

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

NO : 500-11-049737-154

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT (R.S.C. 1985,
c. C-36, AS AMENDED):

BLUBERI GAMING TECHNOLOGIES INC. /
BLUBERI JEUX ET TECHNOLOGIES INC.

-and-

BLUBERI GROUP INC.

-and-

BLUBERI USA, INC.

Debtors

and

ERNST & YOUNG INC.

Monitor

CALLIDUS CAPITAL CORPORATION

Petitioner

**CONTESTATION BY THE DEBTORS
OF THE MOTION TO APPOINT AN INTERIM RECEIVER**

**IN CONTESTATION OF PETITIONER'S MOTION TO APPOINT AN INTERIM RECEIVER,
THE DEBTORS RESPECTFULLY SUBMIT THE FOLLOWING:**

I. PREAMBLE¹

1. The contestation of Bluberi can be summarized as follows:
2. The only reason why the transaction has yet to "close" is that the proposed purchaser, Callidus, has not yet obtained the authorizations (licenses/permits) that it claimed to be able to rapidly obtain.

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order rendered on November 12, 2015.

3. Over the past six months, Callidus has been communicating with the American native tribes and other regulatory authorities (“Gaming Commissions”, hereafter referred to as the “**Commissions**”). Callidus has not yet understood the requirements, prerequisites, and *modus operandi* of these native tribes. It has yet to appreciate the risks associated with its action plan and the highly regulated and fragile context within which Bluberi operates.
4. Callidus has not yet understood the fundamental requirement whereby the Company must have, at all times, an officer, with true decision-making authority, who is appropriately licensed and who is answerable to the Commissions. Bluberi’s licenses are attached to Gérald Duhamel personally, so that, as soon as he is no longer the officer responsible for Bluberi, with all the related authority and decision-making powers, Bluberi’s licenses will no longer be valid and Bluberi will no longer be able to operate. If an interim receiver is appointed, Mr. Duhamel will be obliged to immediately notify the Commissions of this fact and resign. As a consequence, Bluberi will no longer be authorized to operate EGMs in its casinos.
5. The SSP Procedures do not contemplate taking possession or control of the Company prior to the closing of the transaction, that is to say, before Callidus holds the required licenses to operate or to complete the acquisition. Callidus wishes to take control and possession of Bluberi prior to having duly acquired it in compliance with the requirements of the law and the SSP Procedures ordered by this Court. The suspensive conditions pertaining to the closing have in no way been fulfilled. Having failed to follow the usual rules applicable to the enforcement of security and the SSP, Callidus now seeks to take possession of the Company prematurely, while profiting from Mr. Duhamel’s obligations towards the Commissions, even as it announces that it no longer wishes to have any dealings with him and as it prepares a \$3 million claim in connection with his purported personal guarantee.
6. The contemplated appointment of this so-called *sui generis* interim receiver in the context of the current proceedings and in the current circumstances is simply not acceptable. The concept of an interim receiver is completely incompatible with (i) prior orders of this Court; (ii) the presence and powers of the Monitor; (iii) the presence and powers of the CRO; (iv) the Commissions’ requirements (v) and the conditions linked to the licenses held by Bluberi which Callidus seeks to inherit.
7. Mr. Duhamel is cooperating in all respects with the Monitor, the CRO, the Commissions, and even with Callidus in order to move forward with the transaction. Bluberi has offered and proposed a variety of solutions to Callidus, submitting systematically to Callidus’s numerous ideas and ever-changing plans. Bluberi is willing to accept and to implement any legal mechanism that would comply with the terms and conditions of the licenses and that would not risk the survival of the Company, the jobs of its 70 employees and Mr. Duhamel’s licenses. None of the solutions proposed by Bluberi cause any harm

whatsoever to Callidus, other than the turmoil it creates when Callidus's thirst to impose its law and to control absolutely everything is not quenched.

8. Callidus does not seem to grasp the fundamental notion of legal personality in Quebec law and the fact that every corporation must necessarily act through a natural person. Mr. Duhamel speaks on behalf of Bluberi, as it is his right as shareholder and as sole director. In the context of these proceedings, this decision-making power has been somewhat mitigated (rightly so) by the presence and powers of the CRO and the Monitor, who have a say in every decision taken by Mr. Duhamel. The fact that Bluberi speaks through Mr. Duhamel, acting under the supervision of and in consultation with the Monitor and the CRO, does not imply that Mr. Duhamel is a party to these proceedings.
9. The fact that one of Mr. Duhamel's main priorities has always been and remains the sustainability of his Company and the survival of the 70 jobs at issue in Drummondville is indisputable. Purporting otherwise constitutes bad faith and is defamatory. In fact, it is Callidus that, in recent drafts of the proposed APA, wishes to arrogate for itself the right to dismiss all the employees, in violation of the SSP Procedures approved by the Court, and despite the fact that the recommendation of the Monitor in favor of Callidus's bid was heavily predicated on the undertaking to maintain all jobs (except those held by Mr. Duhamel and his spouse).

II. INTRODUCTION

10. With regard to the allegations contained in paragraph 1 of Callidus Capital Corporation's ("**Callidus**") Motion entitled "*Motion to Appoint an Interim Receiver*" (the "**Motion**"), the Debtors, Bluberi Jeux et Technologies Inc., Bluberi Group Inc. and Bluberi USA, Inc. (collectively "**Bluberi**", the "**Company**" or the "**Debtors**") note that they constitute an attempt on the part of Callidus to short-circuit the restructuring process implemented by this honorable Court under the *Companies' Creditors Arrangement Act* ("**CCAA**"), to take control of the debtors prematurely and to do indirectly what the law does not allow it to do otherwise. Indeed:
 - a) The draft order filed as Exhibit R-1 is in no way interim and is in fact an order for the appointment of a receiver with all the powers of disposal, in addition to being an unjustified and significant derogation to the draft order for the standard appointment of a receiver approved by the Superior Court and the *Barreau de Montréal*, and demonstrates the incompatibility of such a recourse, and such a mechanism with the process currently under way under the CCAA;
 - b) It is simply incompatible, if not impossible, that a monitor and an interim receiver, in addition to a *Chief Restructuring Officer* ("**CRO**") already appointed by this honorable Court, coexist in the context of the current process under the CCAA. It is of the essence of the CCAA that the debtor companies continue to manage the business.

- c) The *sui generis* mechanism proposed by Callidus is (in fact and in law) unworkable and unjustified: despite a stay of proceedings order (for which the lifting of said order is not sought), it is asked that an interim receiver be granted power, rights and responsibilities that depart completely from the standards, with and despite the presence of a CRO that meets all the needs of Callidus, with and despite the presence of a monitor in Ernst & Young Inc. (the "**Monitor**") that fulfills all its duties and obligations under the Initial Order, while demanding the withdrawal of the sole director, whose full collaboration is simultaneously required, while it claims to have no further confidence in him. In addition, especially in light of the comments issued by the Court in the past regarding professional fees, it is surprising that Callidus is willing to add "*another layer of insolvency proceedings*" in the file, despite the related "*risks and costs*" (see the Richter report, exhibit R-2, para 99).
11. As for the allegations contained in paragraph 2 of the Motion, the Debtors, being businesses that have operated in this field for more than 20 years, are well aware that and inform this honorable Court that the procedure and the measures sought by Callidus are not "*smooth*" at all. To the contrary:
- a) They constitute a dangerous and hostile attempt to take over companies that operate in a field that is highly regulated by multiple authorities having highly discretionary powers, and this, in violation of the process already homologated by this Court. Callidus has clearly no desire whatsoever to ensure a smooth transition in order to ensure Bluberi's sustainability and the survival of its many jobs.
- b) Another right-holder of Bluberi that works in the gaming industry and is familiar with the native tribe market (unlike Callidus), AGS, is extremely nervous and opposed to the idea of appointing a receiver or an interim receiver. Proceedings filed on May 25, 2016 before the American Court, a copy of which is provided in support of the present Motion as **Exhibit B-1**, provided for the following (see paragraph 3 of the *Supplement*):

"3. The Receivership Motion is of great concern and alarm to AGS for a number of reasons. First, it appears that the timeline Callidus presented to this Court regarding its ability to close the sale is no longer realistic or reasonable given the developments in the Canadian Proceedings. Second, the appointment of a receiver will likely trigger licensing and regulatory compliance lapses that will affect AGS' gaming operations. Put another way, Callidus does not and cannot guaranty that there will be no such licensing and regulatory compliance lapses should it prevail on its Receivership Motion. Finally, AGS is extremely concerned regarding the ability of Bluberi Gaming to provide the service required by the BSA."

- c) It is important to note that Bluberi disputes AGS's latest proceedings (on procedural grounds) and that the American Court has so far dismissed AGS' demands and refused to share its concerns regarding Bluberi's capability to render the required services.
- d) Callidus is clearly trying to short-circuit the *Sale and Solicitation Process* (the "**SSP**") as well as the related proceedings already homologated by this honorable Court ("**SSP Procedures**"). In fact, the measures proposed by Callidus (notably the irresponsible transition mechanism) constitute a disguised appeal of this Court's rulings and a flagrant violation of the SSP Procedures put in place by the Court.
- e) The Motion once again confirms Callidus's unhealthy obsession with the forced and immediate takeover of the Debtors, and this, in the same manner that it proceeds in most of its files, its default *modus operandi* being to systematically take control of its clients by force, and this, as soon as it detects an opportunity to take advantage of the potential in the making ("*upside*") in order to implement its "*loan to own*" strategy. It should be recalled, as explained in the Motion for the issuance of an initial order, that Callidus specializes in the market of "distressed companies", where it targets vulnerable companies that nonetheless demonstrate significant potential. As soon as Callidus sees an opportunity to realize this potential, it uses its creditor status and its financial leverage, as well as its loan agreements that it has imposed in order to take over the businesses of its clients.
- f) In the proceedings filed by Callidus itself in the current file, notably as part of its Contestation dated November 16, 2015 against Bluberi's Motion for the issuance of an initial order (the "**Contestation**"), Callidus pleaded the following and made the following admissions related to its previous demands to establish a so-called "*voting trust agreement*" and to impose an "Independent Board" within Bluberi:

This², coupled with the fact that the Independent Board would remain in place, meant that governance issues could be addressed without triggering the gaming regulatory, licensing and contractual complications that may have accompanied a formal change of control;³
- g) Both the Court and the parties themselves have always operated in this file under the premise that the imposition of a receiver or a third party within Bluberi as well as a forced takeover of the business would inevitably cause serious risks regarding the regulatory authorities, including the "*Gaming Commissions*" and the native tribes in the United States.

² Refers to the so-called "voting trust agreement" that Callidus wanted to impose to Mr. Duhamel in the fall of 2015.

³ See paragraphs 87 and 88 of the Contestation.

- h) This fact was admitted repeatedly by all parties in the course of the current proceedings. This reality is the only reason why Callidus did not proceed in the manner it usually does by appointing a receiver earlier and for which it engaged in a series of legal, procedural and contractual gymnastics one after the other, changing its mind each time, as part of its attempts to takeover Bluberi. A partial inventory of Callidus's procrastination, changes in strategies and changes of positions before this Court, consists of the following:
- appointment of a so-called "independent board"⁴, which was repealed after Callidus realized, three months later, that, with respect to the Gaming Commissions and the terms of the licenses granted to Bluberi, it was essential that any person having decision-making power be licensed, and vice versa;
 - replacement of the "independent board" by the forced setting up of an "advisory committee", subsequently abolished due to the sudden resignation of one of the members appointed by Callidus;
 - alleged takeover of the voting rights via the November 7, 2015, letter which was found to be void by this Court;
 - contestation of the stay sought under the CCAA and the request to appoint Scott Sinclair as CRO as an alternative;
 - agreement to maintain the protection of the Court under the CCAA and request to continue the process and extend the stay period⁵;
 - request to implement a SSP (recommended by Richter Advisory Group Inc. ("**Richter**")) as a means of achieving security and the homologation of SSP Procedures by this Court;
 - requests for major changes to the SSP, through the APA, although approved by the parties, the Monitor, and the Court, seeking for example: (i) the right to dismiss all employees of Bluberi and/or to not transfer any to the new entity, and (ii) the establishment of an unclear transition program, with two phases which include an arbitrary modulation of powers for Mr. Duhamel and an unknown third party, Mr. Mike Starzynski;

⁴ The *Second Amended and Restated Letter Loan Agreement*, that sealed the fate of Bluberi towards Callidus, provided however that the *Independent Board* should be "satisfactory to Callidus." During its short existence, this "board" was composed of Sean Sirois, long-time friend of Newton Glassman and counsel to Michael Lipton (Dickinson Wright LLP) author of the 'report' in Exhibit R-11 and in Appendix A of report by Richter (Exhibit R-2).

⁵ See for example Sections 10.4(m), 10.5 and 11 of the order proposed by Callidus (Exhibit R-1).

- contestation of the decision and usefulness of filing proceedings in the United States under Ch. 15 U.S. Bankruptcy Code, as it appears particularly in the Fourth Monitor's Report (dated March 28, 2016) at paragraph 45;
 - agreement to maintain the protection of the American courts under Ch. 15 and request to continue the process⁶;
12. With regard to the allegations contained in paragraph 3 of the Motion, the Debtors refer to the proceedings filed with the Court, including the Motion for the Issuance of an Initial Order dated November 11, 2015, as well as the reports of the Monitor, Ernst & Young Inc. Monitor (the "**Monitor**") filed in the Court record.
13. With regard to the allegations contained in paragraph 4 of the Motion and Exhibit R-2, the Debtors submit that the report is devoid of any reliability. Moreover, Richter is unable to provide the necessary assurances to the Court that the measure sought by Callidus is appropriate or has reasonable chances of achieving the expected outcome (without admission as to the legality of this measure).
- a) Furthermore, as it appears from the annexes filed in support of Exhibit P-2, particularly annexes I, J, K, L, M, N, O, P and Q, that Callidus had already, at least as of April 1, 2016, the intention to appoint a receiver/interim receiver and had already begun the process to appoint one;
 - b) It should be noted that, in the context of these earlier representations before this honourable Court, particularly in support of its report filed on December 14, 2015, Richter had already represented to the Court that it would be possible to carry out a complete transition from Bluberi to Callidus within a few weeks of a solicitation process that could conclude in a formal closing, and this, within 45 days, as appears from the Court file as well as Richter's report dated December 14, 2015, filed in Court, a copy of which is provided in support hereof as Exhibit-B-2;
 - c) Richter's report is based on opinions that contain no explicit consent from the tribes and Commissions having jurisdiction in areas where Bluberi has important clients, the letters filed as Annexes J, L, N and O emanate from other jurisdictions where Bluberi has not one machine installed.

⁶ See for example Section 11 of the order proposed by Callidus (Exhibit R-1).

14. They admit the allegations contained in paragraph 5 of the Motion;
15. With regard to the allegations contained in paragraph 6 of the Motion, the Debtors prefer to rely on the contents of said Contestation from Callidus dated November 16, 2016, adding that:

a) With regard to paragraph 6 a) of the Motion, Callidus's allegation whereby it has lost confidence in Mr. Duhamel is nothing less than a generic allegation that Callidus keeps repeating in every single one of its files, including this one, in which it is applying its "loan to own" strategy. This is Callidus's *modus operandi*, motivated by bad faith, devoid of any meaning and defamatory; such allegation is made solely to benefit its interests. The facts and actions of Callidus and the evidence before this Court undoubtedly demonstrate that there has never been and that there is still no reason to make this kind of baseless and unsubstantiated allegation: Mr. Duhamel has clearly demonstrated good faith, integrity and competence, motivated by complete devotion for his employees, his clients and his suppliers, having worked during the past six months in all practical sense for these latter and, ultimately, for the benefit of Callidus;

b) With regard to paragraph 6 b), Bluberi admits that Callidus vigorously contested the Motion for the issuance of an initial order. However, Callidus's earlier claims regarding the purported uselessness to proceed under the CCAA is in direct contradiction with:

its request, today and in recent months, to continue and to keep the process under the CCAA and Chapter 15 – U.S. Bankruptcy Code, but only as long as it can manage it itself and that Richter is the new Petitioner for and on behalf of Callidus which, in turn, would do the same for and on behalf of Bluberi all under the "supervision" of a Monitor stripped of all effective power (see Exhibit R-1, including paragraphs 10.4, 10.5 and 11);

(i) the representations made by Callidus and its directors to its shareholders, through which it sought to reassure them by telling them that it constitutes a normal process and appropriate in the circumstances, in order to protect the "*collatera*" of Callidus and is done in a spirit of collaboration, as it will be more amply demonstrated below;

c) For example, while it vigorously contested proceedings before this Court, in its December 8, 2015, formal communication to its shareholders and the public, Callidus wrote and published the following:

Callidus is working in conjunction with the Monitor and our financial advisor to achieve a full recovery "including all principal,

interest and differed fees” in priority to junior creditors, even if the result is that they are insufficient to satisfy those creditors.

- d) Further, it reassured its shareholders as follows:

It is not uncommon for Callidus to deal with borrowers where it is expected that they will undertake some form of financial restructuring given the nature of their business. As the Company operates in the distressed lending sector, loans that go through a formal restructuring process offer an efficient tool for Callidus to protect its collateral, often while continuing to collect its contracted rate of return. Callidus uses a variety of techniques to mitigate potentially challenging situations, ranging from a cooperatively managed liquidation to a full court process in order to minimize any risk of loss;

- e) Unlike what is represented to Callidus’s shareholders, at no time before this Court did Callidus take the position that the current process is “*an efficient tool for Callidus to protect its collateral,*” except perhaps very recently, where, through its proposed order, it changes position and seeks to continue the proceedings under the CCAA.
- f) While it published these reassuring words on December 8, 2015, on December 15, 2015, Callidus vigorously contested Bluberi’s motions before this Court. At the conclusion of a fiercely contested hearing, this Court ordered and declared the following:

CONSIDERING that the parties are incurring significant costs, mainly because Callidus and the management of the Applicants are continuing positioning themselves in the ongoing litigation. For example:

- a) *Around November 26 2015, Callidus asked the Monitor for a valuation of the business, but withdrawn its demand this morning on the basis that it is now useless;*
- b) *Callidus cooperated for the appointment of a CRO over the last two weeks, but contested today the requested extension of the stay period without giving proper and sufficient notice to the Monitor and the Applicants. It is one thing to reserve its rights, but it is another to strategize in a way that lacks transparency;*

CONSIDERING that same is unfortunate and could only further delay the likelihood of a positive outcome in the matter;

CONSIDERING that the Applicants have acted and are acting in good faith and with due diligence since the issuance of the Initial Order;⁷

- g) Callidus's propensity to change its mind and/or to deliberately change positions for tactical reasons and in a manner that lacks transparency was evident throughout the file, including during the negotiation of the APA.
16. They admit the allegations contained in paragraph 7 of the Motion.
17. With regard to the allegations contained in paragraph 8 of the Motion, they prefer to rely on the SSP Procedures, adding that Callidus's ever changing demands as reflected in its proceedings, its communications and its draft agreements with the Monitor and Bluberi, respect neither the SSP Procedures nor the conditions ratified by this Court. Callidus insisted that a fast and rigid sales process be imposed upon Bluberi (notably to ensure that it would be the only one veritably able to make an offer to purchase), however, after being assured that its offer was the only one that could be retained by the Monitor, it completely ignored the proceedings, steps and deadlines ratified by this Court, including the closing date that Callidus must still to this day postpone for an indefinite period. The SSP and SSP Procedures have been completely trampled by Callidus.
18. With regard to the allegations contained in paragraphs 9 and 10 of the Motion, it should be reiterated that Callidus had imposed - as a condition for its consent to the SSP Procedures and allegedly to avoid another costly and prolonged contestation of the proceedings initiated by Bluberi - that the deadlines and steps of the SSP Procedures be extremely tight, all to ensure that no other person could conduct proper due diligence and submit an interesting offer.
19. With regard to the allegations contained in paragraph 11 of the Motion, the Debtors refer to the Exhibit R-3, denying anything that would not be consistent, therewith adding that:
- a) Callidus's position, proposals, and requests during the negotiations leading up to the execution of a new *Asset Purchase Agreement* ("**APA**") do not only fail to comply with what was homologated by the Court in the SSP, but strongly depart from the APA submitted by Callidus itself during the SSP (Exhibit R-3);
 - b) For example, and without limitation, Callidus belatedly added new requirements not foreseen by anyone regarding the so-called "transition" between the execution of the APA, the issuance of a vesting order ("**Vesting Order**") and the closing of the transaction. It is clear that Callidus was clueless as to how to proceed to take control of the assets of such a highly regulated business, that it lacks ideas and information in this regard and, as such, adjusts its requirements accordingly as the file progresses, obviously without knowing that its current

⁷ See the Court minutes of the December 15, 2015 hearing, pages 6 and 7.

requirements are equally dangerous, irresponsible and unrealistic in the circumstances.

20. With regard to the allegations contained in paragraph 12 of the Motion, the Debtors take note of the admission that Callidus had actually anticipated that no other realistic and acceptable offer would be presented, not only because of the cost of borrowing, interest rates and other abusive fees and unreasonable penalties imposed by Callidus, but also because of the delays and unreasonable steps imposed upon Bluberi as a condition for its consent for the purposes of the proceedings subsequently filed by Bluberi.
21. With regard to the allegations contained in paragraphs 13, 14 and 15 of the Motion, the Debtors prefer to rely on Exhibit R-4, adding that it is obvious that, in the circumstances, since there was virtually no chance given to third parties to make a reasonable offer that could be higher than Callidus's bid, the Monitor was therefore obliged to recommend Callidus's "*Credit Bid*," which sought to take advantage of the abusive and exorbitant interest rates that it charged to Bluberi (without any admission).
22. With regard to the allegations contained in paragraph 16 of the Motion, the Debtors prefer to rely on Exhibit R-5, denying anything that is not consistent therewith, adding that:
 - a) Be that as it may, the transaction proposed by Callidus differs considerably from its offer and the offer accepted by the Court in the SSP Procedures;
 - b) Under no circumstances, upon accepting the offer and the Monitor's recommendation, was it anticipated by anyone that Callidus would significantly alter the draft APA proposed in the context of the SSP, by adding, for example, complex and impracticable terms regarding the so-called "transition", which were never considered and cannot be considered without major obstacles that the parties attempted, until recently, to resolve.
 - c) Bluberi's letter is clear and does not say what Callidus wants it to say. On the contrary, Bluberi simply announced that it was prepared to follow the Monitor's recommendation but that this "should not be construed as an acceptance "as is" of the "terms and conditions" proposed by Callidus, particularly because: (i) there remained several "queries" from the Monitor to respond to before it could give an "unqualified recommendation"; (ii) there remained (and still remains) a number of important suspensive conditions to fulfill and resolve before receiving a final recommendation from the Monitor and before closing the transaction;
23. With regard to the allegations contained in paragraph 17 of the Motion, it is indeed true that Bluberi, the Monitor, the CRO and Mr. Duhamel allowed Callidus to make a wide range of interventions and representations to Bluberi employees and various other stakeholders, in good faith and in order to prepare a smooth transition. Bluberi never challenged Callidus's ability to follow the recommendation of the Monitor. The underlying

dispute between Callidus and Bluberi lies in the fact that Callidus wishes to act as if it already received the vesting order which it served in draft form on May 25, 2016, and as if it already closed the transaction with Bluberi, without having obtained for the Buyer any license whatsoever to ensure the survival of the business.

24. Callidus's plan presents an unacceptable risk of corporate suicide that could lead to the loss of all jobs for Bluberi employees. It is simply impossible for Callidus to proceed in the manner in which it suggests.
25. They deny the allegations contained in paragraph 18 of the Motion. Indeed, Callidus did everything to ensure the failure of the negotiations, including rendering it impossible for Bluberi, acting reasonably in the interests of its employees and other stakeholders, to execute the APA proposed by Callidus:
 - a) The letters sent by Callidus to various Gaming Commissions contained in the annexes support the report by Richter (Exhibit R-2), including statements, and this, as of April 1, 2016, such as:

Callidus plans to seek an order of the Court placing the assets of Bluberi under the control of a "Court appointed receiver/manager" (the Receiver) (various letters sent by Michael Lipton dating from April 1st and April 5, 2016).

"We anticipate requesting the appointment of a receiver very soon."

(email from April 11, 2016 – Schedule O);

- b) It is therefore obvious that the grounds alleged by Callidus in its Motion are poorly camouflaged pretexts to supposedly justify the appointment of an interim receiver, when it already intended to seek such an appointment for more than two months, at the very least;
 - c) It is particularly deplorable that, while Callidus informed the *Gaming Commissions* and gave instructions to professionals to prepare for the appointment of a receiver, it informed this honourable Court of its intention to negotiate a smooth transition for the execution of an APA and it represented to the Monitor, Bluberi and their respective counsel, that it intended to negotiate an APA, when in fact it had no such intention.
 - d) This is all the more patent when one finds, at paragraphs 50 and 54 of the Motion, that Callidus invokes stalled negotiations, as of May 2, 2016 in the evening, as being the triggering event leading to the Motion, when it was dated and served on May 3, 2016 and contains nearly 100 paragraphs and hundreds of pages of exhibits. It is clear that Callidus had every intention to serve said Motion well before the purported trigger as alleged in the Motion and, particularly, well

before the fact that on May 2, 2016, Bluberi would have served an APA that supposedly betrayed Mr. Duhamel's malicious intentions.

26. With regard to the allegations contained in paragraph 19 of the Motion, if the reasons for Bluberi's refusal to execute the APA proposed by Callidus are still unclear for Callidus, it is worth reiterating:
- a) The APA proposed by Callidus looks nothing like the APA proposed as part of the SSP and approved by the Court, nor to the one submitted on March 7, 2016, as part of the call for tenders;
 - b) In particular, SSP Procedures provide so-called transitional arrangements which, in fact, constitute an indirect way for Callidus to take total control of Bluberi without having closed the transaction, without having obtained the orders sought from this Court, without having obtained the licenses required to operate the business, without having completed necessary checks with regulatory authorities to know the prerequisites and other conditions required to be able to operate, without having the necessary industry knowledge and without any consideration of the adverse effects that such arrangements could have on the survival of the business and the safeguard of jobs;
 - c) Callidus requires that Bluberi ensure the presence and services of Mr. Duhamel but only as a figurehead in order to maintain these licenses in place, but devoid of any decision-making power, which is illegal;
 - d) Callidus, in its requests, demands, for all practical purposes, that Mr. Duhamel mislead the government authorities and the *Commissions* by omission and, in other cases, by concealing information from the *Commissions*, while Mr. Duhamel has strict requirements for complete and immediate disclosure and that any deviation from these obligations would forever jeopardise his ability to make a living and Bluberi's ability to maintain its licenses in the future;
 - e) Effectively, Mr. Duhamel has the right to earn a living after becoming a victim of Callidus, and it is in the gaming industry in the USA that he will continue to do so and for that, he must submit a clean record, clear of any defaults in order to obtain the required licenses.
 - f) Clearly Callidus has no qualms about putting the future earning capacity of Mr. Duhamel at risk while getting rid of a potential competitor in advance;
 - g) The SSP does not provide for taking actual possession or *de facto* possession of Bluberi's assets, nor provide for the control of the decision-making process and management of Bluberi. Indeed, the SSP provides for the normal situation of any commercial transaction, namely for the purchaser to obtain the required prior consents and authorizations;

- h) What Callidus does not seem to understand, or pretends to ignore, despite hundreds of thousands of dollars spent on professional fees, is that it will be impossible for Callidus to close the transaction by executing the original APA which complies with the SSP, as proposed by Callidus, since Callidus will not have obtained the required or desired licenses;
 - i) Mr. Duhamel has already reassured and confirmed with the *Gaming Commissions* that he is committed to share any development or change in decision-making or other management aspect of Bluberi, as he is required to do so, as appears from a copy of an email dated January 20, 2016 provided in support hereto as Exhibit B-3.
 - j) Necessarily, Mr. Duhamel will have to disclose to the *Gaming Commissions* the fact that Callidus will either implement its receivership strategy or disguised takeover strategy and that, in either case, he no longer has decision-making power.
27. The allegations contained in paragraph 20 of the Motion are false, erroneous, misleading and reveal Callidus's complete ignorance and incompetence to determine what is involved in the takeover of a highly regulated business such as Bluberi. Contrary to what is alleged, the approach proposed by Callidus would do just the opposite of providing stability and legitimacy for any purpose or to any person whatsoever, and certainly not for its employees, suppliers and clients nor for regulatory authorities. Callidus is preparing to completely derail the business. It has shown that it finds itself constantly obliged to change strategy and change its position with regard to regulatory issues, as it appears particularly from Exhibit R-2, particularly when juxtaposed to previous representations made before this Court, its shareholders and regulatory authorities in the past. Callidus has simply no idea of what it is doing and its cavalier behavior constitutes gross negligence which will inevitably cause the loss of Bluberi's goodwill and jobs.
28. The Debtors deny as drafted the allegations contained in paragraph 21 of the Motion and rectify the facts as follows:
- a) The enquiry of Wind Creek Hospitality sought assurances that Bluberi would not terminate its operations without giving it a prior notice of at least 120 days, that the monitoring of servers, networks and games could continue and that if the support were to stop, that a 120-day prior notice be given and that any other condition resulting from the restructuring that would render the games inoperative not occur without giving a 120-day prior notice. There is no reason to believe that either of these three concerns would materialize in the present circumstances, as evidenced by the fact that since the appointment of a Monitor and a CRO and since Bluberi obtained the protection of this Court, the operations have functioned quite normally;

- b) On the contrary, the appointment of a receiver and the total upheaval that Callidus proposes to implement would be much more conducive to the kind of situations apprehended by Wind Creek Hospitality and Bluberi itself;
- c) Regarding the concerns of third parties, Bluberi wishes to stress that, on the contrary, it is rather the possibility of an eventual interim receiver or any other similar change as proposed by Callidus, that causes significant concerns and apprehensions particularly for the *Gaming Commissions*, as evidenced notably by the exchange of correspondence dated April 1, 2016, by which Bluberi had to manage a crisis with the California Department of Justice whereas, without having previously notified Bluberi or the Monitor, Callidus foreshadowed doubts and significant concerns with said Department of Justice, copy of the communications between the Department of Justice and Bluberi being communicated in support hereof, as **Exhibit B-4**. As it appears from the email from the Department of Justice dated March 24, 2016, a Department representative wrote to Dawn Hume, regulatory conformity officer at Bluberi, to inform that:

The California Bureau of Gambling Control (Bureau) has been contacted by Mr. Michael Lipton from Dickinson & Wright LLP... Mr. Lipton also indicated that Mr. Michael Starzynski is the Court appointed guardian.

- d) This information is completely erroneous and demonstrates not only Callidus's irresponsible and negligent behaviour, but also its lack of knowledge regarding the highly sensitive regulatory issues that Bluberi is exposed to.
29. With regard to the allegations contained in paragraph 22 of the Motion, they are misleading to the point of completely distorting the enquiries of the Miccosukee Tribe of Indians. The Miccosukee Tribe's enquiries were the object of the weekly conference call held on April 13, 2016 between representatives of Bluberi, the CRO, the Monitor and Richter, of which the minutes prepared by the CRO are communicated in support hereof as **Exhibit B-5F**, and which demonstrate that Mr. Massi of Richter and Callidus were supposed to review the proposals put forward and to report to the CRO, which, to Bluberi's knowledge, was never done. Moreover, as it notably appears in the said minutes of the conference call of April 13, 2016, the Miccosukee Tribe requests a complete and final transition, which, to Callidus's own admission, could take several months, so that the execution of an APA is completely foreign to the decision-making process of the Tribe. It should be noted that this so-called issue, raised for the first time by Callidus, has never been previously raised by Callidus, nor by the Monitor in his reports to the Court.
30. With regard to paragraph 23 of the Motion, it is false and misleading to allege that Callidus acted with diligence to complete the steps in order to proceed with the closing of the transaction. It seems obvious now that Callidus deliberately and sometimes by mere

negligence and incompetence, unduly delayed the process, having taken several months prior to proposing an APA, which is constantly a work in progress. For example, it was not until **April 15, 2016** that Callidus finally informed counsel for the Monitor of the proposed structure of the transaction that it had envisioned and for which it had already submitted a formal offer on March 7, 2016, as appears in the email exchanges between counsel for Callidus and counsel for the Monitor, among others, filed jointly as **Exhibit B-6**, which confirms a complete disorganisation and total lack of knowledge on the part of Callidus regarding basic aspects of the transaction that it had considered for months.

31. It is false and misleading to claim that Callidus sought to keep Bluberi and the Monitor informed of its efforts in order to conclude the APA. On the contrary, in recent weeks, since March 2016 when its offer was accepted as part of the SSP, Bluberi was without news from Callidus for several days, if not several weeks, before receiving any news and/or a draft APA, to then be told that it was urgent to provide comments or its approval of such draft on the same or following day, as appears from the correspondence exchange between counsel for Callidus, the Monitor, and Bluberi, Exhibit B-7;
32. With regard to the allegations contained in paragraph 25 of the Motion, Bluberi wishes to emphasize the following:
 - a) Bluberi acknowledges the fact that Exhibit R-7 is filed in support of this allegation and is dated April 26, 2016, when it had already submitted its bid to the Monitor under SSP Procedures on March 7, 2016. Thus, Callidus took nearly two months before providing such basic information relating to the decision to acquire the shares of any of the companies, versus the assets;
 - b) As mentioned above, it is only on April 15, 2016 that Callidus communicated its intentions regarding the structure of the transaction with regard to tax implications, as appears in Exhibit B-6;
 - c) The allegations contained in paragraph 25 c) of the Motion are possibly true when viewed as of May 3, 2016, when Callidus served said motion. However, prior to the issuance of said motion, Callidus had not shared this information as stated in the motion. Similarly, since the issuance of said motion, Callidus's position and the terms it proposes have changed drastically. For example, it is categorically erroneous to say that as of today, "*Callidus has confirmed the hiring (effective at the closing) of Mike Starzynski as Chief Operating Officer of its new Bluberi entity*". To date, although it is unclear what Callidus truly seeks, it seems that it now seeks the appointment of Mr. Starzynski as Chief Operating Officer of an existing entity of Bluberi and not a "new Bluberi entity" upon the execution of the APA, which is an unacceptable and dangerous proposal at the regulatory level and with respect to corporate governance. Moreover, it is inconceivable that a creditor who has interests completely opposite to those of the debtor, in this case Bluberi, can act at the same time as its Chief Operating Officer and

therefore make decisions in its name while a process was put in place precisely to allow the exercise of Callidus's guarantees;

- d) With regard to paragraph 25 (d): the question of "priority claims and cash reserves" has also been, like many other ideas proposed by Callidus, a constantly moving target;
- e) Bluberi acknowledges that on April 8, 2016, Callidus had yet to settle the issue of its securities in the United States, while claiming only to be able to exercise its rights under its secured creditor status;
- f) While it is true that it is possible to proceed without the closing agenda: (i) it is not normal practice; (ii) nevertheless, Callidus is not able to propose one and this (iii) despite the fact that it was accepted by everyone and ordered by the Court.

33. With regard to the allegations contained in paragraph 26 of the Motion:

- a) If Callidus has actually moved forward towards the closing of the transaction (for example, by finally deciding if it was acquiring the shares or the assets of Bluberi), it has done so at an extremely slow pace. It has even regressed in certain respects and on numerous occasions. It is currently in no position to complete the steps set out in the SSP, and is blinded by several illusions about the issues and regulatory demands and risks advanced by the acts it proposes. Yet, Callidus has devoted considerable time and resources to prepare a motion containing a hundred or so paragraphs and hundreds of pages of exhibits and various reports in order to seek the appointment of an "interim" receiver, as well as to seek a vesting order.
- b) Curiously, despite having taken this position on April 6, 2016 (Exhibit R-8), counsel for Callidus wrote, two weeks earlier, on March 24, 2016, that:

Our client believes that, at this point, the deal structure regarding the option of purchasing share with the assets of the subsidiaries and the tax application are not material and that the transaction can continue to go forward regarding the other conditions [...] Therefore, we are of the view that the company must file a motion to obtain a vesting order in conformity with the Credit Bid without additional delay. Obviously, said Motion will include wording that the final APA can be modified following the purchaser (sic) or its assignee's decision in conformity with Section 2.1(e) of the Credit Bid and that the closing will occur once the purchaser has obtained the Authorization.

As appears from the email from Callidus's counsel dated March 24, 2016, **Exhibit B-8**;

- c) This is another flip-flop from Callidus, among many others, which illustrates its total lack of organisation and coherency of ideas. The Monitor did not support

Callidus's position as expressed in its March 24, 2016 letter, nor its letter of April 6, 2016, and this, for good reason, since, among other reasons, it was completely irresponsible to suggest that the Court can issue a vesting order in respect to an APA that may be subsequently amended, even before the essential suspensive conditions contained in the offer to purchase are completed and before the required authorizations at the regulatory level are obtained.

34. The allegations contained in paragraph 27 of the Motion are categorically false and misleading.
- a) This is another example of Callidus's typical tactic to systematically consider that the directors of its clients (debtors) place their personal interests above the other right-holders, which is plainly incorrect in this case.
 - b) At this meeting, and subsequently thereafter, Callidus asked Bluberi to continue to ensure the presence of Mr. Duhamel but only as a figurehead. Callidus's representatives had, for all practical purposes, asked Bluberi to require that Mr. Duhamel mislead, by omission, the regulatory authorities by making them believe that he still met the fundamental requirement underlying any license granted by the *Commissions*, namely that he remained the only decision-maker within the company to hold a license. It was actually demanded that Bluberi ensure the presence of Mr. Duhamel solely to keep the licenses "alive" and devoid of any decision-making power whatsoever, which is a direct and fundamental violation of the first criteria required by the tribes.
 - c) Bluberi nonetheless, in good faith, extensively studied this request and analysed if it was possible to accommodate Callidus without violating the licensing terms and without jeopardizing Bluberi's status with the *Commissions*. Bluberi concluded, in consultation with experts in the field, that Callidus's request was inadmissible and dangerous for Mr. Duhamel and Bluberi.
 - d) Curiously, at the same meeting, on March 17, 2016, Callidus's representatives simultaneously notified Bluberi that (i) Mr. Duhamel was useless and could resign and (ii) that he could not resign because his presence as a figurehead was essential. The only request that Bluberi put forward, which was supported by the Monitor, was to consider asking the Court to restore Mr. Duhamel's previous salary, so that he could simply be compensated at the same level he was before the filing of the motion for an initial order. Indeed, Mr. Duhamel and Mrs. Marie-Claude Lapierre voluntarily and unilaterally reduced their salary prior to the filing of the motion for an initial order but continued to work tirelessly, without counting hours, including weekends, during winter holidays and statutory holidays to ensure the continuity and a smooth transition of the business.
 - e) Mr. Duhamel simply requested that Callidus comply with the SSP and the normal and usual rules of a commercial transaction, namely, that Callidus obtain its

licenses before the control of the company be handed over to an unknown and unlicensed person. It should be noted that the proposals put forward by Callidus during this meeting changed repeatedly since then.

35. They take note of the admissions contained in paragraph 28 of the Motion to the effect that it was always understood that the closing of the transaction was to take place after obtaining the authorizations from the regulatory authorities. It is in effect inconceivable to proceed with the closing of a transaction relating to a business that requires licenses, without the licenses being transferred to the acquiring entity or the latter having its own licenses.
36. They take note of the admission contained in paragraph 29 that Callidus required the cooperation of Gérald Duhamel and insisted that he remain director of the Company until Callidus is ready to conclude the transaction. If these requirements changed since then, Bluberi is unable to appreciate the reasons that would motivate such a change in position.
37. With regard to the allegations contained in paragraph 30 of the Motion and in Exhibit R-9, Bluberi takes note that as of March 23, 2016, Callidus had proposed that “Duhamel remains as designated officer and sole director of Bluberi throughout the interim period or as otherwise directed by Callidus” (see paragraph 3 a) iii) of Exhibit R-9), while requiring that access to employees, files, premises, clients and others to be given to Callidus, but that decisions pertaining to assets and licenses will not be taken by Duhamel without seeking and obtaining the consent of Mike Starzynski and Callidus, which constitutes a direct violation of the requirements of the Commissions. Callidus also required that Bluberi consents, in advance, to any motion filed by Callidus in connection with the current proceedings. Obviously these illegal proposals, violating public order, could not be accepted by Bluberi and were not recommended by the Monitor.
38. The allegations contained in paragraphs 31 and 32 of the Motion are categorically denied. The letter sent by counsel for Bluberi (dated March 29th and not March 24th as alleged in the Motion) is communicated in support hereof as Exhibit B-9. This letter is privileged, as the discussions pertained to the settlement of a dispute caused by Callidus’s request to waive the orders issued by the Court, to ignore the SSP Procedures, to put aside the rules regarding the enforcement of security and to take possession of a company prematurely. Since Callidus’s has now violated the privileged and confidential nature of the discussions, Bluberi has no choice but to set the record straight.
 - a) Callidus’s demands were aimed at requesting Bluberi to deliver and make available its only representative before the Commissions and the only licensed person (Mr. Duhamel), all the while removing his powers and asking him to infringe his contractual agreements/regulatory obligations. Suddenly, it was natural that Callidus’s demands involve Mr. Duhamel.

- b) Mr. Duhamel therefore flatly refused to abide by Bluberi's requests by refusing to (i) jeopardize the sustainability of Bluberi and the sixty jobs that depended on it, (ii) mislead the Commissions, behave in a manner that lacks transparency towards them, or otherwise violate the terms of the licenses.
- c) Subject to these two premises, it was otherwise normal that, to work with Callidus and allow a third party that had the ability to incur Mr. Duhamel's civil and statutory liability (not to mention his reputation, and ability to earn a living after Bluberi), to take control of his company, Mr. Duhamel sought a certain consideration to the risks he would have been asked to take and for his valuable collaboration. However, after further thought, compensation would be of no help to Mr. Duhamel's ability to obtain licenses in the future, so that any discussions in this regard, which Callidus goes out of its way to allege in order to discredit Mr. Duhamel, was in reality dead on arrival.
- d) Therefore, in addition to requesting the reinstatement of his regular salary (which had been voluntarily reduced to contribute to restructuring efforts), which was not done despite the Monitor's consent, Mr. Duhamel would have requested, as part of a negotiated agreement, to have Callidus renounce to its lawsuit for the alleged \$3 million guarantee, which Callidus refused to do. Evidently, Callidus intends on suing Mr. Duhamel personally. Callidus seems to forget that it is a personal guarantee that Gérald Duhamel had to consent to in order to ensure the survival of the business, and this, even after constantly reinvesting, for years, the funds generated by the Company. In total, more than \$80 million were reinvested by Mr. Duhamel, while Mr. Duhamel declared negligible dividends in order to create, develop and keep the business alive, as well as the nearly 200 jobs that it provided in the Drummondville area. This guarantee will be contested.
- e) Bluberi received no follow ups from Callidus following this meeting, until April 18, 2016 when Callidus formally announced its refusal. It is well known now that, during this time, Callidus was analyzing other means to achieve these ends, as long as it does not renounce to Mr. Duhamel's alleged personal guarantee.
- f) It is evident that Callidus preferred to spend some hundreds of thousands of dollars to request the appointment of a receiver and put at risk the survival of Bluberi and its jobs, rather than follow the rules imposed by this Court, to comply with the licenses and give any consideration whatsoever to Mr. Duhamel for all the personal concessions that were asked of him.
- g) **It must be stressed that Mr. Duhamel is now willing to withdraw from Bluberi, without any conditions and without any regard to his personal considerations (thus keeping the alleged personal guarantee), in so far as Callidus is able to take over without destroying Bluberi or eradicating the sixty jobs that depend on it.**

39. The allegations contained in paragraphs 33 and 34 of the Motion are categorically denied and simply constitute a repetition of Callidus's usual position, as stated on numerous occasions in Callidus's Contestation regarding the Motion for the issuance of an initial order.
40. With regard to paragraph 35 of the Motion:
- a) Although it is indeed obvious that the offer from Callidus was the only one that could be accepted by the Monitor in the circumstances, and although it is Bluberi's and its directors's obvious intention to transfer the business to an entity that can sustain its jobs and ensure its survival, the steps and arrangements proposed by Callidus will inevitably lead to the extinction of Bluberi and its jobs.
 - b) It is also noted that, in accordance with its usual tactics, Callidus is attempting to impose a major change at the very last minute of a negotiation. In the present case, while all APA drafts contained employment guarantees, a defining crucial element for the Monitor and for Bluberi, the latest APA draft informs us that Callidus absolutely does not want to guarantee any jobs. The Court should then draw its conclusion as to the true intentions of Callidus. (Callidus amended its APA to, effectively, reserve the right to dismiss all Bluberi employees (or retain none within the new entity)).
41. With regard to the allegations contained in paragraph 36 of the Motion, the Debtors admit that Callidus has always taken the abusive and ridiculous position that Gérald Duhamel failed to manage his business, however the facts of the case contradict these unfounded and defamatory claims. For instance, Bluberi seems to ignore the fact that:
- a) In the six months preceding the issuance of the initial order, Bluberi, under the hold of Callidus (through Diego Castelli who, according to his new corporate organisational chart approved by Callidus, entrusted the responsibility of game development to himself) failed to develop any new games.
 - b) Since the month of December 2015, when Gérald Duhamel was able to regain control of his Company, Bluberi managed to develop at least five new games per quarter. Under the effective aegis of Callidus, through its agents, particularly Mr. Diego Castelli, the Company did not develop any new games in the six months preceding the Initial order.
 - c) In recent months, Mr. Duhamel was able to generate tax credits of nearly \$1.3 million (\$730,000 for 2014 and \$543,000 for 2015), largely due to the efforts of the current team and of Marie-Claude Lapierre. Mr. Duhamel had no personal interest to gain these significant sums that are for the ultimate benefit of Callidus and other beneficiaries, including the employees. Callidus now wants to impose terms and conditions that will destroy Bluberi.

42. With regard to the allegations contained in paragraph 37 of the Motion, it is admitted that Callidus wants to get rid of Mr. Duhamel and Mrs. Lapierre.

- a) It is also clear and unequivocal that in the same exhibit, the offer from Callidus (“Callidus Offer” exhibit R-3), at article 10.2.3 that the obtainment of licenses is an important prerequisite to closing the transaction:

10.2.3 Barring any alternative agreement between the parties cooperating in good faith for continued operation of the Business, the filings, notifications and Authorizations listed in schedule 6.1.3 must have been made, given or obtained.

Although it already consists of a modification to the APA approved by the Court and the Monitor, Bluberi was ready to accept such amendment. However, this amendment completely disappeared in Callidus’s latest draft APA, who seeks to close the transaction without necessarily holding the required permits.

- b) Bluberi agrees to transfer all the authorizations it is able to transfer. With regard to the authorizations (permits) that Callidus must itself obtain from regulatory authorities, the dispute between the parties rests solely in the fact that Callidus does not wish to comply with the requirement contained in its own contractual documents.

43. The allegation contained in paragraph 38 of the Motion is unfounded and lacks any grounds. It deserves no further comment.

44. With respect to the allegations contained in paragraphs 39, 40 and 41 of the Motion, the facts must be established since Callidus’s allegations are, once again, misleading, false and defamatory and consistent with its usual tactics to denigrate the debtors:

- a) Bluberi’s usual practice was to defer personal income taxes payable in connection with Gérard Duhamel’s remuneration by paying the said remuneration in part as salary and in part as advances to Mr. Duhamel, which were subsequently converted to bonuses or dividends in accordance with the best available tax plan.
- b) Therefore, nearly every year, to Callidus’s and any other party’s knowledge, Bluberi adopted the perfectly legal and legitimate practice of making advances to Mr. Duhamel, thereby delaying the payment of Mr. Duhamel’s personal income tax against the said amounts.
- c) It is important to emphasize that, contrarily to what is insinuated in Callidus’s motion, Mr. Duhamel has not received any sum of money because of the declaration filed in early November 2015 to confirm what is mentioned above.

Mr. Duhamel has not disbursed any extra sum of money to past advances, prior to or after the issuance of the initial order.

- d) In fact, only \$159,000 was paid at the time, as advances, to Mr. Duhamel.
- e) Therefore, it is false to claim that “Duhamel caused Bluberi to pay to him a bonus in the amount of \$325,000”. The only thing Bluberi did was to declare that the advances already granted to Mr. Duhamel were to be qualified as a bonus, according to the prior and usual practice of Bluberi.
- f) It is worth noting that the Monitor, in his reports to the Court, does not condemn this decision by Bluberi.
- g) Indeed, contrary to what is alleged in the motion, Callidus was informed of this fact not through the Monitor’s fourth report, but rather as part of the weekly telephone conferences held with the Monitor, Callidus, Bluberi and the CRO. The Monitor even states, in its Fourth Report, at paragraph 31, that:

No cash was paid to Mr. Duhamel pursuant to the issuance of this bonus as \$165,000 of the bonus was used to offset loans payable to Bluberi and the balance intended to be applied in payment of the associated deductions as source/income taxes of \$160,000 generated by the declaration of this bonus.

- h) Moreover, in the same report, the Monitor mentions at paragraph 100:

In the Monitor’s view, Bluberi’s management is acting in good faith and with due diligence in these proceedings.

45. With respect to the allegations contained in paragraph 42 of the Motion:

- a) The qualification of the discussions between Callidus and Bluberi as being rather between Callidus and Duhamel, on the one hand, and regarding his personal guarantee, constitute a juvenile allegation designed to deceive the Court and tarnish Mr. Duhamel’s name. In fact, there have never been any discussions or exchanges with Bluberi or Mr. Duhamel in this regard, since Callidus and its advisors only listened to the proposal during the March 29th meeting.
- b) Callidus fails to mention that Mr. Duhamel personal guarantee was made in order to ensure the survival of Bluberi within trying and abusive circumstances imposed by Callidus in the context of its credit agreements, and the creation of 60 well-paying jobs.

46. With regard to the allegations contained in paragraph 43 of the Motion:

- a) It is difficult to conceive how the receipt of US\$1,000,000 by Bluberi, at a negligible cost, consists of a transaction for which Callidus can complain about. If there was any communication problem between Mr. Duhamel, the CRO and the Monitor regarding this transaction which was completed in the ordinary course of business, appropriate measures have been implemented to avoid any misunderstandings in the future, and this, to the satisfaction of everyone acting in good faith.
- b) The Debtors prefer to refer to Exhibit R-10, denying anything not in strict conformity therewith while adding that the minutes of the said conference call indicate that Bluberi's main incentives were as follows:

Bluberi was attempting to provide Primero with the services it had been receiving pursuant to the Distribution Agreement in an effort to collect the Primero account receivable and generate additional revenue pending Callidus determining how it was going to proceed with the Redemption Games Business.

- c) In order to deceive the Court, Callidus, in bad faith, fails to point out that this transaction, that took part in Bluberi's normal course of business, enabled it to make a net profit of \$1,000,000 against a receivable account that had persisted for several months. Had it not been for this transaction, Bluberi would still be short of the sum of \$1,000,000. It is also noteworthy that, in the context of the said conference call, Craig Boyer (of Callidus) and the CRO were supposed to adopt measures to "respond to the situation," discuss with Primero, and meet Callidus to develop a plan and otherwise manage the "situation." However, to Bluberi's knowledge, Callidus took no concrete steps to follow up on this "situation," most likely because it is perfectly satisfied; Mr. Duhamel's decision having proven to be quite beneficial for both Bluberi and for Callidus.
- d) What Callidus also fails to highlight, with the intent to deliberately mislead the court, is what the Monitor itself reported to the Court in its Fifth Report dated May 2, 2016 (see paragraph 38 *in fine*) (emphasis added):

Mr. Duhamel explained that while his failure to consult was an error, it was not committed in bad faith as he was under the sincere impression that this shipment was consistent with contractual arrangements and that it would serve to improve goodwill for Bluberi. In spite of the foregoing, the Monitor notes that as a result of the payment received from Primero, this transaction is beneficial to Bluberi and its stakeholders.

- 47. With regard to the allegations contained in paragraph 44 of the Motion, the one and only reason why Bluberi sent the proposed APA to the Monitor's counsel only (and not directly to Callidus) and that, throughout this file since the appointment of the Monitor,

Bluberi concerned itself to make sure it has the support and the consent of the Monitor regarding its proposals. Contrary to what Callidus was doing (that is, to unilaterally impose ever-changing terms and conditions without prior notice), Bluberi wanted to ensure that the Monitor and its counsel were also of the opinion that the terms proposed by Bluberi were reasonable. At times, the Monitor provided comments to Bluberi who adjusted the wording of the draft APA to ensure that Callidus had a draft APA that was acceptable to both the Monitor and Bluberi.

48. With regard to the allegations contained in paragraphs 45 to 47 of the Motion:
- a) it is true that on April 28, 2016 at 6:34 pm, Callidus, through its counsel in Toronto, submitted a revised draft of the APA, in which counsel for Callidus, Mr. Robert Muncaster wrote the following, as it appears from the e-mail exchanges, **Exhibit B-10**:

There have been a few tax-driven further amendments to what was provided by me this time yesterday. The attached remains subject to the review and comments of Callidus. We are instructed that Callidus requires the APA to be executed and delivered by 5 PM tomorrow by either Bluberi or the Monitor failing which Callidus will be making the appropriate representations to Court next week.
 - b) Therefore, as it appears from this e-mail exchange, and as denounced by the Monitor's counsel, Callidus claimed to grant less than 24 hours to Bluberi to execute the APA that had just been amended, once more, and for a second time in 24 hours by Callidus, failing which "Callidus will be making the appropriate representations to Court next week", and this, despite the fact that the APA itself remained subject to the comments of Callidus. Thus, Callidus required that Bluberi immediately execute the APA which had not even been approved by Callidus itself. A copy of the exchange in this regard is communicated in support hereof as Exhibit B-10.
49. With regard to the allegations contained in paragraphs 48 to 50 of the Motion, it is remarkable to note how the information contained therein is fragmented and self-serving. In this section of its Motion, Callidus refers to events that occurred in a specific period in time within a nearly three-month period since it submitted its offer, during which time it was particularly active and focused on its APA, and during which time it began to exert undue pressure on Bluberi and the Monitor, while it usually could take weeks to prepare a new draft of its APA.
50. With regard to the allegations contained in paragraph 51:
- a) these are once again outright false and entirely concocted, alleged in bad faith and in an attempt to tarnish Mr. Duhamel's name. It is clear from the exhibits filed

by Callidus itself and the representations made by its counsel before this Court as early as the month of March, 2016, that Callidus never intended to execute an APA, but rather advocated the appointment of a receiver at any cost. Had it not been for the fact that it considered at the time (correctly so) that the appointment of a receiver would be suicidal for Bluberi, it would have tried to do so in the fall. It now received a so-called (heavily qualified) assurance from some people who claim to provide the comfort required to grant Callidus's wishes to appoint a receiver, as it is used to doing in each and every one of its files when it is ready to implement its global strategy of "*loan to own*."

51. With regard to the allegations contained in paragraph 51b), the frivolous nature of Callidus's assertion whereby it became apparent on May 2, 2016 at 9:38 PM, after receiving Exhibit R-7a, that Mr. Duhamel had no intention of completing the transaction, is even more apparent when one considers that Callidus's motion, which is spread over 15 pages and supported by hundreds of pages of exhibits had been served the next day, on May 3, 2016.
52. The allegations contained in paragraph 52 of the Motion are downright false. Mr. Duhamel enabled agents and representatives of Callidus to discuss and meet with clients, suppliers, and the *Commissions*. Notably, Bluberi enabled Mr. Mike Starzynski to meet with Bluberi employees to reassure them (which was not achieved; rather, Mr. Starzynski created further uncertainty among the employees).
 - a) With regard to the allegations contained in subparagraph 52 (1), it is false to allege that Mr. Duhamel refused to allow Callidus to meet with the casinos or that he delayed discussions with employees. Moreover, Callidus appears once again unable to appreciate the concept of legal personality and the fact that all corporations must necessarily act through natural persons, who make decisions for and on behalf of the corporation. Mr. Duhamel instead expressed the Company's position to the CRO and the Monitor, notably with respect to the fact that it was inappropriate and risky for an unknown third party to present itself as a representative of Bluberi, but on behalf of its creditor, while Callidus had still yet to figure out what to do to make to acquire the business.
 - b) With regard to the allegations contained in subparagraph 52 (2), Callidus makes misleading and deceptive statements. The Debtors refer the Court to the minutes of the conference call held on March 23, 2016, by which the CRO refers to the following situation, **Exhibit B-5D**. The convention in question was the *Indian Gaming Tradeshow and Convention* held by the *National Indian Gaming Association ("NIGA")*, the main institution of the *American Commissions*. It constitutes the largest gathering of the *NIGA*. This Convention was held as of March 13, 2016, even before the Monitor issued its recommendation regarding the SSP. It was therefore quite normal that Bluberi (and not Gérald Duhamel personally), the CRO and even the Monitor were of the opinion that it was

inappropriate for anyone who would not be a duly authorized representative of Bluberi, to attend the Convention in said capacity. Callidus and Mr. Starzynski had undertaken to present the latter as a representative of the future acquirer of Bluberi. However, unbeknownst to all and contrary to the CRO's instructions, when Mr. Joe Pernica was not present in Bluberi's booth, Mr. Starzynski was hard at work depicting himself as Bluberi's representative.

- c) With regard to the allegations contained in subparagraph 52 (3), it is quite ironic for Callidus to report a *"lack of clear message to regulators,"* as it changed its tune on at least two occasions during this process; and was itself responsible for triggering the crisis with the California Department of Justice. Callidus's position with the Monitor, the CRO, the Court, Bluberi and the regulatory authorities has been a moving target. As an additional example, Mike Starzynski's meeting, that Bluberi so graciously enabled Callidus to hold, created uncertainty and additional concerns among the employees, since Mr. Starzynski was unable to inspire confidence, and incited more questions rather than provide answers. If the market raises questions about the "situation," Callidus has only itself to blame. Like it has done in other markets and in other circumstances, Callidus is used to exercising its recourses in an abusive and untimely manner and to question itself afterwards on the usefulness and the wisdom of such decisions.
53. The allegations contained in paragraph 53 of the Motion are baseless and unsubstantiated, even ridiculous and deserve no further response than what is explained above.
54. The allegations contained in paragraph 54 of the Motion are all meaningless. Insofar as a response to such ridiculous allegations is required, Bluberi points out that the only risk to its survival (other than the abusive and illegal interest rates imposed by Callidus) is the reckless behavior that Callidus displays. The issue of authorizations has always been in the foreground and it has always been part of the conditions of the SSP. The dispute between the parties at this stage is mainly due to Callidus's desire to take control of Bluberi without complying with the terms of the SSP and the adding of a so-called transition phase that it concocted during the past few weeks.
55. With regard to the allegations contained in paragraph 55 of the Motion, it is true that it has been several months, specifically since Callidus imposed a strict sales process, with steps impossible for anyone other than Callidus itself to respect, that it became obvious that the latter would take possession of the business. However, the Court has, rightly so and as imposed by law, established requirements and the law requires moreover that Callidus meets certain prerequisites before it can acquire a business that still does not belong to it. Bluberi simply asks that Callidus complies with these steps, as well as those established by the Court, including under the SSP. Furthermore, Bluberi takes note of the admission that it is only recently that *"Callidus began taking steps to better understand how it could proceed..."* Mr. Duhamel and other representatives of Bluberi,

having been in the field for decades, are able to state unequivocally to the Court that Callidus is clueless regarding the requirements that are to be met in order to take possession and control of such a highly regulated business, without destroying and annihilation the 60 jobs it provides today.

56. With regard to the allegations contained in paragraph 56 of the Motion, it is apparent that Callidus came up with a plan to address the *Commissions* in a way to receive precise answers which could be suitable for its cynical objectives. Moreover, it is interesting to note that Callidus's motion is a "copy/paste" of the Richter report (Exhibit R-2) which, in turn, is largely the "copy/paste" of the Dickinson Wright LLP report, which is worth reminding, was prepared in the month of March, while Callidus had supposedly no reason to even imagine the possibility of appointing a receiver if the Court is to believe the allegations of the Motion.
57. The allegations contained in paragraph 57 of the Motion are categorically denied. Indeed, Bluberi refers the Court to the following excerpts from the documents filed by Callidus itself:
- a) Despite what Callidus claims, Mr. Lipton is careful to distinguish the different levels of authorizations required by the various Commissions. The "red jurisdictions" are defined as follows:

These Commissions indicated that the purchaser must both apply for licensure, and receive approval of its licence application, before the closing of the sale, otherwise these Commissions would direct the casinos in which the EGMs were located to remove the EGMs resulting in a major disruption of business and revenue. (see Exhibit R-2, Annex A, page 5). (our emphasis)

However, among these "red jurisdictions," are included those for whom Bluberi has the most EGMs, including the Washington State Gambling Commission and the Poarch Creek Indians, who represent nearly half the machines placed by Bluberi.

- b) Furthermore, what does not appear in Mr. Lipton's report but is nevertheless explicit in the document from the firm Miller Malone & Telefson (Annex G in Exhibit R-2), is that Callidus's advisers admit that the safest way to proceed would be to obtain a confirmation from each Commission as to their requirements. Despite everything that is mentioned in the report regarding these advisers, a significant reserve is included at the end:

However, with that said, we recommend confirmation of each affected Tribe's licensing requirements that may be applicable in this instance. (our emphasis)

2. It is clear that this exercise was not accomplished.
3. Richter's report (see Exhibit R-2, para 30) recognizes the following important elements:

[...] "[M]ost gaming authorities require that licenses be attached to one or more key individuals operating the business...[D]ickinson has been seeking approval of a transitional licensure structure with a receiver, which approval has not yet been confirmed. The proposed Interim Receiver, if formally appointed by the Court, would seek to obtain such confirmations so that the operations could continue.

58. The allegations contained in paragraphs 58, 59, 60 and 61 of the Motion are categorically denied. Even the least bit attentive reading of the documents that these paragraphs refer to will reveal that the Commissions's purported openness or willingness to maintain Bluberi's licensing under receivership is accompanied by a wide range of conditions that Callidus has assured to meet, and that evidently only provided the assurances for the very precise and restrictive purposes requested by Dickinson Wright LLP further to its demands.
59. It should be noted also that the concept of "receiver/manager" cited repeatedly in the Callidus Motion and in the correspondence exchanged between Dickinson Wright LLP and the *Commissions* does not exist in Quebec. Moreover, the position of Callidus at paragraphs 58, 59, 60 and 61 contradicts the position adopted by Callidus itself in its own Motion and in other forums, while it strongly maintains that it is imperative to have a period of transition, with two critical phases precisely to ensure that we can overcome the fragility of the situation with regard to the regulatory issues. It is totally incongruous to find that, on the one hand, Callidus requires the establishment of a complex and detailed transition protocol (it proceeds with kid gloves), but on the other hand, it claims to be able to proceed easily through the draconian and coercive mechanism of an interim receiver.
60. With regard to the allegations contained in paragraph 62 of the Motion, Bluberi acknowledges that (i) the entirety of the erroneous position it proposes to implement is based solely and completely on Mr. Lipton's report, (ii) it invested hundreds of thousands of dollars to concoct, negotiate and draft terms and conditions relating to the transition that can be found in the various APA drafts, all the while proposing at this stage that the appointment of an interim receiver would be virtually innocuous and believes that despite everything, it is a conclusion that Callidus is able to arrive to, but only "at this stage." It is very likely that Callidus is reserving its right to amend its position once again as it acquires further knowledge of the highly regulated environment that constitutes the regulations of the American native tribes.

61. With regard to the allegations contained in paragraphs 63 to 70 of the Motion, Bluberi alleges as follows:
- a) Most of these allegations are repetitions of what is already alleged in the Motion and Bluberi refers the Court to Bluberi's response above regarding the same allegations (examples: that Callidus lost confidence in Mr. Duhamel; that Mr. Duhamel is incompetent; that Mr. Duhamel no longer has the required interest in the business; that Callidus will save employees through the appointment of an interim receiver). These are gratuitous, frivolous, and baseless claims, devoid of any meaning, if not ridiculous, which only serve to mislead the Court.
 - b) Callidus has already demonstrated, and confirms once again, that it has a surprising propensity, although irresponsible, to say and write anything, may it be to the *Commissions* or in its proceedings before the Court, and to require of its professionals, advisors and representatives to do the same, as long as its cynical objectives animated in bad faith are achieved.
62. With regard to the allegations contained in paragraph 71 of the Motion, Richter's recommendations are of no use for the purposes of the issues of fact and law to be determined by the Court. Callidus demonstrated that it has a tendency to improvise and to adopt irresponsible and contradictory positions, depending on the objective of the day.
63. With regard to the allegations contained in paragraphs 72 to 83 of the Motion, Bluberi refers the Court to Exhibits R-12, R-13, R-14, R-15 and R-16 referred to therein, denying anything that is not strictly in conformity therein, adding that the terms of Callidus's loan, its actions as well as the terms and conditions it imposed on Bluberi and Mr. Duhamel personally, are illegal, abusive and damaging and will soon be subject to a significant law suit.
64. With regard to the allegations contained in paragraph 84 and 85 of the Motion, it is erroneous to purport that the situation is urgent because Callidus finally demonstrated that if such an emergency existed, it is due to its negligence and incompetence and that there exists a much more reasonable solution than that of the appointment of a receiver.
65. With regard to the allegations contained in paragraph 86 of the Motion, the Motion is evidently ill-founded in fact and in law.

AND FOR FURTHER PLEADING, BLUBERI RESPECTFULLY SUBMITS THE FOLLOWING:

III. SOLUTION PROPOSED BY BLUBERI

66. On May 26, 2016, counsel for Bluberi sent to the Monitor a revised draft of the APA, a copy of which is communicated as **Exhibit B-11**;

67. In order to accommodate Callidus and as a demonstration of good faith, this draft APA provides detailed terms and conditions relating to the transition during the interim period between the date of the execution and the closing date, including:
- a) An interim period in two phases, as proposed by Callidus, including (i) the first phase that would include several rights in favor of Callidus regarding the transition, rights to have a say and veto rights, as requested by Callidus and (ii) the second phase during which Mr. Duhamel would resign as principal director of Bluberi and Callidus's consultant would take over the management of Bluberi, as requested by Callidus;
 - b) To facilitate the process of obtaining authorizations (licenses) by Callidus, a representative of Callidus would be hired as a consultant of Bluberi after the execution of the APA and such consultant could approach the Commissions to obtain the necessary authorizations in its name, as a representative of Bluberi;
 - c) Said consultant would have the right to meet and negotiate with any person, be it clients, suppliers, Commissions, or others in order to facilitate the transaction and ensure a smooth transition. Bluberi would assist said consultant for these purposes.
 - d) Callidus could transition from the first to the second phase once the new entity would have obtained all the important ("material authorizations") permits required to complete the transaction;
 - e) Mr. Duhamel, at his discretion but acting in good faith, could resign from his position as director at any time during the interim period;
 - f) Certain closing conditions in favor of Callidus would no longer be applicable from the time Callidus decides to move on to the second phase of the transition;
 - g) Callidus would undertake to indemnify Bluberi and its representatives from any damages resulting from decisions taken or services provided by Callidus's consultant during the second phase;

68. Bluberi's proposal provides a second phase that would most likely be shorter than the one proposed by Callidus and, as such, would mitigate the risks that Callidus's consultant could incur Bluberi's liability, as well as that of its shareholder or its respective representatives. In addition, Bluberi's proposal would ensure that all important authorizations would have been obtained by Callidus (via the new entity) prior to moving to the second phase, thus ensuring the sustainability of the business and the protection of the interests of employees and other stakeholders;
69. To protect the interests of the employees, this draft APA provides that Callidus would be responsible for all the employees of Bluberi, except Mr. Duhamel, his spouse and up to three other employees. Callidus now wants to have the right not to preserve jobs;
70. This draft provides that an allocation of the purchase price should be agreed upon between the parties prior to the execution of the APA, and this in order to minimize negative tax consequences for Bluberi and Callidus. Callidus has still not provided the required information to understand how it intends to distribute the sale price;
71. This draft provides for a right of termination of the agreement by Bluberi, with the approval of the Monitor or the Court, particularly if a closing condition in favor of Bluberi is not satisfied or if Callidus is in material breach of the terms of the APA and that such material breach is not remedied in accordance with the APA;
72. This latest and final attempt by Bluberi to satisfy Callidus's demands was communicated on Thursday evening, May 26, 2016, even though Mr. Craig Boyer advised all stakeholders on Wednesday, May 25, 2016, during Callidus's weekly call with the CRO, the Monitor and Bluberi that he was no longer interested in negotiating and that Callidus was unwaveringly determined and motivated to proceed with its application for the appointment of an interim receiver on June 1, 2016.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the present Contestation;
- [2] **DISMISS** the Motion to appoint an interim receiver of the Petitioner ;
- [3] **THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Montréal, May 30, 2016

DENTONS CANADA LLP

Attorneys for the Debtors,
BLUBERI GAMING TECHNOLOGIES INC.,
BLUBERI GROUP INC. and BLUBERI USA, INC.

AFFIDAVIT OF GÉRALD DUHAMEL

I, the undersigned, **GÉRALD DUHAMEL**, businessman, doing business at 310-2120 Letendre Street, Drummondville, Québec (J2C 7E9), solemnly declare as follows:

1. I am a director and duly authorized representative of the Debtors;
2. All the facts alleged in the Contestation of the Motion to Appoint an Interim Receiver are true.

AND I HAVE SIGNED:

GÉRALD DUHAMEL

SWORN TO before me at Drummondville,
this 30th day of May 2016

Commissioner for Oaths for Quebec

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R
(Commercial Division)

C O U R T

NO : 500-11-049737-154

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT (R.S.C. 1985,
c. C-36, AS AMENDED):

BLUBERI GAMING TECHNOLOGIES INC. /
BLUBERI JEUX ET TECHNOLOGIES INC.

-and-

BLUBERI GROUP INC.

-and-

BLUBERI USA, INC.

Debtors

and

ERNST & YOUNG INC.

Monitor

CALLIDUS CAPITAL CORPORATION

Petitioner

LIST OF DEBTOR'S EXHIBITS

Exhibit B-1 :	Proceeding entitled "Supplement" filed on May 25, 2016 in front of the American Court by AGS;
Exhibit B-2 :	Report by Richter dated December 14, 2015;
Exhibit B-3 :	Email dated January 20, 2016;
Exhibit B-4 :	Email exchange with the Department of Justice;
Exhibit B-5 :	A. Minutes of January 20, 2016 conference call; B. Minutes of March 2, 2016 conference call; C. Minutes of March 9, 2016 conference call; D. Minutes of March 23, 2016 conference call; E. Minutes of April 6, 2016 conference call; F. Minutes of April 13, 2016 conference call; G. Minutes of April 20, 2016 conference call; H. Minutes of May 25, 2016 conference call;

Exhibit B-6 :	Email exchange regarding the structure of the transaction;
Exhibit B-7 :	A. Email dated March 7, 2016 and its attachments; B. Email dated April 26, 2016 and its attachments; C. Email dated April 27, 2016 and its attachments; D. Email dated April 28, 2016 at 18:55 and its attachments; E. Email dated April 28, 2016 at 18:57 and its attachments; F. Email dated April 29, 2016 and its attachments; G. Email dated May 2, 2016 and its attachments; H. Email dated May 3, 2016 and its attachments; I. Email dated May 10, 2016 and its attachments; J. Email dated May 18, 2016 and its attachments;
Exhibit B-8 :	Email from Callidus's attorneys dated March 24 and 25, 2016;
Exhibit B-9 :	Email from Bluberi's attorneys dated March 29, 2016;
Exhibit B-10 :	Email from Callidus's attorneys dated April 26, 2016 at 6:34 pm;
Exhibit B-11 :	Email from Bluberi's attorneys dated May 26, 2016.

Montréal, May 30, 2016

DENTONS CANADA LLP

Attorneys for the Debtors,
BLUBERI GAMING TECHNOLOGIES INC.,
BLUBERI GROUP INC. and BLUBERI USA, INC.