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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

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

MOTION RECORD OF ZOLA FINANCE HOLDINGS LTD. AND IGOR GIMELSHTEIN

(Sanction Hearing)
(Returnable June 11, 2021)

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Tab 1

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

ONTARIO
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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 June 2, 2021)

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 the Proposed Allocation and Distribution Scheme (the "Plan of Allocation").

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, including the growing process.

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 was ordered by this Court have or had much smaller ownership positions in CannTrust.

ZOLA'S INVOLVEMENT IN THE MEDIATION

13. Despite our desire to be an active participant in the mediation, which we communicated to the mediator on several occasions, and even though we are significant CannTrust shareholders, Zola and I were mostly excluded from the mediation process. In total our involvement in the mediation 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 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.

14. The coalition of lawyers representing various class action plaintiffs in the US and Canada, who subsequently became CCAA Representative Counsel, actively negotiated with CannTrust but also refused to allow Zola, myself or our counsel to directly participate in settlement discussions. Zola participated in two briefing sessions with the coalition where they provided us with a summary on the status of negotiations, but they made it clear that they did not intend to allow us to participate directly in the process.

15. Accordingly, we were effectively excluded from the mediation process, even though the main reason the stay is in place is to attempt to mediate a resolution of claims like ours. Importantly, if use had been made of our expertise in the cannabis industry, which was offered to and left untapped by CCAA Representative Counsel, it may have avoided the problematic aspects of the Plan of Allocation, as detailed below.

THE PLAN OF ALLOCATION

16. Under the current Plan of Allocation, claimants, like Zola, who held shares as of the closing on March 5, 2021 have a "Recognized Loss Amount Per Share" of the lesser of:

- The "Share Inflation" on the date of purchase, or
- The purchase price minus $1.70 CAD.

17. Zola purchased three million shares on September 26-28, 2018 at an average share price of $12.57 and held the vast majority of those shares through March 5, 2021. As a result, under the Plan of Allocation we are entitled to the lesser of: $10.87/share; or the Share Inflation at the date of purchase. According to Table C in the Plan of Allocation, the Share Inflation for all shares purchased between June 1, 2018 – September 30, 2018 is $1.29/share.[1] By contrast, on October 1, 2018 the Share Inflation amount is far higher at $5.02 per share.

18. The increase in Share Inflation that occurs on October 1 is arbitrary and results in a massive dilution of Zola's claim. To illustrate the harshness of the current Plan of Allocation, if we had chosen to purchase our shares not on Wednesday-Friday of the week of September 24

1 All secondary market purchases are then further reduced by 0.8 by the Risk Adjusted Loss calculation.

but rather the following Monday-Wednesday of the week of October 1, 2020, our entitlement under the Plan would more than triple.

19. On May 28, 2021 our counsel wrote to CCAA Representative Counsel about our concerns. A copy of that letter is attached as **Exhibit "B".** Our counsel advised that they do not believe that this difference is justifiable. They stated that they understand that October 1, 2018 may have been selected because certain CannTrust disclosures indicated that illegal growing began in the Niagara facility in October. Counsel further advised that it was not aware of any evidence beyond these generalized assertions that support October 1. 2018 as being the definitive date that CannTrust commenced its illegal growing operation.

20. In my experience with cannabis production operations, if CannTrust had begun its illegal growing operations in early October, then the decision to grow would have been made and concrete preparations begun at a minimum several weeks in advance of the illegal production, and no later than mid-September. This is due to the complexity and logistics of cannabis production, which require extensive efforts before growing can begin.

21. There are three specific reasons why October 1 is not an appropriate date. First, the illegal growing space at Cann Trust involved a massive expansion that would have required numerous additional mother (starter) plants, which did not otherwise exist. Those needed to be procured. Second, the cloning process, which includes the hardening stage, takes 5-9 days. Third, it is likely that the vegetative stage would likely have taken place outside of the illegal growing rooms, and that takes at least another one to two weeks, and could be up to four weeks depending on the production style used. While I do not have direct knowledge of exactly how the growing was done for the illegal space, I can say for certain that the cloning process would have taken 5-9 days and that management of Cann Trust

would have had to make the necessary decisions to effect this decision. As such, at least one to two weeks was needed if the mother plants already existed and the vegetative stage took place in the illegal growing space, but it is likely more than four weeks before October 1 was needed if the mother plants need to be procured and the vegetative stage took place outside the illegal growing space. In addition, the decision would have had to have been made in order for illegal growing to begin on October 1, and that would have involved deciding exactly how to go about growing illegally. There is simply no way that illegal growing could have started on October 1 without these significant and time-consuming preparatory steps and decision making processes being completed.

22. The current Plan of Allocation unfairly places Zola and similar class members who purchased shares in mid-to-late September, when the conspiracy to begin illegal growing was obviously underway, in the same Share Inflation category as those who purchased in June of 2018, when there was likely no possibility that illegal cannabis was being cultivated at the Niagara facility.

23. On June 1, 2021 CCAA Representative Counsel responded to our counsel. A copy of that letter is attached as **Exhibit "C"**. CCAA Representative Counsel's response in part is as follows: "While your theory may well have merit, it is it [sic] not the case theory that CCAA Representative Counsel have pleaded, publicized to Securities Claimants, and have advanced throughout mediations. The increased recovery to your client that would result from the suggested modification to the A&DS would necessarily have a corresponding detrimental impact on the recovery of other Securities Claimants."

24. I note that while this may be the theory that CCAA Representative Counsel advanced through the mediation, the decision to exclude Zola from the mediation would have

avoided a flawed theory from being advanced through that process. I also note that the suggested modification would benefit not just Zola but all other similarly situated Securities Claimants (whoever they may be), and would provide for what is an allocation that more fairly and properly takes into account the conduct that is the basis for Zola's claim and that of other Securities Claimants.

SWORN before me over video teleconference in accordance with Ontario Regulation 431.20, with the affiant in the City of New York, in the State of New York and the commissioner located in the City of Toronto, in the Province of Ontario, this ~~3rd~~ 2nd day of June, 2021

A Commissioner, etc.

Michael Wright.

Igor Gimelshtein

This is Exhibit "A" referred to in the Affidavit of Igor Gimelshtein sworn June 2, 2021.

Commissioner for Taking Affidavits (or as may be)

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

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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
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AND TO: Mark Dawber
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AND TO: Robert Marcovitch
c/o 7300 Keele Street
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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

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Lawyers for the Plaintiff

This is Exhibit "B" referred to in the Affidavit of Igor Gimelshtein sworn June 2, 2021.

Commissioner for Taking Affidavits (or as may be)

MICHAEL D. WRIGHT, LSO# 32522T

100 Lombard Street, Suite 302, Toronto, ON M5C 1M3

SISKINDS | THE LAW FIRM

EMAIL michael.robb@siskinds.com

FILE NO. 843058/AD/jsr

Delivered By Email

May 28, 2021

Serge Kalloghlian
Kalloghlian Myers LLP
250 Yonge Street, Suite 2201Suite 3600
Toronto, Ontario, M5B 2L7

Dear Serge:

Re: *Zola Finance Holdings Ltd. v CannTrust Holdings Inc., et al.*

We write to communicate our clients' concerns regarding the proposed Allocation and Distribution Scheme (the "Plan of Allocation") contained in the Plan of Compromise, Arrangement and Reorganization, dated April 14th.

Under the current Plan of Allocation, claimants, like our clients, who held shares as of the closing on March 5, 2021 have a "Recognized Loss Amount Per Share" of the lesser of:

- The "Share Inflation" on the date of purchase, or
- The purchase price minus $1.70 CAD.

Our clients purchased three million shares on September 26-28, 2018 at an average share price of $12.57 and held the vast majority of those shares through March 5, 2021.[1] As a result, they are entitled to the lesser of: $10.87/share; or the Share Inflation at the date of purchase. According to Table C in the Plan of Allocation, the Share Inflation for all shares purchased between June 1, 2018 – September 30, 2018 is $1.29/share.[2] By contrast, on October 1, 2018 the Share Inflation amount is far higher at $5.02 per share.

Our clients believe that the increase in Share Inflation that occurs on October 1 is arbitrary and results in a massive dilution of their claim. To illustrate the harshness of the current Plan of Allocation, if our client had chosen to purchase their shares not on Wednesday-Friday of the

[1] Our clients sold approximately 390,000 shares in the fall of 2018. However, since the purchase date of these shares was also in late September, these shares are treated no differently under the Plan of Allocation than the others shares.

[2] All secondary market purchases are then further reduced by 0.8 by the Risk Adjusted Loss calculation.

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week of September 24 but rather the following Monday-Wednesday of the week of October 1, 2020, their entitlement under the Plan would more than triple.

We do not believe that this difference is justifiable. We understand that October 1, 2018 may have been selected because certain CannTrust disclosures indicated that illegal growing began in the Niagara facility in October. We are not aware of any evidence, beyond these generalized assertions, that support October 1, 2018 as being the definitive date that CannTrust commenced its illegal growing operation.

To the contrary, our client Igor Gimelshtein, who has extensive experience with cannabis production operations, is quite confident (and will swear an affidavit if necessary to support this) that if CannTrust had begun its illegal growing operations in early October, then the decision to grow would have been made and concrete preparations begun at a minimum several weeks in advance of the illegal production and no later than mid-September. This is due to the complexity and logistics of cannabis production, which require extensive efforts before growing can begin. This includes the cutting of cannabis plant clones from the mother plants, which are then taken and placed for a minimum of 5-9 days in a “cloning room” before they could be placed in the illegal growing rooms.

As a result of this, the current Plan of Allocation unfairly places our client and similar class members who purchased shares in mid-to-late September, when the conspiracy to begin illegal growing was underway, in the same Share Inflation category as those who purchased in June of 2018, when there was no possibility that illegal cannabis was being cultivated at the Niagara facility.

Accordingly, we would ask that Table C of the Plan of Allocation be modified so that the start point of the $5.02 Share Inflation period occur on September 15, 2018, not October 1, 2018. Making this simple change to the Plan of Distribution would cause the parties no additional burden or prejudice at this point in the proceeding. We appreciate that with any cut off date there may be a level of arbitrariness. What we are asking for is simply an allocation that in our view more properly and fairly addresses the reality of what transpired at Cann Trust. Just because a cut off date has an aspect of arbitrariness does not mean that a date that best reflects realities should not be used. September 15, 2018 is more consistent with those realities.

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We look forward to your response.

Yours Truly,

Siskinds LLP

Per:
Michael Robb
Partner

cc. Alex Dimson (Siskinds LLP)
Michael Wright and Danielle Stampley (Wright Henry LLP)

This is Exhibit “C” referred to in the Affidavit of Igor Gimelshtein sworn June 2, 2021.

____
Commissioner for Taking Affidavits (or as may be)

MICHAEL D. WRIGHT, LSO# 32522T

KALLOGHLIAN MYERS LLP

Serge Kalloghlian
T (647) 812 5615
E serge@kalloghlianmyers.com

June 1, 2021

Delivered by Email

Michael G. Robb
Siskinds LLP
680 Waterloo Street,
London, ON N6A 3V8

Dear Michael,

Re: CannTrust CCAA Plan: Allocation & Distribution Scheme

I am writing in response to your May 28th letter expressing concern with the proposed Allocation & Distribution Scheme ("**A&DS**") in the CCAA Plan.

<u>Design of the proposed A&DS</u>

The proposed A&DS was designed by CCAA Representative Counsel working together with our expert financial economist, Dr. Sunita Surana of Forensic Economics. Our approach was the same as the approach taken by Siskinds in the securities class actions it has prosecuted. As is typical, we provided Dr. Surana with instructions and assumptions based on our factual investigation, the allegations and case theories in the Ontario and U.S. Class Actions, and damages principles under Ontario and U.S. securities laws. To determine the artificial inflation figures in the proposed A&DS, Dr. Surana then conducted an analysis of CannTrust's share price reaction to various public announcements related to the alleged misrepresentations in the Class Actions.

Dr. Surana's analysis showed that CannTrust's share price was artificially inflated by different amounts at different periods of time between June 1, 2018 and September 17, 2019. As you know, this is because different alleged misrepresentations began at different times, and because the artificial inflation declined, but not completely, after certain "partial corrections" of the misrepresentations.

For example, the Ontario Class Action alleges that CannTrust made separate misrepresentations about compliance at its facility in Vaughan ("**Vaughan Misrepresentation**") and its facility in Niagara ("**Niagara Misrepresentation**"). It alleges that the Vaughan Misrepresentation began on June 1, 2018, and that the Niagara Misrepresentation began on October 1, 2018. Based on Dr. Surana's analysis, the Niagara Misrepresentation caused a

KALLOGHLIAN MYERS LLP

higher amount of artificial inflation to CannTrust's shares than the Vaughan Misrepresentation.

Accordingly, the artificial inflation between June 1 and September 30, 2018 (when only the Vaughan Misrepresentation was outstanding) was $1.29. But starting on October 1, 2018 (when the Niagara Misrepresentation began), artificial inflation increased to $5.02. This artificial inflation amount reflects both of the misrepresentations' effect on the share price.

Your clients' concern

CCAA Representative Counsel chose October 1 as the date the Niagara Misrepresentation began based on CannTrust's announcement that illegal growing began in Niagara in October 2018. There is no public information of which we are aware which could provide further specificity of the start date.

In effect, your letter expresses concern that October 1, 2018 is not the appropriate start date for the Niagara Misrepresentation. It suggests that Niagara Misrepresentation inflation period instead begin on September 15, 2018 because the decisions and ramp-up to the illegal activity must have started at least several weeks before the illegal activity began.

While your case theory may well have merit, it is it is not the case theory that CCAA Representative Counsel have pleaded, publicized to Securities Claimants, and have advanced throughout the mediations. The increased recovery to your client that would result from the suggested modification to the A&DS would necessarily have a corresponding detrimental impact on the recovery of other Securities Claimants.

We believe the A&DS we have proposed is sound and best accords with the evidence. Given the foregoing, we do not find it appropriate to make the change you have proposed to the A&DS.

Sincerely,

Kalloghlian Myers LLP

Per: Serge Kalloghlian

c. CCAA Representative Counsel
Alex Dimson (Siskinds)
Michael Wright and Danielle Stampley (Wright Henry LLP)

Tab 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

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 MELISSA O'CONNOR
(Sworn June 4, 2021)

I, Melissa O'Connor, of the City of Welland, in the Regional Municipality of Niagara, **MAKE OATH AND SAY**:

1. I am a law clerk with the law firm of Wright Henry LLP, lawyers for Zola Finance Holdings Ltd. and Igor Gimelshtein, and, as such, have knowledge of the matters contained in this Affidavit.

2. Attached as Exhibit "A" is a chart, downloaded from the website Yahoo Finance, that shows daily trading volume, among other things, for CannTrust shares for the period between September 10-October 5, 2018.

3. I swear this affidavit in support of Zola Finance Holdings Ltd. and Igor Gimelshtein's position on the Proposed Allocation and Distribution Scheme and for no improper purpose.

SWORN REMOTELY by Melissa O'Connor stated as being located in the City of Welland, in the Regional Municipality of Niagara, before me at the City of Hamilton in the Province of Ontario, on June 4, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

Commissioner for Taking Affidavits
(or as may be)

MELISSA O'CONNOR

Rotana Adnan Sharqawi
a Commissioner, etc., Province of Ontario,
for Wright Henry LLP, Barristers and Solicitors.
Expires December 9, 2023.

This is Exhibit "A" referred to in the Affidavit of Melissa O'Connor sworn June 4, 2021.

Commissioner for Taking Affidavits (or as may be)

Rotana Adnan Sharqawi
a Commissioner, etc., Province of Ontario,
for Wright Henry LLP, Barristers and Solicitors.
Expires December 9, 2023.

Date	Open	High	Low	Close	Adj Close	Volume
9/10/2018	8.334	8.922	8.146	8.92	8.92	1450100
9/11/2018	8.976	9.265	8.675	9.16	9.16	1083900
9/12/2018	9.376	9.923	9	9.567	9.567	1228900
9/13/2018	9.664	9.738	7.96	8.277	8.277	1145000
9/14/2018	7.77	8.631	7.537	8.402	8.402	769900
9/17/2018	8.939	8.952	8.211	8.742	8.742	783400
9/18/2018	8.866	9.45	8.832	9.328	9.328	1002400
9/19/2018	9.649	10.402	8.691	9.275	9.275	1841200
9/20/2018	9.698	10.077	9.321	10.008	10.008	837700
9/21/2018	9.87	10.087	9.603	9.767	9.767	690900
9/24/2018	9.682	9.869	9.456	9.5	9.5	410800
9/25/2018	9.721	9.85	9.41	9.7	9.7	409200
9/26/2018	9.759	9.807	9.359	9.606	9.606	308200
9/27/2018	9.54	9.626	8.82	8.898	8.898	692400
9/28/2018	8.783	9.87	8.665	9.848	9.848	371900
10/1/2018	10.102	10.18	9.401	9.68	9.68	488100
10/2/2018	9.612	9.701	9	9.255	9.255	680300
10/3/2018	9.31	9.443	8.992	9.345	9.345	511900
10/4/2018	9.375	9.391	9.024	9.271	9.271	331800
10/5/2018	9.299	9.95	9.149	9.32	9.32	529800

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

Court File No. CV-20-00638930-000L

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF ZOLA FINANCE HOLDINGS LTD. AND IGOR GIMELSHTEIN
(Sanction Hearing)
(Returnable June 11, 2021)

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