016 Callidus Earnings Call (Q3 2016), **Exhibit P-8**, at page 4.

46. In an August 11, 2017 earnings call (second quarter results call), Glassman reiterated the following:

We are an asset-based lender. We only extend loans based on a collateral available to support the loans.

as appears from a transcript of the August 11, 2017 Callidus Earnings Call (Q2, 2017), **Exhibit P-9**, at page 4.

47. However, in the case of Bluberi, and especially for the purpose of the credit facilities attached to the so-called Airball, Callidus extended loans on the basis of other considerations and metrics, and not exclusively on the basis of the actual collateral available.

⁴ The notion of "Yield Enhancements", also used as a euphemism for Callidus' loan-to-own strategy, is a non-IFRS measure (i.e. a derogation, in its calculations, from International Financial Reporting Standards, as it is not a generally accepted accounting measure under IFRS), is dealt with in more detail below. In each of the annual reports referred to herein, Callidus defines the term as follows: "An amount that Callidus negotiates over and above the original loan agreement as a result of an accommodation made for a borrower, including but not limited to additional fees, profit participation arrangements and equity and equity like instruments. These amounts may be recognized or unrecognized through the statement of comprehensive income depending on the appropriate accounting treatment under IFRS."

ii. Catalyst Capital Group Inc.

48. Catalyst describes itself as an independent, privately held investment firm focused on making investments in distressed and undervalued Canadian entities for control or influence, known as “special situations investments for control”.
49. Plaintiffs intend to demonstrate that Callidus is in fact the alter ego of Catalyst. The directing minds and principals of Catalyst are substantially the same as those of Callidus, namely Glassman, Chief Executive Officer of Callidus and Managing Partner of Catalyst, as well as Defendant James Riley.
50. Callidus is a creation of Catalyst; Catalyst is an integral component of Callidus’ business model, and Callidus is an integral component of Catalyst’s business model. As will be more fully set forth below, Callidus is essentially the publicly traded arm of Catalyst. Plaintiffs will demonstrate that Callidus is used as an instrument of Catalyst, for its personal advantage and those of the individual Defendants. Catalyst leverages the value of Callidus on the market, which in turn requires injections of capital from Catalyst, as it has in February and March 2018 and thereafter when market conditions required it.
51. As appears from the Callidus Condensed Consolidated Interim Financial Statements for the three and six-month period ended June 30, 2018 and 2017, communicated as **Exhibit P-10 (“Callidus 2018 Financial Statements”)**, Catalyst is a major shareholder of Callidus. As at June 30, 2018, Catalyst and funds managed by it owned approximately 72% of the issued and outstanding shares of Callidus.
52. As appears from the Callidus 2018 Financial Statements, Catalyst began to participate in the funding of new loans originated by Callidus in April 2015. Other arrangements allow Catalyst (through its funds) to participate in loans extended by Callidus as lender. Callidus reports that “this provides Callidus with additional funds to fund the expansion of [Callidus’] loan portfolio” (Exhibit P-10, pages 16-17).
53. Catalyst provides term debt to Callidus. Callidus reported in June 2018 that “it is currently reliant on continued funding from Catalyst” (see Exhibit P-10, page 21). Catalyst funds also guarantee any losses incurred by Callidus on certain loans, as appears from Exhibit P-10 (page 17). For example, in February and March of 2018, Callidus received a \$31 million advance under the guarantee from Catalyst, over and above other amounts, as appears from Callidus’ auditor’s report dated April 2, 2018, in respect of financial years ending December 31, 2016 and December 31, 2017 (at page 35), a copy of which is communicated as **Exhibit P-11**. More recently, in March 2018 Callidus entered into agreements that would provide additional financing of up to \$15.5 million “if required” for certain purposes, and to advance up to US\$150 million “if required by [Callidus] to fund potential future advances to the borrower,” as appears from Callidus 2018 Financial Statements (page 21).

54. Interestingly, with respect to the cash sweeps operated by Callidus as part of its loan agreements with borrowers, it reported in the Callidus 2018 Financial Statements as follows (page 17):

Neither guarantee generally applies to accrued and unpaid interest. The Company normally requires that its borrowers agree to a cash sweep arrangement so that their cash will be subject to the Company's control. The Company and Catalyst have agreed that the Company will operate the cash sweep so that the first application of a borrower's cash will be to currently due accrued and unpaid interest and fees and secondly to principal and any other amounts due. These cash sweep arrangements are intended to minimize losses in relation to interest and fees.

55. Accordingly, Catalyst and Callidus are inextricably linked for the very purposes and enterprises relevant hereto, and Catalyst—being controlled by many of the same principals as those controlling Callidus—has financial stakes in, is affected by and exercises control over Callidus activities and performance.
56. This synergy is manifested as well in their shared interest in Gateway. Catalyst came to own a controlling shareholding interests in Gateway by first buying a series of public debt owing by Gateway to various banks, consolidating it and subsequently converting its debt into equity.
57. Defendant Newton Glassman and Callidus' representatives sometimes use Callidus' communications channels to discuss Catalyst with investors of Callidus:

We've said since 2006 that Callidus itself, (Callidus), is a strategically fundamentally critical part of the Catalyst business platform. Since 2006, we've proven it because Callidus has either mitigated or eliminated the J- curve in every (Catalyst) fund since that time. Fund V, which is five quarters old, has not only never had a J-curve, it's up net about 130%.

as appears from the transcript of the Callidus Earnings Call, Q3 2016, communicated as **Exhibit P-12, at p 134.**

58. Catalyst and Callidus are coordinated with one another and organized to engage in virtually the same business. Recognizing the risk of at least perceived conflicts of interest between the entities, due to related party transactions potentially being made at the expense of Callidus minority shareholders, Callidus has attempted to draw a line distinguishing itself from Catalyst, as follows.

In the case of CCGI [Catalyst], Callidus believes that the likelihood of any conflict is reduced given the differences in the business of Callidus and the Catalyst Funds.

Whereas Callidus is primarily in the business of asset-based lending, the Catalyst Funds are in the business of control and/or influence investments in distressed and/or undervalued Canadian entities. This often entails the Catalyst

Funds purchasing debt of an entity with the primary objective of gaining control of, or influence over, such entity either through converting debt to equity or through a restructuring process. Callidus believes that the Catalyst Funds' investment objectives are distinct from Callidus' business as a conventional finance asset based lender [...]

as appears from Callidus' Annual Information Form for the year ended December 31, 2017 (2 April 2018) ("Risk Factors – Conflicts of Interest", page 30), **Exhibit P-13**.

iii. Newton Glassman

59. At all times relevant hereto, Newton Glassman was on the board of directors of Callidus as Executive Chairman. He is also on the management team of Callidus, as Chief Executive Officer.
60. Glassman is also the founder, Managing Partner and Chief Executive Officer of Catalyst. Glassman also serves, or has formerly served, as a director or senior officer of various Catalyst's portfolio companies, including Gateway Casinos.
61. He is an alter ego of Callidus and its directing mind.
62. As set out below, Glassman was personally and directly responsible for interference in the contractual relationship between Callidus and Bluberi, and unduly profited from Callidus' loan-to-own strategy.
63. In particular, as the leading member of what Callidus called its "credit committee", Glassman was personally responsible for inciting and directing Callidus to commit the faults alleged herein. Glassman's actions constitute standalone extra-contractual faults in their own right, and directly led to the damages suffered by Plaintiffs.

iv. David M. Reese

64. Reese, President and Chief Operating Officer of Callidus, was the direct superior of Duhamel's principal point of contact, Mr. Craig Boyer. Reese was responsible for approving most important decisions with respect to Bluberi. He also executed Glassman's instructions and directions, and was an important conduit between Duhamel and Glassman. Reese became directly involved whenever major negotiations took place with Bluberi, and to that end transacted directly with Duhamel. When important financial situations needed to be addressed, Reese would typically provide instructions to Duhamel on behalf of Callidus.
65. Reese immersed himself in day-to-day operations of Bluberi on numerous occasions, including issues pertaining to the release of moneys to fund Bluberi's payroll and other minutiae of Bluberi's operations.

66. In particular, as a member of the Callidus “credit committee”, Reese was responsible for inciting and directing Callidus to commit the faults alleged herein. Reese’s actions constitute standalone extra-contractual faults in their own right, and directly led to the damages suffered by Plaintiffs.

v. James Riley

67. Riley is the Secretary on the board of directors of Callidus as well as Managing Director and Chief Operating Officer of Catalyst.
68. As a member of the Callidus “credit committee”, Riley was personally responsible for inciting and directing Callidus to commit the faults alleged herein; Riley’s actions constitute standalone extra-contractual faults in their own right, and directly led to the damages suffered by Plaintiffs.

III. CALLIDUS’ PRE-CONTRACTUAL CONDUCT (2012)

(A) Term sheet and due diligence

69. Initial talks between Bluberi and Callidus took place in or about March 2012, at which time the parties engaged in negotiations and Callidus commenced its due diligence process.
70. Callidus expressed its understanding of Bluberi’s objectives and that it wanted to help Bluberi’s business succeed. Callidus explained that, as advertised on its website and elsewhere, it was willing to provide funding based largely on the “enterprise value” of Bluberi’s underlying intellectual property assets and future growth potential.
71. Bluberi began to prepare cash-flow projections and other analyses required by Callidus. It was made clear to Callidus that these models were projections for the limited purpose of considering possible cash-flow needs, as appears from emails dated April 17 and April 27, 2012 indicating the type of information and documentation required by Callidus communicated *en liasse* as **Exhibit P-14**.
72. As appears from those emails and elsewhere, Bluberi had determined that an initial financing tranche of \$37 million would be required in order to execute its new business model: approximately \$26 million to finance Bluberi’s new activities and operational needs, \$9 million to consolidate other debts under Callidus’ umbrella, as required by Callidus (of which about half were previously low-interest secured loans), and approximately \$2 million in set-up fees and commissions payable to Callidus and Synergis.
73. Callidus and Bluberi ended up discussing a loan of approximately \$34 million. Callidus indicated it was willing to commit only \$24 million, and only for a one-year “initial term”—but with the promise of more to follow as needed.

74. On the basis of the representations and exchanges that took place between Callidus, Bluberi and Synergis, Bluberi signed a binding term sheet on April 24, 2012 (the “**Term Sheet**”), pursuant to which Callidus was to provide \$24 million in the form of a demand loan carrying interest at 18% per annum, as appears from a copy of the Term Sheet communicated as **Exhibit P-15**.
75. Shortly thereafter, despite the loan documents not being executed, Callidus activated the so-called Blocked Account: a bank account through which all Bluberi’s receivables (and “all other monies from all sources”) were obligated to flow, and over which Callidus would have express control.
76. As appears from the Term Sheet, the “Purpose of Funding” sought by Bluberi was: “To provide working capital for the company to build inventory for the launch of casino games.” Although Callidus would later insist that credit facilities must be tied to deliveries of machines, Bluberi obviously could not deliver and install any machines whatsoever until they had been developed, marketed, and produced, which is why the valuation of the Bluberi IP was of such central importance. Callidus’ assertion, much later in the relationship, that “with performance there is adequate financing” was therefore exactly backward: “adequate financing” represents the amount necessary to provide sufficient working capital for the launch of the new games, which was to be the source of revenue to repay the financing.
77. Shortly after signing the Term Sheet, Callidus required Bluberi to engage with various valuation professionals, including a company with whom Callidus has a long-standing relationship, Hilco Enterprise Valuation Services LLC (“**Hilco**”). Hilco was meant to conduct valuations of Bluberi’s intellectual property (the “**Bluberi IP**”), which was to form the lion’s share of the collateral for the loan, as appears from copy of the engagement letter dated May 9, 2012 (the “**Hilco Engagement Letter**”) communicated as **Exhibit P-16**.
78. Callidus also retained the services of GDR Advisory Group to conduct due diligence mandates on Bluberi (prior to the conclusion of the loan agreements and several times thereafter) and Callidus also requested due diligence work from Fuller Landau (on at least five occasions).
79. On June 1, 2012, Hilco’s appraisal report was finalized. Hilco concluded that Bluberi’s IP had orderly liquidation value (“**OLV**”) of up to \$17.8 million, as at April 30, 2012 (the “**First Hilco Report**”), as appears from a copy of the appraisal report communicated as **Exhibit P-17**.
80. It eventually became known to Bluberi that Hilco would tailor its evaluations to suit the needs expressed by Callidus. Indeed, during the course of Hilco’s mandate, Duhamel witnessed Boyer providing specific instructions to Hilco as to the conclusions it was to arrive at in respect of the value of Bluberi’s IP. Much to Duhamel’s surprise, Callidus instructed Hilco to conclude that the appraisal value was \$17 million. In response to

Duhamel's surprised reaction and query as to how this was possible, Boyer replied: "They do what we tell them to do."

81. By mid-July 2012, having executed the Term Sheet and not being advised by Callidus of any adverse development, Bluberi was told that the closing would be imminent. Bluberi assumed that as per representations and analyses made following the execution of the Term Sheet and Callidus' due diligence, Bluberi would receive an approximately \$20 million disbursement at closing, the whole as will be demonstrated at trial and as appears *inter alia* from an email dated July 18, 2012 from Synergis to Bluberi, summarizing the information conveyed to Callidus, communicated as **Exhibit P-18**.
82. Thus, on July 23, 2012 and at Callidus' demand, Bluberi executed all the documents and gave all necessary authorizations to activate the Blocked Account and give Callidus access to it. Accordingly, from then on, all of Bluberi's receivables flowed through the Blocked Account controlled by Callidus.
83. On July 26, 2012, in anticipation of the closing, Duhamel also signed the deeds of hypothec and other ancillary documents before the notary.
84. It was at that point that the parties' relationship took a turn for the worse.

(B) Callidus' first try to change deal terms (imposition of milestones)

85. On July 26, 2012, hours after having signed the deeds of hypothec and other ancillary documents, Duhamel was informed that Callidus was attempting to unilaterally modify the terms of the financing. Boyer advised, for the first time, that Callidus' disbursements would be made incrementally and only as a function of certain "milestones" pertaining to the deployment of gaming machines by Bluberi, as appears from an exchange of emails between Boyer, Duhamel and Synergis dated July 26, 2012, communicated as **Exhibit P-19**.
86. This had never been contemplated previously and was contrary to the very rationale of the financing: it was nonsensical to try to tie loan disbursements to machine deployment, when the purpose of the loan was to fund the research, development and manufacturing of machines in the first place. Further, it was inappropriate to use the different cash-flow scenarios Bluberi provided to Callidus as if they were a promise of machine deployment. Indeed, at that time, Bluberi had not placed a single machine and had not yet begun implementing its business plan in that regard. As Callidus was well placed to know, there was no prior history under the current business model upon which Bluberi could predicate any of the forecasts being required by Callidus. As Callidus knew, their purpose was simply to determine how much investment would be required to yield certain cash flow needs in the future.
87. On July 27, 2012, Bluberi, through counsel, issued a demand letter to Callidus advising that it expected Callidus to honour its undertakings and the terms of the Term Sheet,

failing which legal action could be taken, as appears from a copy of this letter, along with other correspondence, communicated *en liasse* as **Exhibit P-20**.

88. In response to the demand letter, Defendant Reese reassured Duhamel that Callidus was very interested in lending to Bluberi, that the situation would be “taken care of” and that a solution satisfactory to Bluberi would be found, on the condition however that Bluberi formally retract its demand letter.
89. Having invested much time and effort on the Callidus financing since the signing of the Term Sheet, and after almost a month having elapsed since the scheduled closing date, Bluberi came to rely on the anticipated disbursement and agreed to retract the demand letter—although it refused to do so in the self-serving language demanded by Callidus and Reese, who also suggested that Bluberi falsely attribute the miscommunication to a language barrier, as appears from a copy of the exchanges between Bluberi (per Duhamel) and Callidus (per Reese) communicated *en liasse* as **Exhibit P-21**.
90. As a result of this resolution, Duhamel scheduled a meeting at the offices of Callidus’ counsel to sign the loan documents.

(C) Callidus’ second try to change the deal terms (reduction in initial disbursement from \$20 million to \$11.3 million)

91. On August 1, 2012, Duhamel executed the loan documents on behalf of Bluberi at the offices of Callidus’ attorneys, Gowling Lafleur Henderson LLP. Immediately thereafter, the attorneys informed Duhamel that they were authorized to disburse only \$11.3 million, rather than the \$20 million promised by Callidus.
92. When Duhamel confronted Boyer by telephone about this last-minute change, Boyer said there was “nothing he could do”, as the decision was in the hands of Glassman and/or the “credit committee”, who were not available to speak at that time. Boyer told Duhamel to leave the signed documents with the lawyers and that Boyer would resolve this issue later.
93. This was unacceptable to Bluberi. Duhamel collected the documents he had just signed and left the offices of Callidus’ lawyers.
94. In the following days, Boyer wrote to Duhamel and Synergis on numerous occasions to assuage Bluberi’s concerns. He emphasized the “flexibility” of Callidus, its ability to meet Bluberi’s needs, and that it was concerned for Bluberi’s success, as appears from copies of these emails communicated *en liasse* as **Exhibit P-22**. For example, in an email from Boyer to Duhamel on August 5, 2012 at 8:39 pm, Exhibit P-22, Boyer wrote in part as follows:

Callidus wants to support the business and the roll out of the games. For that reason I am supportive of the cash flows that reflect a quicker roll out

Those cash flows show borrowings, net of cash, of about 34 MM.

I estimate the borrowing base in respect of Facility A at about 6 MM.

The borrowing base in respect of Facility C is about 3 MM (65 percent of the higher real estate valuation).

This then suggests that borrowings against the IP will be about 25 MM.
(Emphasis added)

95. While the increased availability of funds and the confirmation that Callidus was still contemplating to advance \$34 million were reassuring to Bluberi, there was nevertheless confusion about the basis for determining the availability of funds. For instance, whereas Hilco had only recently evaluated the Bluberi IP to be worth between \$12.9 to \$17.8 million, Callidus was now suggesting that, out of the \$34 million facility, \$25 million would be attributed to the value of the Bluberi IP.
96. In the course of these exchanges and confusion, seeing that Callidus' new parameters and evolving modalities could lead to differences of interpretation, especially regarding the potential defaults that could be invoked by Callidus, and considering especially that "cash flows" were increasingly being referred to by Boyer, Synergis advised Callidus in an email dated August 6 (10:52 AM, Exhibit P-22) that:
- Bluberi wants to make sure that no default or penalties can arise from cash flow evolution or changes.
97. A few minutes later, Boyer responded requesting, *inter alia*, that Synergis be removed from negotiations, stating that "it serves no useful purpose at this juncture for Synergis to act as a filter for the information", as appears from Exhibit P-22 (email of August 6, 2012, 11:03 AM).
98. Indeed, considering that Bluberi's business model was nascent and had neither been tested nor deployed, and considering that Bluberi required financing to manufacture cabinets and deploy games and machines, it was inappropriate to expect that fluctuations or shortfalls in cash flow would penalize Bluberi.
99. In fact, there was a critical need, at that time more than ever before, to have Synergis, a sophisticated and experienced broker on whom Bluberi relied in its dealings with Callidus, to act as a filter for information and as an adviser to Bluberi, as Callidus was aware, especially as it was harder to follow Callidus' constantly moving targets and requirements, and given the imbalance in sophistication and knowledge (in financing matters) between Callidus and Bluberi.
100. In the course of subsequent exchanges, Callidus sought to reassure Duhamel again. In email to Duhamel on August 7, 2012 (6:40 PM), Exhibit P-22, Boyer wrote:
- Callidus is not a bank and we don't approach lending decisions the way a bank does.

We support business and work with business owners so that they can achieve the success they strive for.

101. Similar emails aimed at reassuring Bluberi were sent by Callidus between August 7 and 9, 2012, copies of which are communicated *en liasse* as **Exhibit P-23**.
102. On August 8, 2012, Callidus advised that it was now prepared to support a credit increase to \$34 million, and acknowledged an immediate “borrowing need” of \$18 million. Seeking again to reassure Duhamel, Boyer wrote (see Exhibit P-23):

I know that your external CA firm is Deloitte. Deloitte knows us well and you can reach out to Russel David who heads up its corporate finance group to learn more about us. There are others at Deloitte who know us as well and I can give you those names too

As to flexibility I want to note the following

1) We wish for Bluberi to be successful. Part of that is ensuring that Bluberi has sufficient credit limits to accomplish its goals. We were concerned, as you may recall, that the recent plans put forward were less than you required. We support a credit increase to 34 MM

2) We structured the borrowing base on what we heard. As we learned new things the borrowing base was changed. [...]

[...]

6) The most recent cash flows indicated a borrowing need of about 18 MM in August. If this isn't correct we need you to explain what your needs are so that we can accommodate this

I think the above (and there are more points) clearly establishes our flexibility in meeting Bluberi's requirements. (Emphasis added)

103. Somewhat reassured by Callidus' professed openness, flexibility and eagerness to conclude the transaction, the increase of the facility to \$34 million, and the fact that Callidus was prepared to disburse at closing an amount approaching the \$20 million that had previously been discussed, Bluberi agreed to proceed with the financing.
104. These representations were consistent with Callidus' representations since the pre-contractual phase and following the signature of the Term Sheet, i.e. that Callidus was to “work with” Bluberi to ensure the accomplishment of its goals and for it so be successful. The “second closing” was therefore scheduled for August 9, 2012.
- (D) Callidus' third try to change deal terms (reduction in initial disbursement from \$18 million to \$14 million)**
105. On August 9, 2012, Duhamel attended the offices of Callidus' attorneys again, expecting to receive the initial \$18 million disbursement promised to Bluberi by Callidus. However, once more, Callidus was trying to make material last-minute changes to the deal.

Callidus now advised Duhamel that it was willing to disburse only \$14 million on closing, rather than the \$18 million previously promised.

106. Duhamel conveyed to Boyer that Bluberi was concerned about Callidus' trustworthiness and the viability of the relationship, and that Bluberi would seek funding elsewhere.
107. As before, seeing the transaction slipping away, Callidus scrambled to save the deal from falling apart. To that end, it entrusted the negotiations to Reese, its Chief Operating Officer, who came to Montreal to meet with Duhamel and was tasked with convincing Bluberi to stay with Callidus and close the deal.
108. In the course of this meeting, on August 15, 2012, and as a means of appeasing Bluberi's concerns towards Callidus, Reese readily committed Callidus to disbursing \$18.5 million on closing, and granted Bluberi's request to allow Bluberi to keep, at all times, a sum of \$1.5 million outside the Blocked Account. These decisions were taken immediately, without the "credit committee" consultation or approval that Boyer had used previously as the reason for being unable to make decisions quickly. There was no discussion of milestones, projections, cash-flows or performance. Duhamel explained his needs to Callidus, as per the purpose set out in the Term Sheet, and was reassured that Callidus would work with Bluberi towards the success it strived for.
109. Bluberi was faced with a choice: on the one hand, it could walk away from the Callidus deal, pay the break-fees, and start the process of approaching other lenders anew. This would undo many months of effort and require unwinding the Blocked Account which had been in operation since late July. On the other hand, it could believe Callidus that the prior deal changes were mere growing pains in the parties' relationship that were now behind them, and that Callidus really was committed to acting in good faith as a reasonable lender that would support Bluberi's business.
110. A deal was struck on August 15, 2012, and the loan documents were to be remitted to Glassman for signature shortly thereafter.
111. The following day, presumably due to the fact that the disbursement at closing was to be in excess of the \$17.8 million figure provided by Hilco in the First Hilco Report, Callidus requested a new appraisal from Hilco. Consistent with Boyer's representation that "they do what we tell them to do," another Hilco report, as at September 30, 2012, eventually (and conveniently) valued the Bluberi IP at up to \$22.8 million (the "**Second Hilco Report**"), communicated as **Exhibit P-24**.
112. In hindsight, in early August, Callidus was purporting to be prepared to extend credit facilities of \$24 million, and indeed up to \$34 million, despite having an appraisal ranging from \$12.9 million to \$17.8 million. Had Bluberi agreed to allow Callidus to retain all excess cash, as Callidus demanded at various points at the attempted closings, Callidus would have been in a position to invoke insufficient valuation to support the loan any

further, thereby provoking a liquidity crisis and ultimately Bluberi's demise very shortly after contracting with Bluberi.

(E) The transaction closes (with initial disbursement of \$18.5 million)

113. Bluberi decided to proceed with the Callidus deal. Bluberi signed the loan documents and they were remitted to Glassman, who signed on August 31, 2012.
114. For convenience, a copy of loan agreement as well as all other related and subsequent agreements are communicated *en liasse* as **Exhibit P-25**:
- (a) First credit facility agreement dated August 31, 2012, Exhibit P-25-A (the "**First Credit Facility Agreement**");
 - (b) General Security Agreement, dated August 31, 2012, Exhibit P-25-B;
 - (c) Letter Agreement of November 1, 2012, Exhibit P-25-C;
 - (d) Agreement Amending Letter Loan Agreement, dated April 15, 2013, Exhibit P-25-D (the "**First Amending Letter**");
 - (e) Second Agreement Amending Letter Loan Agreement, November 12, 2013, Exhibit P-25-E (the "**Second Amending Letter**");
 - (f) Agreement Amending Security, dated November 12, 2013, Exhibit P-25-F (the "**2013 Security Agreement**");
 - (g) Amended and Restated Letter Loan Agreement, dated June 19, 2014 (the "**Third Amended Agreement**"), Exhibit P-25-G;
 - (h) Agreement Amending Security dated June 19, 2014, Exhibit P-25-H
 - (i) Second Amended and Restated Letter Loan Agreement, dated June 10, 2015 (the "**Fourth Amending Letter**"), Exhibit P-25-I.
115. As appears from Exhibit P-25, these facility agreements included personal guarantees (suretyship agreements) whereby Duhamel personally guaranteed all of Bluberi's obligations under the First Credit Facility Agreement.

IV. POST-CLOSING: BLUBERI IMPLEMENTS NEW BUSINESS MODEL (2012-2013)

(A) Bluberi prepares for deployment of gaming cabinets (August 2012 to December 2012)

116. Meanwhile, Bluberi continued developing its game titles portfolio, applying for vendors' licenses with various casino gaming commissions, finalizing the design of its proprietary gaming machine, developing the logistics and infrastructure required for game

deployment, and integrating numerous accounting and player tracking systems and various gaming devices used by casinos. It invested in engineering, customisation of game features and payout distribution models.

117. At all material times, Callidus was kept apprised of all developments, and had detailed knowledge of operations, plans and progress.

(B) Initial deployment of gaming cabinets and game development (as of January 2013)

118. Bluberi began placing gaming machines under its own name and licenses (as vendor) in January 2013. A copy of an in-house document prepared by Bluberi, tracking the deployment of machines per financial quarter, per casino and per type (whether sold or leased) is communicated herewith as **Exhibit P-26** (the “**Deployment History Chart**”).
119. Quite naturally, the games required fine-tuning and tweaking, mainly in order to adjust to player behaviour, preferences and habits (which vary according to region and demographic characteristics), and therefore maximize both player experience and casino revenues. At first, Bluberi’s machines underperformed the “floor average” (the average revenue of all machines on the casino’s gaming floor) by 30%. Casinos do not tolerate prolonged periods of time with machines underperforming the casino’s floor average. Bluberi was therefore under significant stress to improve the game performance quickly.
120. As a result of this, in early 2013, the Poarch Creek Indian (“**PCI**”) casinos requested that Bluberi remove its machines. Duhamel persuaded PCI otherwise, requesting a few more months to demonstrate that its games could outperform the floor.
121. Owing to a concerted effort from the Bluberi team and drawing on Duhamel’s decades-long expertise in the psychology of gaming, Bluberi managed to make good on its promises: whereas Bluberi machines initially underperformed the floor average of the Montgomery, Alabama, casinos of the PCI by 30%, within a couple of months the games had reached the floor average (of \$300 profit per machine per day). By February 2014 the average was at \$410/day. One year later, in February 2015, the game average reached \$500/day profit.
122. Developing games that could significantly outperform the floor average was fundamental to Bluberi’s success, and a prerequisite for market expansion. This was a core component of Bluberi’s business plan, which Callidus supported.
123. For this reason, until the third quarter of 2013, Bluberi decided to concentrate its efforts to first improving the game profitability in a limited sampling of casinos. There was no sense in expanding the footprint until and unless the games were perfected and Bluberi could demonstrate consistent game profitability. It focused on three gaming commissions (PCI, Miccosukee Tribe of Indians Florida (“**Miccosukee**”) and Citizen Potawatomi Nation (“**Potawatomi**”)), with a view towards tightly controlling any problems

encountered, proving its abilities, and establishing its reputation as a reliable and competent vendor. As a start-up aiming to establish its reputation, it could not afford to fail and be removed from a casino for lack of performance, as this would hinder placement and footprint in other casinos.

124. During this time, Bluberi continued to lay the groundwork for its eventual expansion: it applied for more licenses, continued research and development in accordance with pre-established milestones to maintain its competitiveness, prepared its hardware (cabinets, boards, game titles, etc.), nurtured existing relationships, and developed new ones within the industry.

V. CALLIDUS IMPOSES DELAYS THAT PREJUDICE BLUBERI

(A) Callidus' unreasonable delays in approving funding; imposition of harsh new deal terms (2013)

125. In February 2013, Bluberi asked Callidus for an advance of \$5 million, which would bring the total loan amount to \$29 million of the \$34 million figure that the parties had discussed. This was needed for Bluberi's continuing work on the performance of the machines already deployed and additional research and development. Boyer confirmed to Duhamel on February 25, 2013 that a \$5 million amount would be recommended to the "credit committee", which would be meeting on March 1, 2013.
126. However, despite repeated promises that the \$5 million disbursement was forthcoming, it was not approved until April 15, 2013, some seven weeks later, when the parties executed the First Amending Letter (Exhibit P-25-D).
127. In this period of several weeks' delay, Bluberi was forced to deplete the funds in its operating account and moved into an overdraft position. While in overdraft, Bluberi was paying an additional 3% of interest for the entire loan amount it owed to Callidus.
128. Although the First Amending Letter did not change the December 2013 expiration date for the Credit Facilities, Callidus indicated to Bluberi that the term's expiration date would be extended, as it indeed was, on several occasions.
129. In July 2013, in part because of these mounting costs, Bluberi asked Callidus for an advance of the other \$5 million tranche, which would bring the total loan amount to \$34 million.
130. In an email dated July 25, 2013, communicated as **Exhibit P-27**, Boyer advised Duhamel as follows:

I expect to hear about the increased financing (\$5 MM) by Monday (there do[] not appear to be any issues—pricing will be higher than the norm and there will likely be a payment kicker based on enterprise value as this new funding is viewed as equity[-]like (and no we won[']t be taking any equity here). (Emphasis added)

131. Bluberi was surprised at the apparent change in terms and approach Callidus wanted for this next tranche of funding. This was not discussed or agreed to when the First Credit Facility Agreement was entered into, even though the parties had considered the full amount of the loan to be \$34 million. However, given its financial situation, Bluberi acquiesced.
132. Nevertheless, there was no news and no progress on the anticipated advance for four months. During this time, Bluberi was forced to exceed its existing loan capacity and thus operated in overdraft position, which resulted in additional 3% compound interest accruing. Bluberi was also forced to wait for Callidus to review and approve or reject each of Bluberi's payables. In addition, some critical suppliers were paid late, or not at all.
133. Finally, at the end of November 2013, Bluberi received confirmation that Callidus would approve an increase—not of the requested \$5 million, but of \$12 million. This amount was more than twice what Bluberi requested, determined unilaterally by Callidus without consultation with Bluberi.
134. It was also accompanied by a requirement that Bluberi execute an amended contract with materially different, and more onerous, terms than the original contract. For example, Callidus demanded an increase in interest rates across several facilities of 3% plus an “additional facility fee”, which it called a “kicker”: upon either the occurrence of an event of default, a demand by Callidus for repayment, or the repayment of the loan, Callidus would be entitled to the greater of \$2,800,000 or 5% of the “business enterprise value” of Bluberi, as established by Hilco “at a precise date satisfactory to [Callidus]”. The Second Amending Letter and the 2013 Security Agreement were executed by the parties on November 12, 2013.
135. It only later became apparent to Bluberi how severely the “kicker” impeded—indeed, outright precluded—any possibility for Bluberi to escape Callidus' shackles by obtaining alternative financing, as the cost of paying this “kicker” to Callidus would be prohibitive.
136. Given the four-month delay before this tranche was approved, the structure of the new deal terms, and the increase in borrowing costs and penalties, Bluberi was left with very little new operating capital from this \$12 million. Indeed, after paying Callidus various fees, penalties, interest, overdraft charges and professional fees, Bluberi was left with only approximately \$1.2 million of the \$12 million that was nominally advanced to it in November 2013.
137. This ensured that Bluberi would need more capital, and provide Callidus with another opportunity to impose even harsher conditions.
138. The \$1.2 million Bluberi received in November 2013 was barely enough to cover payments to suppliers. Due to the overdraft situation, increase in interest and other fees

and penalties imposed, the debt service costs increased substantially in the 12-month span from January to December 2013.

139. It is worth noting that Bluberi's indebtedness, at approximately \$32 million by the time this tranche was disbursed, had far surpassed the amounts reflected in the Second Hilco Report, i.e. \$22.8 million. Yet, Callidus did not commission a new appraisal as part of its approval process for this tranche of financing.
140. Despite these challenges, by the end of 2013, owing to their appeal and technology, Bluberi's games began showing an ability to consistently outperform casino floor averages. Still, Bluberi was continuing to adapt its games to the various casinos in which it operated.

(B) Callidus' closes in: more unreasonable delays in approving funding; imposition of harsh new deal terms (2014)

141. Bluberi was handicapped by unreasonably low borrowing base calculations employed by Callidus to deny Bluberi access to funds. Callidus would calculate loan availability based on only 14% of the value of finished goods, and only 16% of the value for raw materials. This, combined with the aforementioned structure of the Second Amending Letter, including the prohibitive debt service costs and the virtual absence of available working capital from the moment of its execution, meant that, by December 2013, Bluberi would already be short on operating capital, and was projecting difficulty to meet payroll before the winter Holiday period.
142. On December 6, 2013, Duhamel emailed Boyer to ask when the credit committee would respond to his request that Callidus increase the borrowing base calculations to reasonable levels (from 14% to 75% for finished goods and from 16% to 50% for raw materials), which would better align with industry norms. Failing that, Duhamel wanted to know if Callidus could create a new facility on more reasonable terms to finance the boards and cabinets. Boyer's reply was "this weekend."
143. In fact, Callidus would not agree to more reasonable terms. It also did not approve the facility until June 2014, more than six months later, choosing instead to advance funds to Bluberi on overdraft terms. During this period, Bluberi was incurring interest and other costs it could not mitigate, all the while being in limbo.
144. As more fully set out below, while the new credit facility which was finally extended in June 2014 was nominally for the sum of \$10 million, when accounting for all expenses, penalties, fees and interest that were already earmarked to go directly back to Callidus, Bluberi was left with actual operating capital of \$3.4 million, with many suppliers and other creditors still unpaid.
145. In hindsight, it became evident that Callidus was not interested in permitting Bluberi to repay its loan; Callidus preferred to keep Bluberi on life support, racking up interest at

exorbitant rates until all hope of repayment was impossible, at which point Callidus could acquire the Company, and exploit an otherwise valuable business for itself.

146. Plaintiffs communicate herewith *en liasse* as **Exhibit P-28** a series of emails exchanged principally between Duhamel and Boyer in December 2013 and subsequent months, as well as a table illustrating the fact that, as at December 2013, there was already no longer any availability under the borrowing bases.
147. Bluberi was at the mercy of Callidus' whims, as well as its slow and arbitrary decision-making process, including availabilities of the "credit committee," for the purposes of paying suppliers and creditors during this entire period.
148. Bluberi began generating revenue in late 2013 and early 2014. In the last two quarters of 2014 alone, Bluberi experienced stable and progressive growth in terms of footprint and revenue generation. It improved the technology behind its systems and server infrastructure, augmented its brand recognition in the market, integrated in its software-specific casino marketing and accounting abilities, and built relationships with casino managers. Callidus remained apprised of developments throughout this period.
149. Bluberi's games were also ripe for deployment: the revenue-generating ability and general appeal of the games were proven, and the seeds sowed in the various casinos were beginning to bear fruit. Bluberi was ready to start deploying games, concurrently with its continuous increase of licensure applications.
150. By the end of 2014, Bluberi had established relations with approximately 70 casinos and had invested \$80 million in research and development. Its revenues were increasing and its machines were becoming increasingly profitable to casinos.
151. Indeed, in July 2014, an accounting firm mandated by Callidus to oversee Bluberi's affairs, at great expense to Bluberi, Farber Financial ("**Farber**"), conceded that Bluberi's business had been "taken to another level" (although attributing this to the wrong factors), as appears from a series of exchanges between Farber, Boyer and Bluberi from October 2014, communicated *en liasse* as **Exhibit P-29** Bluberi was gaining upward momentum in terms of implementing Duhamel's vision and plan, but began seeing its progress stalled and derailed by the vicious circle of debt engineered by Callidus, from which Bluberi could not escape.
152. Because Callidus continued to thwart Bluberi's growth and its ability to generate revenue, Bluberi constantly found itself in a vulnerable position, compelled to turn to Callidus for the extension of additional credit on terms dictated by Callidus.
153. By then, it had become difficult for Bluberi to extricate itself from Callidus, even as it was forced to content itself with extremely onerous financing terms. In October 2014, Bluberi and Callidus discussed the possibility of concluding a new loan agreement on commercially reasonable terms that might allow Bluberi to get out from under the exponentially growing onslaught of interest by Callidus.

154. However, less than two months after the acknowledgment that Bluberi was progressing, its business having been “taken to another level,” Callidus began complaining that the balance sheet was “imploding” and that the “business has not performed as expected,” as justification for the new set of terms upon which Callidus would now start insisting in exchange for, *inter alia*, interest rate relief. Plaintiffs communicate *en liasse* as **Exhibit P-30** a series of emails from December 2014 to June 2015 exchanged between Callidus and Bluberi.
155. Callidus did not engage constructively with Bluberi to address the situation; to the contrary, Callidus used its stranglehold on Bluberi (especially the ability to decide which trade creditors get paid and which initiatives get funded) as leverage in contract negotiations.
156. In an email dated December 2, 2014, Boyer outlined a plan whereby Callidus would immediately take 15% of Bluberi, with an additional 30% if Bluberi required additional financing, 30% if an investment of \$10 million was not made by February 28, 2015, and 20% if deployments (on a revenue-sharing basis) did not reach 1,500 games by March 31, 2015. Callidus shares or options could be repurchased by Bluberi only if Callidus received a 40% return on total loans, as appears from a copy of that email communicated as Exhibit P-26.
157. Although it was becoming an increasingly unrealistic avenue by that point, considering the highly onerous nature of Bluberi’s indebtedness towards Callidus, this was among the first instances where Callidus would openly purport to contemplate accommodating new investments.
158. Shocked by the foregoing email, Duhamel called Boyer, only to be told what Duhamel already knew all too well. In an effort to assuage Duhamel as to Callidus’ intentions, Boyer said:

...the idea isn’t that it [Callidus] owns the company, the idea is that...you...the 30% interest is killing your balance sheet. [...] Your balance sheet is gonna look worse and worse every month.
159. Numerous email exchanges containing various proposals ensued over the following months, copies of which are communicated *en liasse* as **Exhibit P-31**, culminating in Callidus essentially imposing its terms on Bluberi on a “take-it-or-leave-it” basis, as more fully set forth below. Bluberi talked to Callidus about its desire to focus on its operations, seek solutions for restructuring its debt, implement its market strategy, and develop strategic partnerships. However, it was clear by this point that Callidus was implementing the various loan-to-own techniques so as to provoke defaults and take over Bluberi for itself.
160. One proposal Callidus did not consider, for example, is the simple and reasonable suggestion of capitalizing research and developments investments on the balance sheet, rather than accounting for them as pure expenses.

161. Accordingly, when the last credit facility was extended pursuant to the Fourth Amending Letter in June 2015, Bluberi was notionally extended \$14 million, but this entire amount served to pay for interest, fees and penalties to Callidus, including a \$1.3 million “closing fee” charged to Bluberi. In effect, Bluberi received no new operating capital.
162. Ultimately, as set forth below, Callidus had leveraged its position of strength and Bluberi’s dependence on Callidus to extract significant compromises, including changes to Bluberi’s governance structure and management and obtaining additional collateral in the form of a pledge of all of Bluberi’s shares, thereby spelling the end of Bluberi; the nail in the coffin Callidus had been incrementally and subtly building for Bluberi.

VI. VARIOUS ELEMENTS OF CALLIDUS’ LOAN-TO-OWN STRATEGY⁵

(A) Callidus lets Bluberi languish in overdraft

163. On March 13, 2014, as part of the process to conclude the Third Amended Agreement, Callidus commissioned a third appraisal report from Hilco, to assess Bluberi’s value as at December 31, 2013 (the “**Third Hilco Report**”), communicated as **Exhibit P-32**.
164. The Third Hilco Report was not issued until May 30, 2014, wherein it appraised Bluberi’s value at \$58.2 million as at December 31, 2013 (see p. 38). This appraisal was based on a so-called “Sensitivity Analysis” (see s. 7.9) whereby the orderly liquidation value of the company was established as a function of the number of machines placed (170 on a revenue-share basis at the time of the analysis). Significantly, Hilco estimated that an orderly liquidation would require between 6 and 12 months (see p. 34).
165. During the entire six-month period that it was purportedly waiting for the “credit committee” to execute the loan documents, Callidus was happy for Bluberi to operate in an overdraft position, paying interest at default rates as well as various fees and penalties. As before, Bluberi was at the mercy of Callidus’ whims and control over the Blocked Account, and its slow and arbitrary decision making process for permission to pay suppliers and other creditors.
166. Largely on the basis of the Third Hilco Report (as at December 31, 2013), the parties finally entered into the Third Amended Agreement, Exhibit P-25-G. The stated purpose of this facility was to increase of the credit facilities available to Bluberi by \$10 million, to a total of \$51 million and to modify applicable interest rates, which by then were in the order of 35%.
167. At the time of the execution of the Third Amended Agreement, the parties also concluded an “Agreement Amending Security” dated June 19, 2014, Exhibit P-25-H

⁵ For better context, this section provides an overview of the circumstances surrounding the execution of the various amendments to the loan agreements, from February 2013 to June 2015, as well as a non-exhaustive enumeration of the various ways in which Callidus incrementally executed its loan-to-own strategy. It is important to note that this enumeration, including the events and faults described, are not necessarily in chronological order.

168. Bluberi had requested an advance of funds in December 2013, and the Third Hilco Report (commissioned on March 13, 2014 and issued on May 30, 2014) was a snapshot of the Company on December 31, 2013. However, by the time the advance for (a notional amount of) \$10 million was finally made in June 2014, a substantial portion of it was already earmarked to pay Callidus penalties, overdraft charges, interest, professional fees, such that the effective amount actually available as operating capital was approximately \$3.4 million, before any payables were acquitted. The result of the unreasonable six-month delay was that the Third Amended Agreement was in large part an exercise in capitalizing Callidus' interest, at even higher rates.
169. All the while, Callidus exerted pressure on Bluberi, threatening to take drastic action unless new capital was injected in the form of subordinated equity, despite Callidus having made it impossible for Bluberi to attract either a new lender or equity investor by reason of the inflated debt and the "kicker" provision.
170. For example, just prior to the execution of the Third Amended Agreement, on June 16, 2014, and as part of Callidus' pressures to have Duhamel agree to its terms, Defendant Glassman summoned Duhamel to Toronto for a meeting. During the large part of the meeting, Glassman proceeded to berate Duhamel, yelling uncontrollably to the point that Duhamel was left speechless.
171. Glassman proceeded to disparage Duhamel's efforts and results in attempting to seek new equity investors. Yet, as Glassman himself knew very well, it was unrealistic to expect new investors to inject new capital into Bluberi while remaining subordinated to Callidus.
172. Clearly, Callidus' purported amenability to accept new equity investors, new sources of financing or any exit strategies were disingenuous. Callidus sought to take Bluberi's equity for itself. It did not seriously consider any options put forth by Bluberi and showed no flexibility in facilitating such alternatives. To the contrary, Callidus ensured that Bluberi's situation would become increasingly conducive to a takeover by Callidus alone.
173. In this meeting, Glassman also threatened to put Bluberi "up for auction" and indicated that if Duhamel did not quickly find \$10 million in equity investment, he would "take 10% of the company", followed by another 10% of equity every month thereafter.
174. After the meeting, Reese sought to reassure Duhamel by telling him not to worry about Glassman's outbursts; that Reese knew how to reign in Glassman and that he would talk to him.

(B) Callidus takes control of Bluberi's sales

175. On September 22, 2014, Mr. Jean Bernier began work at Bluberi, at the behest of Callidus, as Director of Sales. Less than a week after joining Bluberi, Mr. Bernier emailed all Bluberi sales staff to instruct them to thenceforth exclude Duhamel from sales decisions and from emails, as appears from a copy of that email communicated as

Exhibit P-33, Duhamel was also excluded from many discussions and strategy meetings.

176. Mr. Bernier lacked knowledge of Bluberi's niche market and customized approach, yet he regularly ignored Duhamel's advice. As a consequence, under Mr. Bernier's leadership, sales fell precipitously from over 100 machines per month to only a handful. This translated into a decrease in the placement of gaming machines—which was felt only after the “pipeline” of machines was depleted in February 2015, given the typical four-month lag between a casino placing an order and Bluberi fulfilling it, the whole as will be more fully demonstrated at trial.

(C) Callidus imposes a new Chief Operating Officer

177. By January 2015, Duhamel wrote to Boyer, Reese, and Riley, advising them that the situation had become untenable; Bluberi being again in a paralyzing cash crunch. Duhamel wrote to Boyer on January 16, 2015:

Craig

I told David months ago that I will hold the fort as long as I can for Callidus but Callidus credit committee need[s] to realise that we have reached a point where it is impossible.

Yesterday we received 26 emails from suppliers asking for money.

Yesterday Marie-Claude [Lapierre] talked with 9 others and they are getting really upset.

The average account payable is around [] 110 days.

Fedex account is frozen so we cannot ship anything.

We cannot send any cabinets as all our accounts with our transporters are frozen too.

We have next week 11 meetings with casinos in California that we will have to cancel because we cannot buy plane [tickets] [] and other expenses.

Deployment next week in Washington at Muckleshoot Casino is in great danger to be cancel[led] for not being able to send gaming equipment. Not to be able to meet the deployment schedule with that casino will raise a very serious issue[] about Bluberi.

Deployment the first week of February cannot be schedule[d] as we have no server in stock which take two to four weeks to be delivered[.]

I could continue forever

Gérald

as appears from the email dated January 16, 2015, **Exhibit P-34**.

178. Neither this email nor other pleas had the effect of sensitizing Callidus to Bluberi's predicament. In the context of these exchanges, Callidus reiterated that in order to

continue supporting Bluberi, which it purported to be prepared to do, it was essential that a new Chief Operating Officer be hired, and that a new Board of Directors, comprised of independent members, be put in place. Moreover, Callidus purported to be open to providing some relief on the interest rates imposed, on condition that it could obtain some equity “in whatever form.” Boyer’s email to Duhamel on January 15, 2015 reads as follows:

Gerald

Boyer discussion points

I need the cash flows (maybe these came in).

The structure should be based on several borrowing bases. Need to figure that one out

There has to be a board with independents in control

A COO whether that is Robert⁶ or someone else needs to be engaged. It is a non starter if there isn't a COO (sic)

Options might work and that concept is being discussed with our counsel. Hope to know more tomorrow

The option percentages did not resonate well with the credit committee members I spoke to (your percentage)

Not getting all of the different interest rates. My simple thought was to set the interest rates on all of the facilities at say 5 percent with a kicker so to speak to get Callidus a return of X (equity rates)

The equity in whatever form is agreed to would reduce as the loans become collateralized. A collateralized loan would likely bear a relationship to AR and inventory and real estate and deployments/ revenues (sic)

Not clear to me that absent equity or some other investment coming in that the amount you are requesting is sufficient. For example once there is debt service there will still be a need to buy new game inventory. That investment is repaid in time (say 9 to 12 months) but it means there will be a cash burn for a while or perhaps until deployment gets to 2500 or so games. Some math needs to be done on your part to see how that looks

[...]

179. For the position of COO, Bluberi proposed a Québec-based, French-speaking professional with extensive experience in operations, whose candidacy was refused by Callidus without even meeting him.
180. Callidus ultimately imposed the appointment of Diego Castelli, to whom Bluberi was adamantly opposed for various reasons, including notably that he had no experience in the gaming industry or in operations relevant to Bluberi’s needs, did not speak adequate

⁶ This refers to Robert Attala, who was hired by Duhamel in November 2014 and resigned in mid-January 2015.

French, and was based in Toronto (Bluberi had to pay Mr. Castelli's expenses to work in Drummondville four days a week).

181. Mr. Castelli began as COO on March 25, 2015, with Callidus insisting in April that "*Diego [Castelli] is to make the operating decisions.*" Castelli, as nominee of Callidus, was detrimental to Bluberi's progress, as will be demonstrated at trial.
182. In September 2015, in response to Mr. Castelli inquiring as to why Duhamel's approval was required at all for a funding decision, seeing as this appeared to "interfere with the daily operations of the business of which Gérald is no longer a part of," Boyer responded:

He is until he isnt(sic)

as appears from emails dated April 30, 2015 and September 23, 2015, respectively, *en liasse* as **Exhibit P-35**.

(D) Callidus oversees a continuing decline of Bluberi under its *de facto* leadership

183. The financial situation of the Company continued to decline in late 2015, under the *de facto* governance of Callidus, particularly after the sales pipeline was depleted. Indeed, under pressure from Boyer to "put boots on the ground" (at all costs) in order to show revenue, Mr. Castelli, apparently at the behest of Callidus, took the desperate decision to sell, at liquidation prices, as many cabinets as possible in September and October 2015.
184. Owing to this ill-advised decision to liquidate machines, Bluberi saw a spike in revenues. This spike was obviously temporary and artificial, as this meant that Bluberi had forever lost the revenue-sharing potential of these machines, the whole as will be demonstrated at trial.
185. Despite the skewed nature of these results, Mr. André Bouffard and Mr. Castelli reported to Boyer, in an email dated October 28, 2015, that September "was the best month ever of Bluberi for income related cabinets (sic)," pointing to the \$3.3 million in revenues this liquidation generated, as appears from an email communicated as **Exhibit P-36**.
186. The aforesaid decision to liquidate machines was short-sighted and compromised Bluberi's ability to sell machines to the same clients and casinos at their normal market price (approximating \$18,000 each) in the future.
187. Several other prejudicial and ill-advised decisions were imposed by Callidus or its nominees who had been placed in Bluberi, sometimes without consulting Duhamel, as will be demonstrated at trial. These include decisions on operations, human resources, sales, strategy and marketing, with the overall effect that Bluberi potential was stunted.

(E) Callidus aborts projects, refuses to pay suppliers, cancels orders

188. One of the cornerstones of Callidus' loan-to-own strategy was the incremental interference in operations and meddling in management and decision making. Through its control of the purse strings and management, many projects and initiatives undertaken by Duhamel were discontinued and cancelled. Callidus, in turn, invoked the decline in financial performance as pretext for exerting yet more control and demanding yet more exclusion of Duhamel from operations and governance, as set forth herein and as will be demonstrated at trial.

189. In an example of the type of obstruction committed by Callidus, in August 2015, as Bluberi was exploring potential exit strategy initiatives, an explicit admission as to Callidus' strategy was made by Boyer, who wrote, in response to a request for funds in order to pay Synergis, a financial intermediary and broker which Bluberi would have liked to enlist to explore exit strategies:

Callidus will not support such a payment to a financial intermediary at this juncture. It [Synergis] knows Callidus and perhaps it should be advised that Callidus will own Bluberi soon.

as appears from a copy of the letter dated August 24, 2015 communicated as, **Exhibit P-37.**

190. Another key way in which this was exemplified is in dictating the pace, nature, extent and timing of game development, cabinet deployment, and the licensure application process—the engine of Bluberi.

191. As of March 2015, Bluberi had 1000 gaming machines installed on a revenue sharing basis, representing approximately CAD\$1.2 million in revenue per month: each gaming machine generated an average of \$12,000 per year and, since few costs are incurred after each gaming machine is installed, the revenues generated were almost pure profit. By this point (in March 2015), Bluberi was generating approximately \$4 million per quarter under the revenue sharing model.

192. But for the interference of Callidus (including through Mr. Bernier), Bluberi was on track to install over 1500 more machines on a revenue-sharing basis between April and December 2015. Importantly, Bluberi had invested in the latest technology (larger monitors with better brightness and resolution), curved screens (which were becoming the new norm), new game design concepts and new up-to-date gaming boards, to allow for better player experience and more appealing games.

193. Following are examples of Callidus' prejudicial meddling in Bluberi's affairs or unjustified refusal to support Bluberi.

(a) The Jaguar circuit board, new prototype and Primero transaction aborted

194. Callidus, through its control of Bluberi's new management, exhibited a pattern of stalling or impeding the licensure application process and cancelling Bluberi's project and initiatives—only to eventually revive them once it had gained control of Bluberi through the CCAA Proceedings. This included the cancellation of the Jaguar PC circuit board, the cancellation of the Cole Kepro new gaming cabinet order prototype.
195. The Jaguar circuit board was a state of the art board developed by Bluberi. It was a cornerstone of Bluberi's operational strategy and business plan, and key to its short, medium and long-term profitability. Among its many attributes is the fact that it would enable development and deployment of games with far superior graphic quality and animation, higher definition and larger screens, and the ability to run three monitors at once, a significant technological improvement. It would allow Bluberi's games to drive with screens as large as 42 inches, at a time when the industry was moving towards larger screens. Bluberi was poised to deploy cabinets with 25-inch screens, and was planning to deploy the popular curved 42-inch screens in time for the 2016 National Indian Gaming Conference in April 2016.
196. In the fall of 2016, immediately after Callidus was in control of Bluberi, it decided to revive the project and proceeded with the deployment of the Jaguar board, benefitting from the research and development conducted under Duhamel's leadership. Among the first decisions taken by the Mike Starzynski, who was retained by Callidus to manage Bluberi operations during the CCAA process, was to tackle the development of a new PC board. He quickly came to realize that the Jaguar was a far better option than outsourcing the development of a new board.
197. At the most recent Las Vegas gaming trade show, in 2018, Duhamel was able to see first hand that Callidus, as owner of "new Bluberi," had invested exorbitant sums of money for a premier booth to showcase the new cabinets (including with 55-inch screens) and games that Duhamel had been pleading with Callidus (and the individuals it appointed to manage Bluberi) to allow him to develop and implement years earlier, when the technology would have been considered even more cutting edge.
198. In June 2015, Castelli, with the tacit or active support of Callidus, decided unilaterally to abort the last development phase prior to the projected deployment of the Jaguar PC board.
199. Another one of Castelli's decisions, despite Duhamel's protests, was to halt the development of the new gaming cabinets, with larger monitors, which Bluberi was on the verge of finalizing. A working prototype was to be delivered within three weeks by Cole Kepro LLC, the manufacturer, when the product's development was aborted.
200. This new gaming cabinet was crucial to maintain Bluberi's technological edge and avoid obsolescence as it enabled Bluberi, in the short term, to deploy cabinets and games

using 25-inch cabinets and the 42-inch curved screens and any other large monitors (which are becoming increasingly prevalent).

201. On June 4, 2015, fewer than three weeks before Bluberi was slated to receive the new prototype for final tweaking before deployment, Mr. Castelli decided to cancel the delivery of the new gaming cabinet prototype.
202. Duhamel attempted, in vain, to have Callidus and Castelli understand that it was crucial to launch that new cabinet, since it was expected to increase the profitability of the games and it was vital to Bluberi's growth. Castelli informed Duhamel that he was under pressure by Callidus to cut costs, and did not want to put in the remaining time and money (about \$75,000) to bring the near-ready prototypes to fruition.
203. Another disappointing decision taken by Callidus involved an established client of Bluberi, Primero, which, by the fall of 2015, had been pleading with Bluberi for several months to proceed with the conclusion of a US\$4 million sale of redemption software (the "**Primero Transaction**").
204. Duhamel saw this as an opportunity to sell the rights, knowledge and technology it no longer had any use for, at fair market price. Primero needed to buy licenses for its games in order to continue supporting the 20,000+ games that were sold and are still operating in Georgia.
205. Seeing as this was easily accessible revenue, on June 8, 2015, Bluberi (with Callidus' permission) concluded a letter of intent with Primero, a copy of which is communicated as **Exhibit P-38**. This transaction would involve no devaluation of any inventory, nor would it entail the disposition of assets of any material value. It involved the licensing of software for substantial consideration, at no cost to Bluberi.
206. On August 7, 2015, Farber issued a report concluding that the transaction appeared fair and reasonable financially, as appears from a copy of said report, communicated as **Exhibit P-39**.
207. On August 24, 2015, Boyer approved the transaction, writing "please proceed" to the members of the Board of Directors and Castelli, as appears from said email, communicated as **Exhibit P-40**.
208. Although the Primero Transaction had been formally approved by Callidus, albeit only in late August 2015, it was only implemented later, in the context of the CCAA Proceedings, after the CCAA Court granted Bluberi's motion seeking the vesting of the assets in favour of Primero. A copy of the said motion, wherein more context is provided, is communicated herewith as **Exhibit P-41**.

(b) Suppliers not paid and Bluberi licensure in jeopardy

209. Callidus reviewed each of Bluberi's invoices and decided which critical suppliers would be paid and when. This caused Bluberi to miss important payments, which adversely affected its reputation and perceived creditworthiness in the eyes of important suppliers. This affected morale at Bluberi, which would deteriorate severely by the end of 2015, as the refusal by Callidus to meet funding requests meant that employees began to worry whether Bluberi would even be able to make its payroll.
210. Callidus often refused Bluberi's requests to use money from the Blocked Account to pay creditors, which included suppliers of essential services such as Hydro-Quebec, trash collectors, mobile phone providers, credit card companies, as well as gaming commissions. A spreadsheets and series of emails sent by Bluberi to Callidus during this period regarding the accumulating number of receivables are communicated *en liasse* as **Exhibit P-42**.
211. By the end of 2014, Bluberi found itself unable to secure more licenses to install new games due to Callidus' refusal to fund both the preparation of audited financial statements by its auditors, Deloitte LLP. Gaming commissions required up-to-date financial statements to maintain existing licenses and to consider new applications.
212. On numerous occasions, Duhamel and company staff found themselves essentially begging Callidus and its representatives to pay Deloitte, who would, understandably, not perform any new work so long as arrears were not paid.
213. Callidus also prevented Bluberi from reaching an accommodation to pay the account of Deloitte, causing all the collateral damages described herein. Indeed, in August 2015, Deloitte and Duhamel agreed to a payment plan by installments, which agreement was soon thereafter reneged upon by Castelli, acting at the behest of Callidus, as appears from emails from July 2015 and August 2015, communicated *en liasse* as **Exhibit P-43**.
214. In September 2015, weeks before seeking CCAA proceedings, Duhamel's pleas with Callidus to pay Deloitte fell on deaf ears. On September 16, 2015, further to a request by Bluberi to implement a solution offered by Deloitte (i.e. paying Deloitte's accounts with anticipated R&D credits), which solution would have solved most of the issues with that account, Boyer—deeply immersed, from Toronto, in the day-to-day minutiae of operations, including accounts payable—responded:

“[N]ot going to happen.”

as appears from an email exchange communicated *en liasse* as **Exhibit P-44**.

215. In response to another urgent plea for permission to pay Deloitte, Boyer responded:

“Isn't there potentially a better use of limited cash than to pay Deloitte?”

as appears from an email exchange from July 2015 and August 2015, 2015, **Exhibit P-45**.

216. Moreover, in order to maintain existing licenses in good standing, certain fees had to be paid periodically. Duhamel advised Callidus that, if a cheque issued to the order of a gaming commission was dishonoured for insufficient funds, Bluberi's relationship with that gaming commission would be severely impaired, or even terminated. Moreover, due to reporting requirements and the nature of the industry, this would almost certainly have a domino effect on Bluberi's relations with other gaming commissions. Incredibly, this existential risk did not change Callidus' behaviour.
217. The situation deteriorated to the point where Marie-Claude Lapierre (Bluberi's Director of Operations and Duhamel's spouse) had to pay licensing fees from her own pocket so that Bluberi would not lose licenses.

(F) Callidus imposes its terms on a new loan agreement

218. In April 2015, Callidus commissioned Hilco to prepare another report, which was issued on June 16, 2015 (the "**Fourth Hilco Report**") evaluating Bluberi's assets with an effective date of February 28, 2015, as appears from a copy of the Fourth Hilco Report communicated as **Exhibit P-46**.
219. Importantly, even as Callidus was exerting this financial pressure and evoking Bluberi's financial challenges as the nominal reason for its actions, Reese and others confirmed at various times, in conversations and telephone meetings, their belief "in Bluberi's potential and value"; that it is a matter of "putting boots on the ground ("deploying machines") and getting the right opportunities," and that there was indeed "money to be made" with Bluberi, the whole as will be demonstrated at trial.
220. Although Bluberi had placed more machines and generated more revenues since the Third Hilco Report, the Fourth Hilco Report appraised Bluberi at \$39 million (down from \$58 million) largely on the basis that Bluberi had not met certain so-called targets and on the unfounded assumption that Bluberi would stop growing its business despite historical and current market evidence to the contrary.
221. On the basis of the Fourth Hilco Report, Callidus could claim that with a lower valuation than the notional loan amount, it was entitled to invoke problems with the borrowing base and potential defaults. Now armed with a Hilco valuation that said just what Callidus needed it to say, Callidus demonstrated an even greater degree of aggression toward Bluberi.
222. Despite its concerns by this point (Q2 and Q3 of 2015), Callidus did not formally invoke any default, nor did it send any default notices pursuant to the loan agreement or other formal notices or prior notices pursuant to the CCAA or the Bankruptcy and Insolvency Act.

223. Rather, Callidus submitted a new loan agreement to Bluberi for execution. On June 1, 2015, as terms for a new loan agreement were being discussed, Bluberi wrote to Callidus as follows:

Craig / David

I would like to inform you of the critical situation at Bluberi, and the fact that as of this week, we are unable to operate due to the lack of funding. Failing to find a solution today will leave us with no choice but to inform tomorrow morning our employees, suppliers and accounts that we have cash flow issues and that until Bluberi gets funding from Callidus we have to delay our deployment of cabinets to casinos and postpone all account payable.

The loan agreement that I have been asked to sign does not reflect the agreement discussed with Craig on February 13, 2015. [...]

With the conditions currently included in the agreement, Bluberi would be short of approx. \$5 million by December 2015, whereas with the agreed conditions (from Feb 13), Bluberi would have a slight surplus \$ 800K at the end of the year.

as appears from the June 1, 2015 email exchange between Duhamel to Boyer, **Exhibit P-47**.

224. Callidus' response, received on the same day, was as follows:

You have been advised repeatedly that what is reflected in the loan agreement is what has been approved

The changes you wish to see will be considered by credit committee. But that will only happen once the current loan agreement is signed

The supplier issues you speak to frankly are your issues and more specifically from a failed deployment strategy which rests solely with you

Regards

Craig (Emphasis added)

as appears from Exhibit P-47.

225. Given Boyer's role and approach with Callidus, Duhamel was reticent to allow him on Bluberi's Board of Directors. Boyer informed Duhamel that Bluberi had no choice, as "Newton [Glassman] wants me on the board," as appears from an email dated June 18, 2015, **Exhibit P-48**.

226. Faced with Callidus' rigidity, and seeing as the new Board of Directors was presented to Bluberi as its best hope for an objective and reliable interlocutor with Callidus and the "credit committee," Duhamel felt compelled to agree to modify the constitution of the Board of Directors to include three more directors, the choice of which would have to be satisfactory to Callidus, and agreed to execute the Fourth Amending Letter, Exhibit P-25-I.

227. Still, Bluberi did not in fact receive a single dollar of new working capital. Far from abating, the calls and letters from numerous unpaid creditors increased. Indeed, the Fourth Amending Letter purports to address Bluberi's "request to maintain and establish" a new credit facility, but although Bluberi notionally "received" \$14 million, this entire amount served to pay interest, advances, fees and penalties to Callidus. Bluberi was still in overdraft.
228. Obviously, without new working capital, Bluberi was destined to fail; the Fourth Amending Letter served only to consolidate Callidus' position.
229. Among the notable terms of the Fourth Amending Letter, Exhibit P-25-I, was that most of the indebtedness thenceforth bore 35% interest.
230. Despite the fact that the Fourth Amending Letter was merely a reshuffling by Callidus of its loans and an opportunity to acquire more security, Callidus charged a closing fee in the amount of \$1.3 million to the overall indebtedness of Bluberi Gaming, making sure to keep the "non-refundable additional facility" in the amount of the greater of \$2.8 million or 5% of the business enterprise value of Bluberi Gaming.
231. Consistent with its preparations to take ownership, Callidus also demanded in the Fourth Amending Letter that Duhamel (as trustee of the family trusts) pledge to Callidus all of the equity shares in Bluberi (see subsection 22(n) of the Fourth Amending Letter), with undertakings by the borrowers to vote in accordance with covenants contained at section 28 of the Fourth Amending Letter.
232. As for the new Board of Directors, it was to be comprised of:
- (a) Callidus Vice-President Craig Boyer;
 - (b) Callidus' lawyer Michael Lipton (of Dickson Wright LLP), who was later heavily involved in the CCAA Proceedings, supporting Callidus' contestations and positions before the Superior Court;
 - (c) Mr. Sean Sirois (a professional in institutional investments), who was a long time friend to Callidus COO and co-Defendant David Reese; and
 - (d) Gérald Duhamel.
233. Although this Board was clearly comprised of Callidus-friendly people, Duhamel genuinely and in good faith believed that its members would act in accordance with their fiduciary duties as directors and support Bluberi.
- (G) Callidus takes control of the Board of Directors**
234. On June 30, 2015, the new Board of Directors held its first meeting, as appears from a copy of the minutes of the said meeting is communicated as **Exhibit P-49**.

235. However, seeing as the minutes of the said meeting were incomplete and therefore inaccurately reflected the content thereof, Duhamel sent to the other members of the Board his own “additional minutes” of the meeting of June 30, 2015, a copy of which are communicated herewith as **Exhibit P-50**.
236. Among the first decisions taken by Mr. Castelli and the new Board were to demand that Duhamel “step down” from any role in operations, and to resolve to make an official announcement to that effect to all employees on July 14, 2015. Moreover, the Board proceeded to fire, with immediate effect, Marie-Claude Lapierre, Duhamel’s spouse who was an integral part of the business and who was highly appreciated by employees, as Director of Operations.
237. It is worth noting that Ms. Lapierre was fired at Callidus’ behest, even though, mere days earlier (on June 10, 2015), the parties had negotiated the terms and conditions pertaining to her employment and remuneration, and had included same in the Fourth Amending Letter (subsections 24(b)(vii) thereof).
238. As for Duhamel, he was immediately relegated to minor roles within the Company, with Callidus increasingly vetoing or otherwise imposing a series of operational, strategic, financial and personnel decisions upon Bluberi, ultimately taking *de facto* control of it, as more fully set forth below.
239. Therefore, by the summer of 2015, Callidus had succeeded in:
- (a) having a COO of its choosing in charge of operations;
 - (b) having Bluberi purportedly governed by a Board of Directors essentially handpicked by Callidus, with a Callidus employee, Callidus’ lawyer and a friend of Defendant Reese constituting three of its four members;
 - (c) imposing a new Sales Director, who was in charge of sales but not qualified for this position for Bluberi;
 - (d) ridding Duhamel of all authority and decision-making power;
 - (e) having its own consultants work on site at Bluberi’s offices on behalf of Callidus, overseeing virtually all aspects of the Company, and reporting to Callidus; and
 - (f) firing Ms. Lapierre.
240. However, Callidus and the Board members it had chosen for Bluberi quickly came to realize that some of these changes resulted in potential conflicts of interest and regulatory issues.

241. Seeing as Mr. Lipton was already acting as counsel to Callidus, he asked Duhamel to confirm the terms of his tenure as director, which included various forms of waivers and acknowledgments, as well as a condition that, in the context of his decision-making as board member, “I will have to recuse myself from any decision involving Callidus Capital Corporation,” as appears from Mr. Lipton’s letter to Duhamel dated June 25, 2017, **Exhibit P-51**.
242. It should be noted that, on July 31, 2015, whereas board meetings had already taken place and decisions had already been taken in respect of Bluberi, Mr. Lipton sought to retract this condition, writing to Duhamel as follows, as more fully appears from a copy from Mr. Lipton’s letter to Duhamel dated July 31, 2015, **Exhibit P-52**:
- In my letter to you dated June 25, 2015 (copy enclosed), in response to your invitation to serve on the board of directors of Bluberi, I advised, *inter alia*, that “I will need to recuse myself from any issues relating to Callidus Capital Corporation”. At the time of the letter, I was not aware of the full extent of the relationship between Bluberi and Callidus and the significant impact Callidus may have on Bluberi. [...]
- As an independent director, I will need to participate in the discussions and decisions relating to Callidus and accordingly, I cannot recuse myself from any issues relating to Callidus.
243. Meanwhile, lengthy discussions were held principally between Mr. Lipton and Duhamel as well as counsel, mainly surrounding an indemnity agreement that the board members required Bluberi to sign. Duhamel had concerns with, *inter alia*, the scope of the proposed indemnity agreement, as well as the amount of the indemnity, which the Board members sought to have increased from \$2 million to \$20 million.
244. On July 14, 2015, a second meeting of the Board of Directors was held. Among the principal issues raised was the matter of the directors’ liability insurance. Mr. Lipton and Mr. Sirois requested the coverage increase to \$20 million, but opined that the “Duhamel family” should be excluded from certain provisions that the other board members would benefit from, as appears from a copy of the minutes of the July 14, 2015 meeting and accompanying email from Diego Castelli communicated *en liasse* as **Exhibit P-53**.
245. Unsatisfied with the level of transparency and detail of the minutes prepared by Mr. Castelli, Duhamel prepared “additional minutes” and circulated same to the other Board Members, a copy of which are communicated as **Exhibit P-54**.
246. Clearly, as will be demonstrated at trial, Mr. Sirois, Mr. Lipton and Boyer were highly concerned about their potential liability as directors and of the high risk posed by their conflicts of interest. They sought sweeping indemnities from both Callidus and Bluberi.
247. Mr. Sirois sought legal counsel from a law firm and from Mr. Lipton. Among some of the changes proposed by Mr. Sirois in the “invitation letter” he drafted for Duhamel to send back to Mr. Sirois himself, was the removal of the requirement that Mr. Sirois provide guidance in a manner “which is consistent with ... the best interest of the organization

and the needs of its shareholders,” as will be proven at trial and as appears from mark-up of the so-called board appointment invitation letter made by Mr. Sirois and his counsel, as well as accompanying correspondence communicated *en liasse* as **Exhibit P-55**.

248. As for Mr. Lipton, as appears from his June 25, 2015 letter, Exhibit P-51, he imposed a litany of conditions and had to navigate through to his own firm’s restrictions on the matter.
249. The indemnity agreement was never executed, for the reasons set forth below.
250. While these discussions were ongoing, on July 29, 2015, a Board meeting was held, without the presence of the Duhamel, who was not invited to the said meeting despite being a member of the Board himself. The minutes of the said meeting, as taken by Mr. Castelli, as well as the email exchanges which took place after July 29, 2015 between the Board members and Mr. Castelli, without including Mr. Duhamel, are communicated *en liasse* as **Exhibit P-56**.
251. These emails and the minutes of the meeting demonstrate the maneuvering by Callidus with respect to Bluberi, which was now becoming systemic. Some of the major highlights of these exchanges and minutes include:
 - (a) Following a query from Mr. Lipton, Mr. Castelli informed the participants on the call that Mr. Duhamel was not invited to the call, in accordance with Mr. Duhamel’s alleged wishes not to be involved in day-to-day operations. This is categorically denied by Duhamel.
 - (b) Mr. Lipton was rightfully concerned about the participants “making decisions without Gérald which affect the business.”
 - (c) Mr. Castelli reiterated the well known and urgent problem relating to the potentially imminent loss of licensure from the California gaming commission, stemming from Callidus’ refusal to pay the fees (\$33,000) and its refusal to pay Deloitte to prepare the financial statements required by the gaming commissions.
 - (d) Mr. Lipton announced that it is not clear if he is actually an “advisor”, a “consultant” or a member of the Board of Directors, and that it “may be better to advisor/consultant.”
 - (e) It appears the Board was for the first time becoming sensitized to the real problem of having new Board members. Strict disclosure requirements and the strict vetting process demanded by gaming commissions makes it difficult to add new board members and to remove existing ones (in this case Duhamel, who must have effective control of Bluberi in order not to violate gaming licenses, per gaming commission requirements).

- (f) Moreover, the participants realized they have a transparency problem on their hands, for having failed to disclose to the gaming commissions that a new board had been constituted. Mr. Lipton advises that he is concerned Bluberi might be in default vis-à-vis the gaming commissions.
 - (g) Mr. Castelli proposed he be appointed general manager and that the Board be a mere advisory board.
 - (h) Mr. Lipton reiterated that he does not “want to prejudice Gérald in any way and want[s] to provide transparency and disclosure regarding our involvement.”
 - (i) Boyer, joining the meeting only after all this had taken place, dismissed all these concerns and ideas. He advised that the “Credit committee wants a real board, not an advisory board, whatever the implications on cost.”
252. Having received the detailed transcript and having assumed the call was recorded, Boyer immediately replied to all recipients of Mr. Catelli’s email, removing Duhamel however, expressing the view that the “tape needs to be destroyed” since he was unaware the meeting was potentially recorded, which he found “troubling”, as appears from Boyer’s email of July 29, 2015, Exhibit P-56.
253. Mr. Lipton sought to reassure Boyer, surmising that the meeting was likely not recorded. Boyer then sent another email the same night, contesting Mr. Lipton’s theory on the basis that Boyer’s comments “appeared verbatim.” He also expressed concern that he disclosed “some stuff re credit committee that I said was off the record and never to be repeated,” that the discussion appeared to be taped, which was “a big concern,” the whole as appears the email exchange of July 30, 2015, Exhibit P-56.
254. Mr. Duhamel was not copied on these exchanges, but came to be privy to them when reinstated pursuant to the Initial Order issued in the CCAA Proceedings.
255. On August 10, 2015, Duhamel sent a letter (memorandum) reminding Mr. Lipton and other Board Members of their fiduciary duty towards the company, as well as their duty of loyalty, good faith, care and due diligence, a copy of said letter being communicated as **Exhibit P-57**.
256. Three days later, a teleconference meeting was convened. From that point on, Callidus and the members of the Board decided to label the Board as an “Advisory Committee.”
257. Concurrently with the filing of the CCAA Proceedings, Mr. Lipton sent another formal resignation letter, as appears from Mr. Lipton’s letter of November 16, 2015, **Exhibit P-58**. In said letter, Mr. Lipton claims that despite his resignation as Board Member, he did not actually serve as a Board member in any official capacity.

(H) Callidus refuses or delays funding of payroll and attempts to confiscate shareholders' rights

258. It is in the context of this vicious circle of impaired performance caused by Callidus that Callidus (through Boyer, Reese and Sean Sirois) exerted extreme pressure on Duhamel, in October 2015, to sign a so-called "Voting Trust Agreement" in which Duhamel would have relinquished all of his rights with the objective of effectively taking complete control of Bluberi while at the same time circumventing the licensing rules of the gaming commissions.

259. The Voting Trust Agreement would have maintained Duhamel in place as a Director but in name only; in reality, he would be a strawman for Callidus (vis-à-vis the gaming commissions), while Callidus would effectively control all decision making, finances and operations of Bluberi through Messrs. Sirois, Bouffard, Castelli and others. A copy of the proposed Voting Trust Agreement is communicated as **Exhibit P-59**.

260. When it was becoming apparent that Callidus was subsuming the funding of the October 29, 2015 payroll to the unrelated condition precedent that Duhamel execute the Voting Trust Agreement and a new employment contract which Callidus was demanding that Duhamel sign, and seeing that Callidus was impervious to the threats this posed on the survival of the business, Castelli wrote to Boyer advising that:

It's been 3 weeks since we last got funded and we have no news on when we might receive money.

as appears from email correspondences dated October 29 and 30, 2015 between Mr. Castelli and Boyer, communicated *en liasse* as **Exhibit P-60**.

261. Boyer's response, 45 minutes later, was:

Gerald is the one holding this up. He knows that. Perhaps you can remind him of what he must do.

262. The next day, Castelli wrote to Boyer yet again, advising that:

[N]ot meeting payroll will have a devastating effect on the business, and we may not recover from this.

263. Boyer simply replied "I understand. Gerald is the issue."

264. Counsel for Callidus also got involved, writing to Duhamel's employment lawyer to say:

Callidus has made clear for a number of weeks that in order for anything to move forward the Voting Trust Agreement needs to be signed. Kindly ask your client to sign this afternoon. (Emphasis added)

265. On October 30, 2015, Castelli and Bouffard had a telling exchange on the issue of payroll and Duhamel's rights. The following email exchange epitomizes the many problems faced by Bluberi: i.e. the lack of loyalty from Castelli and Bouffard to Bluberi; the lack of concern for the employees exhibited by Castelli and Callidus; and the fact that the employees' payroll was being used as leverage for Callidus to get its way. Bouffard wrote to Castelli as follows:

Hi Diego,

With the money left in the bank account we would be able to make a one week pay for all employee(sic), except one person (you know who).⁷ It will be tight but we should be ok. We would advise Callidus of our intention. (Emphasis added)

Ten minutes later, Castelli responds to Bouffard:

We need to wait for the outcome of the meeting today between Gerald and David. Salaries is the leverage Callidus has so they will not agree until a decision is made. I've made the point of paying employees this morning with Craig.

Having said this, I agree with your proposal. Let's wait till end of day. (Emphasis added)

266. Although the payroll was due to be disbursed on October 29, 2015, Callidus was still refusing to fund it by that date.
267. The proposal of the Voting Trust Agreement was framed by Reese as a "suggestion" that Duhamel "elegantly withdraw" from the Company temporarily and that he allow his shareholding interests in Bluberi Gaming be entrusted to Boyer, the whole in view of allowing Callidus to "turn things around."
268. However, it quickly became evident to Duhamel that this "elegant withdrawal" would not be temporary, that it was not subject to any discussion or compromise by Callidus, that it would spell the permanent demise of Bluberi and Duhamel's involvement in or control over it, and that the Voting Trust Agreement was in all aspects tantamount to a voluntary surrender of Bluberi. It was a means for Callidus to essentially take the company and its assets in payment, and own all of its property, without extinguishing or comprising any of its debt, all the while enjoying the benefits of Duhamel's standing as respondent for licensing purposes.
269. Duhamel therefore initially resisted the demand to sign the Voting Trust Agreement, leading to a stalemate despite extensive negotiations. Brandishing a carrot and a stick, i.e. the threat of legal and hypothecary recourse, including realization of the share pledge, on one hand, and the reassurance that Duhamel's interests would be looked after (in that he would have secure employment with Bluberi under the leadership of Callidus) thus helping turn Bluberi around, on the other hand, Callidus got Duhamel to

⁷ Note that by then, Duhamel had already agreed to substantially reduce his salary, to alleviate financial pressure and cash flow stress.

agree to negotiate new terms and the Voting Trust Agreement. However, in reading and reviewing the said agreement, he came to realize Callidus' true intentions and refused to sign it. A copy of the exchanges and comments Duhamel provided to Callidus in respect of the Voting Trust Agreement and the employment agreement are communicated herewith *en liasse* as **Exhibit P-61**.

270. In the meantime, most of the employees had ceased attending work on Friday, October 30, 2015. Duhamel and Ms. Lapierre personally guaranteed the salary of certain employees to maintain essential services in the technical support and licensing departments, in order to ensure compliance with gaming commission requirements. Some employees stayed on due solely to professional or personal loyalty to Duhamel or Ms. Lapierre.
271. On Saturday, November 7, 2015, Mr. Castelli was planning to summon all employees to a meeting at Bluberi offices on Monday, November 9, 2015, to communicate the "very good news" that "Gerald is gone/no longer in charge of Bluberi." However, the meeting never took place, following an email to employees from Duhamel advising that Mr. Castelli and Callidus were unlawfully purporting to have evicted him from the company, the whole as appears from emails communicated *en liasse* as **Exhibit P-62**.
272. It was on that same Saturday morning that Duhamel was served by bailiff with a letter from Callidus, wherein it purported to take immediate ownership of Bluberi by exercising its purported rights under the share pledge signed by Duhamel.
273. On November 10, 2015, with the events of the previous days and Callidus' maintained stance that it would not fund any future payroll, Bluberi's Director of Human Resources wrote to Duhamel, advising that, "[*nous travaillons*] *dans des conditions absolument inqualifiables (stress, perte d'emploi possible, etc.*" (translation: "[we are working under] absolutely indescribable conditions (stress, possible loss of employment, etc.)", the whole as appears from an email dated November 10, 2015, communicated as **Exhibit P-63**.
274. Callidus indeed made good on its threat to refuse to fund the November 12, 2015 payroll and indicated that for payroll to be reinstated it had to be in control of Bluberi. This is one of the reasons Bluberi was forced to seek protection under the CCAA.
275. After taking ownership of Bluberi, Callidus and its agents engaged in a communications campaign against Duhamel, telling employees and others in the Drummondville community that Duhamel did not care about the employees and that it was because of him their jobs were in jeopardy, as he had only looked after his personal interests as shareholder. This could not be further from the truth.

VII. ENDGAME: CCAA PROCEEDINGS

(A) Bluberi's initial petition for protection from Callidus

276. As mentioned earlier, seeing that Duhamel would not capitulate to Callidus' demands to surrender his shareholding interest and rights voluntarily, Callidus, through its counsel, served upon Duhamel, on Saturday, November 7, 2015, a letter (the "**November 7 Letter**") in which it alleged, for the very first time, that Bluberi was purportedly in default under the various Credit Agreements. Callidus purported to seize the shares held by BGI in the share capital of Bluberi Gaming and Bluberi USA pursuant to the purported share pledge provided to Callidus. A copy of said letter and Bluberi's response are communicated *en liasse* as **Exhibit P-64**.
277. Given the need to stay these sudden purported realization measures undertaken by Callidus, and considering the myriad other lawsuits and demand letters Bluberi was receiving from other creditors, it had no choice but to seek relief from the Superior Court under the CCAA. On November 11, 2015, Bluberi filed a Petition for the Issuance of an Initial Order pursuant to the CCAA, in Superior Court file 500-11-049737-154, a copy of said motion being communicated as **Exhibit P-65**.
278. On November 12, 2015, despite vigorous contestation by Callidus, the Honorable Jean-François Michaud of the Superior Court of Quebec (the "**CCAA Court**") granted an Initial Order that included a stay of proceedings against Bluberi (the "**Stay of Proceedings**"). On November 18, 2015, despite vigorous contestation by Callidus once again, the Superior Court granted an Amended and Restated Initial Order in respect of Bluberi (the "**Initial Order**") and Ernst & Young ("**EY**") was appointed as Monitor to the Company pursuant to the CCAA, as appears from a copy of the Initial Order communicated as **Exhibit P-66**.
279. The contestation filed by Callidus in the context of the relief being sought by Bluberi contained numerous misleading allegations, wherein Callidus resorted to *ad hominem* attacks against Duhamel personally, making inflammatory allegations in an apparent effort to tarnish his reputation, particularly vis-à-vis Bluberi's employees, as appears from a copy of said contestation communicated as **Exhibit P-67**. Most of the premises and arguments contained in this contestation were dismissed by the CCAA Court.
280. Perhaps the most egregious of these allegations—denounced by the supervising judge—was that Bluberi was not cash-flow insolvent and was able to pay its liabilities as they became due (see paragraphs 128-129). In fact, this claim could either be true or not true, depending entirely upon the willingness of Callidus to make funds available.
281. It is worth noting that Bluberi later came to learn that, for the purposes of the preparation of Callidus' contestation, Mr. Bouffard attended Gowlings' offices to assist the lawyers, as appears from the detail of invoices from Gowlings, communicated *en liasse* as **Exhibit P-68**. In other words, despite his legal duty of loyalty towards Bluberi, Bouffard,

an executive at Bluberi, was cooperating with Bluberi's creditor and adversary in the context of litigious court proceedings, helping Callidus contest the relief being sought by Bluberi, with the ultimate objective of allowing Callidus to take ownership of Bluberi.

282. In December 2015, Joe Pernica of Pernica Advisory Services Inc. ("**Pernica**") was appointed as Chief Restructuring Officer (the "**CRO**").
283. The appointment of Pernica was ultimately the result of a compromise, seeing as Bluberi was faced with a risk that the Court might be persuaded to appoint another CRO, Mr. Scott Sinclair ("**Sinclair**"), whose candidacy was vigorously challenged by Bluberi. Sinclair is a defendant in at least one lawsuit where he is alleged to have helped Callidus in its loan-to-own initiative against another borrower of Callidus: *Alken Basin Drilling Ltd. v. Callidus Capital Corporation, Scott Sinclair et al* (Alberta Court of Queen's Bench, no. 1801-06399), which is communicated herewith as **Exhibit P-69**.
284. Callidus adopted a quarrelsome, aggressive and litigious approach in the context of the entire CCAA Proceedings, which are currently stalled pending an appeal by Callidus before the Court of Appeal. It contested virtually every motion filed by Bluberi, and filed numerous motions of its own, only to desist from some of them just before or during scheduled hearings. It commissioned unnecessary reports from professionals, including Richter LLP (who acted as *de facto* "shadow Monitor"), and from Mr. Lipton, whose reports were self-serving to Callidus, the whole as set forth below.
285. In the context of a recent decision, rendered on March 16, 2018, a copy of which is communicated as **Exhibit P-70**, the CCAA Court aptly highlighted (if only partially) some of Callidus' conduct in these proceedings. Reference is made to paragraphs 40 et seq. of the said decision of Justice Michaud.⁸

(B) Sale of Bluberi's assets

286. On January 28, 2016, following pressure from Callidus to force an expedited sales process in order to sell Bluberi's business and/or assets as quickly as possible, an Order for a Sales Solicitation Process was issued, as appears from **Exhibit P-71**.
287. Hilco had previously reported in its report commissions by Callidus that an orderly liquidation would require from 6 to 12 months. However, Callidus submitted to the CCAA Court that a sales process could be completed within weeks, and it commissioned a report from Richter to recommend to the Court an expedited sales process in respect of Bluberi's assets, opining that a sales and solicitation process ("**SSP**") could be launched in 45 days, as appears from Richter's report dated December 15, 2015 (the "**Richter Report**"), **Exhibit P-72**.

⁸ Although the said decision is under appeal, the facts chronicled in the said decision of March 16, 2018 are not contested by Callidus in its brief and submissions at the Court of Appeal.

288. The Richter Report opined that “there is no reasonable possibility that the Company will be able to execute a restructuring which will create value in excess of [Callidus’] senior secured debt”, as appears from paragraph 4 of the Richter Report (Exhibit P-72).
289. Accordingly, Bluberi resisted Callidus’ position, requesting more time to conduct a sales process. On January 28, 2016, the Superior Court ultimately ordered an expedited sales and solicitation process (the “**SSP Order**”). The deadline to file bids was set at March 7, 2016, leaving Bluberi fewer than 5 weeks to solicit potential bidders.
290. Not unexpectedly, due to the enormity of Callidus’ ever-growing debt at over 35% interest, combined with the fact that Callidus made it clear that it would not be prepared to take any reduction of its debt to facilitate a sale to a third party, the only bid for the entirety of the assets (rather than specific lots) was made by Callidus, as appears from the Fourth Report of the Monitor to the Court, report dated May 28, 2016 communicated as **Exhibit P-73**.
291. On June 23, 2016, Callidus and Bluberi entered into an Asset Purchase Agreement (“**APA**”), which converted all but \$3 million of Bluberi’s purported debt to Callidus into a “credit bid” for the acquisition by Callidus of the Bluberi assets and certain parts of its business, as appears from a copy of the APA communicated as **Exhibit P-74**.
292. However, the APA carved out Bluberi’s rights, recourses and claims against Callidus, which rights were not vested in the purchasers (as defined in the APA, the “**Bluberi Retained Claims**”).
293. Despite Callidus’ representations to the Superior Court that a transition to Callidus would be seamless and take mere weeks, it ended up requiring over 9 months, until February 2017, for Callidus to finally take over operations and licensure of Bluberi, as set forth below.
294. The primary reason for the delay was that Callidus (or the purchasing entities and certain individuals) needed to obtain a certain critical mass of licenses from key gaming commissions in order to be able to ensure a modicum of succession and transition from the Bluberi vendor entities and from Duhamel.
295. Even though Duhamel could have resigned following the conclusion of the APA, he nevertheless remained on board, mainly for licensure purposes, as the new COO applied for his licensure and as Callidus figured its way through the various commissions and regulatory framework of Indian Commissions and Quebec regulations. He did this out of good faith, to ensure the viability and survival of jobs, and with a view towards ensuring that his conduct could not be reproached in the context of these and the CCAA proceedings.

(C) Callidus' attempts to use the CCAA to block Bluberi's lawsuit

296. Callidus also made every effort in the CCAA proceedings to thwart Bluberi's ability to bring the present proceedings as part of its restructuring efforts. Some of these are chronicled in Justice Michaud's decision of March 16, 2018.
297. Callidus demonstrated bad faith in the context of the CCAA Proceedings. A few instances of Callidus' dilatory conduct are chronicled in Justice Michaud's decision of March 16, 2018, and more will be demonstrated at the trial hereof.
298. Callidus attempted to file two separate plans of compromise or arrangements whereby it would obtain unidirectional releases from Bluberi, via the consent of other creditors, in exchange for paying less than 1% of the value of Bluberi to the creditors (approximately \$2 million, under a new plan). Under the plans proposed by Callidus, Bluberi would be compelled to release Callidus, but Callidus would provide no releases, while paying creditors only a fraction of their provable claims against Bluberi.

VIII. PURPORTED PERSONAL GUARANTEE OF GÉRALD DUHAMEL

299. As part of the APA, Callidus insisted on establishing the purchase price at total value of Bluberi indebtedness towards Callidus, including capital, interest and costs, less an amount of \$3 million.
300. By carving this amount out to survive Callidus' claim, despite essentially taking the company in payment, Callidus ensured the possibility of pursuing the \$3 million personal guarantee (suretyship) provided by Duhamel.
301. This is consistent with Callidus' loan-to-own strategy, as allegedly employed against other clients across North America, whereby it not only forces its clients into bankruptcy, receivership or other insolvency process, but also subsequently ensures that the debtor's principals are personally embroiled in insolvency proceedings so as to completely neutralize any attempt at lawsuits or counter-claims against Callidus.
302. Given the abusive and unlawful conduct of Callidus and its principals, Plaintiffs contest the validity of the suretyship. Alternatively, Plaintiffs assert that any potential monetary obligation of Duhamel in favour of Callidus is extinct by reason of legal compensation between any such amount and the damages due by Defendants.
303. As noted, in the context of their proposed plan of arrangements, Callidus sought or seeks to obtain releases in its favour, as well as in favour of Catalyst and the other Defendants, but endeavoured not to reciprocate those releases in favour of Duhamel or Plaintiffs. Callidus would like to be released of all obligations, but wishes to still be able to sue Duhamel for his personal suretyship.

IX. DEFENDANTS' FAULTS: CALLIDUS' NOTORIOUS "PLAYBOOK" APPLIED TO BLUBERI

304. The co-Defendants Callidus, Catalyst, Glassman, Riley and Reese all participated in the conspiracy to provoke and unduly benefit from the demise of Bluberi, to ultimately take ownership of the business, and then attempt to stifle Plaintiffs' ability to pursue this recourse. Their extra-contractual liability has therefore been engaged, having banded together to perform illegal actions and omissions, the whole as set forth below.
305. The tactics employed by Callidus against Bluberi—the incremental stranglehold over and hemorrhaging of borrowers; the insidious takeover of the operating borrowing entities; the replacement of managers and directors; the provocation of insolvency situations—have been alleged in other proceedings, by other borrowers of Callidus.
306. Callidus' approach to Bluberi appears to be part of a discernable pattern. Callidus has been accused of operating in a very similar manner in cases involving Groupe Arsenault Inc. (Trois-Rivières, Québec); Fortress Resources, LLC (Kentucky, USA); Xchange Technology Group LLC (Toronto, Ontario); ESCO Marine, Inc. (Texas, USA); and Alken Basin Drilling Ltd. (Calgary, Alberta). Certain principal proceedings pertaining to these matters, in which a similar pattern of behaviour on the part of Callidus is alleged, are communicated *en liasse* as **Exhibit P-75**.
307. Callidus has denied all allegations of wrongdoing and has, in many instances, sued various parties, including journalists and claimants, for defamation and other causes of action.
308. One of the lawsuit against Callidus was actually filed by Craig Boyer, one of Bluberi's point of contacts, who has now left and alleges a series of mistreatments and faults in the context of his departure from Callidus, claiming \$100,000. Boyer alleges that "the management style of [Callidus] is driven by the Chief Executive Officer of Catalyst Capital Corporation, Newton Glassman" and that "unfortunately, that management style focuses on taking hyper-aggressive positions with third parties." Callidus has countersued for \$150,000,000.
309. The allegations levelled by each of the parties against the other in that lawsuit are relevant in the present matter in that they set out that Boyer reported directly to Reese; that Boyer resigned from Callidus or that, alternatively, he was dismissed for cause for having breached fiduciary duties. Boyer alleges that Callidus' counter-claim is "vexatious" and is "raised for ulterior purposes" since Callidus is, according to Boyer and other media reports, "subject to multiple complaints and regulatory investigations with respect to its material non-disclosure to fund members and the public as to the status...of its various investments."
310. A copy of the claim and counter-claim are communicated *en liasse* as **Exhibit P-76**.

311. Plaintiffs intend to demonstrate that the Defendants' conduct in this matter was premeditated, deliberate, animated by bad faith and an intent to injure in order to provoke and then unduly and unlawfully profit financially from Bluberi's demise, as well as from the fruits of Plaintiffs' labour and investments, with the intent and consequence of absconding with Bluberi's enterprise and assets.
312. As will be demonstrated at trial, Callidus has demonstrated no aversion to leaving dormant some of the businesses or the collateral upon which they foreclose. The realization of hypothecary recourses/foreclosures are billed as successes for Callidus, which represents to shareholders, on the basis of its own evaluations, that it has realized substantial value and recovered debt.
313. Accordingly, in the case of Bluberi as in others, Defendants were able to tell shareholders that their "yield enhancement strategy" was successful: Callidus realized on the full value of their debt in Bluberi, having conveniently succeeded in establishing an enterprise value that corresponded with the amount of the credit bid, which in turn corresponded with the value of the debt, with no loss apparent on the books and with collateral with "upside" to boot.
314. Indeed, whereas the Fourth Hilco Report appraised Bluberi at \$39 million at February 2015, Callidus entered a credit bid in March 2016 valued at approximately \$91 million to acquire Bluberi's assets in the context of the SSP, then, at closing in November 2017, listed the value at \$133 million and, most recently, has represented that Bluberi is estimated to be valued at \$237 million, as set forth below.
315. Callidus' refusal, animated by bad faith, to consider asset realization strategies or other exit strategies that would have reduced the Bluberi debt or otherwise allowed for an orderly and indeed potentially profitable exit from the credit facility and security agreements, compounded by its negligence and wanton disregard of Bluberi's interests, resulted in significant prejudice to Bluberi.
316. Callidus deliberately and/or negligently provoked severe liquidity constraints and crises. Callidus blocked restructuring and refinancing efforts and actively sought to acquire Bluberi's assets on improvident basis. Callidus has engaged in deliberate asset impairment, through its almost arbitrary extension of funding and credit facilities on a "drip feed basis," by constraining working capital available to the business, and by deliberately inciting Bluberi to default on numerous contractual arrangements with various suppliers.
317. The tactics used by Callidus and the other Defendants, including misrepresentations, unlawful interference in contacts, and unlawfully taking advantage of Bluberi when vulnerable and misleading Plaintiffs into lender-borrower relationships, have already been enumerated at the outset of this motion.

318. The Defendants have acted in bad faith in the pre-contractual phase of the contractual and business relationship between Callidus and Bluberi. The Defendants maliciously and deliberately induced Duhamel and Bluberi to enter into a contractual relationship on the basis of false pretenses and representations.
319. The Defendants have acted in bad faith in the context of the implementation and execution of the contractual and business relationship between Callidus and Bluberi.
320. The Defendants have acted in bad faith in the context of the performance of the credit facility agreements concluded between Callidus and Bluberi.
321. The Defendants have acted in bad faith in the context of the extinction of such obligations and contracts. This is ongoing as at the date hereof.
322. Through the deliberate actions and omissions of the Defendants, or through their negligence, the Plaintiffs have been deprived of revenues, business opportunities and profits.
323. In addition to the faults described above, Callidus, Catalyst, Glassman, Riley and Reese committed extra-contractual faults by inciting Callidus to commit faults in the conclusion, performance and extinction of contractual obligations.
324. Callidus, Catalyst, Glassman, Riley and Reese conspired to deliberately mislead Duhamel and Bluberi, or them to be misled, on the basis of fraudulent misrepresentations, allowing Bluberi, indeed inciting it, to enter into contracts of loan, deeds of hypothec, pledge agreements and suretyship agreements on the basis of knowingly false promises and pretenses, as described above.
325. The Defendants, for their own benefit, burdened Bluberi with debt and enormous penalties, fees, costs and other expenses, rendering the debt service extremely difficult for Bluberi to assume and allowing Callidus to seize Bluberi's assets and enterprise below market value, as will be demonstrated at the trial hereof.
326. The Defendants committed faults and conspired to deprive Plaintiffs of peaceful enjoyment and free disposition of property, in violation, *inter alia*, of article 6 of the Quebec Charter of Human Rights and Freedoms (the "**Quebec Charter**"). Plaintiffs claim damages in respect thereof, including under article 49 of the Quebec Charter.

X. CALLIDUS MANAGEMENT'S PUBLIC DISCUSSION OF ITS MODUS OPERANDI

327. Glassman, when pressed for explanations by investors and shareholders in the context of earnings calls, or in the context of press releases, has on occasion publicly acknowledged the Defendants' goals, strategy and *modus operandi*. Transcripts of other relevant Callidus Earnings Calls with shareholders are communicated *en liasse* as **Exhibit P-77**.

328. In the Q2 2016 Earnings Call of August 12, 2016, Glassman explained the notion of yield enhancement as follows (see Exhibit P-77, at p 4 of the Q2 2016 Earnings Call):

For the benefit of those who are unfamiliar with yield enhancements, they are required under IFRS accounting rules⁹ and are generally no-risk or low-risk financial [ph] instruments (sic) we receive when we make an accommodation to a borrower.

Yield enhancements are unequivocally and undeniably a fundamental, ongoing, repeating part of the business for a company such as Callidus. It is therefore a key part of normal operations, albeit they can be lumpy.

We deal in a market segment where our clients often go through structural changes. As a result, it is very common for a client to need or desire changes to the original deal with Callidus. When such changes are requested or needed by the client, Callidus may choose to accommodate the borrower, and in exchange, demand or request a change in the economic relationship, resulting in what's known as "yield enhancement". These yield enhancements can take many forms. The most commonly understood would include revenue royalty streams, periodic fee arrangements, warrants and limited equity participations.

329. In the same earnings call, on the subject of how Callidus views its “yield enhancement” strategy, Glassman explained [...], in response to a question from an analyst at CIBC World Markets Inc. as to “the type of situation that would get [Callidus] into these yield enhancement instruments” (see Exhibit P-77, at p 14 of the Q2 2016 Earnings Call):

[...] And there will be others [borrowers of Callidus] that don't execute as well as they think, and they need help from us; and as a result, we have to decide if we're going to help them. And if so, on what terms? That would be something like a company that's been in the public domain in the past, which it's now been the report process called Blueberry [ph] (sic) We will get value where we help people, or else we just won't help them and we'll liquidate our collateral.

So it's really up to us to decide if we're willing to help people and accommodate them; and if so, what the price of that will be. If you look at it, you'll see there is a range. The range is from a small fee for an extension because somebody couldn't finance us out after the term of the loan, to very large, where but for our contribution, the rest of the stakeholders ...at the borrower (sic) would not have any of the upside, and we want and believe that, as a result, we're entitled to a piece of it, and we negotiate it. (Emphasis added)

330. This is, indeed, exactly what happened with Bluberi, as exposed herein and as will be demonstrated at trial.

⁹ It is, in fact, not a generally accepted accounting measure under IFRS.

331. In response to a query posed by a representative of National Bank Financial Inc., Glassman made the following statement in respect of how Callidus profited from Bluberi (see transcript of the Q4 2016 Earnings Call, at p 11, Exhibit P-77):

Again, we haven't segmented that information. But suffice it to say, suffice it to say that our return on Bluberi more than covers the original loan and represents an extraordinary rate of return, but it also represents enormous amounts of effort and energy by the management team at the company to fix what was a broken business by the prior management team and by the people both frankly at Callidus and at Catalyst. It is a great business. (Emphasis added)

332. In explaining its business model, Glassman, in the earnings call of Q4 2016 acknowledged the following (see transcript of the Q4 2016 Earnings Call, at p 12, Exhibit P-77):

But since we have a decent track record of unlocking value of those businesses in which we become involved, let alone control, this is how we make money. When we end up with assets that are out of favor or countercyclical, the ability to help restructure a business, like Bluberi, and position it properly going forward is the way we can create extra value.

333. It is worth reiterating that, at no point in time did Callidus ever explain to Bluberi that controlling companies to “unlock” their value was how Callidus “makes money.” Bluberi rightfully assumed that, far from seeking to get “involved in” or “controlling” Bluberi to “unlock value,” Callidus, like any reasonable and good-faith lender, especially an asset-based lender, “made money” on the revenues generated from interest on the money it lent.

334. Bluberi further expected that Callidus, as any normal, well-intentioned lender, would not be predatorily on the constant lookout for an opportunity to pounce on Bluberi’s assets if they were to fall “out of favor” but, rather, would seek to mitigate its losses and recuperate its investment.

335. In another acknowledgment of that which is alleged above, that is, that Callidus changes its approach to lending and valuation mid-contract, Glassman explained at the Q3 2017 earnings call that (see transcript of the Q3 2017 Earnings Call, at pp 10-11, Exhibit P-77):

Not only do am I -- not only am I not sure that your number is correct because the vast majority is covered by collateral, not by enterprise value. We don't lend against enterprise value, at least not at the beginning of a loan. (Emphasis added)

336. Yet, in the Q2 2017 earning call, Glassman represented that:

We are an asset-based lender. We only extend loans based on a collateral available to support the loans. From time to time, in order to protect our collateral

positions, we end up owning a business that we acquire as part of a restructuring process.

as appears from page 4 of the transcript of the Q2 2017 Earnings Call, Exhibit P-9).

337. As Bluberi came to realize in the context of its dealings with Callidus, Callidus changes its approach to lending and appears to use different metrics, depending on the circumstances.
338. Crucially, with respect to the value generated by Bluberi for Callidus, the following was acknowledged by Glassman at the Q3 2017 earnings call (see transcript of the Q3 2017 Earnings Call, at p 4, Exhibit P-77):

Two such businesses removed from the loan portfolio earlier this year and consolidated on our statements. Bluberi is a gaming company, valued at its loan value approximately \$125 million, and that is before the approximate of \$112 million of unrecognized non-IFRS yield enhancement.

339. On the basis of this assessment by Glassman, Callidus would estimate the total value of Bluberi to be \$237,000,000.

XI. THE ABUSIVE INTEREST RATES IMPOSED BY CALLIDUS

340. Although the interest rates₁ as spelled out in the credit facility agreements₁ are as high as 35%, the effective percentage rate at which the Bluberi's indebtedness accrued on an annual basis could well be calculated as having surpassed 60%, as set forth below and as will be illustrated at trial.
341. When including the various fees, penalties and costs added on to the indebtedness of Bluberi, the effective borrowing costs were exorbitantly high and disproportionate not only to the capital extended, but it is also so far removed from normal and reasonable business practices in Québec so as to be legitimately considered unlawful.
342. By way of summary:
- (a) "on paper", a total of \$74.5 million was advanced to Bluberi by Callidus, over a period of 54 months;
 - (b) in reality, out of this \$74.5 million, only \$38.4 million (i.e. approximately half) was actually available to finance Bluberi's operations. As far as debt service is concerned (i.e. in interest, financial fees, and professional fees), it cost Bluberi \$91.7 million in order to borrow \$38.4 million of working capital, i.e. 206%.
 - (c) the other half, i.e. \$36.1 million, was virtually immediately returned to Callidus in the form of interest and fees, or used to pay various professional services required by Callidus;

- (d) from August 2012 until March 2014 alone, \$23.3 million received in capital from Callidus was applied immediately to pay interest charged by Callidus; and
 - (e) over the said 54-month period, over \$13 million was charged in “professional fees”, “contract closing fees” and “monitoring fees” (an average of \$240,000 every month); for example, merely renewing the credit facility agreements resulted in \$2.7 million in closing fees charged by Callidus to Bluberi in the form of a loan.
343. Given the first ranking securities granted by Bluberi in favour of Callidus, as well as the personal guarantees of Duhamel, including those pertaining to his life insurance policies and the other protections granted to Callidus, as well as the virtually complete stranglehold over the affairs and operations of the company, such high interest rates are even less justifiable.
344. Among the many factors heavily exacerbating Bluberi’s indebtedness are the professional fees incurred in the context of the restructuring proceedings. Callidus engaged numerous professionals of all sorts, including lawyers, accountants, appraisers, and others with virtual abandon and complete disregard for any notion of proportionality or reasonableness. Callidus contested virtually every motion and filed numerous frivolous motions, and two attempts to appeal two different decisions of Justice Michaud, J.S.C., as set forth above and as will be demonstrated at the trial hereof. All of the professional fees incurred by Callidus to contest Bluberi’s restructuring efforts in Court were billed to Bluberi.
345. In light of the foregoing, Callidus is not entitled to any reimbursement of interest, penalties or other costs, above and beyond the dollar-for-dollar value of the capital it extended to Bluberi, which it has realized upon through its credit bid in the context of the CCAA Proceedings.

XII. DAMAGES

346. The precise quantum of damages will be communicated in due course.
347. In accordance with, *inter alia*, article 1611 CCQ, Bluberi asserts a claim corresponding to the losses sustained by Plaintiffs and the profits of which they have been deprived. Bluberi asserts a claim in an amount corresponding to lost business opportunities, lost investments, and the spoliation of its enterprise and assets by Callidus.
348. The specific present value of Bluberi—which value was absconded by Callidus and its principals, as a result of the faulty actions and omissions described herein and which will be more fully set out at trial, as well as the loss of profits—will be the object of expert evidence.

349. As set out above, Callidus itself has acknowledged, under the auspices of official statutory reporting requirement, that Bluberi is valued at least at **\$237 million**, *sauf à parfaire*.
350. This is consistent with the steady progression of value which Bluberi has seen or which has been attributed to it over the years, for example:
- (a) As at December 2013, the Third Hilco Report, appraised Bluberi at \$58.2 million;
 - (b) To come out as the successful bidder under the SSP, Callidus entered a bid that was valued at approximately \$91 million.
 - (c) At the closing of the transaction pertaining to the APA, the Purchase Price was determined to be \$134,065,636, as appears from the Bill of Sale with respect to Bluberi and from the Statement of Purchase Price Adjustment, dated February 6, 2017 communicated *en liasse* as **Exhibit P-12**. This amount is consistent with the amount reported by Callidus in its Interim Financial Statements as part of its securities filings in November 2017, when it listed the value at \$133 million.
 - (d) In its Q4 2017 filings, Callidus reported that Bluberi's value ought to be set at its loan value of approximately \$125 million, plus the approximate of \$112 million of unrecognized non-IFRS yield enhancement, for a total of \$237 million.
351. From this amount of \$237 million, consideration is given to the fact that Callidus in fact advanced **\$38.4 million** of operating capital, which is deducted, *sauf à parfaire*.
352. Given the bad faith, abuse of rights, malicious inducement and misrepresentations, as well as other faults and omissions described herein, and the abusive rates of interest and other costs and financial penalties themselves, Bluberi is justified in excluding all amounts corresponding to interest and penalties from the quantum.
353. Accordingly, accounting for the loss of enterprise sustained, less the moneys effectively advanced by Callidus, Plaintiffs claim from Defendants solidarily, the sum of **\$198,600,000**, *sauf à parfaire*.
354. Plaintiffs reserve the right to amend this claim, including the nature of the damages included or excluded (as these are without admission or renunciation) and the quantum thereof, including *inter alia* for recuperation of Plaintiffs' investments towards Bluberi.
355. Furthermore, Mr. Duhamel is entitled to claim and does hereby claim indemnities for loss of revenues and salaries. On a prorated basis, the amount claimed as at the date hereof is **\$437,500**, *sauf à parfaire*, and which Duhamel reserves the right to amend to claim for other damages suffered personally.

356. Moreover, Plaintiffs are entitled to claim and do hereby claim the following sums for punitive damages, including damages pursuant to the *Quebec Charter of Rights and Freedoms* and article 1621 CCQ:
- (a) From Callidus: the sum of \$10 million;
 - (b) From Catalyst: the sum of \$10 million;
 - (c) from Defendant Glassman: the sum of \$5 million;
 - (d) from Defendant Reese: the sum of \$2 million;
 - (e) from Defendant Riley: the sum of \$2 million.
357. It is submitted that these amounts are reasonable to fulfill the preventive purpose of the Quebec Charter provisions, given the gravity of the faults, their premeditated character, and the extent of the amounts at play, having regard as well for the financial wherewithal of each of the respective Defendants.

WHEREFORE, MAY IT PLEASE THIS COURT TO:

GRANT the present Originating Application;

CONDEMN Defendants solidarily to pay to Plaintiffs the sum of **\$198,600,000**, sauf à parfaire, with legal interest and additional indemnity provided for by the law, as of November 7, 2018.

CONDEMN Defendants solidarily to pay to Gérald Duhamel the sum of **437,500**, sauf à parfaire, with legal interest and additional indemnity provided for by the law, as of November 7, 2018.

CONDEMN Defendant Callidus Capital Corporation to pay to Plaintiffs, solidarily, the sum of \$10,000,000.

CONDEMN Defendant Catalyst Capital Group Inc. to pay to Plaintiffs, solidarily, the sum of \$10,000,000.

CONDEMN Defendant Newton Gershon Zev Glassman to pay to Plaintiffs, solidarily, the sum of \$5,000,000.

CONDEMN Defendant James Riley to pay to Plaintiffs, solidarily, the sum of \$2,000,000.

CONDEMN Defendant David M. Reese to pay to Plaintiffs, solidarily, the sum of \$2,000,000.

ORDER and DECLARE, *de benne esse*, that the personal guarantee executed by Gerald Duhamel on August 31, 2012, as subsequently amended, modified or restated, is null, void, and inoperative, *à toutes fins que de droit*.

THE WHOLE with judicial costs.

Montréal, December 18, 2018



DENTONS CANADA LLP

Attorneys for Plaintiffs

Me Ari Y. Sorek

ari.sorek@dentons.com

1 Place Ville Marie, Suite 3900

Montréal QC H3B 4M7

Telephone: 514 878 8883

Fax: 514 866 2241

Our reference: 573355-1

SUMMONS
(Articles 145 and following C.C.P.)

Take notice that the plaintiff has filed this originating application in the office of the court of Drummondville in the judicial district of Drummond.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Drummondville, situated at 1680, Boulevard Saint-Joseph, J2C 2G3, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those

rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits:

Exhibit P-1:	Extract of the Québec Registry of Enterprises in respect of Bluberi Gaming Technologies Inc.;
Exhibit P-2:	Extract of the Québec Registry of Enterprises in respect of Bluberi Group Inc.;
Exhibit P-3:	Corporation Profile Report of Callidus Capital Corporation;
Exhibit P-4:	Organizational chart of Bluberi.
Exhibit P-5:	<i>En liasse</i> : Various sections of the Callidus website, its investor presentations, and various press releases;
Exhibit P-6:	<i>En liasse</i> : Extracts of Callidus' website;
Exhibit P-7:	Callidus' Annual Information Form dated March 30, 2017 for the year ended December 31, 2016 (at page 7);
Exhibit P-8:	Transcript of the November 4, 2016 Callidus Earnings Call;
Exhibit P-9:	Transcript of the August 11, 2017 Callidus Earnings Call;
Exhibit P-10:	Callidus Condensed Consolidated Interim Financial Statements for the three and six-month period ended June 30, 2018 and 2017;
Exhibit P-11:	Callidus' auditor's report dated April 2, 2018, in respect of financial years ending December 31, 2016 and December 31, 2017;
Exhibit P-12:	<u>Transcript of Callidus Earnings Call, Q3 2016</u> ;
Exhibit P-13:	Callidus' Annual Information Form for the year ended December 31, 2017 (2 April 2018);
Exhibit P-14:	<i>En liasse</i> : Emails dated April 17 and April 27, 2012
Exhibit P-15:	Term sheet signed on April 24, 2012;
Exhibit P-16:	Hilco engagement letter dated May 9, 2012;

Exhibit P-17:	Hilco's appraisal report dated June 1, 2012;
Exhibit P-18:	Email dated July 18, 2012 from Synergis to Bluberi, summarizing the information conveyed to Callidus;
Exhibit P-19:	Exchange of emails between Boyer, Duhamel and Synergis dated July 26, 2012;
Exhibit P-20:	<i>En liasse</i> : Copy of letter dated July 27, 2012 and other correspondence;
Exhibit P-21:	<i>En liasse</i> : Copy of the exchanges between Bluberi (per Duhamel) and Callidus (per Reese) in response to the demand letter P-16;
Exhibit P-22:	<i>En liasse</i> : Exchange of emails between Boyer, Duhamel and Synergis;
Exhibit P-23:	<i>En liasse</i> : Copies of emails sent by Callidus between August 7 and 9, 2012;
Exhibit P-24:	Second Hilco appraisal report as at September 30, 2012;
Exhibit P-25:	<p><i>En liasse</i>: Agreement signed on August 31, 2012 as well as all other related and subsequent agreements;</p> <ul style="list-style-type: none"> A) First credit facility agreement dated August 31, 2012 B) General Security Agreement, dated August 31, 2012 C) Letter Agreement of November 1, 2012 D) Agreement Amending Letter Loan Agreement, dated April 15, 2013 E) Second Agreement Amending Letter Loan Agreement, November 12, 2013 F) Agreement Amending Security, dated November 12, 2013 G) Amended and Restated Letter Loan Agreement, dated June 19, 2014 H) Agreement Amending Security dated June 19, 2014 I) Second Amended and Restated Letter Loan Agreement, dated June 10, 2015
Exhibit P-26:	Document prepared by Bluberi, tracking the deployment of machines per financial quarter, per casino and per type (whether sold or leased);
Exhibit P-27:	Email dated July 25, 2013 from Boyer;
Exhibit P-28:	<i>En liasse</i> : Series of emails exchanged principally between Duhamel and Boyer in December 2013 and subsequent months, as well as a table illustrating the fact that, as at December 2013, there was already no longer any availability under the borrowing bases;

Exhibit P-29:	<i>En liasse</i> : Series of exchanges between Farber, Boyer and Bluberi from October 2014;
Exhibit P-30:	<i>En liasse</i> : Series of emails from December 2014 to June 2015 exchanged between Callidus and Bluberi;
Exhibit P-31:	<i>En liasse</i> : Numerous email exchanges containing various proposals;
Exhibit P-32:	Third appraisal report from Hilco as at December 31, 2013;
Exhibit P-33:	Copy of email from Jean Bernier to Bluberi sales staff;
Exhibit P-34:	Email dated January 16, 2015 by Gérald Duhamel;
Exhibit P-35:	<i>En liasse</i> : Emails dated April 30, 2015 and September 23, 2015;
Exhibit P-36:	Email dated October 28, 2015;
Exhibit P-37:	Letter dated August 24;
Exhibit P-38:	Letter of intent with Primero dated June 8, 2015;
Exhibit P-39:	Report issued by Farber on August 7, 2015 concluding that the transaction with Primero appeared fair and reasonable financially;
Exhibit P-40:	Email from Boyer dated August 24, 2015;
Exhibit P-41:	Motion seeking the vesting of the assets in favour of Primero;
Exhibit P-42:	Spreadsheets and series of emails sent by Bluberi to Callidus;
Exhibit P-43:	<i>En liasse</i> : Emails from July 2015 and August 2015;
Exhibit P-44:	<i>En liasse</i> : Email exchange dated September 16, 2015;
Exhibit P-45:	<i>En liasse</i> : Email exchange from July 2015 and August 2015;
Exhibit P-46:	Forth Hilco Report dated June 16, 2015;
Exhibit P-47:	June 1, 2015 email exchange between Duhamel to Boyer;
Exhibit P-48:	Email dated June 18, 2015;
Exhibit P-49:	Copy of the minutes of the first meeting of the new Board of Directors held on June 30, 2015;
Exhibit P-50:	"Additional minutes" of the meeting of June 30, 2015 prepared by Duhamel;

Exhibit P-51:	Mr. Lipton's letter to Duhamel dated June 25, 2015;
Exhibit P-52:	Mr. Lipton's letter to Duhamel dated July 31, 2015;
Exhibit P-53:	<i>En liasse</i> : Minutes of the July 14, 2015 meeting and email from Diego Castelli;
Exhibit P-54:	"Additional minutes" of the meeting of July 14, 2015 prepared by Duhamel;
Exhibit P-55:	<i>En liasse</i> : Mark-up of the so-called board appointment invitation letter made by Mr. Sirois and his counsel, as well as accompanying correspondence;
Exhibit P-56:	<i>En liasse</i> : Minutes of the board meeting held on July 29, 2015, as taken by Mr. Castelli, and email exchange which took place between the Board members and Mr. Castelli;
Exhibit P-57:	Letter of Duhamel dated August 10, 2015;
Exhibit P-58:	Mr. Lipton's letter of November 16, 2015
Exhibit P-59:	Voting Trust Agreement;
Exhibit P-60:	<i>En liasse</i> : Email correspondences dated October 29 and 30, 2015 between Mr. Castelli and Boyer;
Exhibit P-61:	<i>En liasse</i> : Exchanges and comments Duhamel provided to Callidus in respect of the Voting Trust Agreement and of the employment agreement;
Exhibit P-62:	<i>En liasse</i> : Email exchange of November 7, 2015;
Exhibit P-63:	Email dated November 10, 2015 sent to Duhamel by Bluberi's Director of Human Resources;
Exhibit P-64:	Letter dated November 7, 2015;
Exhibit P-65:	Petition for the Issuance of an Initial Order pursuant to the CCAA, in Superior Court file 500-11-049737-154
Exhibit P-66:	Initial Order;
Exhibit P-67:	Contestation filed by Callidus;
Exhibit P-68:	<i>En liasse</i> : Invoices from Gowlings;
Exhibit P-69:	Lawsuit <i>Alken Basin Drilling Ltd. v. Callidus Capital Corporation, Scott Sinclair et al</i> (Alberta Court of Queen's Bench, no. 1801-06399);

Exhibit P-70:	Decision, rendered on March 16, 2018 by Justice Michaud;
Exhibit P-71:	Order for a Sales Solicitation Process issued on January 28, 2016;
Exhibit P-72:	Richter's report dated December 15, 2015;
Exhibit P-73:	Fourth Report of the Monitor to the Court dated May 28, 2016;
Exhibit P-74:	Asset Purchase Agreement dated June 23, 2016;
Exhibit P-75:	<i>En liasse</i> : Certain principal proceedings pertaining to Groupe Arsenault Inc. (Trois-Rivières, Québec); Fortress Resources, LLC (Kentucky, USA); Xchange Technology Group LLC (Toronto, Ontario); ESCO Marine, Inc. (Texas, USA); and Alken Basin Drilling Ltd. (Calgary, Alberta);
Exhibit P-76:	<i>En liasse</i> : Claim and Counter-Claim;
Exhibit P-77:	<i>En liasse</i> : Transcripts of <u>other</u> relevant Callidus Earnings Calls with shareholders;
Exhibit P-78:	<i>En liasse</i> : Bill of Sale with respect to Bluberi and from the Statement of Purchase Price Adjustment, dated February 6, 2017;

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.