Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.
Applicants

RESPONDING MOTION RECORD OF ZOLA FINANCE HOLDINGS LTD. AND IGOR GIMELSHTEIN
(Opposing the Stay Extension)
Motion Returnable October 28, 2020

October 26, 2020

Siskinds LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8
Michael G. Robb (LSO#: 45787G)
Garett M. Hunter (LSO #: 71800D)
Tel: 519-660-2121
Fax: 519-672-6065

Barristers & Solicitors
100 Lombard Street
Suite 302
Toronto, ON M5C 1M3

Alex Dimson (LSO#: 56129U)
Tel: 416-594-4394
Fax: 416-362-2610

Wright Henry LLP
200 Wellington St. West
Suite 602
Toronto, ON M5V 3C7

Michael Wright

Danielle Stampley
Tel: 416-306-8280
Fax: 416-306-8281

Lawyers for the Plaintiff Lawyers for the Plaintiff (Responding Party)

Wright Henry LLP
200 Wellington Street West, Suite 602
Toronto ON M5V 3C7
Tel: 416-306-8280
Fax: 416-306-8281

Michael D. Wright, LSO# 32522T
mwright@wrighthenry.ca

Tracey Henry, LSO# 46897B
thenry@wrighthenry.ca

Danielle Stampley, LSO# 69487C
dstampley@wrighthenry.ca

Lawyers for Zola Finance Holdings Ltd. and Igor Gimelshtein

AND

SISKINDS LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8
Tel: 519-660-2121
Fax: 519-672-6065

Michael G. Robb, LSO# 45787G
michael.robb@siskinds.com

Garett M. Hunter, LSO # 71800D
garett.hunter@siskinds.com

100 Lombard Street, Suite 302
Toronto, ON M5C 1M3
Tel: 416-594-4394
Fax: 416-362-2610

Alex Dimson, LSO# 56129U
alex.dimson@siskinds.com

Lawyers for Zola Finance Holdings Ltd. and Igor Gimelshtein

TO: **ERNST & YOUNG INC.**
Ernst & Young Tower
100 Adelaide Street West
P.O. Box. 1
Toronto, ON M5H 0B3
Tel: 416-864-1234

Alex Morrison
alex.f.morrison@ca.ey.com

David Saldanha
david.saldanha@ca.ey.com

Karen Fung
karen.l.fung@ca.ey.com

Monitor

AND T O: **McCarthy, Tétrault LLP**
Barristers and Solicitors
TD Bank Tower
66 Wellington Street West
Suite 5300
Toronto, ON M5K 1E6
Fax: 416-868-0673

James D. Gage, LSO# 34676I
Tel: 416-601-7539
jgage@mccarthy.ca

Paul R. Steep, LSO# 21869L
Tel: 416-601-7998
psteep@mccarthy.ca

Shane D'Souza, LSO# 58241G
Tel: 416-601-8196
sdsouza@mccarthy.ca

Trevor Courtis, LSO# 67715A
Tel: 416-601-7643
tcourtis@mccarthy.ca

Alexander Steele, LSO# 75719P
Tel: 416-601-8370
asteele@mccarthy.ca

Lawyers for the Applicants, CannTrust Inc., CTI Holdings (Osoyoos) Inc. and Elmcliffe Investments Inc. and the Applicant and Debtor, CannTrust Holdings Inc.

AND TO: **FTI Consulting Canada Inc.**
TD Waterhouse Tower
79 Wellington Street W
Toronto Dominion Centre
Suite 2010, PO Box 104
Toronto, ON M5K 1G8

Paul Bishop
Tel: 416-649-8100
paul.bishop@fticonsulting.com

Steven W. Bissell
Tel: 416-649-8054
steven.bissell@fticonsulting.com

Ellen Dong
Tel: 416-649-8091
ellen.dong@fticonsulting.com

Chief Restructuring Officer of the Applicants

AND TO: **Aird & Berlis LLP**
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

Steven Graff, LSO# 31871V
Tel: 416-865-7726
sgraff@airdberlis.com

Jonathan Yantzi
Tel: 416-865-4733
jyantzi@airdberlis.com

Lawyers for the Monitor

AND TO: **THORNTON GROUT FINNIGAN LLP**
100 Wellington Street West, Suite 3200
P.O. Box 329, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton
Tel: 416-304-0560
rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
lwilliams@tgf.ca

Lawyers for Greenhill & Co. Canada Ltd.

AND TO: **Attorney General of Canada**
Department of Justice Canada
Ontario Regional Office, Tax Law Section
120 Adelaide Street West, Suite 400
Toronto, ON MGH 1T1
Fax: 416-973-0810

Diane Winters, General Counsel
Tel: 647-256-7459
diane.winters@justice.gc.ca

Maria Vujnovic
Tel: 647-256-7455
Maria.Vujnovic@justice.gc.ca

Lawyers for the Minister of National Revenue

AND TO: **Ministry of Finance (Ontario)**
Legal Services Branch
777 Bay Street, 11th Floor
Toronto, ON M5G 2C8
Tel: 416-327-8463

Kevin O'Hara
kevin.ohara@ontario.ca

AND TO: **Attorney of British Columbia**
Legal Services Branch, Revenue & Taxation
400-1675 Douglas Street
Victoria, BC V8W 9J7
Tel: 250-356-8589

Aaron Welch
aaron.welch@gov.bc.ca

AND TO: **Goldman, Spring, Kichler & Sanders LLP**
40 Sheppard Avenue West
Toronto, ON M2N 6K9
Tel: 416-225-9400

Mitchell J. Sanders
msanders@goldmanspring.com

Lawyers for CannTrust Holdings Inc.

AND TO: **TORYS LLP**
79 Wellington Street West, Suite 3000
Toronto, ON M5K 1N2

David Bish
Tel: 416-865-7380
dbish@torys.com

John Fabello
Tel: 416-865-8228
jfabello@torys.com

Gillian Dingle
Tel: 416-865-8229
gdingle@torys.com

Craig Gilchrist
Tel: 416-865-7629
cgilchrist@torys.com

Lawyers for Merrill Lynch Canada Inc., Jefferies Securities Inc., Credit Suisse Securities (Canada) Inc., Canaccord Genuity Corp., Citigroup Global Markets Canada Inc., and RBC Dominion Securities Inc.

AND TO: **MILLER THOMSON LLP**
255 Queens Avenue, Suite 2010
Toronto, ON N6A 5R8

Tony Van Klink
Tel: 519-931-3509
tvanklink@millerthomson.com

Lawyers for Bank of Montreal

AND TO: **FOGLER RUBINOFF LLP**
77 King Street West, Suite 3000
Toronto, ON M5K 1G8

Vern W. DaRe
Tel: 416-941-8842
vdare@foglers.com

Lawyers for Balfour Energy Corp.

AND TO: **HENEIN HUTCHISON LLP**
235 King Street East, First Floor
Toronto, ON, M5A 1J9

Marie Henein
Tel: 416-368-5000
mhenein@hhllp.ca

Scott Hutchison
Tel: 416-368-5000
shutchison@hhllp.ca

Mark Strychar-Bodnar
Tel: 416-368-5000
mstrychar.bodnar@hhllp.ca

Lauren Mills Taylor
Tel: 416-368-5000
lmillstaylor@hhllp.ca

Lawyers for the Ad Hoc Committee of Shareholders

AND TO: **KALLOGHLIAN MYERS LLP**
250 University Avenue, Suite 200
Toronto, ON M5H 3E5

Serge Kalloghilian
Tel: 647-812-5615
serge@kalloghlianmyers.com

Alexander Freedman
Tel: 647-812-5615
aj@kalloghlianmyers.com

Lawyers for the Ad Hoc Committee of Shareholders

AND TO: **A DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION**
G101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

A Dimitri Lascaris
Tel: 514-941-5991
alexander.lascaris@gmail.com

Lawyers for the Ad Hoc Committee of Shareholders

AND TO: **STROSBERG SASSO SUTTS LLP**
1561 Ouellette Avenue
Windsor, ON N8X 1K5

Jay Strosberg
Tel: 519-561-6285
jay@strosbergco.com

David R. Wingfield
Tel: 519-561-6285
dwingfield@strosbergco.com

Justin Smith
Tel: 519-561-6285
jsmith@strosbergco.com

Lawyers for the Ad Hoc Committee of Shareholders

AND TO: **MORGANTI & CO., P.C.**
21 St Clair Avenue East
Toronto, ON M4T 1L9

Eli Karp
Tel: 647-344-1900
ekarp@morgantico.com

Sajjad Nematollahi
Tel: 647-344-1900
snematollahi@morgantico.com

Hadi Davarinia
Tel: 647-344-1900
hdavarinia@morgantico.com

Lawyers for Renato A. Piscioneri

AND TO: **CRAWLEY MACKEWN BRUSH LLP**
179 John Street, Suite 800
Toronto, ON M5T 1X4

Alistair Crawley
Tel: 416-217-0806
acrawley@cmblaw.ca

Jonathan Preece
Tel: 416-217-0897
jpreece@cmblaw.ca

Lawyers for Peter Aceto

AND TO: **STOCKWOODS LLP**
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Paul Le Vay
Tel: 416-593-2493
paullv@stockwoods.ca

Gerald Chan
Tel: 416-593-1617
geraldc@stockwoods.ca

Carlo DiCarlo
Tel: 416-593-2485
carlodc@stockwoods.ca

Lawyers for Eric Paul

AND TO: **GOWLING WLG (CANADA) LLP**
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Thomas Gertner
Tel: 416-369-4618
thomas.gertner@gowlingwlg.com

Lawyers for KIK Holdco Company Inc.

AND TO: **SULLIVAN MAHONEY LLP**
40 Queen Street, P.O. Box 1360
St. Catherines, ON L2R 5K8

Peter Mahoney
Tel: 905-688-8490
pmahoney@sullivanmahoney.com

Lawyers for Verhoef Electric Inc.

AND TO: **MERCHANT LAW GROUP LLP**
400-2710 17th Avenue S.E.
Calgary, AB T2A 0P6

Evatt Merchant
Tel: 403-225-7777
emerchant@merchantlaw.com

Chris Simoes
Tel: 403-225-7777
csimoes@merchantlaw.com

Lawyers for 1604070 Alberta Ltd. representative plaintiff in respect of 1604070 Albert Ltd. v. CannTrust Holdings Inc., et al.

AND TO: **MERCHANT LAW GROUP LLP**
200-10 Notre-Dame Street East
Montreal, QC H2Y 1B7

Erik Lowe
Tel: 514-248-7777
elowe@merchantlaw.com

Lawyers for Diran Avedian, representative plaintiff in respect of Diran Avedian v. CannTrust Holdings Inc., et al.

AND TO: **MERCHANT LAW GROUP LLP**
304-15127 100th Avenue
Surrey, BC V3R 0N9

Evatt Merchant
Tel: 604-951-0777
emerchant@merchantlaw.com

Steven Roxborough
Tel: 604-951-0777
sroxborough@merchantlaw.com

Lawyers for Jeff Dyck, representative plaintiff in respect of Jeff Dyck v. CannTrust Holdings Inc., et al.

AND TO: **BLAKES, CASSELS & GRAYDON LLP**
199 Bay Street, Suite 4000
Toronto, ON M5L 1A9

Linc Rogers
Tel: 416-863-4168
linc.rogers@blakes.com

Caitlin McIntyre
Tel: 416-863-4174
caitlin.mcintyre@blakes.com

Lawyers for KPMG LLP

AND TO: **STIKEMAN ELLIOT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Peter Howard
Tel: 416-869-5613
phoward@stikeman.com

Ashley Taylor
Tel: 416-869-5623
ataylor@stikeman.com

Brian Pukier
Tel: 416-869-5567
bpukier@stikeman.com

Lawyers for Forum Financial Corp

AND TO: **ROCHON GENOVA**
121 Richmond Street West, Suite 900
Toronto, ON M5H 2K1

Joel P. Rochon
Tel: 416-363-1867
jrochon@rochongenova.com

Peter R. Jervis
Tel: 416-363-1867
pjervis@rochongenova.com

Douglas Worndl
Tel: 416-363-1867
dworndl@rochongenova.com

Ronald Podolny
Tel: 416-363-1867
rpodolny@rochongenova.com

Lawyers for Stephen Rosen

AND TO: **WEISZ FELL KOUR LLP**
100 King Street West
Suite 5600
Toronto, ON M5X 1C9

Steven Weisz
Tel: 416-613-8281
sweisz@wfklaw.ca

Canadian Lawyers for US Securities Class Action Claimants

AND TO: **LABATON SUCHAROW LLP**
140 Broadway
New York, New York 10015

James Johnson
Tel: 202-907-0859
jjohnson@labaton.com

Michael H. Rogers
Tel: 212-907-0814
mrogers@labaton.com

American Lawyers for US Securities Class Action Claimants

AND TO: **CHAITONS LLP**
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
harvey@chaitons.com

Lawyers for Single Dose Solutions Inc

AND TO: **THORNTON, GROUT & FINNIGAN LLP**
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Mitch Grossell
Tel: 416-315-2864
mgrossell@tgf.ca

Lawyers for Andrew Peppin

AND TO: **KIRKLAND ELLIS LLP**
300 North LaSalle
Chicago, IL 60654

John Hartmann
Tel: 312-862-2215
jhartmann@kirkland.com

Jonathan Lahn
Tel: 312-862-2151
jlahn@kirkland.com

American Lawyers for KPMG

AND TO: **TRISURA GUARANTEE INSURANCE COMPANY**
333 Bay Street, Suite 1610, Box 22
Toronto, ON M5H 2R2

AND TO: **ENTERPRISE FLEET MANAGEMENT CANADA, INC.**
77 Belfield Road, Suite 100
Toronto, ON M9W 1G6

AND TO: **ENTERPRISE FLEET MANAGEMENT CANADA, INC.**
5821 6 Street SE
Calgary, AB T2H 1M4

AND TO: **RIGO LIFT TRUCK LIMITED**
175 Courtland Avenue
Concord, ON L4K 4T2

AND TO: **IMPACK PACKAGING SYSTEMS INC.**
445 Milner Avenue, Unit 4
Scarborough, ON M1B 2K4

AND TO: **BRITCO BOXX LIMITED PARTNERSHIP**
21690 Smith Crescent
Langley, BC V2Y 0W6

INDEX

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF IGOR GIMELSHTEIN
(Sworn October 26, 2020)

I, IGOR GIMELSHTEIN, of the City of Toronto, in the Province of Ontario AFFIRM:

1. Zola Finance Holdings Ltd. ("**Zola**") and I are plaintiffs in an action commenced in the Ontario Superior Court of Justice against CannTrust Holdings Ltd. ("**CannTrust**") and others, bearing the court file number CV-19-00002329-00CP (the "**Zola Action**"). The Zola Action was stayed when CannTrust obtained the initial order staying all proceedings under the *Canada Companies Creditor Arrangement Act (*"**CCAA"**) on March 30, 2020.

2. I have knowledge of the matters deposed to below. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information and believe such information to be true.

3. I swear this affidavit in support of Zola and my opposition to CannTrust's motion to extend the CannTrust stay period until January 30, 2021.

MY BACKGROUND

4. I am a 2009 graduate of Western University's Richard Ivey School of Business, where I obtained an HBA. Upon graduation, I worked for over seven years in finance-related positions, including as an Investment Banking Analyst at Union Square Advisors LLC from 2008-2011 and as a Vice President at Birch Hill Equity Partners from 2011-2015.

5. In March 2015, I became Chief Financial Officer ("CFO") of MedReleaf Corp. ("**MedReleaf**"), then a privately owned cannabis company. I was directly involved in MedReleaf's successful Initial Public Offering, which resulted in MedReleaf shares trading on the TSE. MedReleaf was acquired by Aurora Cannabis for approximately $3.2 billion CAD in June, 2018. I left MedReleaf in December, 2018.

6. MedReleaf was a licensed medical and recreational cannabis producer headquartered in Markham, Ontario. My responsibilities at MedReleaf included the following:

   (a) Various financial responsibilities, including budgeting, reporting, forecasting and strategic business optimization;

   (b) Various human resources responsibilities, including, hiring, terminations, promotions, incentive plan development and employee review process development;

   (c) Assisting the Vice President of Quality Assurance in preparing for and responding to Health Canada audits and inspections performed by other government agencies and representatives; and

   (d) Managing all floor level operations, which included:

(i) The design and development of infrastructure to house cultivation and post-harvest operations;

(ii) The development of processes and timelines and optimization of schedules; and

(iii) Sales forecasting.

7. In mid-2018 my friend and colleague Tarik Ouass, who was a significant shareholder of MedReleaf, founded Zola. Zola is an operationally focused investment fund that is involved in investing in the legal cannabis industry, as well as other industries. Zola and I are often co-investors and we currently have investments in approximately 10 cannabis companies.

8. I have also served on the board of Columbia Care, a large cannabis producer, and regularly speak at international conferences on topics in the emerging cannabis sector.

9. As a result of my prior experiences I believe I have a strong understanding of cannabis companies' finances and operations.

ZOLA'S INVESTMENT IN CANNTRUST

10. In late September, 2018, Zola and I purchased 3 million shares of CannTrust, paying approximately $37.8 million for the shares. In late October and early November, 2018 we sold 391,800 CannTrust shares. We continue to hold the remaining 2,608,2000 CannTrust shares.

11. On November 27, 2019, Zola and I commenced the Zola Action, which makes claims against CannTrust, Eric Paul and Fred Litwin, among others, for misleading us about the state of CannTrust's operations and its regulatory compliance. A copy of the Statement of Claim in the Zola Action is attached as **Exhibit "A."**

12. I believe that Zola is the single largest CannTrust shareholder to have retained counsel and participated in the CCAA process. It is also my belief that the only shareholders participating in the mediation process that has been ordered by this Court have or had much smaller ownership positions in CannTrust.

ZOLA'S CONCERNS ABOUT CANNTRUST'S CURRENT OPERATIONS

13. Since CannTrust filed for protection under the CCAA, Zola and I have carefully monitored CannTrust's financial state. Among other things, we have scrutinized all financial information that has been provided by the company prior to and during the CCAA process, including the monitors' reports and CannTrust's latest public financial statement, which reports on CannTrust's performance up to the first quarter of 2019.

14. We have also received and analyzed information that is covered by a confidentiality and non-disclosure agreement, which we cannot and do not reference in this section.

15. We have come to the conclusion that CannTrust's spending is unusually high and unjustified given its current operations. We have concluded that it is using its significant cash on hand, which it raised from investors like Zola and me pursuant to what we allege are wrongful acts, not only to maintain its operations but to expand them, although even that decision is not a sufficient explanation for the amount of cash being consumed.

16. We have repeatedly raised these concerns and our analysis with CannTrust and the Monitor, in a significant amount of detail, and received inadequate and untimely responses. This lack of responsiveness to the use or misuse of funds raised by our investment of over $30 million CAD gives us concern about the good faith of CannTrust in this process. These funds would otherwise be available to resolve our outstanding claims.

17. Zola is very concerned about CannTrust's future prospects. It will be extremely difficult to be profitable in this economic climate. The cannabis industry is struggling and faces significant problems with declining prices and an oversupply of inventory. The top Canadian licensed producers of cannabis by market share have seen an average share price decline of greater than 72%. Attached as **Exhibit "B"** is a spreadsheet showing the share price of CannTrust's leading competitors at various points between July 5, 2019 to October 23, 2020.

18. Furthermore, it appears, based on my review of the Greg Guyatt's October 21, 2020 affidavit that CannTrust has not had any retail sales and states no intention to enter the retail market. CannTrust's sales to date have been exclusively in the bulk market, which I understand to be sales to other licensed producers. Based on my experience, the margin on bulk sales is substantially worse than on retail sales. In the current market, it would be near-impossible to operate profitability relying on bulk sales.

ZOLA'S INVOLVEMENT IN THE MEDIATION

19. Despite our desire to be an active participant in the ongoing mediation, which we have communicated to the mediator on several occasions, and even though we are significant CannTrust shareholders, Zola and I have been mostly excluded from the mediation process. In total our involvement in the mediation has consisted of:

(a) Receiving summary memos from the mediator regarding the state of the mediation;

(b) Attending a CannTrust-led presentation, along with all other Plaintiffs counsel. We recently also had a meeting with a CannTrust executive accompanied by counsel for the Monitor and the company; and

(c) Attending a single mediation session between us and CannTrust. In that session, which occurred in mid-August 2020, CannTrust made clear that they do not intend to negotiate directly with us and we have had no further settlement discussions.

20. I am advised by Alex Dimson, a lawyer at Siskinds LLP, that our counsel received an invite to attend a previously scheduled mediation session with a Defendant late the day before the session was to occur. However, counsel, was unable to attend the session on such short notice.

21. The coalition of lawyers representing various class action plaintiffs in the US and Canada that are actively negotiating with CannTrust has also refused to allow Zola, myself or our counsel to directly participate in settlement discussions. Zola has participated in two briefing sessions with the coalition where they provided us with a summary on the status of negotiations but they have made clear that they do not intend to allow us to participate directly in the process.

22. Furthermore, while the mediator's summary memos initially provided some detail about what offers were made in the mediation session, the latest memorandum from the mediator states that the mediator is not free to disclose the details of offers being exchanged. Neither Zola, myself or our counsel have been invited to or been advised of any future mediation sessions where we will be able to participate.

23. Accordingly we have effectively been excluded from the mediation process at this time, even though the main reason the stay is in place is to attempt to mediate a resolution of claims like ours.

SWORN before me over video teleconference in accordance with Ontario Regulation 431.20, with both the affiant and the commissioner being located in the City of Toronto, in the Province of Ontario, this 26th day of October, 2020.	)))))))	
DocuSigned by: Alex Dimson 6DBE7D0F8A024D6...	)))	DocuSigned by: 28BEF455B93B482...
A Commissioner, etc.	)	Igor Gimelshtein

This is Exhibit "A" mentioned and referred to in the Affidavit of Igor Gimelshtein, sworn before me over video teleconference this 26th day of October, 2020, with both the affiant and the commissioner, Alex Dimson, being located in the City of Toronto, in the Province of Ontario.

DocuSigned by:

Alex Dimson

6DBE7D0F8A024D6...

A Commissioner, etc.

Court File No./N° du dossier du greffe: CV-19-00002329-00CP

SUPERIOR COURT OF JUSTICE ★ COUR SUPÉRIEURE DE JUSTICE ★ JUSTICIA

Electronically issued
Délivré par voie électronique : 27-Nov-2019
London

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

ZOLA FINANCE HOLDINGS LTD. and IGOR GIMELSHTEIN

Plaintiffs

- and -

CANNTRUST HOLDINGS INC., ERIC PAUL, PETER ACETO, FRED LITWIN, MARK LITWIN, MITCHELL SANDERS, MARK DAWBER, ROBERT MARCOVITCH, SHAWNA PAGE, JOHN KADEN, IAN ABRAMOWITZ, and BRAD ROGERS

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form l8B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFFS' CLAIM, and $1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 27, 2019 Issued by: ______________________

Local Registrar

Address of Court Office:
Superior Court of Justice
80 Dundas St,
London, ON N6A 6K1

TO: CannTrust Holdings Inc.
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Eric Paul
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Peter Aceto
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Mark Litwin
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Mitchell Sanders
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Mark Dawber
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Robert Marcovitch
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Shawn Page
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: John Kaden
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Ian Abramowitz
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Brad Rogers
c/o 7300 Keele Street
Vaughan, ON L4K 1Z9

AND TO: Fred Litwin
c/o Forum Financial Corporation
106 Avenue Road
Toronto, ON M5R 2H3

CLAIM

DEFINITIONS

1. In this Statement of Claim, in addition to terms defined elsewhere herein, the following definitions apply:

(a) "***Access to Cannabis for Medical Purposes Regulations***" means the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230, as amended, repealed October 17, 2019;

(b) "***Cannabis Act***" means the *Cannabis Act*, SC 2018, c 16 and accompanying regulations, all as amended, which came into force October 17, 2019;

(c) "**CannTrust**" means the **Defendant**, CannTrust Holdings Inc.;

(d) "**CEO**" means Chief Executive Officer;

(e) "**CFO**" means Chief Financial Officer;

(f) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

(g) "**Core Documents**" means:

(i) **CannTrust**'s **MD&A** for the quarter ended June 30, 2018, filed on **SEDAR** August 14, 2018;

(ii) **CannTrust**'s interim financial statements for the quarter ended June 30, 2018, filed on **SEDAR** August 14, 2018;

(iii) the **CEO** and **CFO** certifications of the filings for the quarter ended June 30, 2018, filed on **SEDAR** August 14, 2018;

(h) "***CPA***" means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(i) "**Defendants**" means, collectively, **CannTrust** and the **Individual Defendants**;

(j) "**First Corrective Disclosure**" means **CannTrust**'s press release filed on **SEDAR** July 8, 2019 entitled "CannTrust Statement Regarding Health Canada Audit";

(k) "**Forum Financial**" means Forum Financial Corporation;

(l) **"Gimelshtein"** means the Plaintiff Igor Gimelshtein;

(m) "**IFRS**" means International Financial Reporting Standards;

(n) "**Impugned Documents**" means the **Core Documents** and **Non-Core Documents**;

(o) "**Individual Defendants**" means, collectively, Peter Aceto, Eric Paul, Ian Abramowitz, Mitchell Sanders, Mark Litwin, Fred Litwin, Robert Marcovitch, Mark Dawber, John Kaden, Shawna Page, and Brad Rogers;

(p) "**MD&A**" means management's discussion and analysis;

(q) "**Niagara Facility**" means **CannTrust**'s cannabis cultivation facility (referred to as a "perpetual harvest facility") located in Pelham, Ontario;

(r) "**Non-Core Documents**" means:

(i) a press release filed on **SEDAR** August 14, 2018 by **CannTrust** entitled "CannTrust Reports Record Revenue for Q2 2018 and is on Track to Full Completion of its Million SQ FT Niagara Facility";

(ii) a press release filed on **SEDAR** August 21, 2018 by **CannTrust** entitled "CannTrust Announces Partnership with the Ontario Cannabis Retail Corporation to Supply a Wide Range of Recreational Products";

(iii) a press release filed on **SEDAR** September 10, 2018 by **CannTrust** entitled "CannTrust and Breakthru Beverage Enter Exclusive Partnership in Recreational Cannabis Market in Canada";

(iv) a press released filed on **SEDAR** September 13, 2018 by **CannTrust** entitled "CannTrust Recreational Cannabis Brands Achieve Distribution Across Canada":

(v) a press release filed on **SEDAR** September 18, 2019 by **CannTrust** entitled "CannTrust Makes History with First Shipment of Cannabis Oil to Danish Partner, STENOCARE";

(a) "***OBCA***" means the *Business Corporations Act*, RSO 1990, c B.16, as amended;

(b) "***OSA***" means the *Securities Act*, RSO 1990, c S.5, as amended;

(c) "**Phase 1 Expansion**" means the initial 250,000 square feet development of **CannTrust**'s **Niagara Facility** for cannabis cultivation**;**

(d) "**Phase 2 Expansion**" means the 180,000 square feet expansion at **CannTrust**'s **Niagara Facility** for the cultivation of 25,000 kg of cannabis per/annum;

(e) "**Second Corrective Disclosure**" means *The Globe & Mail* article dated July 23, 2019 entitled "CannTrust chairman, CEO were informed in November of unlicensed cannabis growing, e-mails show";

(f) "**SEDAR**" means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;

(g) "**Third Corrective Disclosure**" means **CannTrust**'s press release filed on **SEDAR** September 18, 2019 and issued on September 17, 2019 entitled "CannTrust Discloses Notice of Licence Suspension";

(h) "**TSX**" means the Toronto Stock Exchange;

(i) "**Vaughan Facility**" means **CannTrust**'s cannabis processing facility in Vaughan, Ontario, which was formerly a cultivation facility; and

(j) "**Zola**" means the Plaintiff Zola Finance Holdings Ltd.

RELIEF SOUGHT

2. The Plaintiffs claim:

(a) an order granting leave to pursue this action under Part XXIII.1 of the *OSA*;

(b) a declaration that the Impugned Documents contained one or more misrepresentations at common law and within the meaning of the *OSA*;

(c) a declaration that the Defendants or one of them made the misrepresentations;

(d) a declaration that the Defendants or one of them failed to make timely disclosure of a material change in the business, operations or capital of CannTrust;

(e) a declaration under section 248 of the *OBCA* that:

(i) the acts and omissions of CannTrust and/or its affiliates have effected a result; or

(ii) the business and affairs of CannTrust and/or its affiliates have been carried on or conducted in a manner; or

(iii) the powers of the directors and/or officers of CannTrust and/or its affiliates have been exercised in a manner;

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiff;

(f) a declaration that the Fred Litwin engaged in insider trading contrary to sections 74 and 134 of the *OSA*;

(g) a declaration that CannTrust is vicariously liable for the acts and/or omissions of the Individual Defendants and, as may be applicable, of its other officers, directors, employees or agents;

(h) rescission of some or all of Zola's acquisitions of CannTrust securities as pleaded herein;

(i) general damages and/or compensation for oppression, in the sum of $45,000,000 or such other relief as this Honourable Court deems just;

(j) punitive damages, exemplary damages and/or aggravated damages in the amount of $15,000,000;

(k) prejudgment and post judgment interest;

(l) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity; and

(m) such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. This action arises out of the Plaintiffs' joint investment in CannTrust, which was made after CannTrust had decided to cultivate cannabis illegally, had taken the necessary steps to set up the illegal cultivation operations, had commenced illegal cultivation and had begun to illegally store cannabis.

4. None of these critically important facts were disclosed to the Plaintiffs or their representatives before they became one of CannTrust's largest shareholders, even though many of the company's senior directors and officers, including CFO Abramowitz and founder and then-CEO Paul, were aware of this illegal behaviour.

5. In addition, prior to making its investment, a principal of Zola, Tarik Ouass, and Gimelshtein spoke with Fred Litwin, a large shareholder of CannTrust who sold the Plaintiffs 1 million shares of CannTrust (with a market value of $12.67 million at the time) at the peak of CannTrust's share price, even as CannTrust was proceeding with its scheme to illegally cultivate and sell cannabis and was illegally storing cannabis. They also spoke with Eric Paul, CannTrust's founder, then-CEO and future Chairman, before purchasing the shares from Fred Litwin.

6. In order to entice the Plaintiffs to invest in CannTrust, Fred Litwin and Paul touted the company as well positioned for future growth while failing to disclose the illegal scheme that they knew or ought to have known was underway and the illegal storage of cannabis that was already occurring. Fred Litwin knew or ought to have known the truth because the company he controlled, Forum Financial, had been party to a management service agreement with CannTrust to aid CannTrust with its continuous disclosure obligations and reporting obligations. Fred Litwin's son Mark Litwin was and is a member of

CannTrust's board. As CannTrust's founder and then-CEO, Paul was well aware of CannTrust's illegal cultivation operations and illegal storage of cannabis.

7. CannTrust's public disclosures also significantly misrepresented the company's state of affairs. They failed to disclose CannTrust's illegal behaviour and heavily promoted CannTrust's future growth potential based on recreational cannabis legalization (which occurred on October 17, 2018) and the lucrative market for future cannabis sales this would create. Indeed, CannTrust invested heavily in its cultivation and processing capacity to position itself favourably for recreational cannabis legalization.

8. The foundational requirement for CannTrust's ability to capitalize on recreational cannabis legalization was the maintenance of its Health Canada license to cultivate, process and sell cannabis legally.

9. Without a license, CannTrust is virtually worthless—it would have no legal business and no ability to raise capital to sustain its operations. The Plaintiffs, who have extensive operational experience in the legal cannabis industry, understood this and did careful due diligence both before and after they invested to ensure that the company was in compliance with Health Canada regulations. This due diligence included frequent communications with Paul and CEO Aceto.

10. In both individual communications and in the public disclosures, the Defendants actively misled the Plaintiffs, making explicit and/or implicit representations that CannTrust was and would continue cultivating, processing, storing and selling cannabis according to the requirements of the *Cannabis Act* and/or its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*. This was not true.

11. The Defendants also represented that CannTrust had reasonably effective internal control over financial reporting ("**ICFR**") and disclosure controls and procedures ("**DC&P**"). CannTrust did not.

12. Beginning on or around June 1, 2018, CannTrust began storing cannabis in five rooms in the Vaughan Facility without the authorization required by Health Canada. As of November 2018, CannTrust had constructed two new areas in the Vaughan Facility and stored cannabis in those areas without the required authorization of Health Canada.

13. On or around September 1, 2018, CannTrust made the decision to cultivate cannabis in unlicensed rooms in the Phase 2 Expansion of the Niagara Facility, process that cannabis and sell it. Following this decision, CannTrust undertook the necessary steps to facilitate the illegal cultivation of cannabis in the Phase 2 Expansion. Starting in late September and continuing until on or around April 8, 2019, CannTrust cultivated cannabis in five rooms in its Phase 2 Expansion in the Niagara Facility that had not been licensed by Health Canada for cannabis cultivation.

14. CannTrust also used cannabis seeds at the Niagara Facility that were obtained from the black market starting in 2018. CannTrust cultivated over 1000 cannabis plants from the black-market cannabis seeds, mislabelled those seeds under its authorized cannabis strains and sold them into the recreational market.

15. The above conduct was illegal under the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*. The illegal conduct jeopardized CannTrust's key asset—its license to cultivate, process and sell cannabis, which was subject to revocation or suspension for conduct contrary to the *Cannabis Act* or the *Access to Cannabis for Medical Purposes Regulations*. CannTrust also illegally exported

the unlicensed cannabis to foreign countries, including Denmark, in violation of the international narcotics treaties and domestic criminal law. CannTrust's senior management and, at least some board members were fully aware of and directed all of this illegal conduct.

16. The truth about CannTrust's non-compliance with applicable laws and regulations was revealed via three corrective disclosures.

17. The First Corrective Disclosure was a press release issued by CannTrust on July 8, 2019 that revealed certain of CannTrust's illegal conduct. CannTrust disclosed that cannabis had been illegally grown in five unlicensed rooms in the Phase 2 Expansion of its Niagara Facility from October 2018 to March 2019 and that inaccurate information had been provided by CannTrust employees to Health Canada. CannTrust disclosed that Health Canada had made a finding of non-compliance related to these activities and that it had accepted the non-compliance finding. CannTrust also disclosed that it had advised Health Canada of cannabis storage compliance issues at its Vaughan Facility. As a consequence of the illegal conduct, Health Canada placed a hold on 5,200 kg of dried cannabis harvested from the unlicensed rooms while it continued its investigation. CannTrust put a voluntary hold on an additional 7,500 kg of dried cannabis stored at its Vaughan Facility. The cannabis put on hold was worth between $51,000,000 and $77,000,000.

18. As a result of the First Corrective Disclosure, CannTrust's share price declined materially on abnormally high trading volumes from C$6.46 at the close of trading on July 5, 2019 to C$5.00 at the close of trading on July 8, 2019 and down to C$3.34 at the close of trading on July 12, 2018.

19. The Plaintiffs' losses were compounded by a conversation that Gimelshtein had with CannTrust CEO Eric Paul on the day of the First Corrective Disclosure. During the conversation Paul misled Gimelshtein, advising him that that he had not been aware of the illegal cannabis growing until the news on October 8, 2019 broke, something that has been proven to be untrue. Paul also assured Ouass and Gimelshtein that the issue did not extend into the highest levels of CannTrust's management team. He maintained that the company was well-positioned for future growth. Gimelshtein and Zola relied on these representations and did not sell their CannTrust shares, suffering further losses as a result.

20. Subsequent disclosures indicated that Health Canada had become aware of CannTrust's illegal cannabis operations from a whistleblower who had formerly worked at the Niagara Facility. The whistleblower disclosed that on at least one occasion he and other employees had been asked to set up fake walls to conceal cannabis cultivation in one of the unlicensed rooms in compliance pictures sent to Health Canada. In the wake of these and other revelations, CannTrust announced a voluntary hold on the sale and shipment of all cannabis products and the formation of a special committee to investigate.

21. Health Canada also investigated the cannabis storage compliance issues at the Vaughan Facility revealed by CannTrust in the First Corrective Disclosure and made findings of non-compliance that CannTrust accepted. The two key non-compliance issues were:

(a) the conversion of five rooms in the Vaughan Facility to cannabis storage areas and the storage of cannabis in those areas since June 2018 without required Health Canada approval; and

(b) the construction of two new areas at the Vaughan Facility that were used for cannabis storage starting in November 2018 without Health Canada approval.

22. The Second Corrective Disclosure revealed that the illegal conduct had occurred with the knowledge and at the direction of senior management and, at least some, members of the board. Aceto (CEO), Abramowitz (CFO) and Paul (founder, Chairman and former CEO), had knowledge of ongoing illegal cannabis cultivation in unlicensed rooms in the Phase 2 Expansion and plans for additional illegal cultivation in unlicensed rooms in the future. This was further confirmed by the publication of excerpts of minutes of CannTrust meetings in a *Business News Network* article and other internal emails leaked to the press. Aceto was subsequently fired as CEO and Paul was forced to resign as Chairman.

23. As a result of the Second Corrective Disclosure, there was a material decline in CannTrust's share price on abnormally high trading levels from C$3.43 per share at the close of trading on July 23, 2019 to C$2.68 per share at the close of trading on July 24, 2019.

24. Following the Second Corrective Disclosure, a joint Ontario Securities Commission ("**OSC**"), Ontario Provincial Police and Royal Canadian Mounted Police investigation, a delay in the filing of CannTrust's second quarter results for 2019 and the withdrawal of KPMG LLP's previous audit opinions were announced. It was also disclosed that CannTrust had been using black market cannabis seeds in its cannabis cultivation operations at the Niagara Facility.

25. The Third Corrective Disclosure revealed that CannTrust had received a notice of license suspension under section 64 of the *Cannabis Act* from Health Canada. CannTrust disclosed that Health Canada suspended CannTrust's authority to produce and sell cannabis, other than cultivating and harvesting existing lots or batches of cannabis.

26. As a result of the Third Corrective Disclosure, there was a material decline in CannTrust's share price on abnormally high trading levels from C$1.99 per share at the close of trading on September 16, 2019 to $1.70 per share at the close trading on September 17, 2019.

27. While the Defendants were disseminating misrepresentations to the market, CannTrust insiders—including Fred Litwin—took advantage of their knowledge of undisclosed material facts and changes to profit, or to obtain a profit for their family members. Insiders sold shares or directed the sale of shares on the secondary market and to the Plaintiffs and others at substantially higher prices than the post-corrective disclosure CannTrust share price.

28. As a result of the Defendants' misrepresentations, their improper financial reporting and disclosures, and other actionable misconduct described herein, the Plaintiffs have incurred significant losses and damages on its investment in CannTrust securities.

THE PARTIES

The Plaintiffs

29. The Plaintiff Zola is a duly formed private corporation.

30. Zola is an operationally focused investment fund that concentrates on investments in the legal cannabis industry.

31. The Plaintiff Gimelshtein is a resident of Toronto, Ontario. He is an investor focused on investments in the legal cannabis industry. He works closely with Zola and served as its agent for the purposes of their joint investment in CannTrust throughout the relevant time.

32. Both Zola and Gimelshtein have extensive experience in the legal cannabis industry. Gimelshtein is former Chief Financial Officer of cannabis company MedReleaf Corp., which was purchased by a large Canadian cannabis company in 2018. Zola's principal, Tarik Ouass, was one of the largest investors in MedReleaf Corp. until its sale.

33. Since late September 2018, Zola and Gimelshtein have been one of CannTrust's larger shareholders. Zola, on behalf of itself and Gimelshtein, purchased 1 million CannTrust shares from Fred Litwin or a corporation wholly or partially owned or controlled by Fred Litwin on September 25, 2018. The share purchase transaction with Fred Litwin was by way of a neutral counterparty and the Plaintiffs do not know the identity of the entity that sold the 1 million shares, though they know the entity is controlled, beneficially owned and/or connected to Fred Litwin.

34. Zola, on behalf of itself and Gimelshtein, then purchased an additional 2 million CannTrust shares between September 26-28, 2018 over the TSX.

35. Zola held 15% percent of the shares purchased in trust for Gimelshtein. It held 85% of the shares purchased for its own benefit.

36. Zola and Gimelshtein would not have made an investment in CannTrust had it known about CannTrust's material non-compliance with the *Access to Cannabis for Medical Purposes Regulations* and *Cannabis Act*.

The Defendants and their Disclosure Obligations

CannTrust

37. CannTrust is a company incorporated under the *OBCA*.

38. At all material times, CannTrust was a reporting issuer in all Canadian provinces besides Québec.

39. At all material times, CannTrust's common shares were listed for trading on the TSX under the ticker symbol "TRST". Since February 25, 2019, CannTrust common shares have been listed for trading on the New York Stock Exchange under the ticker symbol "CTST". CannTrust's common shares are also listed for trading on alternative trading venues in Canada and elsewhere.

The Individual Defendants

40. Eric Paul is the former CEO and Chairman of CannTrust. He is also the co-founder of CannTrust. Paul served as CEO of CannTrust until October 1, 2018 when he was replaced by Aceto. After Paul stepped down as CEO, he was appointed as Chairman of CannTrust's board and as a Special Advisor to CannTrust's management team. Paul was forced to resign as Chairman on or around July 25, 2019.

41. Peter Aceto was appointed as CEO of CannTrust on October 1, 2018. Aceto's termination for cause was announced on July 25, 2019.

42. Ian Abramowitz was CannTrust's CFO until February 19, 2019. Since that time, he has acted as CannTrust's Senior-Vice President of Global Investments and Partnerships.

43. Mark Litwin is an independent director and Vice-Chairman of the board of CannTrust. Mark Litwin was the Chairman of CannTrust until Paul was appointed to that position on October 1, 2019. He is the son of the Defendant Fred Litwin.

44. Mitchell Sanders is a director of CannTrust. Sanders provided legal services to CannTrust through his firm Goldman, Spring, Kichler & Sanders LLP.

45. John Kaden was an independent director of CannTrust. He was appointed to that position effective October 22, 2018. Kaden resignation from his directorship was announced October 28, 2019.

46. Mark Dawber is an independent director of CannTrust.

47. Robert Marcovitch was an independent director of CannTrust. He was appointed CannTrust's interim CEO after Aceto's termination.

48. Shawna Page is an independent director of CannTrust.

49. Brad Rogers was President of CannTrust until on or around November 12, 2018.

50. Fred Litwin has significant CannTrust share holdings. He also owned, controlled and is Chairman of Forum Financial, which had a management services agreement with CannTrust. Stan Abramowitz, the secretary to CannTrust's board, is the CFO of Forum Financial. Mark Litwin is the President of Forum Financial

THE DEFENDANTS' DISCLOSURE OBLIGATIONS

CannTrust's Disclosure Obligations

51. At all material times, CannTrust was, by its own election, a reporting issuer in every Canadian province besides Québec. It elected to become a reporting issuer in order to render its securities publicly tradable. Doing so made them a more attractive investment and provided CannTrust with broader access to capital.

52. In order to maintain its status as a reporting issuer, CannTrust was required to release and file on SEDAR:

(a) within 45 days of the end of each quarter, quarterly financial statements prepared in accordance with applicable accounting principles that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

(b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;

(c) contemporaneously with each of the above, MD&A for each of the above financial statements; and

(d) within 90 days of the end of the fiscal year, an Annual Information Form.

53. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss known trends, events and risks that have affected the financial statements of the issuer, or that are reasonably likely to have an effect on the issuer's business in the future.

54. In fulfilling the above requirements and in making disclosures to the market generally, CannTrust was prohibited from making a statement that:

(a) in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of its securities.

55. CannTrust controlled the contents of the MD&As, financial statements, and the other documents particularized herein, and the misrepresentations made therein were made by CannTrust.

56. CannTrust was also required to immediately disclose (via press release) all changes in its business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of its securities. Pursuant to NI 51-102, CannTrust was required to file a material change report on SEDAR as soon as practicable or in any event within 10 days after the occurrence of the material change.

57. CannTrust knew and intended that both current shareholders and prospective investors would rely on its disclosure in making decisions to purchase and sell securities issued by CannTrust.

The Individual Defendants' Role in CannTrust's Disclosure

58. Each of the Individual Defendants, from the time that he or she accepted a position as a director and/or officer of CannTrust, knew that CannTrust was a reporting issuer and that, in his or her role as a director and/or officer of CannTrust, he or she would have responsibility for ensuring the accuracy of CannTrust's disclosure documents. Further, each of the Individual Defendants knew and intended that both current shareholders and prospective investors would rely on CannTrust's disclosure in making decisions to purchase and sell securities issued by CannTrust.

59. The *OSA*, certain instruments and policies promulgated thereunder, and CannTrust's own internal policies imposed specific personal obligations on the Individual Defendants in the preparation of CannTrust's disclosure documents.

60. NI 51-102 requires the board of directors' prior approval of financial statements and MD&A. As such, the Defendants Paul, Mark Litwin, Sanders, Dawber, Marcovitch, Page, and Kaden, each of whom was a director of CannTrust, were required to review and approve each set of financial statements and related MD&A prior to their release.

61. Moreover, the mandate of CannTrust's board was "to provide oversight for the Corporation and to act honestly and in good faith with a view to its best interests". With respect to risk monitoring, compliance and corporate performance, the members of the Board were specifically required to:

> a) Assess and monitor the principal risks of all aspects of the businesses in which the Corporation and its subsidiaries as a whole are engaged.
>
> b) Monitor performance of the Corporation and its subsidiaries against both short-term and long-term strategic plans and annual performance targets, and monitor compliance with Board policies and the effectiveness of risk management practices.
>
> c) <u>Verify that the Corporation has implemented and maintains adequate and effective internal controls and management information systems which ensure the directors discharge the Board's oversight responsibilities, including the Corporation's compliance with legal and regulatory requirements related to financial and other continuous disclosure reporting</u>.
>
> [emphasis added]

62. Mark Litwin, Dawber, Marcovitch and Kaden were each members of CannTrust's Audit Committee. The Audit Committee charter required them to review the financial statements, press releases containing financial information and guidance, and disclosures made to the CEO and CFO during the certification process. The charter also made them responsible for oversight of internal controls and procedures, disclosure controls, risk assessment and management, and for CannTrust's internal audit function.

63. Pursuant to NI 52-109 and the Companion Policy thereto, the Defendants Paul, Aceto and Abramowitz as CannTrust's CEO and CFOs, respectively, were responsible for designing

CannTrust's ICFR and DC&P and they were required to certify that they had done so when they were in their respective positions. NI 52-109 also required them to certify the accuracy of CannTrust's annual and interim financial statements and related MD&As and CannTrust's annual information form released.

64. Each Individual Defendant was aware of and accepted these obligations, as applicable, in assuming his or her position as a director and/or officer of CannTrust.

Fred Litwin and Forum Financial

65. In late 2016, Forum Financial entered into a management services agreement with CannTrust to "assist it with its continuous disclosure and reporting requirements". As such Forum Financial, and Fred Litwin as its directing mind, undertook to assist CannTrust in providing disclosures in accordance with the *OSA*.

66. Forum Financial's management services agreement with CannTrust ended on March 31, 2019.

BACKGROUND

Canada's Nascent Cannabis Industry

67. At the time of the Plaintiffs' acquisition of CannTrust shares, the cultivation, processing, and sale of cannabis was regulated by the *Access to Cannabis for Medical Purposes Regulation*. The *Access to Cannabis for Medical Purposes Regulation* only permitted the sale of cannabis to the limited medicinal market.

68. The *Cannabis Act* was scheduled to replace the *Access to Cannabis for Medical Purposes Regulation* on October 17, 2018. The *Cannabis Act* legalized the cultivation, processing and sale of cannabis for the lucrative retail market in Canada. Licenses granted under the

Access to Cannabis for Medical Purposes Regulation for the cultivation of cannabis, such as those held by CannTrust, would continue under the *Cannabis Act* with similar (but not identical) requirements and limitations.

69. CannTrust heavily touted its future growth potential based on recreational cannabis legalization and the lucrative market for future cannabis sales this would create. Indeed, CannTrust had invested heavily in its cultivation and processing capacity to position itself favourably for recreational cannabis legalization, including by purchasing and refurbishing the Niagara Facility for cannabis cultivation. However, the foundational requirement for CannTrust's ability to capitalize on recreational cannabis legalization was the maintenance of its Health Canada license to cultivate, process, store and sell cannabis legally.

70. Therefore, the most critical determinant of CannTrust's success at the time of the Plaintiffs' CannTrust share acquisitions was its license to cultivate, process, store and sell cannabis and its ability to maintain that license. Without a license, CannTrust was virtually worthless—it would have no business and no ability to raise capital to sustain its operations. With a license CannTrust was set up for future profitability and growth.

CannTrust's Operations and Expansion: The Vaughan Facility and Niagara Facility

71. CannTrust cultivates cannabis and processes, stores and sells that cannabis. CannTrust conducts these business operations through its wholly owned subsidiary CannTrust Inc.

72. CannTrust's business operations were originally conducted out of the Vaughan Facility. That Facility had limited cannabis cultivation capacity. To meet the growing demand in the medicinal cannabis market, and in anticipation of the legalization of cannabis for recreational use, CannTrust purchased the Niagara Facility.

73. The Vaughan Facility was turned into a cannabis processing facility sometime after cultivation started at the Niagara Facility. CannTrust began illegally storing cannabis in five rooms in the Vaughan Facility starting on or around June 1, 2018. CannTrust constructed two additional areas in the Vaughan Facility and began illegally storing cannabis in those areas in November 2018.

74. The Niagara Facility was not designed or licensed to cultivate cannabis in accordance with regulatory requirements when it was acquired. CannTrust developed the Niagara Facility into a commercial cannabis cultivation facility in phases. The Phase 1 Expansion involved the development of 250,000 square feet of the Niagara Facility. A Health Canada cultivation license for the Phase 1 Expansion was granted in October 2017 under the predecessor legislation to the *Cannabis Act*, the *Access to Cannabis for Medical Purposes Regulations*. Work on the five-room, 180,000-square-feet Phase 2 Expansion then commenced. The combined growing capacity for both the Phase 1 and Phase 2 Expansions was 50,000 kg per/annum, with the Phase 2 Expansion contributing half the capacity.

75. The Phase 2 Expansion was initially scheduled to be completed and in production by mid-2018. However, at the start of September 2018, as the demand for cannabis was about to skyrocket due to the upcoming legalization of recreational cannabis use on October 17, 2018, CannTrust was facing shortages its cannabis supply, the Phase 2 Expansion had not yet been licensed for cultivation of cannabis.

76. Despite this, on or about September 1, 2018, CannTrust decided to illegally cultivate cannabis in the Phase 2 Expansion of the Niagara Facility. Following this decision, CannTrust took the necessary operational steps to cultivate cannabis in the unlicensed

rooms. CannTrust's illegal cultivation of cannabis in completed Phase 2 Expansion rooms began sometime in September 2018. The exact start date of cultivation is solely within the Defendants' knowledge. However, CannTrust started illegal cannabis cultivation in a room in the Phase 2 Expansion referred to internally as "RG8". In November 2018, CannTrust began illegal cultivationin the unlicensed 50,000- square-foot room in the Phase 2 Expansion referred to as "RG9".

77. CannTrust also cultivated illegal cannabis in other Phase 2 Expansion rooms. By at least February 26, 2019, CannTrust was illegally cultivating cannabis in all five rooms in the Phase 2 Expansion. CannTrust's illegal cultivation continued until those rooms were licensed by Health Canada in or around April 8, 2019.

78. While CannTrust was illegally cultivating cannabis in the Phase 2 Expansion rooms, it also illegally obtained cannabis seeds on the black market and cultivated those cannabis seeds. CannTrust disguised the cannabis it grew from the black market seeds as strains of its approved cannabis and illegally sold that cannabis to recreational users.

MISREPRESENTATIONS

79. As further particularized below, the Defendants made the following explicit or implicit representations in their public disclosures, which the Plaintiffs relied on when making the decision to invest in CannTrust:

(a) that CannTrust was complying and would continue to comply with the licensing requirements for the cultivation, processing, storage and sale of cannabis under the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*, including with respect to the cultivation of cannabis in the Phase 2 Expansion of the Niagara Facility and the storage of cannabis in the Vaughan Facility;

(b) that CannTrust and its employees were forthright with Health Canada and did not actively try to mislead Health Canada;

(c) that CannTrust had accurately reported financial and cannabis production guidance for fiscal year 2019; and

(d) that CannTrust had reasonably effective ICFR and DC&P, including with respect to CannTrust's compliance with the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*.

80. These implicit and explicit representations were materially misleading.

81. The First, Second and Third Corrective Disclosures revealed that CannTrust violated the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*. With the knowledge and at the direction of senior management and, at least some, members of the board:

(a) starting on or around June 1, 2018, CannTrust illegally stored cannabis in five rooms in the Vaughan Facility without the required authorization from Health Canada. CannTrust also constructed two new areas in the Vaughan Facility and began storing cannabis in those areas without the requisite Health Canada approval by November of 2018; and

(b) at least as of September 1, 2018, CannTrust had decided to and was taking preparatory steps to illegally cultivate cannabis in the Phase 2 Expansion of the Niagara Facility, process and store that cannabis and sell it. CannTrust then took the operational steps necessary to illegally cultivate cannabis in the Phase 2 Expansion and, in fact, illegally cultivated cannabis, processed, stored and sold it. CannTrust's illegal cultivation of cannabis continued until April 8, 2019, and CannTrust's processing and sale of that illegally cultivated cannabis continued to on or about the First Corrective Disclosure.

While this was occurring, CannTrust actively misled Health Canada about its illegal conduct. Among other things, CannTrust sent deceptive photos that used false walls to hide its production of cannabis in unlicensed rooms from Health Canada

82. Further, CannTrust's ICFR and DC&P were not effective as a result of material weaknesses in their design and operating effectiveness, resulting in ineffective controls over compliance and non-compliance with the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*.

83. CannTrust's misconduct resulted in material risks to CannTrust's business and operations that were undisclosed or not adequately disclosed to the Plaintiffs, including:

(a) criminal and/or regulatory enforcement actions and penalties, including, Health Canada placing a hold on sales of illegally cultivated or stored cannabis, a Health Canada suspension or revocation of CannTrust Inc.'s cannabis licenses, Health Canada fines, criminal prosecution of CannTrust and its senior management for violations of the *Cannabis Act* and/or its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*, OSC enforcement actions and fines, SEC enforcement actions and potential fines and potential enforcement action from a domestic or foreign law enforcement or regulatory agency relating to CannTrust's exporting of cannabis to foreign countries;

(b) an inability to secure future licenses, including for its outdoor cultivation facility in British Columbia;

(c) loss of clients and distribution channels, including CannTrust's medicinal cannabis clientele, Canadian provincial cannabis distributors such as the Ontario Cannabis Store, international clients and its joint venture partner, Stenocare A/S ("**Stenocare**");

(d) a material decline or lack of growth in cannabis cultivation, sales and revenue; and

(e) severe reputational damage.

Misrepresentations in CannTrust's Continuous Disclosure Documents

84. CannTrust made the misrepresentations in the Impugned Documents described below. In August and September 2018, as part of its comprehensive review of CannTrust as a potential investment, the Plaintiffs reviewed and relied on these misrepresentations when making the decision to acquire CannTrust shares.

85. On August 14, 2018, CannTrust filed its interim financial statements and MD&A for the quarter ended June 30, 2018 on SEDAR. In the MD&A, CannTrust stated that the Vaughan Facility was a "state-of-the-art hydroponic indoor facility" and that CannTrust's "primary focus is to produce and deliver the highest quality, standardized, pharmaceutical grade cannabis products and in so doing strengthen its market share in legal cannabis markets in Canada and to establish positions for its products in legal cannabis markets abroad." These statements were materially misleading because they failed to disclose the illegal storage of cannabis in the Vaughan Facility. They were also materially misleading

due to their failure to disclose the risks posed by CannTrust's illegal conduct (as particularized at paragraph 83).

86. The MD&A incorporated by reference CannTrust's MD&A for the year ended December 31, 2017, filed on SEDAR March 29, 2018. That MD&A stated that CannTrust "believes that it is complying in all material respects with the terms of such licences and permits" under the *Access to Cannabis for Medical Purposes Regulations*. This statement was materially misleading. It failed to disclose that CannTrust was storing cannabis illegally at the Vaughan Facility contrary to the *Access to Cannabis for Medical Purposes Regulations*. As such, CannTrust did not believe it was complying with the terms of its licenses and permits, or alternatively, any such belief was not reasonably held.

87. The MD&A CannTrust filed on SEDAR for the quarter ended June 30, 2018 stated that CannTrust's DC&P was designed to provide reasonable assurance that material information relating to CannTrust is made known to senior management, including the CEO and CFO and that information required to be disclosed by CannTrust is recorded, processed, summarized and reported within the time periods specified in securities legislation. CannTrust further disclosed that ICFR is designed by management, under the supervision of the CEO and CFO, to provide reasonable assurance regarding the reliability of the CannTrust's financial reporting and the preparation of its financial statements in accordance with IFRS.

88. These statements were materially false and/or misleading in that CannTrust's ICFR and DC&P were not then effective, and were not effective at any relevant time, as a result of material weaknesses in the design and operating effectiveness of ICFR and DC&P relating to ineffective controls over compliance and non-compliance with the *Access to*

Cannabis for Medical Purposes Regulations and later the *Cannabis Act* and the disclosure of that non-compliance as alleged herein.

89. CannTrust's CEO and CFO provided certifications along with the periodic disclosures for the quarter ended June 30, 2018. Those certifications stated that

(a) the periodic disclosure documents did not contain any untrue statement of material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made;

(b) the CEO and CFO were responsible for establishing and maintaining DC&P and ICFR;

(c) the CEO and CFO had designed DC&P, or caused it to be designed under their supervision, to provide reasonable assurance that material information relating to CannTrust was made known to them by others, particularly during the period in which the documents were being prepared, and information required to be disclosed by CannTrust in its annual filings, interim filings or other reports filed or submitted under securities legislation was recorded, processed, summarized and reported within the time periods specified in securities legislation; and

(d) the CEO and CFO had designed ICFR, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS.

90. As particularized herein, the CannTrust disclosure documents contained misrepresentations. Paul and Abramowitz at the time they made their respective certifications, knew or ought to have known this to be the case and in particular they knew, ought to have known or were wilfully blind to the fact that, they had not designed DC&P, or caused it to be designed under their supervision, to provide reasonable assurance that information required to be disclosed by CannTrust in its annual filings, interim filings or other reports filed or submitted under securities legislation was recorded, processed, summarized and reported within the time periods specified in securities legislation, and that they had not designed ICFR, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS. Accordingly, the Certifications given were false and themselves misrepresentations.

91. On August 14, 2018, CannTrust issued a press release on SEDAR entitled "CannTrust Reports Record Revenue for Q2 2018 and is on Track to Full Completion of its Million SQ FT Niagara Facility." In that press release Paul (then CEO) stated that "[w]e continued to experience dynamic growth in all areas of the Company as we execute our business plan aimed at being a market leader and innovator in the development of products and services to better serve our patients and physicians and to position us for the October 17th legalization of the adult use recreational market." Brad Rogers (then president) stated that "[w]ith Bill C-45 receiving Royal Assent legalizing cannabis for adult consumer use on October 17, 2018, our Perpetual Harvest Facility [the Niagara Facility] offers CannTrust even more opportunities to lead the industry with its disciplined, scientific approach." These statements were materially misleading. Both

Rogers and Paul omitted the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and planned non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis.

92. On August 21, 2018, CannTrust issued a press release on SEDAR entitled "CannTrust Announces Partnership with the Ontario Cannabis Retail Corporation to Supply a Wide Range of Recreational Products." In the press release CannTrust stated that "[b]eginning October 17, 2018, consumers will be able to purchase CannTrust's quality, standardized cannabis via an online retail platform provided by the OCS in a variety of formats. The agreement positions the company for rapid growth in the largest consumer market in Canada and expands on the Company's existing partnerships with provinces across the country, with more being finalized." This statement was materially misleading because it failed to disclose that CannTrust was illegally storing cannabis in its Vaughn Facility. The statement was also materially misleading because it failed to disclose the material risks (particularized at paragraph 83 above) to CannTrust's ongoing operations and future growth from its illegal conduct.

93. On September 10, 2018, CannTrust issued a press release on SEDAR entitled "CannTrust and Breakthru Beverage Enter Exclusive Partnership in Recreational Cannabis Market in Canada". CannTrust stated that it was a "federally regulated licensed producer" and that the Phase 2 Expansion of the Niagara Facility "is expected to be operational in the third quarter." These statements were materially misleading. CannTrust failed to disclose that it had decided and was taking preparatory steps to illegally cultivate cannabis in the Phase 2 Expansion of the Niagara Facility. CannTrust failed to disclose that it was illegally storing cannabis in the Vaughn Facility. CannTrust also failed to disclose the

material risks (particularized at paragraph 83 above) to its cannabis licenses and operations that arose from its illegal conduct.

94. On September 13, 2018, CannTrust issued a press release on SEDAR entitled "CannTrust Recreational Cannabis Brands Achieve Distribution Across Canada." CannTrust stated that it was "one of Canada's leading licensed producers" and was "emerging as a leader within the adult-use recreational cannabis market." CannTrust also stated that it had "a long-term strategy to be a market share leader in the Canadian recreational space." These statements were materially misleading. CannTrust failed to disclose that it had decided and was taking preparatory steps to illegally cultivate cannabis in the Phase 2 Expansion of the Niagara Facility. CannTrust further failed to disclose that it was illegally storing cannabis in the Vaughn Facility. CannTrust, therefore, failed to disclose the illegal underpinnings of its recreational cannabis strategy. CannTrust failed to disclose the material risks (particularized at paragraph 83 above) to its cannabis licenses and operations that arose from its illegal conduct. CannTrust also made the same misrepresentations as in paragraphs 79-80 above.

95. On September 18, 2018, CannTrust issued a press release on SEDAR entitled "CannTrust Makes History with First Shipment of Cannabis Oil to Danish Partner, STENOCARE". In that press release CannTrust stated that it was one of Canada's "most trusted licensed producers of cannabis." CannTrust further stated that its shipment of cannabis oil to Stenocare was "the first phase of the STENOCARE strategy which is to import and distribute quality products from CannTrust" in Denmark. These statements were materially misleading. CannTrust failed to disclose that it had decided and planned to illegally cultivate cannabis in the Phase 2 expansion of the Niagara Facility, was taking or had taken the operational steps necessary to do so, and, in fact, had started illegally

cultivating cannabis. CannTrust further failed to disclose that it was illegally storing cannabis in the Vaughn Facility. CannTrust failed to disclose that the cannabis it planned to export to Stenocare would be illegally cultivated in the Phase 2 Expansion of the Niagara Facility. CannTrust also failed to disclose the material risks to its ability to supply Stenocare with cannabis posed by its illegal conduct, including the risk that the company would be found to be in violation of foreign or domestic laws for its exporting of illegally produced cannabis to foreign countries. CannTrust also made the same misrepresentations as in paragraphs 79-80 above.

96. Further or in the alternative, all the Impugned Documents were materially misleading because they omitted the material information described at paragraphs 81 above.

The Failure to Disclose a Material Change

97. CannTrust's illegal storage of cannabis in its Vaughan Facility was a change in its business, operations or capital that was required to be disclosed immediately upon its occurrence. CannTrust failed to do so.

98. CannTrust's decision to illegally cultivate cannabis in the Phase 2 Expansion of the Niagara Facility, the steps taken to facilitate the illegal cultivation of cannabis in the Phase 2 Expansion, the illegal cultivation of cannabis in the Phase 2 Expansion and the illegal exporting of cannabis to foreign countries were changes in CannTrust's business, operations or capital that were required to be disclosed immediately upon their occurrence. CannTrust failed to do so.

99. The material weaknesses in CannTrust's ICFR and DC&P's design and operating effectiveness, which resulted in ineffective controls over compliance and non-compliance with the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical*

Purposes Regulations, were material changes to CannTrust's business operations and capital that ought to have been disclosed immediately upon their occurrence. CannTrust failed to do so.

100. The material risks to CannTrust's business and operations that arose as a result of its misconduct as particularized at paragraph 83 above were material changes in CannTrust's business, operations or capital that should have been disclosed immediately. CannTrust failed to do so.

PRE AND POST PURCHASE INDIVIDUAL MISREPRESENTATIONS MADE TO THE PLAINTIFFS

Pre-Purchase Misrepresentations

101. Prior to making any investments in CannTrust Gimelshtein, acting on behalf of himself and Zola, spoke to Paul, CannTrust's founder and then-CEO, about CannTrust. At the time Zola was contemplating investing in CannTrust and in the course of these conversations, which took place in September 2018, Gimelshtein made specific inquiries about the state of CannTrust's licensing, as he understood that licensing was the single most critical component of a successful cannabis company.

102. Among other things, Gimelshtein asked specific questions about CannTrust's interactions with Health Canada, when CannTrust expected to receive the license for the Phase 2 Expansion and whether CannTrust had a plan in the event there was a delay in receiving the license for the expansion.

103. Paul, who knew or ought to have known that CannTrust had begun its scheme to illegally cultivate marijuana and who knew or ought to have known that CannTrust was illegally storing cannabis in the Vaughan Facility, provided misleading answers to Gimelshtein. He spoke positively about the likelihood that the company would receive its license for

the Phase 2 Expansion and generally touted the company's future prospects, while omitting to state that CannTrust had begun the process of illegally cultivating cannabis and was illegally storing cannabis, which would jeopardize CannTrust's license and ability to continue as a going concern. Paul omitted to state the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and planned non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis.

104. The Plaintiffs relied on these representations and omissions when deciding to invest in CannTrust and suffered damages as a result. Zola and Gimelshtein would not have acquired any of their CannTrust shares had Paul disclosed CannTrust's illegal cultivation and storage activities.

105. At about the same time as he spoke to Paul, Gimelshtein also spoke to Fred Litwin, from whom Zola was considering purchasing CannTrust shares. Gimelshtein asked him why he was selling the shares and also inquired about the state of CannTrust's operations and whether there were any issues at CannTrust that gave Fred Litwin concerns.

106. Fred Litwin's answers were uniformly positive. He explained that he was selling the shares for the purposes of estate planning and portfolio management and not out of any concerns with the company. He touted the company's future prospects and stated that there was nothing that Zola should be concerned about. He omitted to state that CannTrust had begun the process of illegally cultivating marijuana and that CannTrust was illegally storing cannabis in the Vaughn Facility. He omitted the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and planned non-compliance with the *Cannabis Act* posed to CannTrust's ability to

capitalize on the legalization of recreational cannabis. Fred Litwin knew or ought to have known about these facts. Among other things, Fred Litwin owned, controlled and was Chairman of Forum Financial, which had a management services agreement with CannTrust to assist it with its continuous disclosure and reporting requirements.

107. The Plaintiffs relied on these representations and omissions when making the decision to invest in CannTrust and suffered damage as a result.

Post-Purchase Misrepresentations

108. Following its investment in CannTrust, Zola and Gimelshtein continued to closely monitor and had numerous discussions with Aceto (CannTrust's CEO after his appointment in early October 2018) and Paul (Chairman after Aceto was appointed CEO in October 2018) about the state of CannTrust's operations.

109. On numerous occasions, including on October 29-30, 2018, December 7-8, 2018, December 17-18, 2018, December 21, 2018, January 8, 2019, January 18, 2019, January 21, 2019, March 21, 2019, March 29, 2019, June 12, 2019, June 17, 2019 and June 19, 2018, Gimelshtein, on behalf of himself and Zola, communicated with Aceto by way of in-person meetings, telephone calls, emails and text exchanges. These conversations related generally to CannTrust's business and operations and at no point did Aceto, who had always been aware of CannTrust's illegal cultivation operations, inform Gimelshtein that CannTrust had been illegally growing and selling cannabis and therefore that the company was exposed to the existential risk that CannTrust's Health Canada license would be suspended or revoked. At no point did Aceto inform Gimelshtein of CannTrust's other illegal activities, including the illegal storage of cannabis at the Vaughn Facility and the use of black-market cannabis seeds. To the contrary, he actively

misrepresented the company's operations and future prospects in order to keep Zola invested in CannTrust and obtain operational support and expertise from Gimelshtein.

110. On numerous occasions, including on December 7, 2018, February 27, 2019, March 1, 2019, March 29, 2019, May 20, 2019, June 9-11, 2019 and June 17, 2019, Gimelshtein, on behalf of himself and Zola, communicated with Paul by way of in-person meetings, telephone calls, emails and text exchanges. These conversations related generally to CannTrust's business and operations. Paul, who had always been aware of CannTrust's illegal cultivation operations, omitted to inform Gimelshtein that CannTrust had been illegally growing and selling cannabis and therefore that the company was exposed to the existential risk that CannTrust's Health Canada license would be suspended or cancelled for non-compliance. Paul likewise failed to inform Gimelshtein of CannTrust's other illegal activity, including its illegal storage of cannabis at the Vaughn Facility and use of black-market cannabis seeds. In all of their communications, Paul omitted to disclose the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and ongoing non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis. To the contrary, he actively misrepresented CannTrust's future prospects and operations to ensure Zola's continued investment in the company.

111. For example, on March 29, 2019, Mr Gimelshtein stated in an email to Paul and Aceto that CannTrust's annual results "were incredibly disappointing and the share price reflects that." In his reply, which was copied to Aceto, Paul stated "… we did not cover the positives clearly [in our results]. The main issue for us was the delay in getting our Phase 2 ready which was a combination of equipment and construction issues. This is behind us and we expected [sic] annualized production of 50,000 kilos in 2019." Paul

further stated that Canntrust's "medical sales are very strong and continue to increase…" and also that their "rec[reation] sell through is excellent, again best value, quality and price. We need triple our current capacity and we are actioning our plans asap."

112. On May 9, 2019, Zola representative Rob McLay did a full-day tour of CannTrust's Niagara and Vaughan facilities, which was organised by CannTrust. McLay met with Paul for lunch. He asked Paul and other CannTrust employees extensive questions during the tour about CannTrust's operations, including its inventory levels and licensing status, and he asked further questions by email to Paul on May 15, 2019. During the tour and in reply to McLay's email, Paul and the other CannTrust employee omitted to inform McLay of the illegal cultivation that had taken place in the facility. They likewise failed to inform McLay of CannTrust's other illegal activity, including the illegal storage of cannabis at the Vaughn Facility and the use of black-market cannabis seeds. Paul also omitted to disclose the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and ongoing non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis.

113. On June 19, 2019, Zola principal Ouass and Gimelshtein met with CannTrust's CEO at the time, the Defendant Aceto, at an event near San Francisco. They expressed concern about the delays CannTrust had experienced in obtaining cultivation expansion licenses, which they felt was depressing CannTrust's share price. They also asked whether CannTrust's low sales volumes were related to low inventory. Aceto stated that he understood the disappointment regarding the license but represented that the company remained on track to be granted the licenses. He also stated that the company had significant inventory levels and that the cause of the low sales volume was product

processing bottlenecks. Aceto failed to disclose that the company had cultivated cannabis illegally, stored cannabis illegally and cultivated black market cannabis seeds. Aceto further omitted to disclose the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and ongoing non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis, in contravention of Health Canada laws.

THE TRUTH IS REVEALED AND SUBSEQUENT EVENTS

114. The truth was revealed by the First, Second and Third Corrective Disclosures.

115. On July 8, 2019, CannTrust issued the First Corrective Disclosure in a press release entitled "CannTrust Statement Regarding Health Canada Audit". It disclosed CannTrust's illegal cannabis cultivation, the sale of illegally cultivated cannabis, illegal sale and illegal storage compliance issues at the Vaughan Facility and that misleading information was provided to Health Canada. The First Corrective Disclosure stated that

> CannTrust Holdings Inc. ("CannTrust" or the "Company", TSX: TRST, NYSE: CTST) has received a compliance report from Health Canada notifying the Company that its greenhouse facility in Pelham, Ontario is non-compliant with certain regulations. CannTrust has accepted Health Canada's non-compliance finding and has taken actions to ensure current and future compliance.
>
> The non-compliant rating is based on observations by the regulator regarding the growing of cannabis in five unlicensed rooms and inaccurate information provided to the regulator by CannTrust employees. Growing in unlicensed rooms took place from October 2018 to March 2019 during which time CannTrust had pending applications for these rooms with Health Canada. These rooms were constructed in accordance with regulations and Good Production Practices, and licenses were issued for each of the five rooms in April 2019. There are 12 rooms in total at the facility.
>
> Health Canada has placed a hold on inventory which includes approximately 5,200kg of dried cannabis that was harvested in the previously unlicensed rooms in Pelham, until it deems that the Company is compliant with regulations. In addition, CannTrust has instituted a voluntary hold of approximately 7,500kg of dried cannabis equivalent at its Vaughan manufacturing facility that was produced in the previously unlicensed rooms.

CannTrust's operations at its Pelham and Vaughan facilities remain fully licensed and the Company continues to grow, cultivate, harvest and sell cannabis. Health Canada is conducting quality checks of product samples on hold at Pelham, with results expected in 10 to 12 business days. Due to the product on hold, some CannTrust customers and patients will experience temporary product shortages. The Company is exploring options to mitigate these shortages.

All product sold from the impacted rooms has passed quality control testing at Health Canada certified labs as well as CannTrust's own quality control processes and safety reviews.

"Our team has focused on building a culture of transparency, trust and excellence in every aspect of our business, including our interactions with the regulator. We have made many changes to make this right with Health Canada. We made errors in judgement, but the lessons we have learned here will serve us well moving forward," said Peter Aceto, Chief Executive Officer.

Corrective Actions and Additions to the CannTrust Executive Team

CannTrust has implemented a number of corrective actions including:

•Further comprehensive employee training

•Retained external advisors for an independent review of compliance processes

•Comprehensive review and update of processes and procedures

•Voluntarily advised Health Canada of issues that may impact compliance at its Vaughan facility regarding product storage

Improving the Quality and Compliance function at the Company has been a priority for senior leadership. The first executive addition under the new leadership team was Andrea Kirk, for the newly created role of Vice President, Quality. Ms. Kirk brings nearly 20 years of quality and compliance experience from the pharmaceutical industry to CannTrust and her mandate is to lead the Quality and Compliance Department. Since joining the Company in March 2019, she has hired and trained 17 quality and compliance professionals.

Financial Outlook

At this time, the impact of these matters on CannTrust's financial results are unknown until Health Canada completes its quality testing of product from Pelham which is currently on hold. Further updates will be provided as they become available.

116. Following the First Corrective Disclosure, CannTrust’s share price declined materially on abnormally high trading volumes from C$6.46 at the close of trading on July 5, 2019 to

C$5.00 at the close of trading on July 8, 2019 and to C$3.34 at the close of trading on July 12, 2018.

117. In an interview given to the *Financial Post* on July 8, 2019, Aceto confirmed that some of the illegally cultivated cannabis had been shipped to Canadian provinces for sale to cannabis consumers. Aceto also expressed his disappointment and surprise to the *Post* with respect to what had happened.

118. On July 9, 2019, Health Canada provided an emailed statement to the *Financial Post* stating that it had conducted a surprise inspection of CannTrust's Niagara Facility on June 17, July 3 and 4 and had seized 4,327 kg of implicated product. CannTrust was given until July 17th to respond to the non-compliance report.

119. Also on July 9, 2019, Paul gave an interview to the *Business News Network*. Paul said that "it was quite a shock" when he learned of the illegal cannabis being cultivated at the Niagara Facility and that if someone did so to meet increased demand that was "pretty flawed logic".

120. On July 10, 2019, *The Globe & Mail* published an article entitled "CannTrust allegedly used fake walls to hide pot from Health Canada". That article disclosed information provided by Nick Lalonde, a former employee of CannTrust from June 2017 to May 2019. Lalonde said that in November 2018, CannTrust employees (himself included) were asked to stay after hours to set up fake white poly walls in one of the unlicensed rooms. The fake poly walls were set up to hide several thousand cannabis plants in pictures to be taken of an unlicensed room in the Niagara Facility. The pictures were provided to Health Canada as part of routine licensing requirements. Lalonde emailed Health Canada on June 14 to blow the whistle on CannTrust's illegal behaviour. Health

Canada acted on the information and launched the surprise inspection of CannTrust on June 17, which eventually led to the non-compliance order. The article also noted that the Ontario Cannabis Store and the Alberta Gaming, Liquor and Cannabis Commission stopped selling impacted CannTrust cannabis products.

121. On July 11, 2019, CannTrust issued and filed a press release on SEDAR stating that it was halting the sale and shipment of all of its cannabis products while the Health Canada investigation was ongoing. CannTrust also announced the appointment of a special committee comprised of independent members of the board to investigate the matter.

122. On July 12, 2019, CannTrust filed two material change reports on SEDAR. One of the material change reports reiterated the contents of the First Corrective Disclosure. The other material change report related to CannTrust's hold on cannabis sales and shipments while the Health Canada investigation was ongoing.

123. On July 22, 2019, CannTrust issued and filed a press release on SEDAR entitled "CannTrust Special Committee Update". In that press release CannTrust stated that Marcovitch had been appointed as head of the special committee and that Page, Dawber and Kaden had been appointed as members. CannTrust further disclosed that the Committee had been struck to investigate the matters that resulted in non-compliance with Health Canada regulations. It stated that McCarthy Tétrault LLP had been appointed as legal counsel.

124. The Second Corrective Disclosure was released on July 23, 2019. *The Globe & Mail*, in an article entitled "CannTrust chairman, CEO were informed in November of unlicensed cannabis growing, emails show", reported that members of CannTrust's senior management and board, including both Aceto and Paul, had knowledge that cannabis was

being cultivated illegally in unlicensed rooms in the Phase 2 Expansion of the Niagara Facility. The article stated that:

> Both the chairman and the chief executive officer of CannTrust Holdings Inc. were informed that the company was growing cannabis in unlicensed rooms about seven months before Health Canada uncovered the regulatory breach, internal e-mails show.
>
> The company communications, seen by The Globe and Mail, show chairman Eric Paul and CEO Peter Aceto were made aware that cannabis was being cultivated in rooms at a growing facility in Southern Ontario that had yet to be licensed by the federal regulator, and that Mr. Paul counselled staff on how to respond.
>
> In an e-mail dated Nov. 16, 2018, Graham Lee, CannTrust's director of quality and compliance, informed Mr. Aceto and other top executives about a Health Canada inspection that had just been completed. It had revealed several compliance breaches but missed the plants growing in unlicensed rooms.
>
> "We dodged some bullets," Mr. Lee wrote. "[Health Canada] did not ask about RG8E/W, which are unlicensed rooms currently full of plants."
>
> The e-mail outlines a number of "current risks," including plants growing in unlicensed rooms, the storage of cannabis in unlicensed rooms and the "large number of lost bottles [of cannabis] we have not reported."
>
> "Although serious, on their own, each of these can be talked through with [Health Canada]. The concern is that together they will paint a picture with the regulator of a company not in control. We have dodged observations for items 1 and 6 despite having HC in the building," Mr. Lee wrote.
>
> Along with Mr. Aceto, the e-mail was sent to Ian Abramowitz, a CannTrust executive who was chief financial officer at the time, and Ilana Platt, the company's vice-president of innovation and regulatory affairs.
>
> The e-mail was forwarded to Mr. Paul later the same day, who responded, "We need to clearly point out that we have been diligent in submitting the applications for each new area and they have been slow in responding. We are supporting the legislation and we need their cooperation. Politely as always."
>
> When asked about the e-mails, CannTrust responded with a statement from Robert Marcovitch, a CannTrust board member who is leading a special committee appointed to conduct an international investigation.
>
> "The Independent Special Committee of the Board of Directors of CannTrust is in the final stages of a thorough investigation of these matters as part of our due diligence requirements. We expect to conclude this investigation within days and will take all appropriate actions immediately thereafter," Mr. Marcovitch said.
>
> CannTrust is under investigation by Health Canada, after federal regulators found the Vaughan, Ont.-based cannabis producer grew 12,700 kilograms of cannabis in unlicensed rooms between October, 2018, and March of this year.

The value of CannTrust shares has fallen 47 per cent since July 8, when the company acknowledged that it had received a non-compliance order from Health Canada, raising concerns that CannTrust could lose its licence or be forced to destroy thousands of kilograms of cannabis worth tens of millions of dollars. CannTrust halted all sales on July 11, pending the outcome of the Health Canada investigation.

The special committee responded to Health Canada's queries on July 17, and is waiting to hear back from federal regulators. Health Canada has not indicated how it intends to respond to the regulatory breaches at CannTrust. It has the power to suspend and revoke cannabis licences, and to issue fines.

...

The scandal has cast the cannabis industry in an unfavourable light as it seeks to attract capital and expand operations in the United States, where federal legalization has yet to move forward. U.S. financial-services giants Bank of America, Citigroup and Jefferies LLC were among the underwriters of a US$195.5-million CannTrust share offering in May to international investors, with the stock priced at US$5.50 a share. Mr. Paul and members of the Litwin family, long-time backers of the company, sold US$30-million of CannTrust stock as part of that offering.

…

The November e-mail was sent shortly after a targeted inspection of CannTrust's Pelham facility by Health Canada, which turned up several regulatory breaches, including poor paperwork, missing personnel and an incorrect protocol for releasing batches of cannabis, according to Mr. Lee's e-mail.

"The fallout from this inspection will be major observations, and possibly a 'critical' one. I am not ruling out a censure letter of some sort. That said, in the past I have had success explaining away these types of observations to HC, and they have dialed down the rhetoric. Practically, this may lead to increased inspections and more scrutiny, but hopefully will have no other immediate material affect," Mr. Lee wrote.

"That said, if that's all that happens, we got very lucky here. There are several points of exposure in our business we need to consider. I would not be surprised if HC visits Vaughan in the near future and that could compound HC's concerns," he added.

Mr. Lee outlined a number of risks, referring to room numbers in the facility: "1) RG8 is not licenced but has plants in it; 2) RG9 is not licenced but we are intending to put plants in it on Monday; 3) PA2A-E are not licenced but we have moved the encapsulation equipment into them and will begin running it next week."

Mr. Lee said CannTrust was storing product in unlicensed rooms at both its Pelham and Vaughan facilities.

> "We have a large number of lost bottles we have not reported. I suspect due to bad counting rather than diversion [into the black market]," Mr. Lee added. "I will continue working to eliminate our exposure on all these items, but they remain a liability. Please advise of any actions you would like me to take."
>
> Health Canada appears to have begun its investigation into CannTrust's unlicensed cultivation in mid-June, after receiving a whistle-blower tip from former CannTrust employee Nick Lalonde.
>
> In an e-mail sent to Health Canada on June 14, Mr. Lalonde alleged that last fall he took part in efforts to stage photographs of an unlicensed room in the Pelham greenhouse by hanging temporary walls and moving plants. Health Canada can request photographs of facilities as part of the routine licensing process.
>
> Federal inspectors had conducted three inspections on CannTrust's Pelham greenhouse since the Cannabis Act came into effect in October, Health Canada spokesperson Tammy Jarbeau wrote in a statement to The Globe on July 12.

125. On July 24, 2019, a *Business News Network* article entitled "CannTrust CEO told staff 'continue as planned' on unlicensed pot" confirmed CannTrust's senior management and, at least some, board members had knowledge of the illegal cannabis cultivation and directed it. The article stated:

> Chief Executive Officer Peter Aceto told senior company officials to "continue as planned" and plant cannabis in an unlicensed room in mid-November, according to internal company documents obtained by BNN Bloomberg that establish a clear timeline of when illegal production was brought to management's knowledge.
>
> In minutes from weekly production meetings held by conference call from Nov. 14 to Nov. 28, seven CannTrust employees – including three vice-presidents as well as Graham Lee, the company's director of quality and compliance – provided updates on developments at RG9, one of five unlicensed rooms at the company's facility in Pelham, Ont. where Health Canada inspectors later determined the company grew thousands of kilograms of cannabis.
>
> During a meeting held on Nov. 14, senior CannTrust staff stated that RG9 was not licensed by Health Canada and that further work in the room "needs up (sic) be run up the chain before anything is planted in there." The room was estimated to be 50,000 square feet, roughly the same size as a football field, the minutes showed.
>
> As well, Aceto – who was not present for any of the three production meetings – was to be informed by Lee that the RG9 room was not licensed, and that any repercussions if the company started planting in that room despite being unlicensed were "unknown."
>
> …

> On Nov. 21, the minutes stated that RG9 remained unlicensed but Lee – who attended each of the production meetings – stated he spoke to Aceto about the unlicensed room and was instructed to “continue as planned.”
>
> Minutes from the Nov. 28 production meeting stated CannTrust employees had submitted an application to Health Canada for the RG9 licence and were still waiting for approval from the federal regulator. “Still moving forward with planting today – 3 lots,” the minutes stated. One lot is approximately 1,000 cannabis plants, which can produce as much as 1,000 kilograms of marijuana.

126. On July 25, 2019, CannTrust filed a press release on SEDAR entitled “CannTrust announces Senior Leadership Changes”. In that press release CannTrust announced the termination of Aceto’s employment as CEO with cause. CannTrust appointed Marcovitch, former head of the special committee, as the new CEO. CannTrust also announced that it had asked for and received Paul’s resignation from his role as Chairman and as a board member. CannTrust further said it made a voluntary disclosure to Health Canada as a result of matters that were uncovered in the course of the investigation. CannTrust filed a material change report with respect to the contents of the July 25th press release on SEDAR on August 2, 2019.

127. On July 31, 2019, CannTrust announced the appointment of a financial advisor to assist in a review of strategic alternatives that included a sale, strategic investment, a business combination, and changes to CannTrust’s operations or strategy.

128. On August 1, 2019, CannTrust filed a press release on SEDAR entitled “CannTrust Announces Anticipated Late Filing of Financial Statements and Proposed Management Cease Trade Order”. In the press release CannTrust disclosed a possible restatement of previous financials as a consequence of Health Canada’s investigation and an investigation by the Joint Serious Offences Team of the Enforcement Branch of the OSC (a partnership between the OSC, the Royal Canadian Mounted Police and Ontario Provincial Police). The press release stated, in part:

> Management is of the view that there is significant uncertainty with respect to the potential impact of pending Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition. As previously disclosed, the Company received a compliance report from Health Canada notifying it that its Niagara Facility in Pelham, Ontario is non-compliant with certain regulations based on observations made by Health Canada regarding the growing of cannabis in five unlicensed rooms from October 2018 to March 2019 and inaccurate information provided to Health Canada by employees. Health Canada placed a hold on inventory which includes approximately 5,200 kg of dried cannabis that was impacted by the previously unlicensed rooms at the Company's Niagara Facility. The Company instituted a voluntary hold of approximately 7,500 kg of dried cannabis equivalent at its extraction, manufacturing and packaging facility in Vaughan, Ontario that was impacted by the previously unlicensed rooms. The Company estimates the value of the impacted inventory and biological assets is approximately $51 million as at June 30, 2019.
>
> The uncertainty with respect to the nature, timing and potential financial impact of pending Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition relates to the fact that Health Canada has broad discretion to exercise a wide range of regulatory powers.
>
> Until Health Canada has made determinations with respect to the exercise of its regulatory powers, the potential impact on the Company's operations and financial condition remains unknown. In addition to impacting the Company's financial disclosure in the Q2 Filings, the effects of the pending Health Canada decisions may also require restatement of certain of the Company's historical financial statements and related management's discussion and analysis for the periods ended December 31, 2018 and March 31, 2019 ("Restated Financials")
>
> …
>
> As announced yesterday, the Company's Special Committee of independent directors has commenced a review of strategic alternatives and retained Greenhill & Co. Canada Ltd. as its financial advisor. That review is in its early stages and is ongoing. Today, staff of the OSC advised the Special Committee's legal counsel that an investigation has been opened into matters and parties related to CannTrust and the investigation has been assigned to the Joint Serious Offences Team of the Enforcement Branch of the OSC.

On August 2, 2019, CannTrust filed a corresponding material change report on SEDAR.

129. On August 6, 2019, *The Globe & Mail* published an article entitled “Ex-CannTrust CEO Peter Aceto warned former chair Eric Paul of corporate governance problems”. That article provided excerpts of a letter from Aceto to Paul dated December 31, 2018 which stated, in part, that “[m]anagement often receives conflicting instructions from board members. It is often unclear when and which board members need to be involved in

decision-making, and when decisions are made, they are often second-guessed" and that "[i]t is very difficult for management to confidently devise, adapt and execute strategy, build a confident high-performing team and to make the daily decisions that need to be made for the business to succeed."

130. When asked about the letter, Aceto told *The Globe & Mail* that "[t]he bottom line is this: I knew what needed to be done to fix this company, but the lack of governance and proper executive decision-making authority was extremely concerning to me" and that "[w]hat I can tell you today was I felt very strongly that an almost complete lack of governance was at the root of this, which is why I brought it to the attention of the board in this formal manner."

131. On August 9, 2019, CannTrust issued a press release on SEDAR entitled "CannTrust Announces the Withdrawal of Auditors' Report". That press release stated that:

> the Company's independent auditor, KPMG LLP, Chartered Professional Accountants ("KPMG"), has informed the Company that effective August 8, 2019, it is withdrawing its report dated March 27, 2019 on the Company's consolidated financial statements as at and for the year ended December 31, 2018 and its interim report to the Audit Committee dated May 13, 2019 on the unaudited condensed interim consolidated financial statements as at and for the three month period ended March 31, 2019 (collectively, the "KPMG Reports"), and therefore, the KPMG Reports should no longer be relied upon. KPMG remains CannTrust's independent auditor. The Company's cooperation with KPMG is being directed by the Company's Audit Committee and a special committee (the "Special Committee") of its board of directors which is conducting an ongoing investigation into various matter.
>
> As previously disclosed, Management is of the view that there is significant uncertainty with respect to the potential impact of pending Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition. Accordingly, CannTrust cautions against any reliance on its consolidated financial statements as at December 31, 2018 and interim consolidated financial statements as at and for the three month period ended March 31, 2019. CannTrust is continuing to cooperate with Health Canada and the impact of the matters being investigated by the Special Committee on CannTrust's financial results is unknown at this time. Further updates, to the extent material, will be provided as they become available.

> KPMG's decision was prompted by the Company's caution against reliance on its financial statements for the year ended December 31, 2018 and for the three months ended March 31, 2019, as well as the recent sharing with KPMG of newly uncovered information from the Special Committee's investigation, including information that led to senior leadership changes announced on July 25, 2019. KPMG was not aware of the information recently shared by the Company when it issued the KPMG Reports and had relied upon representations made by individuals who are no longer at the Company.

132. On August 12, 2019, CannTrust issued a press release on SEDAR entitled "CannTrust Provides Interim Update". In that press release, CannTrust disclosed a further Health Canada finding of non-compliance this time at its Vaughan Facility. Specifically, as a result of its inspections between July 10-16, 2019 Health Canada made the following non-compliance findings:

- The conversion of five rooms from operational areas to storage areas, which were used for storage since June 2018 without prior approval of Health Canada;
- The construction of two new areas without prior approval of Health Canada, one of which was used to store cannabis since November 2018;
- Insufficient security controls at the manufacturing facility;
- Inadequate quality assurance investigations and controls;
- Standard operating procedures that did not to meet the requirements under regulations; and
- Documents or information that were not retained in a manner to enable Health Canada to complete its audit in a timely manner.

CannTrust said that it accepted the findings of non-compliance.

133. On September 6, 2019, the *Business News Network* published an article entitled "Black market pot entered CannTrust facility, flowed into legal market last year: Sources". That article disclosed that starting in 2018 senior operating staff at the Niagara Facility used black market cannabis seeds. CannTrust cultivated over 1000 cannabis plants using the black-market seeds. CannTrust mislabelled these seeds as being authorized cannabis strains and eventually sold that cannabis into the recreational market.

134. On September 17, 2019, CannTrust released the Third Corrective Disclosure. In a press release entitled "CannTrust Discloses Notice of License Suspension", CannTrust stated:

> VAUGHAN, ON, Sept. 17, 2019 /CNW/ – CannTrust Holdings Inc. ("CannTrust" or the "Company",TSX: TRST, NYSE: CTST) announced that it received late this morning a Notice of Licence Suspension (the "Notice") under section 64(1) of the Cannabis Act (Canada). The Notice cites the Company's previous non-compliance with certain requirements of the Cannabis Act (Canada) and the regulation made thereunder (the "Cannabis regulations") in respect of the matters that the Company has been discussing with Health Canada.
>
> The Notice states that Health Canada has suspended CannTrust's authority to produce cannabis, other than cultivating and harvesting, and to sell cannabis. As such, the Notice constitutes a partial suspension of the Company's licence for standard cultivation and a full suspension of its licences for standard processing, medical sales, cannabis drugs and research issued under the Cannabis regulations. While the suspension remains in effect, CannTrust will be permitted to cultivate and harvest existing lots or batches previously propagated, as well as conducting ancillary activities to those lots, including drying, trimming and milling. During the suspension, CannTrust may not propagate new lots or batches of cannabis or engage in the sale or distribution of cannabis.
>
> The Notice states that Health Canada will reinstate CannTrust's licences under section 64(4) of the Cannabis Act if the reasons for the suspension no longer exist or if CannTrust demonstrates that the suspension was unfounded. The Notice also states that Health Canada considers that implementation of the following measures could potentially address the public health and safety risks that contributed to Health Canada's decision to issue the Notice:
>
> Measures to ensure that cannabis will be produced and distributed only as authorized, including measures to control the movement of cannabis in and out of CannTrust's site;
>
> Measures to recover cannabis that was not authorized by CannTrust's licence;
>
> Measures to improve key personnel's knowledge of, and compliance with the provisions of the Act and the Regulations that apply to CannTrust; and,
>
> Measures for improving the manner in which records are kept, including a plan to improve the inventory tracking, and any interim measures to ensure that information provided to Health Canada can be reconciled.
>
> The Company's management and Board of Directors are reviewing the Notice with the Company's counsel and other advisors.
>
> Over the past two months, the Company has moved swiftly to assess and address Health Canada's concerns, including areas of operational non-compliance. The Company remains committed to being in full regulatory compliance.

135. Following the Third Corrective Disclosure, CannTrust's shares declined materially on abnormally high trading levels from C$1.99 per share at the close of trading on September 16, 2019 to $1.70 per share at the close trading on September 17, 2019.

136. On October 14, 2019, CannTrust issued a press release entitled "CannTrust Advances its Plan Towards Regulatory Compliance". In that press release, CannTrust announced, among other things, that it was destroying $12 million in biological assets and $65 million worth of inventory that was not authorized by its license as part of its plan to return to regulatory compliance.

137. On October 24, 2019, CannTrust issued a press release entitled "CannTrust Provides Progress Update Regarding Remediation Plan." In that press release Dawber, chair of the Special Committee, made the self-serving statement that the Special Committee found no evidence that any of the remaining members of the board "were aware of or engaged in any non-compliance issue." The members of the Special Committee—Dawber, Kaden, Page and Marcovitch (prior to his appointment as CEO)—were all members of CannTrust's board while illegal activity was occurring and remained members of the board at the time of Dawber's statement. The press release gave no indication of what steps, if any, were taken to address the obvious conflict of interest the members of the Special Committee had in investigating their own complicity in the illegal conduct and the complicity of the other remaining directors who were similarly situated.

138. In its October 24, 2019 press release CannTrust also confirmed that it will be restating and refiling its financial statements for the 2018 year and the first quarter of 2019. The company indicated that it plans to do so "within the next 60 days."

139. John Kaden's resignation from CannTrust's board was announced on October 28, 2019.

140. The Plaintiffs were not aware of the facts contained in the corrective disclosures prior to their release.

POST-CORRECTION INDIVIDUAL MISREPRESENTATIONS MADE TO THE PLAINTIFFS

141. On the day of the First Correction, July 8, 2019, Zola principle Ouass and Gimelshtein spoke to then-Chairman Paul by telephone. Gimelshtein and Ouass were in the process of deciding whether to maintain their investment in CannTrust, given the revelations of CannTrust's illegal cannabis production. Ouass and Gimelshtein advised Paul of this.

142. Paul misled them. He told them that he was not aware of the illegal cannabis growing until the news on July 8, 2019 broke, something that has been proven to be untrue. Paul stated that he "had been dealt this hand" and was in the process of addressing the purported issue, which he suggested was not systemic but rather the actions of a single or small group of individuals. In fact, Paul assured Ouass and Gimelshtein that the issue did not extend into the highest levels of CannTrust's management team. He maintained that the company was well-positioned for future growth.

143. Paul failed to tell Ouass and Gimelshtein that CannTrust had cultivated cannabis illegally, stored cannabis illegally and cultivated black market cannabis seeds under his guidance. Paul omitted the material risks that CannTrust's non-compliance with *Access to Cannabis for Medical Purposes Regulations* and ongoing non-compliance with the *Cannabis Act* posed to CannTrust's ability to capitalize on the legalization of recreational cannabis, in contravention of Health Canada laws.

144. Zola and Gimelshtein relied on these representations when making the decision to maintain their investment in CannTrust and suffered damage as a result. Since that time,

the company's shares have declined further, from a closing price of $5.00 CAD on July 8th to their current trading price of approximately $1.30 (as of mid-November, 2019).

145. Following the First Correction on July 8, 2019, Gimelshtein communicated, via telephone calls and text messages, with Kaden. In a text message to Gimelshtein, Kaden described Aceto's post-correction communications to the media as "INSANE!!" and indicated that CannTrust's investor relations firm had been considering resigning, largely because they were uncomfortable with Aceto and Paul continuing to be in charge. Moreover, during phone conversations Kaden told Gimelshtein that it was crazy that CannTrust's illegal conduct was not disclosed earlier and that Kaden had failed to fulfill his legal obligations as director of CannTrust.

RIGHTS OF ACTION

Part XXIII.1 of the *OSA*: Secondary Market Misrepresentations

146. The Plaintiffs assert the cause of action under Part XXIII.1 of the *OSA* against CannTrust, and the Individual Defendants for the Impugned Documents and for the failure to disclose a material change in a timely manner. The Plaintiffs assert the same cause of action against Abramowitz and Paul for misrepresentations in the CEO and CFO certifications of CannTrust's periodic filings they provided.

147. The Impugned Documents and CEO and CFO certifications contained the misrepresentations alleged herein.

148. Each of the Core Documents is a "core document" within the meaning of the *OSA*. Each of the Non-Core Documents and CEO and CFO certifications are "documents" within the meaning of the *OSA*.

149. CannTrust is a reporting issuer within the meaning of the *OSA*. CannTrust is responsible for the misrepresentations and for the failure to make timely disclosure of the material change particularized herein.

150. Each of the Individual Defendants who was a director of CannTrust at the time that CannTrust released one or more of the Impugned Documents is liable for the misrepresentations alleged to be contained in such document or documents by virtue of having been a director at the time of their release.

151. Each of the Individual Defendants who was an officer of CannTrust permitted, authorized or acquiesced to the release of all Impugned Documents during their tenure as an officer of CannTrust and is therefore liable for the alleged misrepresentations contained therein.

152. With respect to the Non-Core Documents, CannTrust and the Individual Defendants knew that they contained the alleged misrepresentations or, in the alternative, deliberately avoided acquiring such knowledge or, in the further alternative, were guilty of gross misconduct in connection with the release of the document. They are liable for the alleged misrepresentations contained therein.

153. With respect to the CEO and CFO certifications, each of Paul and Abramowitz, permitted, authorized or acquiesced in the release of the certifications, and knew that the certifications contained the alleged misrepresentations or, in the alternative, deliberately avoided acquiring such knowledge or, in the further alternative, were guilty of gross misconduct in connection with the release of the certifications. They are liable for the alleged misrepresentations contained therein.

154. Each of the Individual Defendants authorized, permitted or acquiesced in the failure to make timely disclosure of the material changes particularized herein.

155. For each alleged undisclosed material change, CannTrust and the Individual Defendants: (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that it was a material change; or (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or (c) are guilty of gross misconduct in connection with the failure to make timely disclosure. CannTrust and the Individual Defendants are liable under the *OSA* for the failure to disclose the material change.

156. Each of the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations particularized herein and the failure to make timely disclosure of the material changes alleged herein while knowing them to be misrepresentations or failures to make timely disclosure. Each Individual Defendant is, therefore, liable for the entirety of the damages claimed herein.

Negligent Misrepresentation

157. The Plaintiffs plead negligent misrepresentation against CannTrust and the Individual Defendants for the Impugned Documents and the specific pre-investment representations and post-correction representation (detailed at paragraphs 79-96, 101-107 and 140-143) made to Gimelshtein, who was also serving as Zola's agent, by the Defendants Fred Litwin and Paul.

158. Paul and Fred Litwin made the specific misrepresentations to solicit or maintain the Plaintiffs' investment in CannTrust and the Plaintiffs relied upon these misrepresentations when deciding to invest, or to continue to invest in the case of the post-correction representation.

159. The Impugned Documents were prepared and disseminated to provide material information and induce the Plaintiffs to acquire and hold their CannTrust shares.

160. CannTrust and the Individual Defendants undertook, at all material times, to prepare and disseminate the Impugned Documents with reasonable care for the aforementioned purpose. The Defendants intended and were aware that the Plaintiffs would rely reasonably upon the Impugned Documents to their detriment in deciding to purchase CannTrust shares.

161. CannTrust and the Individual Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of CannTrust's publicly traded shares such that the trading price of those shares would at all times reflect the information contained in the Impugned Documents.

162. CannTrust and the Individual Defendants were responsible for the preparation of the Impugned Documents and undertook to do so for the benefit of, and to be relied upon by, the Plaintiffs.

163. CannTrust and the Individual Defendants, therefore, had a duty of care at common law, informed by the obligations referred to at paragraphs 51 to 65 above, to exercise due care and diligence to ensure that the Impugned Documents fairly and accurately disclosed all material information about CannTrust's business, including the compliance of its cannabis cultivation, processing, storage and sales practices with the regulatory regime.

164. CannTrust and the Individual Defendants breached that duty by failing to take reasonable or any steps to ensure that the Impugned Documents did not contain the alleged misrepresentations particularized herein.

165. CannTrust and the Individual Defendants had exclusive access to information about CannTrust's business and operations. As such, they were the primary source of information with respect to CannTrust's cannabis cultivation, processing, storage and sales practices and CannTrust's compliance with legal obligations related thereto.

166. The Plaintiffs directly or indirectly relied upon the alleged misrepresentations in deciding to purchase CannTrust's shares and suffered damage when the alleged misrepresentations were publicly corrected by the First, Second and Third Corrective Disclosures.

167. The Plaintiffs suffered damages as a consequence of their reliance on the Impugned Documents.

168. The Plaintiffs suffered damages as a consequence of their reliance on Fred Litwin and Paul's pre-investment individual misrepresentations and Paul's post-correction individual misrepresentations.

Relief from Oppression

169. As against CannTrust and the Individual Defendants who are directors of CannTrust, the Plaintiffs seek relief from oppression pursuant to section 248 of the *OBCA*.

170. CannTrust is incorporated pursuant to the *OBCA*.

171. The Plaintiffs had reasonable expectations about the way the business and affairs of CannTrust would be conducted.

172. The Plaintiffs' reasonable and legitimate expectations were that:

(a) CannTrust would conduct its business and affairs in accordance with the legislation and regulation governing licensed cannabis producers, namely the

Cannabis Act and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*;

(b) CannTrust and its directors and officers would abide by continuous disclosure and other reporting obligations prescribed by the *OSA* and applicable securities regulatory instruments; and

(c) CannTrust's directors and officers would act honestly and in good faith with a view to CannTrust's best interests, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

173. CannTrust and its officers and directors breached those reasonable expectations by:

(a) knowingly operating in violation of the *Cannabis Act* and its predecessor regulation the *Access to Cannabis for Medical Purposes Regulations*, as alleged herein; and

(b) breaching the *OSA* and securities regulations by making the misrepresentations in the Impugned Documents (paragraphs 79 to 97), by making the pre-investment individual misrepresentations (paragraphs 101 to 107), by making the post-investment individual misrepresentations (paragraphs 108 to 113) and by making the post-correction misrepresentations (paragraphs 140-143).

174. The violation of the Plaintiffs' reasonable expectations was oppressive, unfairly prejudicial to and unfairly disregarded the Plaintiffs' interests.

175. As a result, the Plaintiffs seek relief pursuant to section 248 of the *OBCA*, including compensation for their damages and the losses they have suffered.

Insider Trading

176. As against Fred Litwin, the Plaintiffs claim damages for insider trading pursuant to section 134 of the *OSA*.

177. Forum Financial is a person or company that was engaging in business or professional activity with or on behalf of CannTrust. Fred Litwin was a director, officer or employee of Forum Financial. Fred Litwin was, therefore, in a special relationship with CannTrust.

178. Alternatively, Fred Litwin learned of material facts and material changes with respect to CannTrust from CannTrust insiders (including but not limited to Mark Litwin, Paul, Mark Dawber and Abramowitz) when he knew or ought to have reasonably known that those individuals were CannTrust insiders. Fred Litwin was, therefore, in a special relationship with CannTrust.

179. In breach of sections 76 and 134 of the *OSA*, Fred Litwin sold CannTrust shares to the Plaintiffs with knowledge of the undisclosed material facts and/or material changes particularized herein.

180. As a result of the conduct in breach of section 76 and 134 of the *OSA*, the Plaintiffs have suffered damages.

DAMAGES AND COMPENSATION FOR OPPRESSION

181. The Plaintiffs would not have acquired any CannTrust shares but for the Defendants' negligent misrepresentations. As a consequence, the Plaintiffs suffered damages in the following amounts:

(a) the full amount of the purchase price paid for its CannTrust shares;

(b) the transaction costs for its CannTrust share purchases; and

(c) the lost returns from alternative investments the Plaintiffs would have made had they not invested in CannTrust.

182. Alternatively, the Plaintiffs would have acquired the CannTrust shares at a materially lower price but for the Defendants' misrepresentations and failure to disclose material changes in CannTrust's business, operations and capital.

183. The price of CannTrust's securities on the secondary market and those acquired by the Plaintiffs from Fred Litwin was directly affected by the alleged misrepresentations and the failure to disclose the material changes. The Defendants were aware at all material times of the effect of CannTrust's disclosure documents and disclosure of material changes upon the price of its shares. Had the Defendants not made the alleged misrepresentations and, instead, disclosed the truth, then CannTrust's shares' market price would have incorporated that information and declined by a material amount.

184. As a consequence, the Plaintiffs suffered damages in the following amounts:

(a) the difference between the purchase price the Plaintiffs paid for their CannTrust shares and the price the Plaintiffs would have paid had the alleged misrepresentations and omissions not been made; and

(b) the lost returns from alternative investments the Plaintiffs would have made with the money they saved due to the lower acquisition price.

185. Further or in the alternative, the Plaintiffs are entitled to the statutory damages for secondary market misrepresentations prescribed by Part XXIII.1 of the *OSA* for their CannTrust share acquisitions.

186. Further or in the alternative, had CannTrust and the Individual Defendants not engaged in the illegal and oppressive conduct particularized herein, then there would have been no threat to CannTrust's status as a licensed producer, CannTrust would not have had its licensed suspended and CannTrust would not have suffered any of the other adverse material impacts that have resulted from its illegal conduct. Consequently, the Plaintiffs seek compensation for the loss they have suffered in the amount of the difference between the market value of CannTrust's shares and the market value of those shares had CannTrust not engaged in the illegal conduct particularized herein.

RESCISSION

187. The Plaintiffs purchased CannTrust shares directly from Fred Litwin. Paul's and Fred Litwin's alleged misrepresentations and omissions to the Plaintiffs were fraudulent or contained an error in *substantialibus*. The Plaintiffs would not have acquired CannTrust shares from Fred Litwin had these material misrepresentations and omissions not been made. The misleading statements and omissions were intended to and did induce the Plaintiffs to purchase the CannTrust shares from Litwin. The Plaintiffs are, therefore, entitled to rescind their CannTrust share transaction with Litwin.

188. The Defendants' misrepresentations and omissions to the Plaintiffs were fraudulent or contained an error in *substantialibus*. The Plaintiffs would not have acquired CannTrust shares on the secondary market had these material misrepresentations and omissions not been made. The misleading statements and omissions induced the Plaintiffs to purchase the CannTrust shares on the secondary market. The Plaintiffs are, therefore, entitled to rescind their CannTrust share purchases on the secondary market.

EXEMPLARY AND PUNITIVE DAMAGES

189. CannTrust and the Individual Defendants made deliberate decisions to act illegally and, in fact, carried out that illegal conduct for an extended time period. CannTrust and the Individual Defendants then made a deliberate decision not to disclose this information to the Plaintiffs specifically and the market generally. This was despite the Plaintiffs' repeated and ongoing inquiries to some or all of the Defendants as to the status of CannTrust's cannabis related business. The Defendants' conduct was high-handed, reckless, without care, deliberate and in wanton disregard of the Plaintiffs' rights and interests. The Defendants' conduct purposely artificially inflated the price of CannTrust's shares and caused a large loss to the Plaintiffs and other CannTrust shareholders. Such harm to investors and Canada's capital markets generally requires a deterrent award.

190. To achieve its deterrence and public interest objectives, any punitive damages award should be significant. The punitive damages award must be substantial to reflect both the underlying illegal conduct and the Defendants' deliberate decision not to disclose that information to the market. A punitive damages award must be sufficiently large to ensure that directors, officers, issuers and other responsible parties cannot easily treat liability for making misleading public and private statements to investors as a mere cost of doing business and a license to breach the law.

VICARIOUS LIABILITY

191. CannTrust is vicariously liable for the acts and omissions of the Individual Defendants particularized herein.

192. CannTrust's acts and omissions particularized and alleged herein were authorized, ordered and done by the Individual Defendants and other agents, employees and

representatives of CannTrust, while engaged in the management, direction, control and transaction of the business and affairs of CannTrust.

193. By virtue of the relationship between CannTrust and Individual Defendants, such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but also are the acts and omissions of CannTrust.

194. At all material times, the Individual Defendants were directors and/or officers of CannTrust. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

195. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

(a) CannTrust is headquartered in Ontario;

(b) CannTrust is a reporting issuer on the TSX;

(c) the Plaintiffs acquired CannTrust shares in Ontario and suffered damages and losses in Ontario; and

(d) CannTrust conducts extensive business in Ontario, including the cultivating, processing, storage, marketing and sale of cannabis.

SERVICE OUTSIDE OF ONTARIO

196. The Plaintiffs may serve the Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this claim is:

(a) a claim in respect of personal property in Ontario (rule 17.02(a));

(b) a claim in respect of a tort committed in Ontario (rule 17.02(g)); and

(c) a claim against a person or entity carrying on business in Ontario (rule 17.02(p)).

RELEVANT LEGISLATION AND PLACE OF TRIAL

197. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the *OSA* and securities regulatory instruments, and the *OBCA*.

198. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

November 27, 2019

Siskinds LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Michael G. Robb (LSO# 45787G)
Garett M. Hunter (LSO# 71800D)
Tel: 519-660-2121
Fax: 519-672-6065

100 Lombard Street
Suite 302
Toronto, ON M5C 1M3

Alex Dimson (LSO#: 56129U)
Tel: 416-594-4394
Fax: 416-362-2610

Wright Henry LLP
200 Wellington St. West
Suite 602
Toronto, ON M5V 3C7

Michael Wright
Danielle Stampley
Tel: 416-306-8280
Fax: 416-306-8281

Lawyers for the Plaintiff

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Zola Finance Holdings Ltd. *et al*
Plaintiffs

and

CannTrust Holdings Inc. *et al*
Defendants

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

Siskinds LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Michael G. Robb (LSO#: 45787G)
Garett M. Hunter (LSO #: 71800D)
Tel: 519-660-2121
Fax: 519-672-6065

Barristers & Solicitors
100 Lombard Street
Suite 302
Toronto, ON M5C 1M3

Alex Dimson (LSO#: 56129U)
Tel: 416-594-4394
Fax: 416-362-2610
Lawyers for the Plaintiff

Wright Henry LLP
200 Wellington St. West
Suite 602
Toronto, ON M5V 3C7

Michael Wright
Danielle Stampley
Tel: 416-306-8280
Fax: 416-306-8281

This is Exhibit "B" mentioned and referred to in the Affidavit of Igor Gimelshtein, sworn before me over video teleconference this 26th day of October, 2020, with both the affiant and the commissioner, Alex Dimson, being located in the City of Toronto, in the Province of Ontario.

DocuSigned by:

Alex Dimson

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A Commissioner, etc

Company	Share Prices									
	05-Jul-19	05-Sep-19	05-Nov-19	06-Jan-20	05-Mar-20	05-May-20	06-Jul-20	04-Sep-20	23-Oct-20	% Decline
CannTrust Holdings Inc.	C$6.46	C$2.32	C$1.56	C$1.53	C$0.85	-	-	-	-	-86.8%
Canopy Growth Corp.	C$52.63	C$34.94	C$26.17	C$26.02	C$22.45	C$22.17	C$22.95	C$21.11	C$25.94	-50.7%
Aurora Cannabis Inc.	C$118.32	C$93.00	C$59.16	C$29.52	C$21.24	C$11.88	C$16.44	C$11.12	C$6.13	-94.8%
Cronos Group Inc.	C$20.00	C$15.34	C$10.87	C$8.82	C$7.95	C$8.11	C$8.71	C$7.02	C$7.64	-61.8%
OrganiGram Holdings Inc.	C$8.57	C$6.30	C$4.57	C$2.80	C$2.79	C$2.10	C$2.10	C$1.49	C$1.65	-80.7%
Aphria Inc.	C$8.94	C$9.07	C$6.76	C$6.20	C$4.52	C$5.08	C$5.97	C$5.98	C$5.97	-33.2%
Tilray Inc.	C$46.98	C$32.08	C$22.43	C$15.5	C$11.2	C$7.39	C$7.85	C$5.92	$6.73	-85.67%
Hexo Corp.	C$6.81	C$5.99	C$2.70	C$1.90	C$1.61	C$0.72	C$0.97	C$0.87	C$1.00	-85.3%

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No.: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF IGOR GIMELSHTEIN
(Sworn October 26, 2020)

Siskinds LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8
Michael G. Robb (LSO#: 45787G)
Garett M. Hunter (LSO #: 71800D)
Tel: 519-660-2121
Fax: 519-672-6065

Barristers & Solicitors
100 Lombard Street
Suite 302
Toronto, ON M5C 1M3

Alex Dimson (LSO#: 56129U)
Tel: 416-594-4394
Fax: 416-362-2610
Lawyers for the Plaintiff

Wright Henry LLP
200 Wellington St. West
Suite 602
Toronto, ON M5V 3C7

Michael Wright
Danielle Stampley
Tel: 416-306-8280
Fax: 416-306-8281

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn March 31, 2020)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn March 31, 2020)

I, Greg Guyatt, of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of CannTrust Holdings Inc. ("**CannTrust Holdings**"). I have served in this capacity since February 17, 2020. Prior to my appointment as CEO, I served as the Chief Financial Officer ("**CFO**") of CannTrust Holdings since joining CannTrust Holdings on or around February 19, 2019. Prior to joining CannTrust Holdings, I served as the CFO of GreenSpace Brands Inc., a Canadian-based premium natural food product company.

2. I am a Chartered Professional Accountant and have more than 20 years of experience in the consumer packaged goods, retail, pharmaceutical and private equity sectors.

3. Through my current role as CEO, and my former role as CFO, of CannTrust Holdings, I am familiar with the operations, financial results and strategies of the Applicants. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be

true.

4. This affidavit is sworn in support of an application by the Applicants pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") seeking:

(a) an order (the "**First Day Order**") substantially in the form of the draft order included at Tab 4 of the Application Record, among other things, granting relief that is reasonably necessary for the continued operations of the Applicants within an initial 10-day stay period; and

(b) an order (the "**Amended and Restated Initial Order**" and collectively with the First Day Order, the "**Initial Orders**") to be sought at a subsequent hearing to be scheduled with the supervising judge prior to the expiry of the initial 10-day stay period, substantially in the form of the draft order included at Tab 5 of the Application Record, granting broader relief that is appropriate in the circumstances.

5. For ease of reference, the Applicants will be collectively referred to herein as "**CannTrust**". All dollar references herein are Canadian dollars unless otherwise referenced.

I. INTRODUCTION

6. CannTrust is a licensed producer of cannabis in Canada, although portions of its two principal licenses are under partial suspension by Health Canada as a consequence of CannTrust's failure to comply with certain requirements of the *Cannabis Act* (Canada) and the regulations made thereunder, as further described herein.

7. CannTrust owns production and processing facilities in Fenwick and Vaughan, Ontario that support its ability to be a low-cost, high-quality producer with scale. The outstanding common shares of CannTrust Holdings (the "**Common Shares**") are posted and listed for trading on the Toronto Stock Exchange (the "**TSX**") and New York Stock Exchange (the "**NYSE**").

8. Prior to June 2019, CannTrust operated a business that was experiencing operational growth and expanding into new markets and product segments. CannTrust was named *Licensed Producer of the Year* at the 2018 Canadian Cannabis Awards.

9. However, following regulatory audits of CannTrust's facilities in June and July 2019, Health Canada determined, among other things, that CannTrust was growing and storing cannabis contrary to applicable laws.

10. In the period following Health Canada's audits:

(a) The Board of Directors of CannTrust Holdings (the "**Board**") formed a special committee of independent directors (the "**Special Committee**") with a broad mandate to, among other things, conduct an investigation into the allegations arising from Health Canada's audits and any other potential regulatory non-compliance, make recommendations to address the findings of that investigation, and consider potential strategic alternatives available to CannTrust;

(b) CannTrust voluntarily placed a hold on the sale and shipment of all cannabis products;

(c) The Special Committee recommended and the Board agreed to terminate the employment of the CEO of CannTrust, Peter Aceto, for cause, and demanded the resignation of the Chairman of the Board, Eric Paul, who promptly resigned;

(d) Health Canada suspended, in part, CannTrust's licences such that CannTrust was permitted to cultivate and harvest cannabis being grown at the time of suspension but is not permitted to propagate new lots or batches of cannabis or engage in the sale or distribution of cannabis until its licenses are reinstated in full;

(e) Large customers of CannTrust, such as the Ontario Cannabis Retail Corporation (the "**OCS**") and Alberta Gaming, Liquor and Cannabis Commission (the "**AGLC**"), returned CannTrust products;

(f) CannTrust determined that it needed to destroy a significant portion of its inventory and biological assets that was not authorized by CannTrust's licence because it was acquired, grown or stored inappropriately;

(g) To reduce operating costs while CannTrust's licenses remained under partial suspension, CannTrust implemented several rounds of layoffs and reduced its employee headcount from a high of approximately 800 to approximately 280 employees currently;

(h) KPMG LLP, CannTrust's auditor, withdrew its audit report on CannTrust Holdings' financial statements for the year ended December 31, 2018 and

CannTrust Holdings has not filed any further financial statements since May 2019;

(i) CannTrust Holdings and certain of its current and former officers, directors, employees and other parties were named as defendants in several putative securities class actions commenced in several provinces in Canada and at the State and Federal levels in the United States of America. These putative class actions seek estimated aggregate damages of at least $500 million; and

(j) The Royal Canadian Mounted Police ("**RCMP**") and the Joint Serious Offences Team of the Ontario Securities Commission ("**OSC**") initiated a criminal investigation and CannTrust may be subject to potential other investigations and proceedings by criminal and regulatory authorities for violations of applicable law.

11. To address these challenges, the Special Committee and CannTrust have pursued a strategy of:

(a) cooperating fully with Health Canada by proactively disclosing relevant facts uncovered by the Special Committee's investigations as they proceeded;

(b) cooperating with the RCMP and OSC investigations,

(c) designing, with the assistance of external advisers, a comprehensive remediation plan to address the issues uncovered during the Special Committee's investigation and in connection with Health Canada's previously disclosed and anticipated concerns;

(d) implementing the remediation plan and then applying to Health Canada for reinstatement of its cannabis licences; and

(e) working towards updating the financial statements and other public disclosures of CannTrust Holdings, all with a view towards returning CannTrust to functional and compliant operations and, ultimately, to profitability.

12. CannTrust recently completed the remediation work at its Fenwick Facility and has submitted a comprehensive package to Health Canada evidencing its remediation and seeking the reinstatement of its cannabis licence there. CannTrust's remediation work at its Vaughan Facility is almost complete and a remediation package is being assembled which is expected to be sent to Health Canada before the end of April 2020, subject to resource constraints associated with the current COVID-19 pandemic.

13. Despite these efforts by the Board and management, the situation facing CannTrust is still highly uncertain. Without its cannabis licences, CannTrust has had no revenue since July 2019. Recent global developments – including an oil price shock and the COVID-19 pandemic – have exacerbated what were already difficult circumstances, making it even more difficult for CannTrust to attract new financing or a strategic partner and introducing further delay in Health Canada's review of CannTrust's applications for reinstatement of its licences.

14. Although CannTrust has some existing inventory that could be sold in bulk, even if its cannabis licences are reinstated, it would take several months for CannTrust to earn revenue from cannabis plants that would need to be propagated, cultivated, processed and sold.

Meanwhile, despite various cash conservation measures, CannTrust has had to incur significant ongoing costs to complete remediation measures required and address its operational, financial, legal and other reporting obligations.

15. CannTrust has already expended significant time and resources investigating, preparing for and defending the putative class actions against it in multiple jurisdictions. Based on CannTrust's assessment of the overall litigation, the lengthy time it is taking for a lead plaintiff to be appointed in the US federal securities litigation, the uncertainty about the appointment of lead class counsel in Ontario due to a potential leave to appeal motion, the parallel litigation in Alberta, British Columbia and Quebec, and the current impact of the COVID-19 pandemic on the courts in both countries, it is not clear whether the litigation could be resolved within a reasonable time period and on a basis that would leave CannTrust with the financial resources necessary to restore operations and return to profitability.

16. If Health Canada decides to reinstate CannTrust's licences, CannTrust would require significant working capital to restore its operations and return to profitability. CannTrust faces material contingent liabilities associated with the class action litigation, as well as potential administrative, quasi-criminal and/or criminal proceedings in Canada and the United States, none of which can be reliably quantified at this stage. The current disruption of global capital markets and the recent downturn of the Canadian cannabis industry more specifically means that CannTrust's ability to attract capital is now highly doubtful.

17. In the circumstances, CannTrust is insolvent and requires CCAA protection to allow CannTrust breathing space so that it can maximize value for all affected stakeholders by, among other things:

(a) completing the remainder of its remediation plan for its Vaughan Facility and submitting the related evidence package with Health Canada;

(b) continuing to work with Health Canada to resolve any remaining *Cannabis Act* compliance issues, with a view towards obtaining reinstatement of its licences, restoring operations and returning CannTrust to profitability;

(c) exploring a CCAA plan of compromise or arrangement as a means for addressing the multiple putative class actions and other litigation brought against CannTrust in several jurisdictions, seeking to resolve all of the claims and contingent claims against CannTrust through a single forum; and

(d) facilitating the completion of the Board of Directors' review of strategic alternatives, including any potential sale of or other strategic transaction involving CannTrust, whether in addition to, or as an alternative to, a CCAA plan of compromise or arrangement.

18. The stay of proceedings would also put all creditors and contingent creditors on an equal footing. It is in the best interest of CannTrust and its stakeholders for CannTrust to have the time and breathing room required to explore a CCAA plan and other strategic alternatives in a court-supervised process.

II. BACKGROUND REGARDING THE APPLICANTS

(i) Corporate Structure

A. <u>CannTrust Holdings and OpCo</u>

19. The business of CannTrust was founded in 2013 by a group of pharmacists with the incorporation of 2384634 Ontario Inc. ("**Opco**") under the *Business Corporations Act* (Ontario) ("**OBCA**"). On June 4, 2013, Opco filed articles of amendment to change its name to Cannmedica Pharma Inc. On September 4, 2013, Opco filed articles of amendment to change its name to Cannamed Pharma Inc. On November 25, 2014, Opco filed articles of amendment to change its name to CannTrust Inc.

20. In 2015, its then-owners began steps to initiate a public offering of its shares pursuant to applicable securities legislation. CannTrust Holdings was incorporated under the OBCA and CannTrust Holdings and Opco completed a corporate reorganization resulting in Opco becoming a wholly-owned subsidiary of CannTrust Holdings.

21. The Common Shares of CannTrust Holdings began trading on the facilities of the Canadian Securities Exchange (the "**CSE**") on August 21, 2017 under the ticker symbol "TRST". On March 5, 2018, the Common Shares migrated from the CSE to the TSX and began trading on the TSX under the ticker symbol "TRST" and were voluntarily delisted from the CSE.

22. On February 25, 2019, the Common Shares also commenced trading on the NYSE under the ticker symbol "CTST", such that the Common Shares were dually listed on the TSX

and NYSE.

23. CannTrust Holdings' head and principal executive offices are located in Vaughan, Ontario. An organizational chart of CannTrust and the other entities in which CannTrust holds an equity interest, described more fully below, is attached hereto as **Exhibit "A"**.

B. Elmcliffe and CTI Holdings

24. Elmcliffe Investments Inc. ("**Elmcliffe**") is an OBCA corporation that owns the real estate, buildings and related equipment for CannTrust's Fenwick Facility (defined below). Elmcliffe acquired these assets on March 6, 2017.

25. CTI Holdings (Osoyoos) Inc. ("**CTI Holdings**") is incorporated pursuant to the *Business Corporations Act* (British Columbia). CTI Holdings owns the BC Outdoor Cultivation Lands (defined below). CTI Holdings acquired these assets in March 2019. While the registered address of CTI Holdings is at a law firm in British Columbia, I am the sole director and officer of CTI Holdings and all operational decisions with respect to CTI Holdings are made from the CannTrust head office in Vaughan, Ontario.

C. Other Equity Interests

26. In addition to the wholly-owned subsidiaries listed above that are also Applicants in these proceedings, CannTrust owns equity interests in certain other entities.

27. Elmcliffe Investments [No. 2] Inc. ("**Elmcliffe No. 2**") is an OBCA corporation and a wholly-owned subsidiary of Opco. Elmcliffe No. 2 is the beneficial owner of shares of Meta Growth Corp. (formerly National Access Cannabis Corp.) ("**Meta**") representing 3% of the

outstanding common shares of Meta. The common shares of Meta are listed on the TSX Venture exchange and had a closing price of $0.08 and a total market capitalization of approximately $19 million at the close of markets on March 20, 2020.

28. Cannabis Coffee and Tea Pod Company Ltd. ("**CCTPC**"), an OBCA corporation, is a 50-50 joint venture between CannTrust and Club Coffee L.P. ("**Club Coffee**"). CCTPC was created to launch BrewBudz, a single-use Keurig-style pod for cannabis infused coffee. CannTrust Holdings holds 50% of the outstanding shares of CCTPC directly. Club Coffee holds its 50% interest through its wholly-owned subsidiary Single Dose Solutions Inc.

29. O Cannabis We Stand On Guard For Thee Corporation ("**O'Cannabis**") is incorporated pursuant to the *Canada Business Corporations Act.* CannTrust, through Opco, holds a 50% interest in this corporation, which is a telemedicine service provider.

30. Since October 2018, CannTrust has been engaged in a strategic partnership with Australian licensed producer, Cannatrek Ltd. ("**Cannatrek**"). As part of the partnership, CannTrust made an investment for a 19.8% stake in Cannatrek, with an option to maintain this shareholding through any future share issuances up to and including Cannatrek completing an initial public offering.

31. Cannatrek, CCTPC, Elmcliffe No. 2 and O'Cannabis (the "**Affected Parties**") are not Applicants in these proceedings. However, the Applicants are seeking a limited stay of proceedings in the Initial Orders against the Affected Parties with respect to any cross-defaults arising from the insolvency of the Applicants, which is more fully described below.

(ii) The Business of the Applicants

32. CannTrust (specifically, Opco) is a licensed producer of cannabis in Canada, although its licences are currently under partial suspension by Health Canada. The business of CannTrust is focused on two distinct markets, which are described more fully below: the medical cannabis market and the adult-use recreational cannabis market.

A. <u>Medicinal Use Market</u>

33. The medical cannabis regime is governed by the *Cannabis Act* (Canada) and the regulations made thereunder (the "**Cannabis Legislation**"), which came into force on October 17, 2018.

34. There is a specific process which CannTrust must undertake with respect to the sale of its medical cannabis. Before selling medical cannabis to an individual, CannTrust must register the patient (a "**Registered Patient**") as a client. According to data collected and reported by Health Canada, as of September 30, 2019, there were 369,614 Registered Patients in Canada who were authorized, on average, to use 2.0 grams of dried medical cannabis per day.

35. As of March 31, 2019,[1] CannTrust had over 2,500 active physicians prescribing its products and approximately 68,000 Registered Patients in Canada. CannTrust's patient base grew by over 50% from 2017 to 2018, and by a further 17% during the three months ended March 31, 2019. During the three months ended March 31, 2019, CannTrust's revenues from

[1] The three months ended March 31, 2019 is the most recent reporting period prior to the Health Canada Audits and CannTrust encountering the challenges set out herein.

medical cannabis were $11.371 million. The total quantity of dried cannabis equivalent sold to medical patients during the three months ended March 31, 2019 was 1,820 kg.

36. For medical use, CannTrust offered dried flower formats, as well as several cannabis oil drops and encapsulated cannabis oil products. CannTrust also produced similar products in capsule form using two-piece capsules that are vegan-based and do not use animal products, such as gelatin, making them more desirable for a variety of customers and patients due to possible religious or ethical reasons.

B. Adult-Use Recreational Market

37. The sale of cannabis for adult recreational use was legalized on October 17, 2018 with the coming into force of the Cannabis Legislation. The Cannabis Legislation provides that the provinces and territories of Canada have authority to regulate certain aspects of recreational cannabis, such as sale and distribution, minimum age requirements, places where cannabis can be consumed, and a range of other matters.

38. All Canadian provinces and territories have enacted regulatory regimes for the distribution and sale of cannabis for recreational purposes within those jurisdictions. There are three general frameworks that the provinces and territories have followed: (i) private cannabis retailers licensed by the province; (ii) government-run retail stores; or (iii) a combination of both frameworks (i.e. privately licensed retail stores, while online retailers are operated by the applicable provincial government). Regardless of the framework, the recreational cannabis market is supplied by federally licensed producers.

39. During the three months ended March 31, 2019, CannTrust's revenues from cannabis

sold in the wholesale market, which reflects sales to the provinces related to the legalization of the adult-use recreational market, were $5.482 million, which represented 32.5% of its total revenues. The total quantity of dried cannabis equivalent sold in the wholesale market during the three months ended March 31, 2019 was 1,194 kg.

40. Following the legalization of recreational cannabis in 2018, CannTrust launched four adult-use brands: liiv, Synr.g, Xscape and Peak Leaf. These brands are focused on distinct consumer segments and provide the user with options for the type of experience they are seeking.

41. Prior to July 2019, CannTrust had a variety of new cannabis products at various stages of development, including oral, topical, edible and inhalable products. These products will all need to be approved by Health Canada before they can be offered for sale.

(iii) Operations of the Applicants

C. <u>Locations</u>

Fenwick Facility

42. Prior to the suspension of its licence, CannTrust grew cannabis in a commercial greenhouse facility of approximately 450,000 square feet in Fenwick, Ontario in the Niagara region (the "**Fenwick Facility**"). The Fenwick Facility is a state-of-the-art greenhouse with computer controlled irrigation, co-generation power supply and full supplemental lighting. The Fenwick Facility is operated with a perpetual harvest system which is capable of producing cannabis 365 days a year and allows for a continuous work cycle, creating a steady

production capacity and a stable work environment for employees.

43. CannTrust acquired the Fenwick Facility on March 6, 2017, through its wholly-owned subsidiary Elmcliffe, and commenced a redevelopment of the site that was scheduled to proceed in three phases:

(a) Phase 1 involved both renovations and retrofitting of 250,000 square feet of the Fenwick Facility with perpetual harvest technology to allow for continuous batch production. CannTrust received its Health Canada cultivation licence for the Phase 1 redevelopment on October 10, 2017.

(b) Phase II involved expanding the Fenwick Facility to 450,000 square feet which was expected to bring the capacity of the Fenwick Facility to an estimated 50,000 kg per year. On April 8, 2019, CannTrust announced that its cultivation and processing permit was amended to include its Phase 2 expansion.

(c) Phase III, which is currently on hold, would involve further expanding the Fenwick Facility and includes productivity and automation enhancements over Phases I and II. Upon completion, it was expected to add a further 50,000 kg per year of capacity.

Vaughan Facility

44. CannTrust initially conducted indoor grow and processing operations from a facility in Vaughan, Ontario (the "**Vaughan Facility**"). Following its acquisition of the Fenwick Facility, CannTrust repurposed the Vaughan Facility into an extraction, manufacturing and

packaging facility of approximately 60,000 square feet, including an in-house quality control laboratory.

BC Outdoor Cultivation Lands

45. Since March 2019, CannTrust has also owned 81 acres of land in British Columbia (the "**BC Outdoor Cultivation Lands**") where it intends to commence outdoor cannabis cultivation which it will use for its extraction-based products. CannTrust acquired the BC Outdoor Cultivation Lands through its wholly-owned subsidiary CTI Holdings.

46. CannTrust has invested in fencing, security, irrigation and other land preparation activities and applied for Health Canada approval to plant and cultivate on most of the BC Outdoor Cultivation Lands. Health Canada has not informed CannTrust of its decision regarding CannTrust's application.

47. CannTrust expects that it could produce approximately 75,000 kg of cannabis per year from the BC Outdoor Cultivation Lands, subject to obtaining the necessary regulatory approvals.

D. Employees

48. As of March 20, 2020, CannTrust had approximately 280 employees and a further 305 employees that are currently subject to temporary layoffs. In or around mid-2019, CannTrust had approximately 400 employees in the Fenwick Facility, approximately 300 employees in the Vaughan Facility, and approximately 100 employees in its head office in Vaughan. As outlined further below, during 2019, CannTrust restructured its workforce to reflect the

current requirements of its business in light of the suspension of its licences. CannTrust provides a benefits plan for its employees. It does not provide a pension plan.

CannTrust Capital Appreciation Plan

49. CannTrust created the CannTrust Capital Appreciation Plan (the "**CCAP**") effective October 1, 2019 in place of the existing stock-based incentive programs and the existing short-term incentive program because, among other things, (i) there was considerable operational uncertainty given Health Canada's suspension of its licences, (ii) the ongoing reduction of CannTrust employees through departures and layoffs was having an adverse impact on the morale of employees at large, and (iii) compensation expectations were not being achieved as the existing programs were not likely to result in any incentive payments or benefits to employees due to the regulatory issues facing CannTrust.

50. The CCAP is intended to be in effect for a period of 24 months. Currently, there are 59 employees that have been chosen to participate in the CCAP. Participants accrue salary each month until paid out in accordance with the CCAP. The percentage each employee accrues is set by management, taking into account the employee's title, base compensation and job complexity.

51. The amount accumulated in the CCAP will vest in each participant on October 1, 2020 and, if the program is extended for a second year, October 1, 2021, and be paid to the participant in a lump sum payment within 15 days of that date. In order to receive the payment, the participant must be an employee of CannTrust at the time the lump sum payment is to be made. The total estimated payments to be made at the end of the first year of

the CCAP is approximately $1.7 million.

52. As set out further below, CannTrust is seeking confirmation in the Amended and Restated Initial Order that it is authorized to pay all amounts payable pursuant to the CCAP, whether accrued prior to or after the date of the First Day Order (the "**Initial Filing Date**").

E. <u>Licences, Permits and Authorizations</u>

53. The Cannabis Legislation establishes different classes of licences that are required depending on the nature of the activity being undertaken such as cultivation, processing, testing and sales. A licence, once issued, identifies the specific activities that the licensee is authorized to conduct. Any licence is valid for no more than five years.

54. Health Canada has issued cannabis licences to Opco for the Fenwick Facility and Vaughan Facility (the "**Cannabis Licences**"). The Cannabis Licences allow for, among other things, the production, sale or provision, possession, shipping, transportation, delivery and destruction of dried cannabis and cannabis plants or seeds. It allows the Vaughan Facility and the Fenwick Facility to produce dried cannabis and cannabis extracts up to such amounts as permitted by Opco's storage capacity.

55. The Cannabis Licences for the Vaughan Facility and the Fenwick Facility are valid until September 13, 2020 and October 6, 2020, respectively, although they are currently suspended as noted above. Before the end of the terms of the Cannabis Licences, Opco must submit an application for renewal to Health Canada containing information prescribed by the Cannabis Legislation.

F. *Distribution*

56. With respect to the medicinal-use market, CannTrust distributed its medical cannabis products directly to its Registered Patients using secure shipping methods such as Canada Post or Purolator.

57. With respect to the adult-use recreational market, CannTrust has entered into supply agreements or arrangements with the applicable government-owned distributors in nine provinces, with a limited arrangement in Quebec under which CannTrust did not supply any product prior to suspension of its licences.

G. *Banking Arrangements*

58. CannTrust maintains 11 bank accounts with Bank of Montreal (the "**BMO Accounts**"), eight of which are held by CannTrust Holdings, two of which are held by Opco and one of which is held by Elmcliffe. During the CCAA proceedings, CannTrust intends to continue using the BMO Accounts for its business and banking requirements and has sought certain relief in the Initial Orders in order to facilitate that.

(iv) Summer 2019 Health Canada Audits

59. Health Canada conducts *ad hoc*, unscheduled site inspections of licensed producers. Prior to June 2019, Health Canada inspectors assessed the Vaughan Facility and the Fenwick Facility on an ongoing basis and provided CannTrust with follow up reports noting observed deficiencies.

A. Fenwick Audit Report

60. On July 8, 2019, CannTrust announced that it had received a compliance report from Health Canada notifying CannTrust that the Fenwick Facility was non-compliant with certain regulations (the "**Fenwick Audit Report**"). The non-compliant rating was based on observations by Health Canada regarding the growing of cannabis in five rooms before they were licensed and inaccurate information having been provided to the Health Canada representatives by CannTrust employees. The growing in unlicensed rooms took place from October 2018 to March 2019, during which time CannTrust had pending applications for the unlicensed rooms with Health Canada.

61. Health Canada placed a hold on certain CannTrust inventory which included approximately 5,200 kg of dried cannabis that was harvested in the then-unlicensed rooms at the Fenwick Facility. In addition, CannTrust placed a voluntary hold on approximately 7,500 kg of dried cannabis equivalent stored at its Vaughan Facility that was produced in the then-unlicensed rooms.

62. CannTrust accepted the non-compliance findings in the Fenwick Audit Report, without objection, and announced that it was implementing a number of remedial measures, including:

(a) Further comprehensive employee training;

(b) Retaining external advisors for an independent review of its compliance processes;

(c) Conducting a comprehensive review and update of its processes and procedures; and

(d) Voluntarily advising Health Canada of any issues that could impact compliance at the Vaughan Facility regarding product storage.

63. On July 11, 2019, CannTrust announced that it had implemented a voluntary hold on the sale and shipment of all cannabis products as a precaution while Health Canada visited and reviewed its Vaughan Facility.

B. Appointment of Special Committee and Leadership Changes

64. On July 11, 2019, CannTrust announced that the Special Committee had been established to investigate the findings of the Niagara Audit Report in their entirety.

65. On July 25, 2019, CannTrust announced certain senior leadership changes made by the Board as a result of interim findings made by the Special Committee's during its investigation, namely:

(a) the termination of the CEO of CannTrust, Peter Aceto, for cause;

(b) the resignation of the Chair of the Board, Eric Paul, following a demand made by the other directors;

(c) the appointment of Robert Marcovitch, who had been the Chair of the Special Committee, to the role of interim CEO of CannTrust Holdings; and

(d) the appointment of Mark Dawber, FCPA, as the new Chair of the Special

Committee.

C. *Vaughan Audit Report*

66. On August 12, 2019, CannTrust announced that it had received a compliance report from Health Canada notifying CannTrust that the Vaughan Facility was non-compliant with certain regulations (the "**Vaughan Audit Report**" and collectively with the Fenwick Audit Report, the "**Health Canada Audit Reports**"). The Vaughan Audit Report noted the following deficiencies:

(a) The conversion of five rooms from operational areas to storage areas, which had been used for storage since June 2018 without prior approval of Health Canada;

(b) The construction of two new areas without prior approval of Health Canada, one of which had been used to store cannabis since November 2018;

(c) Insufficient security controls at the manufacturing facility;

(d) Inadequate quality assurance investigations and controls;

(e) Standard operating procedures that did not to meet the requirements under regulations; and

(f) Documents or information that were not retained in a manner to enable Health Canada to complete its audit in a timely manner.

67. The Special Committee was also tasked by the Board with investigating the Vaughan

Audit Report.

D. *Product Returns*

68. On August 19, 2019, CannTrust announced that it had received a notice from the OCS that all or substantially all of CannTrust's products currently held at the OCS, valued at approximately $2.9 million in the aggregate, would be returned to CannTrust.

69. On September 19, 2019, CannTrust announced that it had received a notice from the AGLC that all or substantially all of CannTrust's products currently held at the AGLC, valued at approximately $1.3 million in the aggregate, would be returned to CannTrust.

70. CannTrust does not expect any further product returns from any additional provincial distributors, Registered Patients or consumers who purchased CannTrust products through retail stores.

E. *Licence Suspension*

71. On September 17, 2019, CannTrust announced that it had received Notices of Licence Suspension from Health Canada pursuant to section 64(1) of the *Cannabis Act* (the "**Suspension Notices**") for the Fenwick Facility and the Vaughan Facility.

72. The Suspension Notices suspended CannTrust's authority to produce cannabis (other than cultivating and harvesting its remaining existing lots or batches previously propagated), and to sell cannabis. While the suspensions remain in effect, CannTrust will be permitted to cultivate and harvest existing lots or batches previously propagated, as well as conduct ancillary activities to those lots, including drying, trimming and milling. However, during the

suspensions, CannTrust is not permitted to propagate new lots or batches of cannabis or engage in the sale or distribution of cannabis.

73. For so long as the suspensions remain in effect, CannTrust is effectively prevented from earning meaningful revenue.

74. The Suspension Notices state that Health Canada will reinstate the Cannabis Licences if the reasons for the suspension no longer exist. The Suspension Notices expressly provide that Health Canada considers that implementation of the following measures could potentially address the public health and safety risks that contributed to Health Canada's decision to issue the Suspension Notices (the "**Identified Risks**"):

(a) Measures to ensure that cannabis will be produced and distributed only as authorized, including measures to control the movement of cannabis in and out of CannTrust's sites;

(b) Measures to recover cannabis that was not authorized by CannTrust's licence;

(c) Measures to improve key personnel's knowledge of, and compliance with the provisions of the Cannabis Legislation; and

(d) Measures for improving the manner in which records are kept, including a plan to improve the inventory tracking, and any interim measures to ensure that information provided to Health Canada can be reconciled.

75. On October 24, 2019, CannTrust announced that the Special Committee had concluded its investigation and its findings had been shared with the Board and Health

Canada.

76. CannTrust acted decisively on the findings of the Special Committee's independent investigation, by removing the individuals who directed, participated or acquiesced in the misconduct and by engaging proactively and cooperatively with Health Canada, the OSC, stock exchanges, Canadian law enforcement and other stakeholders, all with a view towards stabilizing CannTrust, remediating its compliance issues, reinstating its licences, restoring operations and achieving profitability.

F. CannTrust's Remediation Plan and Timeline for Reinstatement of Licences

77. On October 21, 2019, CannTrust submitted its detailed remediation plan to Health Canada (the "**Remediation Plan**"). CannTrust announced that it had committed to destroying approximately $77 million of inventory and biological assets that was not authorized by the Cannabis Licences because they were acquired, grown or stored in a manner that was not in compliance with its licences or applicable law. The Remediation Plan included details about an expanded comprehensive internal training program, a strengthened governance and operations framework, infrastructure enhancements, and prescribed accountabilities and timelines for a variety of specified tasks. CannTrust also committed to taking steps to recover all cannabis from distributors and retailers that had not already been sold to end consumers or returned to CannTrust.

78. On February 14, 2020, CannTrust reported to Health Canada that it had completed the Remediation Plan for the Fenwick Facility and requested the reinstatement of its licence for the Fenwick Facility. CannTrust is awaiting Health Canada's decision.

79. As of the date of this affidavit, CannTrust is continuing to implement the Remediation Plan for the Vaughan Facility. CannTrust anticipates that it will complete the Remediation Plan for the Vaughan Facility by the end of April 2020, subject to availability of resources during the COVID-19 pandemic, and thereafter will request the reinstatement of the Vaughan Facility licence.

80. There is no assurance whether or when Health Canada will reinstate any of the Cannabis Licences. Health Canada's review may be further delayed by its decision to reduce onsite field inspection activities in light of the COVID-19 pandemic. It is not clear how long such reductions may last.

81. Nevertheless, the Board believes that it remains in the best interests of CannTrust to complete all activities described in the Remediation Plan, bring CannTrust to full compliance with the Cannabis Legislation, and take all reasonable steps to obtain the timely reinstatement of its Cannabis Licences from Health Canada.

82. If the Cannabis Licences are reinstated by Health Canada, CannTrust will be able to commence propagating new lots of cannabis and, over time, to restore operations. However, it would take several months for any such initial batches to be grown, processed, shipped and sold. Accordingly, CannTrust's revenue would still likely remain marginal for several months, consisting only of bulk cannabis sales from its limited remaining inventory, following any reinstatement of the Cannabis Licences and, during that interval, CannTrust would continue to incur significant incremental operating expenses to put CannTrust in a position to re-commence its production processes. As such, any revenue generation would likely lag behind a significant increase in expenditures, putting continued and additional

pressure on CannTrust's cash liquidity.

83. An additional potential complication is that the mother plants used by CannTrust as a source of cuttings for new plants are reaching the end of their useful life since CannTrust has been unable to propagate any new plants since the suspension of its licence for the Fenwick Facility. CannTrust is working with Health Canada to address this issue and expects a resolution that will allow CannTrust to propagate new mother plants from the current mother plants, but there is no guarantee of this outcome. If the mother plants are compromised, then CannTrust would need to initiate its genetics stock from seeds, once the Cannabis Licenses are reinstated, which would add six months or more to its propagation, cultivation and processing cycle and further delay CannTrust's ability to generate revenue from operations.

G. Impact on Financial Statements

84. Due to the significant uncertainty with respect to the potential financial impact of the Health Canada Audit Reports and the nature and timing of decisions to be made by Health Canada:

(a) CannTrust announced in August 2019 that its historical financial statements, related management's discussion and analysis ("**MD&A**") and annual information form ("**AIF**") for the period ended December 31, 2018 (the "**2018 Financial Statements**") and the financial statements and MD&A for the period ended March 31, 2019 (the "**2019 Q1 Financial Statements**") may require restatement and should no longer be relied upon;

(b) CannTrust's independent auditor, KPMG LLP, withdrew its audit report on the

2018 Financial Statements;

(c) CannTrust missed its filing deadline for its quarterly financial statements and related MD&A for the periods ended June 30, 2019 and September 30, 2019; and

(d) CannTrust missed its March 29, 2020 filing deadline for its audited financial statements and related MD&A and AIF for the year ended December 31, 2019.

85. Upon application by CannTrust Holdings, the OSC issued a management cease trade order ("**MCTO**") on August 15, 2019 pursuant to National Policy 12-203 – *Management Cease Trade Orders* as a result of CannTrust Holdings' failure to satisfy its disclosure requirements under applicable provincial securities legislation. The MCTO prohibits the directors and executive officers of CannTrust Holdings from trading in securities of CannTrust Holdings until two full business days after all filings CannTrust is required to make under Ontario securities laws are made, including the filings noted in the preceding paragraph.

86. On November 26, 2019, CannTrust announced that the TSX had advised CannTrust that it intends to review CannTrust Holdings' eligibility for continued listing of the Common Shares on the TSX. The TSX advised that, if CannTrust Holdings was unable to cure its disclosure defaults by March 25, 2020, the Common Shares would be delisted 30 days following that date.

87. On March 18, 2020, the TSX advised CannTrust that, in response to CannTrust's request for an extension of the March 25, 2020 deadline, the TSX had determined to defer any

delisting decision until no later than April 16, 2020. The TSX also advised CannTrust that a meeting of its Listings Committee will be held on April 14, 2020 to consider whether to delist the Common Shares.

88. On February 13, 2020, CannTrust announced that the NYSE had granted it a continued listing and trading extension to April 15, 2020 to provide CannTrust with additional time to cure its disclosure defaults. The Common Shares may be delisted following that date, subject to the NYSE granting a further extension to the deadline.

89. On February 28, 2020, CannTrust announced that it had received written notification from the NYSE that CannTrust Holdings was no longer in compliance with the NYSE's continued listing standard rules because the per share trading price of the CannTrust Holdings' common shares had fallen below the NYSE's minimum share price rule, which requires the average closing price of a listed company's common shares to be at least US $1.00 per share over a consecutive 30 trading-day period. CannTrust has six months from the receipt of the notice to regain compliance and prevent delisting.

90. On March 2, 2020, I, along with representatives of McCarthy Tétrault LLP, CannTrust's Canadian legal counsel, met with the TSX to provide a confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. CannTrust was informed by TSX Staff that if CannTrust initiated CCAA proceedings, it would be de-listed from the TSX for the duration of the CCAA proceedings.

91. I am advised by Robert J. Richardson, a partner with McCarthy Tétrault LLP,

CannTrust's Canadian legal counsel, that he met by telephone with legal counsel from the OSC's Corporate Finance Branch to provide a similar confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. I am advised by Mr. Richardson and do believe that he was informed by OSC staff that, if CannTrust initiated CCAA proceedings and was delisted by the TSX, staff would likely seek an immediate cease trade order for the duration of the CCAA proceedings.

92. On March 4, 2020, I, along with CannTrust's Canadian legal counsel, met by telephone with representatives of the NYSE to provide a confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. CannTrust was informed by NYSE Staff that, if CannTrust initiated CCAA proceedings, it would be de-listed from the NYSE for the duration of the CCAA proceedings.

93. Given the indications from the TSX, NYSE and OSC, as applicable, that the Common Shares will be delisted and a cease trade order will be issued as a result of CannTrust commencing CCAA proceedings, the Board has determined that devoting additional time or money towards curing its public disclosure defaults and restoring its status as a reporting issuer not in default of securities legislation is not appropriate at this juncture. As described further below, CannTrust Holdings is seeking the authorization of this Court to cease incurring any further related costs in relation to public disclosure in the Initial Orders.

H. *Cash Conservation Measures*

94. CannTrust has had no revenue since imposing a voluntary hold on all sales and shipments of product on July 11, 2019. Given the uncertainty around the timing of Health Canada's pending decisions, CannTrust's revenue outlook remains uncertain. In response to these challenges, the Board and management have taken a number of steps to reduce CannTrust's cash expenditures.

95. On September 5, 2019, CannTrust announced that it had reduced its workforce by approximately 180 people, or 20%, to reflect the current requirements of the business. The majority of the employees were in cultivation and customer service support roles. The reduction was expected to result in annualized cash savings of approximately $9 million.

96. On October 24, 2019, CannTrust announced that it would temporarily streamline its workforce by as many as 140 people, or approximately 25%, through a series of phased layoffs between late October and the conclusion of 2019, given its reduced operations. The reduction was expected to result in annualized cash savings of approximately $4.8 million.

97. Overall, CannTrust's total headcount has been reduced from approximately 800 at the end of June 2019 to approximately 280 currently.

98. In addition, CannTrust undertook a detailed review of all contracts to eliminate or defer spending where possible. CannTrust halted construction of the Phase III expansion of the Fenwick Facility, international investments in Australia, Denmark and the United States and other product innovation opportunities which were under review.

99. CannTrust also formed a Capital and Operating Expense Steering Committee effective February 2020, comprised of a number of members of senior management, which is required to approve all new capital and operating expenditures in excess of $20,000. Additionally, all consultants engaged at an expected cost in excess of $10,000 now require approval from the CFO. CannTrust also implemented new delegation of authority guidelines to add clarity on approval limits.

I. *Insurance*

100. Recently, CannTrust's lead primary director and officer insurer took the position that CannTrust's "Side C" insurance coverage, which is intended to cover claims against CannTrust, is void *ab initio* due to the conduct of the former CEO and former Chairman of the Board. CannTrust disagrees with this position.

101. CannTrust's director and officer insurance coverage with other insurance carriers expired on February 25, 2020. Following that, "Side C" coverage was not renewed. "Side A" and "Side B" coverage was extended for CannTrust's directors and officers until August 24, 2020. "Side A" coverage is intended to cover non-indemnified claims against the directors and officers. "Side B" coverage is intended to cover indemnified claims against the directors and officers.

102. In the past few weeks, I have had several confidential meetings with insurance carriers to seek a further renewal of Sides A, B and C coverage for CannTrust and its directors and officers. It is unclear to me if and when such coverage will be renewed.

J. Board Renewal Process

103. After the Special Committee's investigation concluded, the Board initiated a process to attract new directors to the Board. I am advised by Shawna Page, a member of the Board and Special Committee, and verily believe that over the course of several months, the Board interviewed and met with several potential director candidates who possessed expertise in operations, compliance, governance, and/or regulated industries.

104. Ultimately, the Board was unable to recruit qualified candidates in the circumstances given the considerable uncertainty concerning the Pending Litigation (described below) and insurance coverage. The Board determined to suspend its renewal process until these uncertainties are addressed.

K. Impact on Market Capitalization

105. The Health Canada Audit Reports and other announcements by CannTrust have had a serious negative impact on the market capitalization of CannTrust Holdings.

106. The price of the common shares of CannTrust Holdings on the Toronto Stock Exchange has declined from a close of $6.46 on July 5, 2019 (the last business day prior to the announcement of the Fenwick Audit Report) to a close of $0.70 on March 27, 2020, a decline of almost 90%. Single day declines of 22.6% and 27.8% were experienced following CannTrust announcing its receipt of the Fenwick Audit Report and the Vaughan Audit Report, respectively.

(v) Significant Downturn in the Canadian Cannabis Industry

107. The Canadian cannabis industry is in the midst of a significant and prolonged downturn that commenced in 2019 due to, among other things:

(a) softer than expected demand due to continuing consumer reliance on the black market and delays in the roll-out of legal distribution channels in certain provinces in Canada;

(b) oversupply of low to mid-potency (i.e. less than 20% THC) cannabis in the market due to various cannabis companies having added significant production capacity in anticipation of and following the legalization of cannabis in Canada in 2018;

(c) the continued lack of federal legalization in the US;

(d) concerns regarding the safety of vaping following reporting of vaping-associated lung injuries in 2019; and

(e) decreased interest in the sector on the part of retail investors making large-scale equity or debt financings difficult.

108. These industry headwinds have resulted in cannabis companies experiencing difficulty attracting capital, both through the equity and debt markets. In a March 10, 2020 article in the Financial Post, it was estimated that on Bay Street in 2019 (i) the number of cannabis deals fell 33 percent from the previous year, and (ii) the capital raised in the cannabis sector fell 45 percent from the previous year. Moreover, of the eight biggest debt and equity raises in 2019,

seven took place in the first half of the year.[2]

109. As a result of this inability to attract further capital, several cannabis companies have sought protection under the CCAA or *Bankruptcy and Insolvency Act* (Canada) or been placed into receivership since the start of 2019, including Ascent Industries Corp., DionyMed Brands Inc., AgMedica Biosciences Inc., Wayland Group Corp., Invictus MD Strategies Corp., Eureka 93 Inc. and Pure Global Cannabis Inc. Other licensed producers have implemented cash conservation measures such as:

(a) Hexo Corp. announcing on October 24, 2019 that it would be laying off approximately 200 employees;

(b) Tilray Inc. announcing on February 4, 2020 that it would be laying off approximately 10% of its workforce;

(c) Aurora Cannabis Inc. announcing on February 6, 2020 that it had eliminated close to 500 full-time employees and was undertaking a review of its capital and operating expenditures, including the sale of certain assets;

(d) Canopy Growth Corp. announcing on March 4, 2020 that it planned to close two fully licensed greenhouse facilities in British Columbia, halt plans to bring a third greenhouse online in Niagara-on-the-Lake, Ontario, and eliminate approximately 500 full-time employees; and

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[2] National Post, "Deals scarce in bruised cannabis sector as risk-off sentiment prevails", March 10, 2020: https://business.financialpost.com/cannabis/deals-scarce-in-bruised-cannabis-sector-as-risk-off-sentiment-prevails.

(e) The Flowr Corporation announcing on March 23, 2020 that it had restructured approximately 25% of its workforce globally citing, among other things, macro-economic headwinds stemming from the COVID-19 pandemic.

(vi) Significant Downturn in the Global Capital Markets

110. Recent global developments have further exacerbated these difficult circumstances facing CannTrust and the cannabis industry generally. An oil price shock caused by a dispute between Saudi Arabia and Russia combined with the global COVID-19 pandemic have resulted in significant market and economic turmoil in a very short period of time.

111. The short and long-term impact of these significant and rapidly-changing market events remains uncertain. However, the potential further reduction in liquidity across the capital markets and the increased likelihood that the Canadian and world economy may be heading towards a recession in the short term makes it even more doubtful that CannTrust will able to attract liquidity if it is required to restore or maintain operations. Furthermore, the downturn and the potential decrease in consumer disposable income would have a negative impact on patient and consumer demand and may reduce CannTrust's revenues if it is able to return to production and hinder its ability to achieve profitability.

(vii) Financial Position of the Company

112. As noted above, CannTrust has cautioned against any reliance on the 2018 Financial Statements and the 2019 Q1 Financial Statements as they require restatement in light of the pending Health Canada decisions with respect to the Fenwick Facility and Vaughan Facility.

113. In order to provide the Court with more accurate and current information regarding the financial position of CannTrust, the Applicants have prepared draft internal unaudited statements of financial position for each of the Applicants as at December 31, 2019 (the "**Draft 2019 Year-End Balance Sheets**"). The Draft 2019 Year-End Balance Sheets are not intended to be, and may not be, relied upon for any other purpose.[3]

114. The Draft 2019 Year-End Balance Sheets are preliminary and may be subject to further adjustment that could decrease certain asset values for accounting purposes and result in certain assets being re-allocated among the Applicants, either in whole or in part. Copies of the Draft 2019 Year-End Balance Sheets are attached hereto as **Exhibit "B"**.

A. <u>Capital Structure</u>

Common Shares

115. As noted above, the Common Shares of CannTrust Holdings trade on the Toronto Stock Exchange under the ticker symbol "TRST" and on the New York Stock Exchange under the ticker symbol "CTST". CannTrust has been a reporting issuer in Canada since August 21, 2017 and in the United States since February 25, 2019.

116. CannTrust Holdings has not, since its inception, declared or paid any dividends on its Common Shares.

117. CannTrust Holdings has completed two public equity offerings of the Common Shares

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since they were listed on the Toronto Stock Exchange in March 2018:

(a) On June 5, 2018, CannTrust Holdings closed an underwritten public offering of 11,155,000 units at a price of $9.00 per unit for aggregate gross proceeds of approximately $100 million. Each unit was comprised of one Common Share and one-half of one common share purchase warrant, which was exercisable to acquire one Common Share at an exercise price of $12.00 per share, subject to adjustment in certain events, until June 5, 2020.

(b) On May 6, 2019, CannTrust Holdings completed an underwritten public offering of 36,636,636 Common Shares at US$5.50 per Common Share, for aggregate gross proceeds of approximately US$200 million, of which CannTrust Holdings received net proceeds of approximately US$160.5 million and certain selling shareholders received net proceeds of approximately US$28.3 million. On May 14, 2019, the underwriters exercised their over-allotment option to acquire additional Common Shares, resulting in additional gross proceeds to CannTrust of approximately US$25.5 million.

118. As noted above, CannTrust has been advised by both the TSX and the NYSE that the Common Shares may be delisted in the short term if certain conditions are not satisfied (i.e. curing its disclosure defaults and, in the NYSE's case, restoring and maintaining a certain price benchmark), and will likely be delisted and cease traded in any event should the Court grant an order under the CCAA staying proceedings against CannTrust.

Stock Option Plan

119. CannTrust Holdings maintains an equity-based compensation plan (the "**Stock Option Plan**") for directors, officers, full-time employees and consultants of CannTrust, which was amended and restated on February 22, 2018 in connection with the CannTrust Holdings' listing on the TSX.

120. The maximum number of Common Shares subject to grants of options under the Stock Option Plan is limited to 10% of the number of issued Common Shares at the time of the granting of options under the Stock Option Plan. As of the date hereof, options exercisable for 1,895,355 common shares have been granted and are outstanding. The options granted under the Stock Option Plan can have a maximum term of 10 years, and the board of directors of CannTrust Holdings has the discretion to determine the vesting period and amount of the options.

B. Assets

121. Based on the Draft 2019 Year-End Balance Sheets, CannTrust had total assets with a net book value of approximately $290 million as of December 31, 2019[4] on a consolidated basis, comprised of, among other things:

(a) cash and short term investments of approximately $175 million;

(b) inventory and biological assets of approximately $17 million;

[4] The Draft 2019 Year-End Balance Sheets and the figures reported in this section include Elmcliffe No. 2 which, as noted above, holds an equity investment valued at approximately $1.8 million.

(c) accounts receivable of approximately $0.5 million;

(d) prepaid expenses of approximately $20 million;

(e) investments in its strategic partnerships of approximately $8 million;

(f) property and equipment of approximately $26 million; and

(g) right-of-use assets of approximately $39 million.

C. <u>Liabilities</u>

122. Based on the Draft 2019 Year-End Balance Sheets, CannTrust had total liabilities of approximately $58 million as of December 31, 2019 on a consolidated basis, comprised of, among other things:

(a) Accounts payable and accrued liabilities of approximately $16 million; and

(b) Lease obligations of approximately $41 million.

123. CannTrust (specifically, Opco) has also entered into commitments of $61,975,680 with a wholly-owned subsidiary of Envest Corp. over a 20 year term with respect to co-generation derived heat and power at the Fenwick Facility, which requires a monthly payment to Envest of $291,802.16.

124. CannTrust also has various other secured obligations primarily relating to equipment leases and purchase-money security interests. A summary of the security interests registered against the Applicants is attached hereto as **Exhibit “C”**. A copy of the parcel registers for the lands owned by the Applicants, specifically the Fenwick Facility and the BC Outdoor

Cultivation Lands, are attached hereto as **Exhibit “D”** and **Exhibit “E”**, respectively.

D. Intercompany Arrangements

125. Substantially all of the cash and short term investments of CannTrust are owned by CannTrust Holdings. CannTrust Holdings funds the operations and expenses of the other Applicants through non-interest-bearing intercompany advances from time to time. CannTrust Holdings also funded the purchase of the real property and other assets held by Elmcliffe and CTI Holdings through non-interest-bearing intercompany advances.

126. The net amounts owing by the other Applicants to CannTrust Holdings for these intercompany advances as reflected on the Draft 2019 Year-End Balance Sheets is approximately:

(a) Opco: $209.8 million

(b) Elmcliffe: $7.0 million

(c) CTI Holdings: $5.1 million

127. CannTrust Holdings and Opco entered into a general security agreement dated July 29, 2015 which has been registered against Opco under the *Personal Property Security Act* (Ontario).

E. Contingent Litigation Liabilities

128. Prior to receiving the Fenwick Audit Report, CannTrust was not a party to, nor was any of its property the subject of, any legal proceedings or regulatory actions material to it.

129. Following receipt of the Health Canada Audit Reports, eight putative class action lawsuits were commenced in Canada, and five putative class action lawsuits were commenced in the U.S., alleging that CannTrust Holdings made misrepresentations in its disclosure to investors related to the findings of the Health Canada Audit Reports.

Canadian Securities Class Actions

In Canada, five of the eight putative class action lawsuits were commenced in Ontario (the "**Ontario Class Actions**"). The Ontario Class Actions, which are brought by different plaintiffs' counsel, plead claims, class descriptions and class periods that are not identical but have a great deal of overlap between one another.

130. On January 28, 2020, the Honourable Mr. Justice Hainey issued an endorsement awarding carriage of the Ontario Class Actions to a consortium comprised of Henein Hutchison LLP, Strosberg Sasso Sutts LLP, A Dimitri Lascaris Law Professional Corporation, and Kalloghlian Professional Corporation. One of the law firms that was unsuccessful on the carriage motion is seeking leave to appeal this decision to the Divisional Court of Ontario.

131. In addition to the Ontario Class Actions, separate class action lawsuits were commenced by Merchant Law Group in British Columbia, Alberta and Quebec (collectively with the Ontario Class Actions, the "**Canadian Class Actions**"). To my knowledge, there have been no material developments in the Quebec lawsuit. In the British Columbia and Alberta lawsuits, CannTrust has consented to the relief sought in leave motions to commence a claim pursuant to the relevant securities legislation of those provinces.

132. None of the Canadian Class Actions has been certified.

Other Canadian Actions

133. An action was commenced in Ontario against CannTrust Holdings and other defendants by two shareholders, Zola Finance Holdings Ltd. and Igor Gimelshtein, relating to the drop in its share price after July 8, 2019 (the "**Zola Action**"). The total amounts claimed in this lawsuit overlaps with the Canadian Class Actions and have not been quantified at the present time.

134. An action was commenced in Ontario against Opco by Gay Company Ltd. on March 4, 2020 concerning a series of construction contracts that were terminated by Opco for the construction of greenhouses at the Fenwick Facility and various work at the Vaughan Facility (the "**Construction Action**"). The Construction Action seeks estimated aggregate damages of over $2 million.

U.S. Securities Class Actions

135. In the United States, four of the five putative securities class actions currently pending were commenced in the Southern District of New York and allege violations of the *Securities Act of 1933* (United States) and the *Securities Exchange Act of 1934* (United States) (the "**New York Class Actions**"). It is expected that an order consolidating the New York Class Actions and appointing lead plaintiff/counsel will be issued in the short term.

136. A separate case is pending in California State Court alleging claims pursuant to the State *Securities Act* (collectively with the New York Class Actions, the "**US Class Actions**").

The plaintiff's counsel in the California State Court litigation has agreed to temporarily suspend the steps in the litigation with the understanding that counsel will be engaged if and when CannTrust initiates global settlement discussions in the various putative class actions.

137. None of the US Class Actions has been certified.

138. The Canadian Class Actions, the Zola Action, the Construction Action and the US Class Actions will be referred to collectively as the "**Pending Litigation**".

F. Contingent Regulatory Liabilities

Health Canada

139. CannTrust may also be subject to administrative monetary penalties under the Cannabis Legislation and may have to incur significant expenses associated with remediation and compliance measures that may be undertaken voluntarily by CannTrust or may be imposed or required by Health Canada, in addition to those that have already been undertaken.

140. The Cannabis Legislation provides that the maximum administrative monetary penalty for a violation of the Cannabis Legislation is $1 million per violation, and that a violation that is committed or continued on more than one day constitutes a separate violation in respect of each day on which it is committed or continued.

141. There is the potential that Health Canada could impose significant administrative monetary penalties against CannTrust. The timing or extent of any penalties that Health Canada may seek to impose on CannTrust cannot be reliably ascertained at this time.

RCMP and OSC Investigation

142. The RCMP and OSC are jointly conducting a criminal investigation. The exact scope and targets of the investigation and the magnitude of any potential penalties are not apparent to me at this time. CannTrust has been cooperating with the RCMP and OSC throughout their investigation. CannTrust may be subject to potential other investigations or proceedings by criminal and regulatory authorities for violations of applicable law.

III. CCAA PROCEEDINGS

(i) Applicants are Insolvent

143. I am advised by James Gage of McCarthy Tétrault LLP and verily believe that, for the purposes of the CCAA, a company is insolvent if, among other things:

(a) the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due; or

(b) it is, for any reason, unable to meet its obligations as they generally become due.

144. In light of the present circumstances:

(a) CannTrust Holdings is insolvent because it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities and its contingent liability for the claims asserted in the Canadian Class Actions, the Zola Action and the US Class Actions, in which estimated damages claims exceed $500 million in the aggregate, and its potential regulatory liabilities.

(b) Opco is insolvent because (i) it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities such as employee obligations, trade debt and contract commitments, its liability to CannTrust Holdings for intercompany advances, its contingent liability for the claims asserted in the Construction Action and its potential regulatory liabilities, and (ii) it has no revenue and is accordingly unable to meet its obligations as they generally become due.

(c) Elmcliffe and CTI Holdings are insolvent because they have no revenue and are accordingly unable to meet their obligations (i.e. municipal taxes, etc.) as they generally become due.

A. CannTrust Holdings: Balance Sheet Insolvency

Assets

145. Based on the Draft 2019 Year-End Balance Sheets, CannTrust Holdings had assets with a net book value of approximately $174.8 million as at December 31, 2019.

146. However, the realizable value of certain categories of CannTrust Holdings' assets may be lower than the book values reported in these statements. Specifically, despite the cash conservation efforts implemented by CannTrust, its cash position continues to decline by approximately $5 million to $7 million per month primarily due to payroll, professional and

insurance expenses. As a result, it is reasonable to expect that the realizable value of the assets of CannTrust Holdings at a fairly conducted sale would be less than the above-noted book value.

Liabilities

147. Based on the Draft 2019 Year-End Balance Sheets, CannTrust Holdings had liabilities with a book value of approximately $2.4 million as at December 31, 2019. This figure does not include:

(a) CannTrust Holdings' contingent liability for the Pending Litigation, in which damages of at least $500 million are claimed in the aggregate;

(b) CannTrust Holdings' contingent liability for monetary penalties that may be imposed by regulators such as the OSC and others; and

(c) any costs associated with the realization of its assets, such as damages for breach of any contracts that CannTrust Holdings was unable to perform.

148. Accordingly, the assets of CannTrust Holdings at fair valuation are insufficient to satisfy in full its potential liabilities relating to the Pending Litigation and administrative monetary penalties, in the event that those liabilities ultimately materialize.

B. Opco: Balance Sheet Insolvency

Assets

149. Based on the Draft 2019 Year-End Balance Sheets, Opco had assets with a net book value of approximately $103.6 million as at December 31, 2019.

150. However, the realizable value of certain categories of Opco's assets may be lower than the book values reported on the Draft 2019 Year-End Balance Sheets. Specifically:

(a) Inventories and Biological Assets: Opco reported inventories of approximately $16.5 million and biological assets of approximately $0.9 million as at December 31, 2019. Due to inventory aging, the impact of the Health Canada Audit Reports and pending decisions from Health Canada on the reinstatement of the Cannabis Licences, the realizable value of these assets may be less than reported on the Draft 2019 Year-End Balance Sheets.

(b) Property, Plant and Equipment: Opco reported property and equipment of approximately $16.2 million and right-of-use assets of approximately $38.7 million as at December 31, 2019. The realizable value of these assets may be negatively impacted by the non-compliance rating that Health Canada has currently placed on the Fenwick Facility and the Vaughan Facility. Given the lack of any certainty on the content or timing of Health Canada's decisions on the Remediation Plan that has been completed at the Fenwick Facility and is nearing completion at the Vaughan Facility, the realizable value of these assets may be less than reported on the Draft 2019 Year-End Balance Sheets.

151. As a result, it is reasonable to expect that the realizable value of the assets of Opco at a fairly conducted sale would be less than the above-noted book value.

Liabilities

152. Based on the Draft 2019 Year-End Balance Sheets, Opco had liabilities with a book value of approximately $265.2 million as at December 31, 2019, including an intercompany balance of $209.8 million owing to CannTrust Holdings. This figure does not include:

(a) Opco's contingent liability for the Construction Action, in which damages of approximately $2 million are claimed;

(b) Opco's contingent liability for monetary penalties that may be imposed by regulators such as Health Canada and others; and

(c) any costs associated with the realization of its assets, such as severance and termination claims and damages for breach of any contracts that Opco was unable to perform.

153. Accordingly, the assets of Opco at fair valuation are insufficient to satisfy in full its existing liabilities, its liability to CannTrust Holdings for intercompany advances and its potential liabilities relating to the Construction Action and administrative monetary penalties, in the event that those liabilities ultimately materialize.

C. Opco, Elmcliffe and CTI Holdings: Liquidity Insolvency

154. As a result of the Health Canada Audits and the partial suspension of the Cannabis

Licences, Opco has had no revenue since July 2019. As noted above, Opco has continued to fund its operations since that time through non-interest-bearing intercompany advances from CannTrust Holdings, consistent with its past practice. As a result of the insolvency of CannTrust Holdings, Opco will unable to meet its obligations as they generally become due, including its employee obligations, trade debt and contract commitments.

155. Elmcliffe and CTI Holdings hold certain real property, buildings and equipment at the Fenwick Facility and the BC Outdoor Cultivations Lands, respectively. Elmcliffe and CTI Holdings do not have any revenues. As noted above, Elmcliffe and CTI Holdings are reliant on non-interest-bearing intercompany advances from CannTrust Holdings to fund their ongoing expenses. As a result of the insolvency of CannTrust Holdings, Elmcliffe and CTI Holdings will unable to meet their respective obligations as they generally become due, including municipal taxes and other corporate expenses.

(ii) Stay of Proceedings

A. Applicants

156. A stay of proceedings against CannTrust is necessary at this time to, among other things, (i) allow CannTrust breathing space so that it can focus its efforts on completing its remediation plan and continue engaging with Health Canada to address its concerns and resume operations; (ii) provide a forum to explore a CCAA plan of compromise or arrangement that would resolve the contingent claims against CannTrust and maximize recovery for creditors and other stakeholders; and (iii) facilitate the potential exploration of a sale or other strategic transaction in addition to, or as an alternative to, a CCAA plan of

compromise or arrangement.

157. The proposed Initial Orders provide for a stay of all proceedings against or in respect of the Applicants or the Monitor or affecting the Business or Property (as defined in the proposed Initial Orders).

158. The stay of proceedings would permit CannTrust to address its enforcement and litigation exposure in a collective manner and put all creditors and contingent creditors on an equal footing.

159. Absent a stay of proceedings, CannTrust will be required to conduct a defence in each of the Pending Litigation and other potential litigation that materializes, which would (i) result in CannTrust incurring significant defence costs, and (ii) cause a meaningful distraction for senior management of CannTrust from continuing their efforts to engage with Health Canada and explore potential strategic alternatives.

B. Co-Defendants

160. The Canadian Class Actions, the Zola Action and the US Class Actions (collectively, the "**Securities Class Actions**") have also named as defendants various current and former directors, officers and employees of CannTrust, its auditors, the underwriters of the 2019 Offering and certain selling shareholders that sold shares in connection with the 2019 Offering (the "**Co-Defendants**"). The Applicants are also seeking to stay the Securities Class Actions against the Co-Defendants in the proposed Initial Orders.

161. The continuation of the Securities Class Actions against the Co-Defendants could

adversely affect the rights of CannTrust in those proceedings and any finding of liability and/or award of damages against the Co-Defendants could have legal and financial consequences for CannTrust, including claims for indemnification or contribution.

162. If the Securities Class Actions were not stayed against the Co-Defendants, CannTrust and its management would still be required to devote time and effort to monitoring and participating in the proceedings to ensure that the rights and interests of CannTrust are not prejudiced, and CannTrust would be required to incur legal and other expenses in connection with these proceedings.

163. In addition, if such matters were to proceed against the Co-Defendants but are stayed as against CannTrust, there would be different inquiries at different times into the same underlying facts, creating the possibility for conflicting or inconsistent judgments and wasted judicial resources.

C. Affected Parties and Cross-Default Rights

164. In the proposed Initial Orders, the Applicants are also seeking a stay of all rights and remedies against or in respect of the Affected Parties arising out of, relating to, or triggered by the insolvency of the Applicants or the commencement of these proceedings (the "**Cross-Default Rights**"). CannTrust has material equity interests in the Affected Parties and if counterparties were able to rely on Cross-Default Rights in their contracts with the Affected Parties, it may have a material impact on the financial position of the Applicants. The counterparties affected by this stay would be entitled to rely on all other contractual rights and remedies that are not related to these proceedings commenced by the Applicants.

165. To ensure that the stay does not irreversibly affect proceedings by the mere passage of time, the proposed Initial Orders provide that, to the extent any limitation period relating to proceedings in respect of the Applicants that are stayed by the Initial Orders may expire, such period is deemed extended by the length of the Stay Period (as defined in the proposed Initial Orders).

(iii) Payments During the CCAA Proceedings

A. Employees and Assistants

166. As set out in the proposed Initial Orders, CannTrust is seeking authorization to pay certain expenses, whether incurred prior to, on or after the Initial Filing Date, in respect of:

(a) outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants (as such term is defined in the proposed Initial Orders) retained or employed by CannTrust.

167. The continued payment of these obligations is necessary for the continued operation of the Business or in connection with the CCAA proceedings and efforts to address CannTrust's current financial circumstances. CannTrust believes it is in the best interests of its stakeholders that such expenses continue to be paid in the normal course, regardless of whether such expenses were incurred prior to, on or after the Initial Filing Date.

B. <u>CCAP Payments</u>

168. In the proposed Amended and Restated Initial Order, CannTrust is also seeking authorization to pay all amounts payable pursuant to the CCAP (whether accrued prior to, on or after the Initial Filing Date). While CannTrust believes that payments under the CCAP would fall within the scope of the above relief as the CCAP is an existing compensation arrangement, CannTrust is seeking express approval to make these payments for greater certainty.

C. <u>Ordinary Course Expenses</u>

169. In the proposed Initial Orders, CannTrust is also seeking the authority to pay all reasonable expenses incurred in carrying on the Business in the ordinary course after the Initial Filing Date, including (a) expenses and capital expenditures reasonably necessary for the preservation of CannTrust's Business or property; (b) expenses required to ensure compliance with any governmental, regulatory, or other enforcement action; and (c) payment for goods and services supplied or to be supplied to CannTrust after the date of the Initial Filing Date.

D. <u>Securities Reporting</u>

170. The Board has determined that devoting additional time or money towards curing its public disclosure defaults and restoring its status as a reporting issuer not in default of securities legislation is not appropriate at this juncture. The TSX, NYSE and OSC, as applicable, have indicated that the securities of CannTrust Holdings will likely be delisted and cease traded as a result of CannTrust commencing these CCAA proceedings, regardless of

whether CannTrust Holdings cures its disclosure defaults. In the opinion of the Board, the time and resources of CannTrust are better directed towards completing its remediation efforts, attempting to resolve the Pending Litigation and completing its review of strategic alternatives.

171. In the proposed Initial Orders, CannTrust Holdings is seeking the authorization of this Court to proceed accordingly. CannTrust is not asking the Court to exempt it from its continuous disclosure obligations, or bar any securities regulators or stock exchanges from taking steps within their discretion as a result of the continued non-reporting by CannTrust. CannTrust Holdings is also asking the Court to order that none of the directors, officers, employees, and other representatives of the Applicants, the Monitor (and its directors, officers, employees and representatives), nor the CRO (as defined below) shall have any personal liability for CannTrust proceeding in this manner and not making the securities filings.

(iv) Funding of CannTrust

A. <u>Cash Flow Forecast</u>

172. As set out in the statement of projected cash flows of CannTrust attached hereto as **Exhibit "F"** (the "**Cash Flow Forecast**"), the current cash balance of CannTrust is approximately $134.7 million.[5] CannTrust's principal use of cash during these proceedings will

[5] In a press release dated March 26, 2020, CannTrust disclosed that it had a cash balance of approximately $145 million as of March 20, 2020. The difference between this figure and the opening cash balance in the Cash Flow Forecast is attributable to (i) the figure in the press release including the amount being held pursuant to the D&O Trust (described below) and (ii) timing differences.

consist of the costs associated with the operation and remediation of the Business and ongoing payments made in the ordinary course, including employee compensation, procurement and other supplier obligations and professional fees and disbursements in connection with these CCAA proceedings and related matters.

173. As the Cash Flow Forecast indicates, the Business is projected to have sufficient cash over the forecasted period to enable CannTrust to meet its day-to-day obligations for the stay period sought in this application. Consequently, CannTrust not seeking interim financing at this juncture.

B. *Intercompany Advances*

174. As noted above, the operations and expenses of Opco, Elmcliffe and CTI Holdings are funded in the ordinary course through non-interest-bearing advances from CannTrust Holdings. CannTrust is seeking relief in the Initial Orders to allow it to maintain this practice during the CCAA proceedings and minimize any prejudice to the creditors of CannTrust Holdings through a priority charge on the assets of the other Applicants. Pursuant to the Initial Orders, among other things:

(a) CannTrust Holdings will be authorized to make intercompany advances to each of Opco, Elmcliffe and CTI Holdings (each, an "**Intercompany Borrower**") to fund their ongoing expenditures and other amounts permitted by the Initial Orders;

(b) any intercompany advances will be subject to Monitor review and approval;

(c) CannTrust Holdings will be entitled to a charge (the "**Intercompany Charge**") on all of the Property of each of the Intercompany Borrowers as security for the intercompany advances made to such Intercompany Borrower; and

(d) the Intercompany Charge will not secure any intercompany advances made by CannTrust Holdings to the Intercompany Borrowers before the Initial Filing Date.

175. In the First Day Order, Intercompany Advances will be limited to $4.2 million, which is the amount that is reasonably necessary for the continued operations of the Intercompany Borrowers in the ordinary course of business during the initial 10-day stay period.

(v) Approval of CRO Engagement

176. Pursuant to the engagement letter dated March 27, 2020 (the "**CRO Engagement Letter**"), CannTrust has engaged FTI Consulting Canada Inc. ("**FTI**") to act as chief restructuring officer ("**CRO**") and provide certain financial, advisory and consulting services to CannTrust. A copy of the CRO Engagement Letter is attached hereto as **Exhibit "G"**.

177. The proposed Initial Orders provide for the approval of the CRO Engagement Letter and the appointment of FTI as CRO pursuant thereto. The services to be provided by the CRO include, if and to the extent requested by CannTrust, among other things:

(a) Providing financial, strategic and restructuring advice to the Board, including in relation to the current status of CannTrust's business and licenses, the litigation against CannTrust and CannTrust's liquidity;

(b) Assisting management and the Board with such analysis as may be required, including assistance with cash flow forecasts, monitoring of actual performance against forecast cash flow and any sensitivity or scenario analysis;

(c) Assisting CannTrust with its cash conservation measures and managing its day-to-day liquidity requirements;

(d) Advising CannTrust in the planning and execution of a sales and investment solicitation process for the business and assets of CannTrust ("**SISP**"), if the Board determines that a SISP is necessary or desirable; and

(e) Advising and assisting CannTrust in any negotiations and discussions with CannTrust's stakeholders.

178. Paul Bishop of FTI will be the person primarily responsible for performing the services of the CRO. The CRO Engagement Letter provides that the CRO will be paid a fixed monthly amount.

179. I believe that it is appropriate for the Court to approve the CRO Engagement Letter and the appointment of FTI as CRO pursuant thereto as:

(a) The CRO is very experienced in restructuring proceedings of this nature;

(b) The experience and expertise of the CRO will be beneficial to CannTrust and its stakeholders in achieving a positive outcome in these proceedings; and

(c) CannTrust and the proposed monitor have reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable under the circumstances.

(vi) Appointment of Monitor

180. The Applicants are seeking the appointment of Ernst & Young Inc. ("**EYI**") as the proposed CCAA monitor in these proceedings. The consent of EYI to act as the Monitor is attached at Tab 3 of the Application Record.

(vii) Charges

C. Administration Charge

181. The proposed Initial Orders provide for a Court-ordered charge over the assets, property and undertaking of the Applicants (the "**Administration Charge**") in favour of the Monitor, the CRO, legal counsel to the Monitor and legal counsel to the Applicants in respect of their fees and disbursements incurred at their standard rates and charges, in order to ensure the active involvement and assistance of such persons during the CCAA proceedings.

182. The proposed Administration Charge is in an aggregate amount of $700,000 in the First Day Order, and in an aggregate amount of $1.5 million in the Amended and Restated Initial Order. The amount of the proposed Administration Charge has been reviewed with the proposed monitor.

D. Directors' Charge

183. The directors and officers of CannTrust will be actively involved in overseeing and directing, among other things, the operation of the Business during the CCAA proceedings and efforts to resolve CannTrust's current financial situation.

184. It is my understanding that, in certain circumstances, directors and officers can be held personally liable for certain of a company's obligations, including in connection with payroll remittances, workers' compensation remittances, harmonized sales taxes and goods and services taxes. Furthermore, I understand it may be possible for directors and officers of a corporation to be held personally liable for certain employment-related obligations.

185. CannTrust's insurance broker has confirmed that most of CannTrust's existing insurers are prepared to extend CannTrust's existing insurance coverage for six months, until August 25, 2020. However, to date, CannTrust's insurers have not committed to renewing CannTrust's insurance coverage, including for its directors and officers, past that date.

186. The insurance policies for the directors and officers of CannTrust is subject to a total limit of $65 million and contains exclusions and limitations to the coverage provided, there is a potential for there to be insufficient coverage in respect of the potential director and officer liabilities.

187. In an attempt to partially close this gap prior to the commencement of these proceedings, CannTrust established a trust in favour of its current and future directors and officers (the "**D&O Trust**") which is intended to cover any claims that they may become personally liable for in their capacity as a director or officer, including employee claims for

unpaid wages and other entitlements and claims for taxes. CannTrust has contributed $6 million to the D&O Trust. The D&O Trust will cover directors and officers that acted honestly and in good faith with a view to the best interests of the Applicants.

188. There is the potential that gaps may remain in the coverage of the directors and officers over the long term notwithstanding the existence of the directors and officers' insurance policy and the D&O Trust. The directors and officers of CannTrust have expressed their desire for certainty with respect to potential personal liabilities if they continue in their current capacities. CannTrust requires the active and committed involvement of its directors and senior officers to operate the Business.

189. Accordingly, the proposed Initial Orders provide for a Court-ordered charge over the assets, property and undertaking of the Applicants (the "**Directors' Charge**") to indemnify the directors and officers of the Applicants in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers. The proposed Directors' Charge is in an aggregate amount of $1.4 million in the First Day Order, and in an aggregate amount of $3.75 million in the Amended and Restated Initial Order. The amount of the proposed Directors' Charge has been reviewed with the proposed monitor.

E. Priorities of Charges

190. The Applicants believe that the amounts of the Administration Charge, the Directors' Charge, the KERP Charge and the Intercompany Charge (collectively, the "**Charges**") in the Initial Orders are appropriate in the circumstances.

191. It is contemplated that the priorities of the Charges will be as follows:

(a) First – the Administration Charge;

(b) Second – the Directors' Charge;

(c) Third – KERP Charge;[6] and

(d) Fourth – Intercompany Charge.

192. The Initial Orders sought by the Applicants provide for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, (collectively, the "**Encumbrances**"), other than certain specified exceptions, such as purchase-money security interests, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority). I am advised by James Gage of McCarthy Tétrault LLP and I believe that the specified exceptions are intended to represent those claims that have priority outside of CCAA proceedings. As described above, CannTrust does not have any secured debt.

(viii) Service and Notice

193. CannTrust is also seeking approval of its proposed manner of service and notice of the Initial Orders and the comeback motion authorized pursuant to the First Day Order. In particular, the Applicants propose that the Monitor shall provide notice by way of publication, by making the Initial Orders publicly available as prescribed in the CCAA, and by sending a

[6] The KERP Charge is only being sought in the proposed Amended and Restated Initial Order. In the proposed First Day Order, the Intercompany Charge would rank third. The Key Employee Retention Plan to be established by CannTrust will be set out in a subsequent court filing in advance of the comeback hearing.

notice (which shall include the date of the comeback motion) to known creditors with claims over $1000, except with respect to the Securities Class Actions, in which cases the Monitor shall only send a notice to counsel of record.

194. Given the limitations imposed on the ability of CannTrust and the Monitor to process and send notices to creditors by physical mail as a result of the COVID-19 pandemic, and the fact that many businesses may not have staff on site to open such mailings, the Applicants are seeking the Court's authorization to deliver the notices to known creditors by e-mail instead of physical mail. If the Applicants do not have e-mail addresses on file for a particular known creditor, the Monitor will send a notice by physical mail in the usual manner. In the current circumstances, the Applicants believe that the notices are more likely to come to the prompt attention of known creditors if they are sent by e-mail.

195. The proposed First Day Order also provides that CannTrust may rely on the notice provided by the Monitor (as described above) to provide notice of the comeback motion and shall only be required to serve motion materials in relation to the comeback motion on those parties who serve a Notice of Appearance in the proceeding or otherwise request service of such materials or to be added to the service list, in writing, in advance of the comeback motion.

IV. CONCLUSION

196. Prior to receiving the Fenwick Audit Report, CannTrust operated a business that was experiencing operational growth and expanding into new markets and product segments. CannTrust was not a party to any material litigation.

197. As a result of the Health Canada Audit Reports, shipments of all CannTrust's cannabis products have been stopped, the Cannabis Licences have been partially suspended, its CEO and chair have been replaced, its independent auditor withdrew its opinion on the 2018 annual statements, it has ceased making its required disclosures under securities laws, Pending Litigation seeking at least $500 million in aggregate damages have been commenced against it and its market capitalization has declined by almost 90%. Recent events in the cannabis sector and the sudden decline in the state of the global markets more generally have made CannTrust's financial situation even more precarious.

198. The Applicants seek CCAA protection at this time to protect the value of the Business. The relief requested in the proposed Initial Orders will provide CannTrust with an opportunity to address its current challenges and the Pending Litigation in a collective manner.

199. The relief requested in the proposed Initial Orders is therefore in the best interests of the Applicants and their stakeholders. The relief sought in the proposed First Day Order is limited to relief that is reasonably necessary for the continued operations of CannTrust in the ordinary course of business during the initial 10-day stay period.

SWORN AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on the 31st day of March, 2020. A Commissioner for taking Affidavits Name: Trevor Courtis (LSO# 67715A)	Greg Guyatt

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

FACTUM OF THE APPLICANTS
(CCAA Application)

March 31, 2020

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: 416-868-0673

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
E-mail: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Alexander Steele LSO#: 475719P
Tel: 416-601-8370
Email: asteele@mccarthy.ca

Lawyers for the Applicants

Court File No.

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Applicants

FACTUM OF THE APPLICANTS (CCAA Application)

PART I. INTRODUCTION

1. CannTrust is seeking relief under the *Companies' Creditors Arrangement Act* (Canada)[1] due to the significant challenges that it has faced following regulatory audits of its facilities in June and July 2019 which revealed that CannTrust was growing and storing cannabis contrary to applicable laws.[2]

2. Prior to these audits, CannTrust operated a business that was experiencing operational growth and expanding into new markets and product segments.[3]

3. Following these audits, among other things, shipments of all CannTrust's cannabis products have been stopped, its cannabis licences have been partially suspended, its chief

[1] *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [**CCAA**].
[2] For ease of reference, the Applicants will be collectively referred to herein as "**CannTrust**". Any capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Greg Guyatt, sworn March 31, 2020 ("**Guyatt Affidavit**").
[3] Guyatt Affidavit, Application Record of the Applicants dated March 31, 2020 ("**Application Record**"), Tab 2.

executive officer and chair have been replaced, it has terminated or laid off over 500 employees, large customers have returned its products, it has ceased making its required disclosures under securities laws, multiple class actions and other litigation seeking at least $500 million in aggregate damages (the "**Pending Litigation**") have been commenced against it and its market capitalization declined by almost 90%.[4]

4. CannTrust has had no revenue since July 2019. Meanwhile, CannTrust has had to incur significant ongoing costs to complete remediation measures required and address its operational, financial, legal and other reporting obligations. While CannTrust has completed its remediation work and requested the reinstatement of its licence at one of its facilities, and is expected to do the same for its other facility by the end of April 2020, there is no assurance whether or when Health Canada will reinstate those licences. Health Canada's review may be further delayed by its decision to reduce onsite field inspection activities in light of the COVID-19 pandemic.[5]

5. Even if its cannabis licences are reinstated, it would take several months for CannTrust to earn revenue from cannabis plants that would need to be propagated, cultivated, processed and sold. At the same time, CannTrust would require significant working capital to restore its operations.[6]

6. The current disruption of global capital markets and the recent downturn of the Canadian cannabis industry more specifically have made CannTrust's financial situation even more precarious and the likelihood that it could attract capital is now highly doubtful.[7]

[4] Guyatt Affidavit at para. 10, Application Record, Tab 2.
[5] Guyatt Affidavit at para. 12, Application Record, Tab 2.
[6] Guyatt Affidavit at para. 14, Application Record, Tab 2.
[7] Guyatt Affidavit at para. 16, Application Record, Tab 2.

7. In the circumstances, CannTrust is insolvent and requires CCAA protection to allow CannTrust breathing space so that it can maximize value for all affected stakeholders by, among other things:

(a) completing the remainder of its remediation plan;

(b) continuing to work with Health Canada to resolve any remaining compliance issues, with a view towards obtaining reinstatement of its licences, restoring operations and returning CannTrust to profitability;

(a) exploring a CCAA plan of compromise or arrangement as a means for addressing the multiple putative class actions and other litigation brought against CannTrust in several jurisdictions, seeking to resolve all of the claims and contingent claims against CannTrust through a single forum; and

(c) facilitating the completion of its review of strategic alternatives, including any potential sale of or other strategic transaction involving CannTrust, whether in addition to, or as an alternative to, a CCAA plan of compromise or arrangement.[8]

8. On this initial application, CannTrust seeks an order (the "**First Day Order**") granting relief that is reasonably necessary for its continued operation in the ordinary course of business during the initial 10-day stay period.

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[8] Guyatt Affidavit at para. 17, Application Record, Tab 2.

PART II. THE FACTS

9. The affidavit sworn by the Chief Executive Officer of CannTrust, Greg Guyatt, on March 31, 2020 in support of this application sets out in detail the facts concerning CannTrust, its business and property and the relief requested on this application.[9]

PART III. ISSUES AND THE LAW

10. The issues before this Court and the position of CannTrust on each are as follows:

(a) Do the Applicants meet the criteria for protection under the CCAA? ***Yes. The Applicants are insolvent companies with total claims against them of more than $5 million.***

(b) Should the Court grant an initial order staying all proceedings in respect of the Applicants? ***Yes. It is appropriate to grant a stay of proceedings with respect to the Applicants to provide the necessary breathing space to complete the remediation plan and resume operations and address the Pending Litigation.***

(c) Should the Court extend the stay of proceedings to the Cross-Default Rights? ***Yes. It is fair and reasonable to extend the stay of proceedings to the Affected Parties in respect of the Cross-Default Rights.***

(d) Should the Court approve the Intercompany Advances? ***Yes, this relief will preserve the status quo between the Applicants.***

[9] Guyatt Affidavit, Application Record, Tab 2.

(e) Should EY be appointed as Monitor? ***Yes. EY meets all of the statutory requirements and is very experienced in similar matters.***

(f) Should the engagement of the CRO be approved? ***Yes. The experience, expertise and institutional knowledge of the CRO will be beneficial to CannTrust and its stakeholders in achieving a positive outcome in these proceedings.***

(g) Should the Court grant the priority charges sought? ***Yes. The quantum and priority of the Administration Charge, Directors' Charge and Intercompany Charge is appropriate and necessary during the initial 10-day stay period.***

(h) Should the Court grant the relief related to securities reporting? ***Yes. In the circumstances it is appropriate to authorize CannTrust to incur no further expenses related to securities reporting.***

(i) Should the Court grant the other relief sought in the proposed First Day Order? ***Yes. The relief sought is reasonably necessary for the continued operation of CannTrust during the initial 10-day stay period.***

A. The Applicants Meet the Criteria for Protection Under the CCAA

11. The CCAA applies to a debtor company or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds $5 million.[10] A "debtor company" includes a company that is insolvent.[11] The Applicants each qualify as a "company" because they are incorporated pursuant to the *Business Corporations Act* (Ontario) or the *Business Corporations*

[10] CCAA, s. 3.
[11] CCAA, s. 2 "debtor company".

Act (British Columbia).[12] The Applicants are affiliated debtor companies with total claims against them of more than $5 million.[13] As outlined below, the Applicants are each insolvent.

(i) The Tests for Insolvency

12. The CCAA does not define "insolvent", so CCAA courts have taken guidance from the *Bankruptcy and Insolvency Act* (the "**BIA**").[14] The BIA defines an "insolvent person" as a person who:

(a) is for any reason unable to meet his obligations as they generally become due (the "**liquidity test**");

(b) has ceased paying his current obligations in the ordinary course of business as they generally become due; or

(c) has property that in aggregate is not, at fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due (the "**balance sheet test**").[15]

13. The tests for insolvency are disjunctive. A company satisfying any one of these tests at the time of its application for an initial order is considered insolvent for purposes of the CCAA.[16]

14. A company is also insolvent for the purposes of the CCAA if, at the time of filing, there is a "looming liquidity crisis" in the sense that it is reasonably expected to run out of liquidity

[12] Guyatt Affidavit at paras. 19, 20, 24, and 25, Application Record, Tab 2.
[13] Guyatt Affidavit at paras. 147, 152 Application Record, Tab 2.
[14] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"). See *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (SCJ) [***Stelco***], leave to appeal to ONCA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200; *Target Canada Co., Re*, 2015 ONSC 303 at para. 26 [***Target***]; *Cinram International Inc., Re*, 2012 ONSC 3767 at para. 50 [***Cinram***].
[15] BIA, s. 2, "insolvent person".
[16] *Stelco* at para. 28; *Cinram* at para. 51.

within reasonable proximity of time as compared with the time reasonably required to implement a restructuring.[17]

15. In applying these tests, the financial statements of the company may be used as a starting point, but they are adjusted to reflect what would then be reasonably and objectively expected based on the totality of the evidence.[18]

16. For the purposes of the balance sheet test, all obligations due and accruing due must be considered. In valuing liabilities due and accruing due, this Court held in *Stelco* that the Court should consider all obligations of "whatever nature or kind", leaving "nothing in limbo," and taking into account all liabilities, whether contingent or unliquidated.[19] Contingent liabilities in the form of litigation claims cannot be ignored "just because [the debtor] has entered defences in all of them."[20]

(ii) The Applicants are Insolvent

17. CannTrust Holdings Inc. ("**CannTrust Holdings**"), the reporting issuer parent company, is insolvent under the balance sheet test because it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities and its contingent liability for the claims asserted in the Canadian Class Actions, the Zola Action and the US Class Actions, in which estimated damages claims exceed $500 million in the aggregate, and its potential regulatory liabilities to the OSC and others.[21]

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[17] *Stelco* at paras. 26, 40; *Target* at para. 26.
[18] *4519922 Canada Inc., Re*, 2015 ONSC 124 at paras. 29-30 [***Coopers & Lybrand***]. *Lemare Holdings Ltd., Re* 2012 CarswellBC 3294 at para. 49 [***Lemare Holdings***].
[19] *Stelco* at paras. 50 & 56; *Union of Canada Life Insurance, Re*, 2012 ONSC 957 at para. 16.
[20] *Coopers & Lybrand* at paras. 31-32. See also *Lemare Holdings* at paras. 50-54; *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 264 at para. 2 [***Muscletech***].
[21] Guyatt Affidavit at para. 147, Application Record, Tab 2.

18. CannTrust Inc. ("**Opco**"), the primary operating entity and holder of the Cannabis Licences, is insolvent under the balance sheet test because it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities such as employee obligations, trade debt and contract commitments, its liability to CannTrust Holdings for intercompany advances (which was approximately $209.8 million as at December 31, 2019), its contingent liability for the claims asserted in the Construction Action and its potential regulatory liabilities to Health Canada and others.[22]

19. Elmcliffe Investments Inc. ("**Elmcliffe**") and CTI Holdings (Osoyoos) Inc. ("**CTI Holdings**") hold certain real property, buildings and related equipment for the Fenwick Facility and the BC Outdoor Cultivation Lands, respectively.[23] Opco, Elmcliffe and CTI Holdings do not currently have any revenues. Accordingly, Opco, Elmcliffe and CTI Holdings are each insolvent under the liquidity test as they are unable to meet their respective obligations as they generally become due.[24]

B. The Court Should Grant an Initial Order Staying Proceedings

(i) Jurisdiction

20. A CCAA application may be made to a court in the province in which the Applicants' head office or chief place of business in Canada is situated.[25] CannTrust's head office is located in Vaughan, Ontario and its production facilities are located in Fenwick and Vaughan, Ontario.[26] CTI Holdings is a BC corporation with its registered address at a law firm in British Columbia,

[22] Guyatt Affidavit at para. 126, Application Record, Tab 2.
[23] Guyatt Affidavit at para. 155, Application Record, Tab 2.
[24] Guyatt Affidavit at para. 155, Application Record, Tab 2; *Target* at paras. 19, 23 and 27.
[25] CCAA, s. 9(1).
[26] Guyatt Affidavit at para. 25, 44, 42, Application Record, Tab 2.

however its sole director and officer is located in Ontario and all operational decisions are made from the CannTrust head office in Vaughan, Ontario.[27] Accordingly, this court has jurisdiction to grant the First Day Order sought by the Applicants.

(ii) Scope of First Day Orders

21. On an initial application, the Court may stay proceedings "on any terms that it may impose."[28] Following the recent amendments to the CCAA, the initial stay period may not be more than 10 days and the other relief granted during that period must be "limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period."[29]

22. The purpose of the newly-enacted section 11.001 of the CCAA is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[30] First day orders should allow debtor companies to stabilize their operations and maintain the *status quo* during the initial 10-day stay period.[31]

(iii) Appropriate to Stay Proceedings Against the Applicants

23. The CCAA stay of proceedings has been described as "the engine that drives a broad and flexible statutory scheme."[32] The purpose of stay orders is to maintain the *status quo* and provide

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[27] Guyatt Affidavit at para. 25, Application Record, Tab 2.
[28] CCAA, s. 11.02.
[29] CCAA, s. 11.001.
[30] *Lydian International Limited (Re)*, 2019 ONSC 7473 at para. 25 [***Lydian***]; *Clover Leaf Holdings Company, Re*, 2019 ONSC 6966 at para. 13.
[31] *Lydian* at paras. 26-30.
[32] *Nortel Networks Corp., Re*, 2010 ONSC 1304 at para. 34; citing *Stelco Inc., Re*, 2005 CarswellOnt 1188 at para. 36 (CA).

the debtor company with an essential respite from the burden of dealing with litigation and other claims against it while it attempts to carry on as a going concern, restructure its financial affairs and negotiate an acceptable restructuring arrangement.[33]

24. The stay maintains a level playing field among the creditors of a company so that no creditor will have an advantage over other creditors, and prevents aggressive creditors from taking actions that would undermine the company's financial position, prejudice other creditors and impair the prospects of a viable restructuring.[34]

25. The CCAA has been employed in numerous cases as a means of dealing with or achieving a global resolution of litigation against the debtor company.[35] For example:

(a) In *Muscletech Research & Development Inc., Re.*, the debtor companies sought CCAA protection primarily to achieve a global resolution of a large number of product liability claims and other lawsuits.[36]

(b) In *Montreal, Maine & Atlantic Canada Co.*, the CCAA filing was made to address litigation claims against the debtor arising out of a train disaster.[37]

(c) In *4519922 Canada Inc.*, the applicant sought to address negligence claims arising from the preparation and audit of financial statements.[38]

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[33] *Lehndorff General Partner Ltd.*, Re, 1993 CarswellOnt 183 at para. 5 (Gen. Div.) [***Lehndroff***]; *Campeau v. Olympia & York Developments Ltd.*, 1992 CarswellOnt 185 at para. 17 (Gen Div); *Re Doman Industries Ltd.*, 2003 BCSC 376 at para. 22.

[34] *Woodward's Ltd., Re*, 1993 CarswellBC 530 at para. 12 (SC); *Lehndorff* at para. 6.

[35] See e.g. *Coopers & Lybrand* at paras. 53-54; *Muscletech* at para. 3; *Montréal, Maine & Atlantique Canada Co., Re*, 2013 QCCS 4039 at paras. 38-40 [***Montreal, Maine***]; *Grace Canada Inc., Re*, 2005 CarswellOnt 6648 at para. 11 (SCJ).

[36] *Muscletech* at para. 3.

[37] *Montreal, Maine* at paras. 38-40.

[38] *Coopers & Lybrand* at para. 10.

(d) Three separate tobacco companies each recently commenced CCAA proceedings to resolve class action litigation and other litigation that had been commenced against each of them.[39]

26. The CCAA is a valuable tool in such situations since it brings various creditors together into one forum, avoiding chaos and inefficiency.[40] It provides the applicant and stakeholders with a means of arriving at a global resolution of litigation claims and provides a structure to attempt to resolve outstanding litigation.[41]

27. CannTrust needs the single forum structure of the CCAA to address the numerous litigation claims against it effectively and in an orderly manner while maintaining its focus squarely on completing its remediation work, obtaining the reinstatement of its licences and resuming operations. Accordingly, it is appropriate to grant a stay of proceedings with respect to the Applicants.

C. The Court Should Extend the Stay of Proceedings to the Cross-Default Rights

(i) Third Party Stays in CCAA Proceedings

28. This Court has the discretion under section 11 of the CCAA to impose a stay of proceedings with respect to non-applicant third parties where it is "satisfied that it is fair and reasonable in the circumstances.[42]

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[39] *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at paras. 12-13; *Imperial Tobacco Canada Limited, Re*, 2019 ONSC 1684 at paras. 3-5; *Rothmans, Benson and Hedges Inc., Re*, Court File No. CV-19-616779-00CL, endorsement of Pattillo J. issued March 22, 2019.

[40] *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60 at para. 22.

[41] *Coopers & Lybrand* at paras. 53 and 67.

[42] *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429 at para. 26 [***Pacific Exploration***].

29. Generally, Canadian Courts have extended the stay of proceedings to non-applicant third parties where "it is important to the reorganization and restructuring process, and where it is just and reasonable to do so";[43] where not extending the stay to a third party "could potentially jeopardize the success of the plan and thereby the continuance of the company";[44] where operations of the third party "are so intertwined with those of the debtor companies that irreparable harm would ensue if the requested stay were not granted";[45] and where the third party has crossclaimed against the debtor companies on the basis of a guarantee, contribution or indemnity that the debtor may owe to the third party.[46]

30. In *Lydian International Limited (Re)*, the Honourable Chief Justice Morawetz recently extended the stay of proceedings to several non-applicant affiliates, including those in foreign jurisdictions, during the initial 10-day stay period to stabilize the operations of the group of companies.[47]

31. In the proposed First Day Order, CannTrust is seeking a stay of all rights and remedies against or in respect of certain third parties in which CannTrust has a material equity interest (the "**Affected Parties**"), arising out of, relating to, or triggered by the insolvency of CannTrust or the commencement of these proceedings (the "**Cross-Default Rights**").[48] If counterparties were able to rely on Cross-Default Rights in their contracts with the Affected Parties, it may have a material impact on the financial position of CannTrust.[49]

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[43] *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at para. 21.
[44] *Lehndorff* at para. 10.
[45] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para. 33 [***Canwest Publishing***].
[46] *Cinram* ***at*** para. 61.
[47] *Lydian* at para. 39.
[48] First Day Order at para. 14, Application Record, Tab 4.
[49] Guyatt Affidavit at para. 164, Application Record, Tab 2.

32. Accordingly, it is fair and reasonable to extend the stay of proceedings to the non-Applicant members of the CannTrust Group in respect of the Cross-Default Rights.[50]

D. Intercompany Advances Should be Approved

33. Where the operations and expenses of debtor companies are funded in the ordinary course through intercompany advances, it is appropriate for the CCAA court to approve the continuation of those arrangements during the CCAA proceedings and to grant an intercompany charge over the assets of the borrowers.[51]

34. Substantially all of the cash and short term investments of CannTrust are owned by CannTrust Holdings. The operations and expenses of Opco, Elmcliffe and CTI Holdings are funded in the ordinary course through non-interest-bearing advances from CannTrust Holdings.[52] The First Day Order will facilitate the continuation of this practice by authorizing CannTrust Holdings to make Intercompany Advances to each of Opco, Elmcliffe and CTI Holdings (each, an "**Intercompany Borrower**") to fund their ongoing expenditures and other amounts permitted by the Initial Orders. Any Intercompany Advances will be subject to Monitor review and approval.[53] The Intercompany Advances will be secured by an Intercompany Charge, as set out further below.

35. In the First Day Order, Intercompany Advances will be limited to $4.2 million, which is the amount that is reasonably necessary for the continued operations of the Intercompany

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[50] *Pacific Exploration* at para. 26; Guyatt Affidavit at para. 164, Application Record, Tab 2.
[51] *Performance Sports Group Ltd., Re*, 2016 ONSC 6800 at paras. 33-35 [***Performance Sports Group***]; *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at paras. 62-67; *Arrangement Relatif a BioAmber Canada Inc.*, 2018 QCCS 3170 at paras. 20-22.
[52] Guyatt Affidavit at para. 174, Application Record, Tab 2.
[53] Guyatt Affidavit at para. 174, Application Record, Tab 2.

Borrowers in the ordinary course of business during the initial 10-day stay period.[54] This relief is necessary and appropriate in the circumstances.

E. EY Should be Appointed as Monitor

36. Upon the granting of an initial order, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.[55] Ernst & Young Inc. ("**EYI**") has consented to act as monitor in these CCAA proceedings and is a trustee within the meaning of subsection 2(1) of the BIA.[56] EYI is very experienced in similar matters, having acted as CCAA monitor for other licenced producers of cannabis in Ontario, and is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA. Accordingly, EYI should be appointed as monitor of the Applicants (in such capacity, the "**Monitor**").

F. The Engagement of the CRO Should be Approved

37. Prior to the commencement of these proceedings, CannTrust engaged FTI Consulting Canada Inc. ("**FTI**") to act as chief restructuring officer ("**CRO**") and provide financial, advisory and consulting services to CannTrust.[57] Paul Bishop of FTI is the person primarily responsible for performing the services of the CRO.[58]

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[54] Guyatt Affidavit at para. 175, Application Record, Tab 2.
[55] CCAA, s. 11.7.
[56] Consent of Ernst & Young Inc. dated March 30, 2020, Application Record, Tab 3.
[57] Guyatt Affidavit at para. 176, Application Record, Tab 2.
[58] Guyatt Affidavit at para. 178, Application Record, Tab 2.

38. CannTrust intends to continue utilizing the services of the CRO during the CCAA proceedings and entered into the CRO Engagement Letter which governs the services to be provided by the CRO to CannTrust during the course of these proceedings.[59]

39. CannTrust is not seeking the appointment of the CRO as a court officer, only for the Court to approve the CRO Engagement Letter and the appointment of FTI as CRO pursuant thereto.[60] Similar relief has been granted in initial orders in other CCAA proceedings, including during the initial 10-day stay period.[61] This relief is appropriate in the circumstances as:

(a) the CRO is very experienced in restructuring proceedings of this nature;

(b) the experience and expertise of the CRO will be beneficial to CannTrust and its stakeholders in achieving a positive outcome in these proceedings; and

(c) CannTrust and the proposed Monitor have reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable in the circumstances.[62]

G. The Priority Charges Should be Approved

40. CannTrust is seeking approval of certain first-ranking court-ordered charges on its assets, property and undertaking in connection with the administrative costs of the CCAA proceedings, the indemnification of its directors and officers and to secure the Intercompany Advances.

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[59] Guyatt Affidavit at para. 176, Application Record, Tab 2.
[60] Guyatt Affidavit at para. 177, Application Record, Tab 2.
[61] *SFP Canada Ltd., Re*, Court File No. CV-20-634980-00CL, initial order issued January 23, 2020 at para. 29 [***SFP Canada Initial Order***]. See also *U. S. Steel Canada Inc., Re*, Court File No. CV-14-10695-00CL, initial order issued September 16, 2014 at para. 28, and *Payless Shoesource Canada Inc., Re*, Court File No. CV-19-00614629-00CL, initial order issued February 19, 2019 at paras. 29-35.
[62] Guyatt Affidavit at para. 179, Application Record, Tab 2.

Granting the Charges with the priority sought is appropriate and important to the restructuring. CCAA Courts have acknowledged the importance of priority charges to ensure the willingness of professionals and directors and officers to participate in the CCAA proceedings.[63]

(i) Administration Charge

41. CannTrust is seeking an Administration Charge of $700,000 to secure the professional fees and disbursements of the Monitor, counsel to the Monitor, counsel to the Applicant, the CRO and the Financial Advisor. The Administration Charge is to rank in priority to the D&O Charge and the Intercompany Charge.[64] CannTrust will request that the maximum amount of the Administration Charge be increased to $1.5 million in the Amended and Restated Initial Order.

42. Section 11.52 of the CCAA expressly provides this Court with the jurisdiction to grant an administration charge in respect of the fees and expenses of the monitor and any financial, legal or other experts engaged by the company for the CCAA proceeding.[65] It is appropriate for the Administration Charge to encompass the fees and expenses of the CRO.[66]

43. The requested Administration Charge in the First Day Order is limited to what is reasonably necessary to cover the fees and disbursements of the professionals for the initial stay period, as reflected in the cash flow forecast filed in support of the application.[67] Administration Charges of CAD $1.25 million[68] and CAD $400,000[69] have been granted during the initial 10-day stay period in other CCAA proceedings.

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[63] *Timminco Ltd., Re,* 2012 ONSC 506 at para. 66.
[64] Guyatt Affidavit at para. 182, Application Record, Tab 2; First Day Order at paras. 34-36, Application Record, Tab 4.
[65] *CCAA*, s. 11.52(1).
[66] *SFP Canada Initial Order* at para. 28.
[67] Cash Flow Forecast, Exhibit “F” to the Guyatt Affidavit, Application Record, Tab 2F.
[68] *Clover Leaf* at para. 32.

44. CannTrust submits that the Administration Charge is warranted and necessary[70] and that it is appropriate to grant the Administration Charge in the amount of $700,000 given that the CCAA will require the extensive involvement of the professional advisors from the very outset; there is no unwarranted duplication of roles; CannTrust has no secured debt; the First Day Order gives priority to enumerated secured claims that would otherwise be affected by the Charges; and the proposed Monitor is supportive of the Administration Charge.[71]

(ii) Directors' Charge

45. CannTrust is seeking a Directors' Charge in an amount of $1.4 million to indemnify its directors and officers for liabilities they may incur in their capacity as directors and officers of CannTrust after the commencement of these CCAA proceedings. The Directors' Charge is to rank subordinate to the Administration Charge.[72] CannTrust will request that the maximum amount of the Directors' Charge be increased to $3.75 million in the Amended and Restated Initial Order.

46. Jurisdiction to grant a charge relating to directors' and officers' indemnification on a priority basis is provided in section 11.51 of the CCAA.[73] An insolvency creates new risks and potential liabilities for directors and officers. A directors' charge is intended to keep them in place during a restructuring to avoid disruption and to retain experienced management at a critical time.[74]

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[69] *SFP Canada Initial Order* at para. 28.
[70] See the non-exhaustive list of factors in *Canwest Publishing* at para. 54. See also *Lydian* at paras. 46-48.
[71] Guyatt Affidavit at para. 182, Application Record, Tab 2.
[72] Guyatt Affidavit at para. 191, Application Record, Tab 2; First Day Order at paras. 20 and 40, Application Record, Tab 4.
[73] *CCAA*, s. 11.51; *Lydian* at para. 52.
[74] *Canwest Publishing* at para. 56.

47. The directors and officers of CannTrust are beneficiaries of directors and officers insurance policies (the "**D&O Insurance Policies**"), however: (i) CannTrust's insurers have not committed to renewing CannTrust's insurance coverage, including for its directors and officers, past August 25, 2020; and (ii) there is the potential for insufficient coverage as there are exclusions and limitations to the coverage provided.[75]

48. To partially close this gap, CannTrust established a trust (the "**D&O Trust**") and committed $6 million to it, which is intended to cover any claims that current and future directors and officers may become personally liable for in such capacity. Notwithstanding the existence of the D&O Insurance Policies and the D&O Trust, there is the potential that gaps may remain in the coverage of the directors and officers.[76] The directors and officers of CannTrust have expressed their desire for certainty with respect to potential personal liabilities if they continue in their personal capacity.[77]

49. In *Clover Leaf* and *SFP Canada*, Directors' Charges of CAD $2.3 million and CAD $1 million, respectively, were granted during the initial 10-day stay period notwithstanding the existence of a D&O insurance policy as further protection for the directors was necessary for the continued operation of the debtor companies.[78]

50. The amount of the Directors' Charge has been calculated based on the estimated potential exposure of the directors and officers during the initial 10-day stay period for obligations and liabilities that they may incur after the commencement of these CCAA proceedings and does not cover wilful misconduct or gross negligence. The Initial Order gives priority to enumerated

[75] Guyatt Affidavit at para. 186, Application Record, Tab 2.
[76] Guyatt Affidavit at para. 188, Application Record, Tab 2.
[77] Guyatt Affidavit at para. 188, Application Record, Tab 2.
[78] *Clover Leaf* at para. 33; *SFP Canada Initial Order* at para. 19.

secured claims that would otherwise be affected by the Charges.[79] The proposed Monitor is supportive of the Directors' Charge.[80]

(iii) Intercompany Charge

51. CannTrust is seeking an Intercompany Charge on all of the Property of each of the Intercompany Borrowers as security for the intercompany advances made by CannTrust Holdings to such Intercompany Borrower.[81] Intercompany charges to protect intercompany advances have been approved before in CCAA proceedings under the general power in section 11 of the CCAA to make such orders as the court considers appropriate.[82]

52. The Intercompany Charge will not secure any Intercompany Advances made by CannTrust Holdings to the Intercompany Borrowers before the Initial Filing Date. In the First Day Order, Intercompany Advances (and thus the Intercompany Charge) will be limited to $4.2 million, which is the amount that is reasonably necessary for the continued operations of the Intercompany Borrowers in the ordinary course of business during the initial 10-day stay period.[83]

H. Securities Reporting Relief Should be Granted

53. The TSX, NYSE and OSC, as applicable, have indicated that the securities of CannTrust Holdings will likely be delisted and cease traded as a result of CannTrust commencing these

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[79] Guyatt Affidavit at para. 192, Application Record, Tab 2.
[80] Guyatt Affidavit at para. 182, Application Record, Tab 2.
[81] Guyatt Affidavit at para. 274, Application Record, Tab 2; First Day Order at paras. 38 and 40, Application Record, Tab 4.
[82] *Performance Sports Group* at para. 34.
[83] Guyatt Affidavit at para. 175, Application Record, Tab 2.

CCAA proceedings, regardless of whether CannTrust Holdings cures its disclosure defaults.[84] In the circumstances, the Board has determined that incurring further expenses to cure its disclosure defaults and maintain the currency of its securities reporting going forward is not appropriate at this juncture. The resources and time of CannTrust are better directed towards completing its remediation efforts, attempting to resolve the Pending Litigation and completing its review of strategic alternatives.[85]

54. In the First Day Order, CannTrust is seeking the authorization of this Court to proceed in this manner and incur no further expenses in relation to any Securities Filings that may be required by the Securities Provisions (as each term is defined in the First Day Order). CannTrust is also seeking protection for certain individuals against any personal liability that may arise as a result of such decision.[86] Similar relief has been granted in other CCAA proceedings, including during the initial 10-day stay period.[87]

55. CannTrust is not asking the Court to exempt it from its continuous disclosure obligations, or bar any securities regulators or stock exchanges from taking steps within their discretion as a result of the continued non-reporting by CannTrust. Accordingly, this relief is appropriate in the circumstances.

I. The Other Relief Sought Should be Granted

56. The other relief sought in the proposed First Day Order is appropriate and is reasonably necessary for the continued operations of the Applicants in the ordinary course of business

[84] Guyatt Affidavit at para. 170, Application Record, Tab 2.
[85] Guyatt Affidavit at para. 170, Application Record, Tab 2.
[86] Guyatt Affidavit at para. 171, Application Record, Tab 2; First Day Order at paras. 46-47, Application Record, Tab 4.
[87] *Pure Global Cannabis, Inc., Re*, initial order issued March 19, 2020 at para. 49 [***Pure Global Initial Order***]; *Old PSG Wind-down Ltd., Re*, Court File No. CV-16-11582-00CL, order issued December 20, 2017 at para. 12.

during the initial 10-day stay period, including relief related to (i) cash management, (ii) continued payment of employee, professional and operating expenses in the ordinary course of business, (iii) certain restructuring steps such as terminating employees and pursuing refinancing and asset sale opportunities, subject to the approval of the Court, and (iv) service and notice. Similar relief has been granted during the initial 10-day stay period in other CCAA proceedings.[88]

57. Given the limitations imposed on the ability of CannTrust and the Monitor to process and send notices to creditors by physical mail as a result of the COVID-19 pandemic, and the fact that many businesses may not have staff on site to open such mailings, the Applicants are seeking the Court's authorization to deliver the notices to known creditors by e-mail instead of physical mail. In the current circumstances, the Applicants believe that the notices are more likely to come to the prompt attention of known creditors if they are sent by e-mail.[89] Similar relief was recently granted in another CCAA proceeding and is appropriate in the circumstances.[90]

PART IV. ORDER REQUESTED

58. For the reasons set out above, the Applicants request that this Court grant the proposed First Day Order. The Applicants meet all of the qualifications required to obtain the requested relief under the CCAA, and the relief is appropriate and reasonably necessary for the continued

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[88] See e.g. *SFP Canada Initial Order*, *Lydian International Limited, Re*, Court File No. CV-19-00633392-00CL, initial order issued December 23, 2019; *AgMedica Bioscience Inc., Re*, Court File No. CV-19-00632052-00CL, initial order issued December 2, 2019; *Quest University Canada, Re*, Supreme Court of British Columbia File No. S-200586, initial order issued January 16, 2020.

[89] Guyatt Affidavit at para. 194, Application Record, Tab 2; First Day Order at para. 48, Application Record, Tab 4.

[90] *Pure Global Initial Order* at para. 50.

operations of the Applicants in the ordinary course of business during the initial 10-day stay period.

59. The balance of the relief sought by the Applicants in the Notice of Application should be reserved to be heard by the Court at the comeback hearing. The Applicants intend to file a separate factum with respect to that relief prior to the comeback hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of March, 2020.

McCarthy Tétrault LLP

Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

Jurisprudence

1. *Stelco Inc., Re*, 2004 CarswellOnt 1211 (SCJ), leave to appeal to ONCA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200
2. *Target Canada Co., Re*, 2015 ONSC 303
3. *Cinram International Inc., Re*, 2012 ONSC 3767
4. *4519922 Canada Inc., Re*, 2015 ONSC 124
5. *Lemare Holdings Ltd., Re*, 2012 BCSC 1591
6. *Union of Canada Life Insurance, Re*, 2012 ONSC 957
7. *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 264 (SCJ)
8. *Lydian International Limited (Re)*, 2019 ONSC 7473
9. *Clover Leaf Holdings Company, Re*, 2019 ONSC 6966
10. *Stelco Inc., Re*, 2005 CarswellOnt 1188 (CA)
11. *Nortel Networks Corp., Re*, 2010 ONSC 1304
12. *Lehndorff General Partner Ltd.*, Re, 1993 CarswellOnt 183 (Gen. Div.)
13. *Campeau v. Olympia & York Developments Ltd.*, 1992 CarswellOnt 185 (Gen Div)
14. *Re Doman Industries Ltd.*, 2003 BCSC 376
15. *Montréal, Maine & Atlantique Canada Co., Re*, 2013 QCCS 4039
16. *Grace Canada Inc., Re*, 2005 CarswellOnt 6648 (SCJ)
17. *JTI-Macdonald Corp., Re*, 2019 ONSC 1625
18. *Imperial Tobacco Canada Limited, Re*, 2019 ONSC 1684
19. *Rothmans, Benson and Hedges Inc., Re*, Court File No. CV-19-616779-00CL, endorsement of Pattillo J. issued March 22, 2019.
20. *Ted Leroy Trucking [Century Services] Ltd., Re*, 2010 SCC 60
21. *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429

22. *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461

23. *Canwest Publishing Inc., Re*, 2010 ONSC 222

24. *Performance Sports Group Ltd., Re*, 2016 ONSC 6800

25. *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107

26. *Arrangement Relatif a BioAmber Canada Inc.*, 2018 QCCS 3170

27. *SFP Canada Ltd., Re*, Court File No. CV-20-634980-00CL, initial order issued January 23, 2020

28. *U. S. Steel Canada Inc., Re*, Court File No. CV-14-10695-00CL, initial order issued September 16, 2014

29. *Payless Shoesource Canada Inc., Re*, Court File No. CV-19-00614629-00CL, initial order issued February 19, 2019

30. *Timminco Ltd., Re*, 2012 ONSC 506

31. *Pure Global Cannabis, Inc., Re*, initial order issued March 19, 2020

32. *Old PSG Wind-down Ltd., Re*, Court File No. CV-16-11582-00CL, order issued December 20, 2017

33. *Lydian International Limited, Re*, Court File No. CV-19-00633392-00CL, initial order issued December 23, 2019

34. *AgMedica Bioscience Inc., Re*, Court File No. CV-19-00632052-00CL, initial order issued December 2, 2019

35. *Quest University Canada, Re*, Supreme Court of British Columbia File No. S-200586, initial order issued January 16, 2020

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

s. 2 ("**company**")

"**company**" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies.

s. 2 ("**debtor company**")

"**debtor company**" means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent.
s. 3(1)

s. 3(1)

Application. – This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

s. 9(1)

Jurisdiction of court to receive applications – Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

s. 11

General power of court – Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

s. 11.001

Relief reasonably necessary – 11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

s. 11.51(1)

Security or charge relating to director's indemnification. – On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all of part of the property of the company is subject to a security or charge -- in an amount that the court considers appropriate – in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

s. 11.51(2)

Priority. – The court may order that the security or charge rank in priority over the claim of any secured creditors of the company

s. 11.51(3)

Restriction. – indemnification insurance – The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

s. 11.51(4)

Negligence, misconduct or fault. – The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

s. 11.52(1)

Court may order security or charge to cover certain costs. – On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceeding under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

s. 11.52(2)

Priority. **–** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended**

s. 2 ("**insolvent person**")

"**insolvent person**" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM
(CCAA Application)

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 34676I
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Paul Steep LSO#: 21869L
Tel: 416-601-7998
Email: psteep@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Alexander Steele LSO#: 475719P
Tel: 416-601-8370
Email: asteele@mccarthy.ca
Lawyers for the Applicants

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

THIRD REPORT OF THE MONITOR

Dated June 29, 2020

INTRODUCTION

1. On March 31, 2020 (the "**Filing Date**"), the Court granted an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") that, among other things, appointed Ernst & Young Inc. as monitor of the Applicants (in such capacity, the "**Monitor**"), approved a stay of proceedings until and including April 9, 2020 (the "**Stay Period**"), granted certain Court-ordered charges, and approved FTI Consulting Canada Inc. continuing to act as Chief Restructuring Officer (the "**CRO**") of the Applicants. In addition, the Initial Order granted a limited stay of proceedings during the Stay Period with respect to O Cannabis We Stand on Guard For Thee Corporation, Cannatrek Ltd., Elmcliffe Investments [No. 2] Inc. and Cannabis Coffee and Tea Pod Company Ltd. staying any rights arising out of, related to, or triggered by the insolvency of any of the Applicants or the commencement of these proceedings (the "**CCAA Proceedings**").

2. On April 9, 2020, the Court granted an order (the "**Amended and Restated Initial Order**") that, amongst other things:

   a) extended the Stay Period to July 5, 2020;

b) increased the maximum amount of each of the Administration Charge, the Directors' Charge and the Intercompany Charge, as defined in the Initial Order;

c) approved Greenhill & Co. Canada Ltd. continuing to act as financial advisor (the "**Financial Advisor**") of the Applicants and approved the Transaction Fee Charge (as defined in the Amended and Restated Initial Order);

d) approved the Key Employee Retention Plan (the "**KERP**") and the KERP Charge (as defined in the Amended and Restated Initial Order); and

e) approved a limited stay of proceedings in respect of various current and former directors, officers and employees of CannTrust, and the auditors, certain underwriters and certain selling shareholders that are currently named, in addition to the Applicants, as defendants in the Canadian Class Actions, the Zola Action, the US Class Actions and the Construction Action, all as defined in the initial affidavit of Greg Guyatt dated March 31, 2020 (the "**March 31 Guyatt Affidavit**").

3. On May 8, 2020, the Court granted:

a) an order (the "**SISP Order**") approving the Applicants' sale and investment solicitation process (the "**SISP**");

b) an order (the "**Claims Procedure Order**") approving the claims process (the "**Claims Process**") proposed by the Applicants; and

c) an order (the "**Mediation Order**") approving the appointment of the Hon. Dennis O'Connor, Q.C. (the "**Mediator**") as a neutral third party to mediate a global settlement of various actions (the "**Mediation Process**") which allege that CannTrust Holdings made misrepresentations in CannTrust Holdings' disclosure to investors and claims related thereto (such actions, the "**Securities Actions**"). Each of the Securities Actions are Excluded Claims under the Claims Procedure Order.

PURPOSE

4. The purpose of this third report of the Monitor (the "**Third Report**") is to provide to the Court:

   a) an update on the Applicants' activities since the second report of the Monitor dated May 4, 2020 (the "**Second Report**");

   b) an update on the SISP;

   c) an update on the status of the Claims Process;

   d) an update on the Mediation Process;

   e) a report on the Applicants' receipts and disbursements for the period from April 27, 2020 to June 21, 2020 compared to the cash flow forecast appended as Appendix "C" to the first report of the Monitor dated April 7, 2020 (the "**First Report Cash Flow Forecast**");

   f) a report on the fees and disbursements of the Monitor for the period from March 17, 2020 to June 17, 2020;

   g) a report on the fees and disbursement of the Monitor's legal counsel for the period from February 14, 2020 to June 28, 2020; and

   h) the Monitor's recommendation with respect to the Applicants' motion for an order (the "**Stay Extension Order**") extending the Stay Period to October 30, 2020 and approving the activities and the fees and disbursements of the Monitor and its legal counsel.

TERMS OF REFERENCE

5. In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third-party sources (collectively, the "**Information**"). Except as described in this Third Report in respect of the Third Report Cash Flow Forecast (as defined below):

    a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

    b) some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

6. Future oriented financial information referred to in this Third Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

7. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Third Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

9. Unless otherwise specified, capitalized terms not defined herein are as defined the Amended and Restated Initial Order.

BACKGROUND

10. CannTrust was founded in 2013 and is a licensed producer that supplied cannabis to the medical and adult-use recreational cannabis markets. The principal activities of CannTrust are the cultivation, processing, distribution, and sale of dried cannabis flower, cannabis soft gel capsules, and cannabis oil.

11. Anyone wishing to cultivate, process and/or sell cannabis in Canada must have a license from Health Canada to do so. In addition to issuing licences, Health Canada is responsible for ensuring compliance with, and enforcement of, the *Cannabis Act*, S.C. 2018, c-16 and the *Cannabis Regulations,* SOR/2018-144 (together, the "**Cannabis Legislation**"). CannTrust Inc., a wholly owned subsidiary of CannTrust Holdings, is a licensed producer of cannabis under the Cannabis Legislation, with production and processing facilities in Fenwick, Ontario (the "**Fenwick Facility**") and Vaughan, Ontario (the "**Vaughan Facility**"). The licences issued in respect of the Fenwick Facility and the Vaughan Facility are referred to herein as the "**Cannabis Licences**" (each, a "**Cannabis Licence**").

12. As explained in the March 31 Guyatt Affidavit, CannTrust received notice of the partial suspension of the Cannabis Licences on September 17, 2019, which remained under partial suspension as at the Filing Date.

13. Prior to the partial suspension, CannTrust derived the majority of its revenue from the sale of medical cannabis to registered patients for medical use. By March 31, 2019, CannTrust had approximately 68,000 registered patients in Canada, which was among the top tier of Cannabis Licence holders by patient count. CannTrust also sold its product in the wholesale market to provincial distributors which ultimately supply the adult-use recreational market. As at March 31, 2019, wholesale revenue represented 32.5% of CannTrust's total revenue.

14. In addition to its production and processing facilities in Ontario, CannTrust also owns 81 acres of land in British Columbia, through its wholly owned subsidiary CTI Holdings (Osoyoos) Inc., which was purchased with the intent to commence outdoor cannabis cultivation. CannTrust applied to Health Canada for a licence to plant and cultivate on these lands. CannTrust has not been informed of Health Canada's decision to date.

15. On February 14, 2020, CannTrust submitted a comprehensive package to Health Canada evidencing that it had completed the remediation plan for the Fenwick Facility and requested the reinstatement of its Cannabis Licence for the Fenwick Facility.

16. On April 24, 2020, CannTrust submitted a comprehensive package to Health Canada evidencing that it had completed the remediation plan for the Vaughan Facility and requested the reinstatement of its Cannabis Licence at that location as well.

17. Prior to commencing these proceedings, CannTrust was listed on the Toronto Stock Exchange under the ticker TRST and the New York Stock Exchange under the ticker CTST. On April 13, 2020, a cease trade order was issued by the OSC, and received by CannTrust Holdings, as a result of CannTrust Holdings' failure to file certain periodic disclosure required by Ontario securities legislation.

18. All court documents and materials related to these CCAA Proceedings have been posted on the Monitor's website at www.ey.com/ca/canntrust (the "**Monitor's Website**").

UPDATE ON THE ACTIVITIES OF THE APPLICANTS

19. Further details of the activities of the Applicants presented in this Third Report are described in the affidavit of Greg Guyatt dated June 25, 2020.

20. Since the Second Report, the Applicants have focused on continuing to work with Health Canada to obtain the reinstatement of the Cannabis Licenses. The Applicants provided further information as requested by Health Canada to assist in the evaluation of the remediation packages that the Applicants had submitted for the Fenwick Facility and Vaughan Facility.

21. On May 29, 2020, Health Canada notified CannTrust that the Cannabis License at its Fenwick Facility has been reinstated. This was a very positive development for CannTrust and is a key step towards restoring its operations.

22. Since its Fenwick Cannabis License reinstatement, CannTrust has begun taking steps to resume operations. As the Fenwick Facility's primary purpose is the propagation, cultivation and processing of cannabis product, it is dependent on the Vaughan Facility to complete any extraction, manufacturing or packaging to bring the cannabis products to the consumer market.

23. CannTrust has been and continues to work with Health Canada to obtain the reinstatement of the Cannabis License at the Vaughan Facility. There has not been any further indication from Health Canada on the timing of its decision.

24. CannTrust has been working with Health Canada on the inspection of the inventory on the CannTrust premises that was previously subject to seizure by Health Canada prior to Filing Date. The seized inventory, as per Health Canada's process, remained at the premises in a secure location. On June 24, 2020, CannTrust was advised by Health Canada that it had finished its inspection of the seized inventory and was releasing all cannabis products back to CannTrust.

25. The Applicants have continued their operational restructuring efforts, including:

a) renegotiating contracts that carry significant costs to better reflect CannTrust's current and anticipated needs;

b) negotiating with vendors on supply terms during the pendency of these CCAA proceedings and afterwards and, when applicable, consulting with the Monitor regarding the payment of certain amounts owing for goods or services supplied prior to the Filing Date on the basis that the supplier is critical to the ongoing operations of the Applicants or the health and safety of their facilities and such payment was required to ensure continued supply or service. To date, the Monitor has approved such critical supplier payments totalling approximately $474,000; and

c) disclaiming the lease at their head office in Vaughan, Ontario as the footprint and lease costs did not reflect CannTrust's current or anticipated business needs, especially considering COVID-19 related work-from-home measures.

26. In preparation for the potential reinstatement of the Cannabis Licence for the Vaughan Facility and eventually selling product again to its customers, CannTrust has continued to prepare its facilities, operations and processes for restoring operations. The Applicants' operations have been stabilized, and there has been no significant disruption to the business since the Filing Date as of the date of this Third Report.

SALE AND INVESTMENT SOLICITATION PROCESS

27. Pursuant to the SISP Order, the Applicants commenced and have been carrying out the SISP which to this point has involved, among other things:

a) the Monitor publishing notice of the SISP in the Globe and Mail (National Edition) on May 15, 2020;

b) the Applicants issuing a press release with Canada Newswire regarding the SISP on May 15, 2020;

c) the Financial Advisor issuing the teaser letter and form of non-disclosure agreement (the "**NDA**") to all known potential bidders and those who were identified to the Applicants or the Monitor as a potential bidder, which occurred by May 20, 2020 as contemplated in the SISP;

d) the Monitor posting notice of the SISP, the press release regarding the SISP, the SISP Order and the teaser letter on the Monitor's Website;

e) the Applicants reviewing and assessing executed NDAs from potential bidders;

f) the Financial Advisor providing a confidential information package those bidders that were deemed Phase 1 Qualified Bidders (as defined in the SISP Order); and

g) facilitating management discussions requested by Phase 1 Qualified Bidders.

28. The Applicants, with the assistance of the Financial Advisor, performed an extensive outreach to known potential bidders including other Canadian licensed producers, private capital, U.S. multi-state operators and consumer packaged goods manufacturers. In total, the Financial Advisor contacted 101 potentially interested parties.

29. The deadline for Phase 1 Qualified Bidders to submit non-binding letters of interest (each an "**LOI**") was June 22, 2020.

30. The Applicants and the Financial Advisor, in consultation with the Monitor, are assessing the results of Phase 1 of the SISP, and are considering the appropriate process and timing for Phase 2 of the SISP, which will include also considering the timing of the next steps in the Mediation Process discussed further herein.

CLAIMS PROCESS

31. Pursuant to the Claims Procedure Order, the Applicants and the Monitor commenced and have been carrying out the Claims Process, which to this point has involved, among other things:

    a) the Monitor sending a proof of claim form, the notice to claimants and the instruction letter (the "**Claims Package**") to known potential creditors based on the Applicants' books and records through either electronic mail or by regular mail, and to those parties listed on the service list maintained in these proceedings, on May 12, 2020;

    b) the Monitor publishing the Notice to Claimants in the Globe and Mail (National Edition) on May 12, 2020;

    c) the Monitor posting the Claims Package and the Claims Procedure Order on the Monitor's Website; and

    d) the Monitor sending Claims Packages to those that have requested one to date and counterparties to any contracts, employment agreement or other agreements and obligations that have been may give rise to a post-filing claim.

32. Pursuant to the Claims Procedure Order, the Pre-Filing Claims Bar Date was June 22, 2020.

33. The Monitor received 111 Claims in the amount of approximately $793.2 million by the Pre-Filing Claims Bar Date. Certain of these claims include intercompany claims as well as Excluded Claims (as defined under the Claims Procedure Order). This quantity is subject to change as the claims are reviewed, proven, disallowed, disputed and resolved.

34. The Monitor and the Applicant will continue to review the claims received and update the Court on the Claims Process in subsequent reports.

MEDIATION PROCESS

35. As noted in the Second Report, the Securities Actions are highly complex as, among other things, they span multiple jurisdictions, have certain areas of overlap as among them, involve multiple plaintiffs and defendants (with certain defendants potentially advancing claims for contribution and indemnity against CannTrust Holdings or against one another).

36. Pursuant to the Mediation Order, the Mediation Process is confidential and any discussions, productions and/or offers exchanged in the course of the Mediation Process cannot be disclosed by the Monitor. The Mediation Order provides that the Court and the Mediator may communicate between one another directly to discuss the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings. The Monitor and its counsel continue to assist the Mediator as requested and continue to keep the Mediator informed on the CCAA Proceedings as applicable to the Mediation Process.

37. The Mediation Order provides that the Mediator may adopt processes and utilize resources which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement. The Mediator has conducted meetings and established a process for next steps in the Mediation, which has been communicated to participants.

APPLICANTS' RECEIPTS AND DISBURSEMENTS

38. A summary of the Applicants' actual receipts and disbursements during the period from April 27, 2020 to June 21, 2020 (the "**Reporting Period**") as compared to the First Report Cash Flow Forecast (the "**Variance Analysis**") is attached as **Appendix "A"** to this Third Report.

39. During the Reporting Period, the Applicants generated a net cash outflow of approximately $7.7 million. The receipts are comprised of principally interest income and a return of an overpayment from a vendor. The disbursements relate mainly to payroll and employee related expenses, marketing costs, consulting and legal fees, utilities, and capital expenditures. As at June 21, 2020, the Applicants' cash on hand was approximately $127.4 million.

40. The favourable cash position variance for the Reporting Period of approximately $8.1 million is a result of the delay in ramp up costs and favourable terms with vendors. Details of both the permanent and timing differences are attached to the Variance Analysis.

41. CannTrust Holdings has made, with approval from the Monitor, Intercompany Advances (as that term is defined in the Amended and Restated Initial Order) of $5.3 million during the Reporting Period to fund disbursements of the other Applicants.

OVERVIEW OF APPLICANTS' THIRD REPORT CASH FLOW FORECAST OVER THE STAY PERIOD

42. The Applicants, with the assistance of the CRO, and in consultation with the Monitor, have prepared a cash flow forecast (the "**Third Report Cash Flow Forecast**") from June 22, 2020 to the week ending November 1, 2020 (the "**Forecast Period**"). Third Report Cash Flow Forecast is attached as **Appendix "B"** to this Third Report.

43. The Third Report Cash Flow Forecast shows that during the Forecast Period, the Applicants will have receipts from wholesale of existing inventory and interest income of approximately $2.0 million and estimate total combined disbursements of approximately $47.3 million for a forecast net cash outflow of $45.3 million. The Third Report Cash Flow Forecast projects that the Applicants will have an ending cash balance at November 1, 2020 of approximately $82.1 million.

44. As CannTrust’s Cannabis License for its Fenwick Facility has been reinstated, CannTrust has included the costs associated with the increase of employees and production costs associated with the preparation and ramp up of various aspects of its facility and operations. In addition, it includes the estimated costs associated with the reinstatement of the Cannabis License for the Vaughan Facility.

45. The Third Report Cash Flow Forecast includes certain limited capital expenditures by the Applicants related to their remediation activities, construction of a new laboratory, automation of some production lines, upgrading the shading system in the greenhouse, and two new product lines, vape pens and pre-rolled cannabis products, that the Applicants believe will ultimately be strategic to their business. These projects will take a number of months to implement but will require certain limited capital expenditures through the proposed extension of the Stay Period. Any capital expenditures will have to be reviewed and approved by the Monitor in advance of being incurred, but the Applicants, the CRO and the Monitor agreed that is was appropriate to include these potential disbursements in the Third Report Cash Flow Forecast.

STAY EXTENSION

46. The Stay Period is currently set to expire on July 5, 2020. The Applicants are requesting an extension of the Stay Period until October 30, 2020.

47. The Monitor is of the view that the requested extension of the Stay Period is appropriate for the following reasons:

a) it allows time for the Applicants to continue working with Health Canada through the approval process for the reinstatement of the Cannabis License for the Vaughan Facility and it provides time for CannTrust to continue its efforts to resume production in an appropriate and cost-effective manner;

b) it allows the Applicants to continue their operational restructuring efforts;

c) it allows the Applicants and the Monitor time to review the claims submitted and advance the Claims Process;

d) it affords the time for the Mediation Process to continue towards an outcome beneficial for all stakeholders;

e) it allows the Applicants time to continue their review of strategic alternatives with the assistance of the Financial Advisor and determine the timing and next steps under the SISP; and

f) the Applicants have continued to act in good faith and with due diligence since the date of the Initial Order.

48. Based on the Third Report Cash Flow Forecast, the Monitor believes that the Applicants will have sufficient liquidity to fund their operations through the proposed Stay Period of October 30, 2020.

49. For the foregoing reasons, the Monitor supports the Applicants' request for an order extending the Stay Period to October 30, 2020.

REQUEST FOR APPROVAL OF FEES AND DISBURSEMENTS

50. The Monitor and its counsel, Aird & Berlis LLP ("**Aird & Berlis**"), have maintained detailed records of their professional time and disbursements for the period from March 17th, 2020 to June 12th, 2020 (the "**Fee Period**").

51. Pursuant to the Amended and Restated Initial Order, the Monitor and its counsel shall each be paid their reasonable fees and disbursements as part of the CCAA Proceedings and shall further pass their accounts from time to time.

52. The total fees and disbursements of the Monitor during the Fee Period (exclusive of HST) is $290,822.52 which included fees of $259,714.00 and disbursements of $31,108.52. Attached hereto as **Appendix** "**C**" is the affidavit of Alexander Morrison in respect of the Monitor's fees and disbursements during the Fee Period.

53. The total fees and disbursements of Aird & Berlis during the Fee Period (exclusive of HST) is $168,493.82 which included fees of $167,361.00 and disbursements of $1132.82. Attached hereto as **Appendix** "**D**" is the affidavit of Steven L. Graff in respect of Aird & Berlis's fees and disbursements during the Fee Period.

54. The Monitor has reviewed Aird & Berlis's accounts and confirms that the services reflected therein have been duly authorized and duly rendered and that, in the Monitor's opinion, the charges are reasonable.

55. The fees and disbursements of the Monitor and its counsel have been reviewed by CannTrust, and CannTrust has advised that it does not oppose the approval of these fees and disbursements.

CONCLUSIONS AND RECOMMENDATIONS

56. For the reasons stated herein, the Monitor recommends that the Court approve the stay extension and approve the activities and fees of the Monitor and its counsel should it see fit to do so.

All of which is respectfully submitted this 29th day of June, 2020.

ERNST & YOUNG INC., in its capacity as Monitor of the Applicants, and not in its corporate or personal capacity.

per:

Alex Morrison, CPA, CA
Senior Vice President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No.: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(Opposing Stay Extension)

Siskinds LLP
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8
Michael G. Robb (LSO#: 45787G)
Garett M. Hunter (LSO #: 71800D)
Tel: 519-660-2121
Fax: 519-672-6065

Barristers & Solicitors
100 Lombard Street
Suite 302
Toronto, ON M5C 1M3

Alex Dimson (LSO#: 56129U)
Tel: 416-594-4394
Fax: 416-362-2610
Lawyers for the Plaintiff

Wright Henry LLP
200 Wellington St. West
Suite 602
Toronto, ON M5V 3C7

Michael Wright
Danielle Stampley
Tel: 416-306-8280
Fax: 416-306-8281