

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE PERELL)
)
)
)

FRIDAY THE 6TH DAY OF
AUGUST, 2021

BETWEEN:

VECCHIO LONGO CONSULTING SERVICES INC.

Plaintiff

- and -

APHRIA INC., VICTOR NEUFELD, CARL MERTON, COLE CACCIAVILLANI,
CLARUS SECURITIES INC., CANACCORD GENUITY CORP, CORMARK
SECURITIES INC., HAYWOOD SECURITIES INC. AND INFOR FINANCIAL INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Leave to proceed pursuant to section 138.8 of the Ontario *Securities Act* ¹;

Certification pursuant to section 5(1) of the Ontario *Class Proceedings Act, 1992*)

¹ All references to the provisions of the *Securities Act* include references to the provisions of Other Canadian Securities Legislation, as applicable or necessary.

THIS MOTION, made by Vecchio Longo Consulting Services Inc. (the “Plaintiff”) for leave to proceed pursuant to section 138.8 of the Ontario *Securities Act*, for certification pursuant to section 5(1) of the Ontario *Class Proceedings Act, 1992*, and for related relief, was heard on June 23, 2021 via teleconference, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, and the Reasons for Decision released this day.

ON READING the materials filed by the Plaintiff and the Defendants;

AND ON HEARING the submissions of counsel, and being advised that:

- a) Aphria Inc., Victor Neufeld, and Cole Cacciavillani (the “Aphria Defendants”) and the Plaintiff² consent to the leave and certification of the claim pursuant to 138.8 of the Ontario *Securities Act* (the “Secondary Market Claim”) and the certification of that claim pursuant to section 5(1) of the Ontario *Class Proceedings Act, 1992*, both on the terms set out herein;
- b) The Aphria Defendants, Carl Merton, and the Plaintiff consent to the dismissal of all claims against Mr. Merton and the dismissal of the oppression and common law misrepresentation claims against the Aphria Defendants;
- c) the Underwriter Defendants contest the certification of the claims pursuant to section 130 of the Ontario *Securities Act* on behalf of those Class Members who acquired their Aphria shares pursuant to the offering made by Aphria pursuant to

a prospectus dated June 22, 2018 that closed on June 28, 2018 (the “**Prospectus Offer**”, “**Prospectus Claim**”); and

- d) The Aphria Defendants contest the certification of the Prospectus Claim, but make no written or oral submissions thereon;

1. **THIS COURT ORDERS** that:

- a. the action against the defendant Carl Merton is discontinued and dismissed on a without costs basis;
- b. the common law misrepresentation claim and the oppression remedy claim against the Aphria Defendants is discontinued and dismissed on a without costs basis;

2. **THIS COURT ORDERS** that the Plaintiff is hereby granted leave, pursuant to subsection 138.8(1) of the *Securities Act* RSO 1990, c S5 (“*Securities Act*”), to commence against the Aphria Defendants an action for secondary market misrepresentation under section 138.3 of the *Securities Act* and, if necessary, under the concordant provisions of the Other Canadian Securities Legislation, all as set out in the Claim which is attached hereto as **Schedule “A”**;

² Except as otherwise stated, this Order incorporates and adopts the definitions set out in the Amended Fresh Amended Statement of Claim (“**Claim**”) attached hereto as Schedule “A”.

3. **THIS COURT ORDERS** that the Secondary Market Claim pursuant to section 138.3 of the *Securities Act* be and is hereby certified as a class proceeding pursuant to section 5 of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”), and that the Plaintiff, be and is hereby appointed as the representative plaintiff of the Class of the certified Secondary Market Claim;

4. **THIS COURT ORDERS** that the Prospectus Claim pursuant to section 130 of the *Securities Act* is certified against the Aphria Defendants and the Underwriter Defendants, conditional upon Class Counsel bringing, and the Court granting, a motion within one hundred days of the date of this Order for the appointment of a representative plaintiff for a class of Class Members who acquired their Aphria shares pursuant to the \$258 million Prospectus Offer made by Aphria that closed on June 28, 2018;

5. **THIS COURT ORDERS** that the “Class” or “Class Members” for the purposes of the Secondary Market Claim are defined as:

All persons, other than Excluded Persons, wherever they may reside or be domiciled, who acquired Aphria common shares during the Class Period in the secondary market, where excluded persons are defined as the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an Individual Defendant.

6. **THIS COURT ORDERS** that the “Class” or “Class Members” for the purposes of the Prospectus Claim are defined as:

All persons, other than Excluded Persons, wherever they may reside or be domiciled, who acquired Aphria common shares in the primary market in the offering made pursuant to the Prospectus, where excluded persons are defined as the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an Individual Defendant.

7. **THIS COURT ORDERS** that the “Class Period” is defined as:

The period of time after 07:00 ET January 29, 2018 until 08:25 ET December 3, 2018.

8. **THIS COURT DECLARES** that that the causes of action asserted on behalf of the Class are statutory claims for damages arising out of misrepresentations in secondary market disclosure, and, pending further order of this Court, claims for damages arising out of misrepresentations in a prospectus, both types of claims are made pursuant to Parts XXIII and XXIII.1 of the of the Ontario *Securities Act* and the concordant provisions of the Other Canadian Securities Legislation all as set out in the Claim;

9. **THIS COURT ORDERS** that nothing in this Order constitutes an admission of fact or liability and that the consent of the Aphria Defendants to the leave and certification of the Secondary Market Claim is without prejudice to their right to fully defend the pleaded claims under the *Securities Act*, without restriction, including the right to dispute the jurisdiction of this Court with respect to claims under the concordant provisions of the Other Canadian Securities legislation;

10. **THIS COURT DECLARES** that the common issues for the Class as set out in **Schedule “B”** hereto are hereby certified pursuant to section 5(1) of the *CPA*, subject to the conditions referred to in paragraph 4 herein regarding the Prospectus Claim;

11. **THIS COURT ORDERS** that the form, content and manner of dissemination of the Notice of Certification of the within action as a class proceeding, including the timing and procedure for opting out, shall be by further order of the Court;

12. **THIS COURT ORDERS** that no other proceeding relating to the subject matter of this action may be commenced after the date of this Order without leave of the Honourable Justice Perell obtained on notice to the parties hereto.

13. **THIS COURT ORDERS THAT** each of the Underwriter Defendants deliver within 30 days of the date of this Order, an affidavit listing their respective purchasers of shares in the Prospectus Offer made by Aphria that closed on June 28, 2018.

14. **THIS COURT ORDERS** that there shall be no order as to the costs of this motion as it relates to the leave and certification of the Secondary Market Claim;

15. **THIS COURT ORDERS** that the costs of the motion for the certification of the Prospectus Claim shall be by further order of the Court.

Perell, J.

JUSTICE PERELL

SCHEDULE "A"

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

VECCHIO LONGO CONSULTING SERVICES INC.

Plaintiff

- and -

APHRIA INC., VICTOR NEUFELD, ~~CARL MERTON~~, COLE CACCIAVILLANI, CLARUS
SECURITIES INC., CANACCORD GENUITY CORP, CORMARK SECURITIES INC.,
HAYWOOD SECURITIES INC. AND INFOR FINANCIAL INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

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' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action 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 18B 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.

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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$400.00 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.

Date: February 7, 2019

Issued by _____
Local registrar

Address of
court office: 393 University Avenue
Toronto, Ontario
M5G 1E6

TO: APHRIA INC.
269 Talbot Street West
Leamington, Ontario
N8H 1N8

AND TO: VIC NEUFELD
c/o APHRIA INC.
269 Talbot Street West
Leamington, Ontario
N8H 1N8

AND TO: COLE CACCIAVILLANI
c/o APHRIA INC.
269 Talbot Street West
Leamington, Ontario
N8H 1N8

~~AND TO: CARL MERTON
c/o APHRIA INC.
269 Talbot Street West
Leamington, Ontario
N8H 1N8~~

AND TO: CLARUS SECURITIES INC.
Exchange Tower,
130 King Street West
Suite 3640, P.O. Box 38
Toronto, ON M5X 1A9
Attention: Robert Orviss, Managing Director

AND TO: CANACCORD GENUITY CORP
Brookfield Place
161 Bay Street, Suite 3000
P.O. Box 516
Toronto, ON
Canada M5J 2S1
Attention Steve Winokur, Managing Director

AND TO: CORMARK SECURITIES INC.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2800
P.O. Box 63
Toronto, Ontario
Canada M5J 2J2
Attention: Chris Shaw, Managing Director

AND TO: HAYWOOD SECURITIES INC.
Brookfield Place
181 Bay Street, Suite 2910
Toronto, ON
M5J 2T3
Attention: Campbell Becher, Managing Director

AND TO: INFOR FINANCIAL INC
Royal Bank Plaza
South Tower
200 Bay Street, Suite 2350
Toronto, ON M5J 2J2

Attention: Ben Goldstein, Principal

RELIEF SOUGHT

1. The Plaintiff claims as against the Defendants:
 - (a) An order granting the Plaintiff leave to commence an action pursuant to sections 138.3 and 138.8 of Part XXIII.1 of the *OSA*¹, and, if necessary, the analogous provisions of the Other Canadian Securities Legislation;
 - (b) An order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class, or such other class or sub-classes as may be certified by the Court;
 - (c) A declaration that the Impugned Documents contained one or more of the misrepresentations alleged herein, and that, when made, those misrepresentations constituted misrepresentations, ~~both at law and~~ within the meaning of the *OSA* and Other Canadian Securities Legislation;
 - (d) A declaration that during the Class Period the Defendants made the misrepresentation(s) ~~and they did so negligently and that the Class was damaged thereby;~~
 - ~~(e) A declaration, pursuant to section 248 of the *OBCA* that:~~
 - ~~(i) the acts and omissions of Aphria, and/or its affiliates have effected a result;~~
 - ~~(ii) the business and affairs of Aphria and/or its affiliates have been carried on or conducted in a manner; and, or~~

¹ Defined terms are described at paragraph 3 below

~~(iii) the powers of the directors of Aphria and/or its affiliates have been exercised in a manner,~~

~~that is or has been oppressive or unfairly prejudicial to or that unfairly disregards or disregarded the interests of the Plaintiff and the Class Members;~~

~~(f) an order, pursuant to section 248(3)(j) of the *OBCA* compensating the Plaintiff and the Class Members for their losses caused by the oppressive conduct of the Defendants, except the Underwriters, in the amount of \$800 million or as determined by the Court;~~

(g) On behalf of all of the Class Members who purchased Aphria's common shares during the Class Period, but not pursuant to the distribution to which the Prospectus related, damages in the amount of \$650 million at common law and, or pursuant to *OSA* section 138.5 and *CPA* section 24;

(h) On behalf of all of the Class Members who purchased Aphria's common shares in the distribution to which the Prospectus related, damages in the amount of \$225 million or such other amount as determined by the Court pursuant to *OSA* section 130;

(i) A declaration that Aphria is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;

(j) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

- (k) prejudgment and post judgment interest compounded, or pursuant to sections 128 and 129 of the CJA;
- (l) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan distribution of the recovery in this action plus applicable taxes; and
- (m) such further and other relief as to this Honourable Court may seem just.

CURRENCY AND DEFINITIONS

- 2. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.
- 3. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “**Annual Financial Statements**” means the audited annual financial statements filed on SEDAR on August 1, 2018;
 - (b) “**Annual CEO Certification**” means the certification of annual filings by the CEO, made pursuant to NI 52-109 filed on SEDAR on August 1, 2018;
 - (c) “**Annual CFO Certification**” means the certification of annual filings by the CFO; made pursuant to NI 52-109 filed on SEDAR on August 1, 2018;
 - (d) “**Annual MD&A**” means the annual Management Discussion and Analysis filed on SEDAR on August 1, 2018;
 - (e) “**Annual Report**” means the 2018 annual report filed on SEDAR on August 27, 2018;
 - (f) “**Aphria**” or “**Company**” means as the context requires, either the defendant Aphria Inc., or Aphria Inc. and its affiliates and subsidiaries, collectively;
 - (g) “**Aphria/Nuuvera Arrangement Agreement**” means the agreement entered between Aphria and Nuuvera Inc. on January 28, 2018 pursuant to which Aphria acquired the issued and outstanding common shares of Nuuvera.

- (h) **“Board”** means the Board of Directors of Aphria;
- (i) **“CJA”** means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (j) **“Class” of “Class Members”** means all persons, other than Excluded Persons, wherever they may reside or be domiciled, who acquired Aphria common shares during the Class Period;
- (k) **“Class Period”** means the period after 07:00 ET January 29, 2018 until 08:25 ET December 3, 2018;
- (l) **“CEO”** means Chief Executive Officer;
- (m) **“CFO”** means Chief Financial Officer;
- (n) **“Cacciavillani”** means the defendant Cole Cacciavillani;
- (o) **“CPA”** means the Ontario *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (p) **“CSA”** means Canadian Securities Administrators;
- (q) **“DC&P”** means disclosure controls and procedures, as defined in section 1(1) of National Instrument 52-109;
- (r) **“Defendants”** means **Aphria, the Individual Defendants, and the Underwriters;**
- (s) **“Excluded Persons”** means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an **Individual Defendant;**
- (t) **“FY/2018”** means the Aphria 2018 Fiscal Year which covered the 12 month period from June 1, 2017 to May 31, 2018;
- (u) **“IFRS”** means International Financial Reporting Standards;
- (v) **“Impugned Documents”** means the **Impugned Core Documents** and the **Impugned Non-Core Documents;**
- (w) **“Impugned Core Documents”** means:
 - (i) the material change report filed on February 7, 2018 in respect of the Nuuvera Transaction;
 - (ii) the material change report filed on March 23, 2018 in respect of the Nuuvera Transaction.

- (iii) the Q3/2018 Interim Financial Statements of Aphria released on April 16, 2018 (“**Interim April Financials**”);
- (iv) the Q3/2018 Interim MD&A of Aphria released on April 16, 2018 (“**Interim April MD&A**”);
- (v) the Q3/2018 Interim CEO Certification signed by CEO Neufeld and released on April 16, 2018;
- (vi) the Q3/2018 Interim CFO Certification signed by CFO Merton and released on April 16, 2018;
- (vii) the Final Short Form Prospectus of Aphria released on June 22, 2018 (the “**Prospectus**”);
- (viii) July 27, 2018 Material Change Report released July 27, 2018;
- (ix) the 2018 Annual MD&A of Aphria released on August 1, 2018;
- (x) the 2018 AIF of Aphria released on August 1, 2018 (the “**AIF**”);
- (xi) the 2018 Annual Financial Statements of Aphria released on August 1, 2018;
- (xii) the 2018 Annual CEO Certification signed by CEO Neufeld and filed on August 1, 2018;
- (xiii) the 2018 Annual CFO Certification signed by CFO Merton and filed on August 1, 2018;
- (xiv) the 2018 Annual Report of Aphria released on August 27, 2018;
- (xv) the Aphria Management Information Circular released on September 28, 2018;
- (xvi) the Material Change Report in respect of the LATAM Transaction filed on October 5, 2018;
- (xvii) the Q1/2019 Interim Financial Statements of Aphria released on October 12, 2018 ;
- (xviii) the Q1/2019 Interim MD&A of Aphria released on October 12, 2018;
- (xix) the Q1/2019 Interim CEO Certification signed by CEO Neufeld and released on October 12, 2018;
- (xx) the Q1/2019 Interim CFO Certification signed by CFO Merton and released on October 12, 2018;

- (x) **“Impugned Non-Core Documents”** means:
 - (i) Aphria Press Release filed January 29, 2018 in respect of the Nuuvera Transaction;
 - (ii) Aphria Press Release filed March 23, 2018 in respect of the Nuuvera Transaction;
 - (iii) Aphria Press Release filed April 25, 2018 in respect of “New Governance Initiatives”;
 - (iv) Aphria Press Release filed July 17, 2018 in respect of the LATAM Transaction; and
 - (v) Aphria Press Release filed September 27, 2018 in respect of the LATAM Transaction..
- (y) **“Interim CEO Certification”** means the certification of interim filings by the CEO, made pursuant to NI 52-109 filed on SEDAR on October 12, 2018;
- (z) **“Interim CFO Certification”** means the certification of interim filings by the CFO; made pursuant to NI 52-109 filed on SEDAR on October 12, 2018;
- (aa) **“Interim Financial Statements”** means the unaudited interim financial statements filed on SEDAR on October 12, 2018;
- (bb) **“Interim MD&A”** means the interim Management Discussion and Analysis filed on SEDAR on October 12, 2018;
- (cc) **“Individual Defendants”** means Neufeld, ~~Merton~~, and Cacciavillani collectively;
- (dd) **“Management Information Circular”** means Management Information Circular filed on SEDAR on September 24, 2018;
- (ee) **“Merton”** means ~~the Defendant~~ Carl Merton, the CFO of Aphria;
- (ff) **“Neufeld”** means Defendant Victor Neufeld, the CEO of Aphria;
- (gg) **“NI 51-102”** means CSA National Instrument 51-102 – *Continuous Disclosure Obligations*;
- (hh) **“NI 52-109”** means CSA National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*;
- (ii) **“NYSE”** means the New York Stock Exchange;
- (jj) **“OBCA”** means the Ontario *Business Corporations Act*, RSO 1990, c B 16, as amended;

- (kk) “**Offering**” means the primary distribution in Canada of Aphria’s Securities that occurred during the Class Period, namely, the public offering of Aphria’s common shares pursuant to the Prospectus;
- (ll) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (mm) “**Other Canadian Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4, the *Securities Act*, RSBC 1996, c 418, *The Securities Act*, CCSM c S50, the *Securities Act*, SNB 2004, c S-5.5, the *Securities Act*, RSNL 1990, c S-13, the *Securities Act*, SNWT 2008, c 10, the *Securities Act*, RSNS 1989, c 418, the *Securities Act*, S Nu 2008, c 12, the *Securities Act*, RSPEI 1988, c S-3.1, the *Securities Act*, RSQ, c V-1.1, *The Securities Act, 1988*, SS 1988-89, c S-42.2, and the *Securities Act*, SY 2007, c 16, all as amended;
- (nn) “**Prospectus**” means the Final Short Form Prospectus of Aphria filed on SEDAR June 22, 2018;
- (oo) “**Q3/2018**” means the Aphria Third Quarter of fiscal year 2018 which covered the period from December 1, 2017 to February 28, 2018;
- (pp) “**Q4/2018**” means the Aphria Fourth Quarter of fiscal year 2018 which covered the period from March 1, 2018 to May 31, 2018;
- (qq) “**Q1/2019**” means the Aphria First Quarter of fiscal year 2019 which covered the period from June 1, 2018 to August 31, 2018;
- (rr) “**Q2/2019**” means the Aphria Second Quarter of fiscal year 2019 which covered the period from September 1, 2018 to November 30, 2018;
- (ss) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (tt) “**TSX**” means the Toronto Stock Exchange;
- (uu) “**Underwriters**” means the Defendants Clarus Securities Inc., Canaccord Genuity Corp, Cormark Securities Inc., Haywood Securities Inc. and Infor Financial Inc., collectively.

OVERVIEW

4. Aphria is an Ontario cannabis company incorporated pursuant to the *OBCA*, and an Ontario reporting issuer pursuant to the *OSA* having its headquarters in Leamington, Ontario. Its shares

traded on the TSX under the ticker symbol APH, and as of November 2, 2018 on both the TSX and the NYSE, under the ticker symbol APHA.

5. This case is about the undisclosed, unlawful and oppressive transfer of wealth from Aphria non-insider shareholders to Aphria insiders and associates which resulted in damage to the non-insider shareholders. This undisclosed wealth transfer was achieved through the issuance of Aphria shares worth hundreds of millions of dollars which were then used as consideration for the acquisition by Aphria of assets which had no or negligible value from companies related to and, or owned by certain Individual Defendants. Aphria shareholders were told that the acquired assets had great value, and that the issued Aphria shares were transferred as fair consideration for such assets. This was not so. As a result of these transactions, the interests of non-insider Aphria shareholders were significantly and unlawfully diluted and Aphria insiders and associates received substantial equity interests in Aphria for little or no consideration.

6. Central to this case was a complete breakdown in Aphria's corporate governance, including its internal controls over financial reporting ("**ICFR**") and disclosure controls and procedures ("**DC&P**"). Aphria assured the market that it was committed to best practices in corporate governance; yet material and oppressive self-dealing transactions which harmed shareholders occurred not once, but twice during the Class Period.

7. In this proposed Class Action, the Plaintiff shareholder of Aphria sues on behalf of a class of non-insider Aphria shareholders for:

- (a) damages arising out of misrepresentations made in Aphria's required continuous disclosure documents, public oral statements, and a Prospectus during the Class

Period, pursuant to *OSA* Part XXIII.1, section 138.3, and *OSA* Part XXIII, section 130;

~~(b) relief from oppression pursuant to the *OBCA*; and~~

~~(c) damages for common law negligent misrepresentation.~~

8. The misrepresentations are by commission and omission and they relate to a number of undisclosed related party, self-dealing transactions whereby Aphria purchased assets at grossly inflated values which benefited certain Aphria insiders and associates including its CEO Vic Neufeld, its CFO Carl Merton, Vice-President Cole Cacciavillani, Aphria officer and director John Cervini (“Cervini”), and one of its founders Andrew DeFrancesco.

9. The misrepresentations and conduct complained of arise from the following four events:

(a) **Nuuvera Transaction**

On January 28, 2018, Aphria entered an Arrangement Agreement with Nuuvera Inc. (“**Nuuvera**”), whereby Aphria agreed to pay consideration for all of the issued and outstanding shares of Nuuvera not already owned by Aphria for \$1.00 per Nuuvera Share plus 0.3546 Aphria share for every Nuuvera Share. Aphria and Nuuvera issued a joint press release announcing the transaction and valuing Nuuvera at approximately \$826 million. Aphria filed a Material Change Report in respect of the Nuuvera Transaction on February 7, 2018 and a second Material Change Report announcing the closing of the Nuuvera Transaction on March 23, 2018. The transaction was completed on March 23, 2018 with Aphria paying consideration of approximately \$485,319,000 in cash and Aphria securities which were not subject to any hold period and which could be publicly traded as soon as

the share exchange occurred. Aphria's Press Release of January 29, 2018, and Material Change Reports of February 7, 2018, and March 23, 2018 contained misrepresentations in that:

- (i) they represented that Nuuvera was "... a leading, global cannabis company", when in fact, it was a fledgling start-up company with annual revenues of \$36,756 and a net loss of \$37,491,971 in its first and only year of operations;
- (ii) they failed to disclose that the Nuuvera Transaction was a related-party transaction in which Aphria insiders, including Neufeld, Merton and Cacciavillani, and Aphria officer and director John Cervini personally profited at the expense of non-insider Aphria shareholders; and
- (iii) they failed to disclose that the assets acquired in the Nuuvera Transaction were worth a small fraction of the approximately \$485 million in consideration being paid for them by Aphria.

(b) **The April 25, 2018 Press Release Regarding Governance Initiatives**

On April 25, 2018, in response to revelations about Aphria insiders profiting from the Nuuvera Transaction as a result of undisclosed financial interests in Nuuvera prior to its acquisition, Aphria announced certain "Corporate Governance Initiatives" including a formal "Policy Regarding Investments and Other Opportunities" in the cannabis industry ("**April 25 Press Release**"). In fact, Aphria's internal corporate governance was ineffective and allowed for significant conflicts of interest, both before and after the April 25 Press Release, which

conflicts were manifest by the Nuuvera Transaction and again by the LATAM Transaction.

(c) **The June 22 Aphria Offering**

On June 22, 2018, Aphria made an offering pursuant to the Prospectus whereby it issued not less than 18,987,400 Aphria common shares for \$225,000,690 (inclusive of Underwriters' fees of \$10,687,532).² The Prospectus, which touted the assets acquired in the Nuuvera Transaction:

- (i) failed to adequately disclose that Nuuvera was, in fact, a fledgling start-up company with annual revenues of \$36,756 and a net loss of \$37,491,971 in its first and only year of operations which facts were known to the Defendants;
- (ii) failed to fully disclose the nature and extent of the Nuuvera Transaction as a related-party transaction in which Aphria insiders, including Neufeld, Merton, Cacciavillani and others personally profited at the expense of non-insider Aphria shareholders;
- (iii) failed to disclose that the assets acquired in the Nuuvera Transaction were worth a small fraction of the approximately \$485 million in consideration being paid for them by Aphria;
- (iv) failed to disclose that the \$485 million valuation was the product of an artificial manipulation of the Nuuvera share price prior to the entering of the Aphria/Nuuvera Arrangement Agreement ; and

² The final distribution pursuant to the Prospectus was for 21,835,510 Aphria common shares at \$11.85 per share for total gross proceeds from the distribution of \$258,750,794.

(v) stated that the Prospectus "...together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the [Prospectus] as required by the securities legislation of each of the provinces (except Quebec)", when that was not so.

(d) **LATAM Transaction**

On July 17, 2018, Aphria announced its planned expansion into Latin America and the Caribbean, through a massive transaction whereby Aphria was to acquire certain assets from Scythian Biosciences Inc. ("**Scythian**"), namely a Scythian holding company called LATAM Holdings Inc. ("**LATAM Holdings**") for consideration which became \$280 million ("**LATAM Transaction**"). The closing of the LATAM Transaction was announced by Aphria news release on September 27, 2018 which confirmed that LATAM Holdings was acquired from Scythian by Aphria for the assumption of US\$1 million of LATAM Holdings debt and the issuance of 15,678,310 common shares of Aphria which were not subject to any hold period and which could be publicly traded as soon as the share exchange occurred. As of the close of trading on September 27, 2018, the Aphria shares which formed part of the consideration had a value of approximately \$280 million. The announcement and subsequent public disclosure contained misrepresentations in that:

(i) They failed disclose that the assets acquired by Aphria from Scythian in the LATAM Transaction for consideration of approximately CA\$280 million were of negligible value; and

- (ii) Aphria insiders including Neufeld personally profited from the LATAM Transaction at the expense of non-insider Aphria shareholders.

10. In addition to the foregoing misrepresentations (which are particularized more fully in the body of this pleading), the Plaintiff seeks damages arising out of the following misrepresentations:

- (a) Aphria's representations that its financial statements during the Class Period presented fairly the financial position of Aphria and its subsidiaries, in accordance with IFRS (when they were not); and
- (b) The required NI 52-109 certifications by CEO Neufeld and CFO Merton to the effect that:
 - (i) Aphria's interim and annual financial filings during the Class Period were free from misrepresentation and fairly presented in all material respects the financial condition of Aphria (when this was not so); and
 - (ii) Aphria's ICFR and DC&P were designed and operating effectively during the Class Period (when this was not so).

11. On December 3, 2018, when the market learned of the previously undisclosed nature of these transactions, hundreds of millions of dollars were flushed out of the value of Aphria's shares, damaging the Plaintiff and proposed Class Members.

12. The Plaintiff and proposed Class Members were entitled to full, true and plain disclosure about the business and affairs of Aphria from the Defendants. They did not get it, and they were damaged thereby.

13. ~~The Plaintiff and proposed Class Members reasonably expected that, during the Class Period, the business and affairs of Aphria would be conducted in a manner which complied with the law, including the requirements of the *OBCA* and the *OSA*. As particularized below, these reasonable expectations were defeated as the business and affairs of Aphria during the Class Period were not conducted in accordance with the *OBCA* and the *OSA*, and this caused damages to the Plaintiff and proposed Class Members.~~

14. The Plaintiff sues for damages for misrepresentation pursuant to Parts XXIII and XXIII.1 of the *OSA*. ~~statutory oppression pursuant to the *OBCA*, and common law negligent misrepresentation.~~

THE PARTIES

The Plaintiff

15. The Plaintiff is an Ontario company resident in the City of Mississauga, in the Province of Ontario. The Plaintiff purchased 2000 Aphria shares on November 29, 2018 at an average price of \$10.5555 per share and sold those 2000 shares on December 28, 2018 at an average price of \$8.2328 per share.

The Defendants

16. Aphria is a licensed cannabis company having its head office in Leamington, Ontario, Canada. It is incorporated pursuant to the *OBCA* and is a reporting issuer pursuant to the *OSA* and a responsible issuer pursuant to *OSA* Part XXIII.1.

17. At all material times, Aphria's common shares traded on the TSX. On November 2, 2018, Aphria's common shares also began trading on the NYSE.

18. As a reporting issuer in Ontario, Aphria was required throughout the Class Period to issue and file on SEDAR:

- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP or IFRS 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 GAAP or IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with the filing of each of the interim and annual financial statements, MD&A for each reporting period covered by the financial statements; and
- (d) within 90 days of the end of its fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

19. Aphria's financial year end was and is May 31, and its fiscal quarter ends were and are, respectively: first quarter ("Q1") August 31, second quarter ("Q2") Nov 30, third quarter ("Q3") February 28/29, and fourth quarter ("Q4"), May 31.

20. The Defendant Neufeld was at the material time, the President and CEO and a Director of Aphria. He resides in Lakeshore, Ontario.

21. ~~The Defendant Merton was, at the material time, the CFO of Aphria. He resides in Belle River Ontario.~~

22. The Defendant Cacciavillani, was a co-founder of Aphria and at the material time, was Vice-President of Growing Operations and a Director of Aphria. He resides in Leamington, Ontario.

23. The Defendants Clarus Securities Inc., Canaccord Genuity Corp, Cormark Securities Inc., Haywood Securities Inc. and Infor Financial Inc. (collectively, the “**Underwriters**”) served as the underwriters of Aphria’s Offering made pursuant to the Prospectus which was issued on June 22, 2018. These Defendants have business premises in Toronto, Ontario.

24. The Underwriters had an obligation pursuant to the *OSA* and the Other Canadian Securities Legislation to ensure that the Prospectus together with all of the documents incorporated by reference, constituted full, true and plain disclosure of all material facts relating to the Aphria securities offered by the Prospectus, and they in fact, executed at a “Certificate of the Underwriters” to this effect at page C-2 of the Prospectus. This Certificate was itself a misrepresentation giving rise to liability for the Underwriters pursuant to section 130 of the *OSA*.

25. Aphria controlled the contents of Impugned Documents as particularized herein. The misrepresentations made in the Impugned Documents were made by Aphria.

26. Each of the Defendants Neufeld, ~~Merton~~ and Cacciavillani, as officers and, or directors of Aphria, knew, from the time that he accepted a position as an officer and, or director of Aphria, that Aphria was a reporting issuer and that, in his role as an officer and, or director of Aphria, he would have responsibility for ensuring the accuracy of Aphria’s public financial disclosure documents.

27. The *OSA*, the Other Canadian Securities Legislation and certain instruments and policies promulgated thereunder imposed specific obligations on Aphria, Neufeld, ~~Merton~~ and Cacciavillani, in the preparation of Aphria's continuous disclosure documents.

28. NI 51-102 requires the board of directors of a reporting issuer to approve each set of financial statements and MD&A released by an issuer prior to the release of those documents. As such, Neufeld and Cacciavillani, who were directors of Aphria during the Class Period, were required to review and approve Aphria's AIF, management proxy circular and each set of financial statements and related MD&A prior to their release.

29. Pursuant to NI 52-109 and the Companion Policy thereto, Neufeld and ~~Merton~~ as Aphria's CEO and ~~CFO~~, was required to certify:

- (a) the accuracy of Aphria's annual and interim financial statements and related MD&As and Aphria's AIF released during the Class Period;
- (b) that Aphria's disclosure documents during the period to which the certification applied, were free from misrepresentation; and
- (c) that Aphria's ICFR and DC&P were designed and operating effectively during the reporting period to which such certifications applied.

~~30. Pursuant to *OBCA* section 134, each of Neufeld, Merton and Cacciavillani, as officers and directors of Aphria, had an obligation to act honestly and in good faith with a view to the best interests of Aphria.~~

31. Each of Neufeld, ~~Merton~~ and Cacciavillani was aware of and accepted these obligations in assuming his position as a director and, or officer of Aphria.

32. In connection with the distribution conducted pursuant to the Prospectus, the Underwriters were paid underwriting fees of not less than \$10,687,532. These fees were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Aphria's business and affairs as described in the Prospectus and represented to the financial markets.

33. The Underwriters, individually or collectively, did not conduct a reasonable investigation into Aphria in connection with the Offering and they did not have reasonable grounds to believe that the Prospectus was free from misrepresentations contrary to the "Certificate of the Underwriters" found at page C-2 of the Prospectus.

THE PROSPECTUS OFFERING

34. On June 22, 2018, Aphria filed with SEDAR the Prospectus, pursuant to which Aphria distributed to the public not less than 18,987,400 Aphria common shares for \$225,000,690 (inclusive of Underwriters' fees of \$10,687,532).³

35. As discussed above and below, the Prospectus contained misrepresentations both in the text of the Prospectus and in the documents incorporated by reference in the Prospectus.

36. ~~Each of Neufeld and Merton~~ signed the Prospectus, and certified that the Prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was not so.

37. Each of Clarus Securities, Canaccord Genuity Corp, Cormark Securities Inc., Haywood Securities Inc. and Infor Financial Inc. also signed the Prospectus, and therein certified that, to the

³ The final distribution pursuant to the Prospectus was for 21,835,510 Aphria common shares at \$11.85 per share for total gross proceeds from the distribution of \$258,750,794.

best of its and their knowledge, information and belief, the Prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was not so.

THE MISREPRESENTATIONS

38. During the Class Period, Aphria made misrepresentations by commission or omission in the Impugned Documents in respect of the nature of related party transactions (“**RPTs**”) entered into by Aphria, including the value of assets acquired by Aphria in these transactions.

The Nuuvera Transaction

39. On January 29, 2018, Aphria issued a press release announcing that it entered into a definitive arrangement agreement to acquire Nuuvera for approximately C\$826 million. The Company claimed Nuuvera was “a leading, global cannabis company with a strong presence in Europe, Africa and the Middle East[.]” Therein, the Company provided the following rationale for the transaction:

- **Creates the Global Leader in the International Medical Cannabis Market:** Aphria will leverage Nuuvera’s numerous relationships in Germany, Italy, Spain, the United Kingdom, Malta, Israel, Lesotho and Uruguay. Combined with Aphria’s existing agreements in Australia, the combined company establishes a leading international footprint among Canadian licensed producers, and expands Aphria’s processing and manufacturing capabilities globally.
- **Combines Complementary, Best-In-Class Core Competencies:** The acquisition of Nuuvera bolsters Aphria’s recent accretive and value-add transactions, including Broken Coast Cannabis, proud producers of small-batch, premium-quality B.C. bud. Nuuvera’s expertise in extraction, distillation and processing of advanced medical-grade derivative products supported by Aphria’s low-cost, high-quality cultivation to scale unlocks greater economic value for the combined company. The acquisition expands upon the existing strategic relationship between Aphria and Nuuvera, established through multiple off-take agreements. As a result of the transaction, Aphria will capture the retail margin of the 77,000 kg of cannabis originally earmarked for these agreements. The combined company will unlock greater economic value from future production, including expectations of realizing supply chain efficiencies, cross-selling and up-selling to customers through a

broader product portfolio, developing a more diverse customer base, integrating operations and controls and implementing best practices.

- Adds Highly Experienced and Complementary Management Team: Aphria will benefit from Nuuvera's highly-experienced, global management team and the international expansion opportunities it has secured at an accelerated pace.

Nuuvera's reputation for offering the highest quality in purified cannabinoid products has set it apart from its competitors. The Nuuvera management team will play a meaningful role within the combined company going forward.

- Provides Access to State-of-the-Art Testing and Extraction Facilities: The combined company, through Nuuvera, has access to the only standalone

Health Canada GMP-approved facility that is authorized and dedicated under its controlled drugs and substances licence to conduct commercial scale activities with respect to cannabis and cannabinoids. This state-of-the-art medical laboratory enables Nuuvera to maintain the highest standards by adhering to both Health Canada and FDA pharmaceutical GMP guidelines, ensuring product safety, quality, and efficacy.

40. On February 7, 2018, Aphria filed on SEDAR a Material Change Report regarding the terms of the Nuuvera Transaction.

41. On March 23, 2018, Aphria filed on SEDAR a Material Change Report announcing the closing of the Nuuvera Transaction.

42. Each of these three documents contained misrepresentations because they failed to disclose that:

(a) Nuuvera was not "...a leading, global cannabis company", rather it was a fledgling start-up company with annual revenues of \$36,756 and a net loss of \$37,491,971 in its first and only year of operations;

(b) Nuuvera's current assets as at December 31, 2017 were valued at \$45,190,383 of which \$44,121,265 was cash;

- (c) By any objective measure, Nuuvera was worth a small fraction of the approximately \$485 million in consideration paid by Aphria for Nuuvera without any appreciable benefit to Aphria or its non-insider shareholders;
- (d) Aphria insiders, including CEO and director Neufeld, CFO Merton, and Vice-President and director Cacciavillani, had substantial shareholdings in Nuuvera prior to Aphria's acquisition of Nuuvera, putting them in a conflict of interest and resulting in them receiving a substantial personal financial benefit (consideration in the form of cash and Aphria shares in exchange for the near-worthless Nuuvera shares) as a result of the Nuuvera transaction; and
- (e) The Nuuvera Transaction resulted in Aphria's non-insider shareholders having their equity interest in Aphria significantly and unnecessarily diluted, resulting in a net transfer of wealth from Aphria non-insider shareholders to Aphria insiders and associates.

The April 25, 2018 Press Release

43. On April 25, 2018, Aphria issued a press release announcing "the adoption of a formal governance policy regarding investments and other opportunities." The press release stated, in material part:

Governance Update

The Company is also pleased to announce that as part of its regular review and enhancement of governance practices, the board of directors (the "Board") of the Company, upon the unanimous recommendation of the Compensation, Nominating and Governance committee (the "Committee") of the Board, has unanimously adopted a refreshed Position Description for the Lead Independent Director and a formal Policy Regarding Investments and other Opportunities (the "Policy") in the cannabis and related industries, each effective immediately. The Policy applies to all directors, executive

officers and other designated individuals employed or retained by the Company and its subsidiaries and provides for, among other things: (i) certain considerations regarding potential corporate opportunities of the Company, (ii) additional requirements for investments in other companies operating in the cannabis and related industries, (iii) approval and other requirements for new and existing directorships within the cannabis and related industries, and (iv) sanctions for any breach or non-compliance with the Policy.

Vic Neufeld, the Chief Executive Officer and Chairman of the Board, stated, “our Company is committed to attracting and retaining new leaders and pursuing best practices for governance on our Board and within our management team. ...”

44. This was a misrepresentation because:

- (a) The company was not committed to pursuing best practices for governance on its Board and within its management team and, in fact, its internal corporate governance was ineffective and rife with conflicts of interest, both before and after the April 25 Press Release;
- (b) Aphria failed to disclose that this announcement regarding its “formal Policy Regarding Investments and other Opportunities” was a response to revelations about Aphria insiders having substantial shareholdings in Nuuvera prior to Aphria’s acquisition of Nuuvera, putting them in a conflict of interest with the Company and the non-insider shareholders and resulting in these insiders receiving a substantial personal financial benefit;
- (c) Aphria failed to disclose in tis announcement that, as was the case with Nuuvera, certain Aphria insiders including CEO and director Neufeld, Vice-President and director Cacciavillani, Vice-President and director John Cervini, and director Renah Persofsky had substantial and undisclosed shareholdings in a cannabis company, Scythian Biosciences Corp. (“Scythian”). In addition, Neufeld was the

Chair of Scythian and Persofsky was a director of Scythian, while both were officers and directors of Aphria;

(d) Aphria failed to disclose that, at the time of the April 25, 2018 Press Release, Neufeld and Persofsky were stepping down from the Scythian Board because of Aphria's recently announced corporate governance policies;

(e) Aphria failed to disclose that Neufeld, Cacciavillani, Cervini and Persofsky continued to have substantial financial interests in Scythian at and after the April 25 Press Release, putting them in conflict of interest with the Company and the non-insider Aphria shareholders in respect of the negotiation and conclusion of the LATAM Transaction, as described below.

The June 22, 2018 Prospectus and Offering

45. In the Prospectus, the Underwriters make the following certification ("**Underwriters Certificate**"):

CERTIFICATE OF THE UNDERWRITERS

June 22, 2018

To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada (except Quebec).

46. In the Prospectus, Aphria made a similar certification ("**Company Certificate**") as follows:

CERTIFICATE OF THE COMPANY

June 22, 2018

This short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada (except Quebec).

47. The Company Certificate was signed by CEO Neufeld and CFO Merton, as well as two Board Members, on behalf of the Board.

48. The statements made in both the Underwriters Certificate and the Company Certificate were misrepresentations because, as particularized below, the Prospectus did not constitute full, true and plain disclosure of all material facts relating to the securities offered by the Prospectus.

49. The Prospectus falsely touted the benefits of the Nuuvera Transaction to the business and operations of Aphria:

In March 2018, Aphria added a **significant international focus to its business**, through the Aphria International Acquisition. Through Aphria International (formerly known as Nuuvera Inc.), the Company's activities are focused on regulated medicinal cannabis markets in Europe, Africa and Pan-Asia, **with assets and agreements concluded in Germany, Italy, Australia, Malta and Lesotho**.

[...]

On March 23, 2018, Aphria and Aphria International completed the Aphria International Acquisition pursuant to which, among other things, the Company acquired all of the common shares of Aphria International not already owned by it in accordance with a court-approved plan of arrangement under the provisions of the *Business Corporations Act* (Ontario).

On March 27, 2018, Aphria announced that Aphria International would be renamed (from the former name Nuuvera Inc.) and will focus on existing and future opportunities in established regulated international cannabis markets including, but not limited to, Germany, Italy, Malta, Australia and Lesotho.

[...]

International Operations

In addition to its Canadian domestic operations, the Company is also exploring international opportunities through Aphria International, including (subject to applicable laws and regulations): (a) opportunities to export its products to other countries; and (b) opportunities to create international alliances with local international partners.

[Emphasis added]

50. The Prospectus incorporated by reference Aphria's Interim Q3/2018 Financial Statements and Interim Q3/2018 MD&A (both which were released on April 16, 2018), as well as the February 7 and March 23, 2018 material change reports in respect of the Nuuvera Transaction. These contained misrepresentations as described herein.

51. The Interim Q3/2018 Financial Statements list "Nuuvera Inc." in the "Long Term Investments" category and states:

31. Subsequent events

Subsequent to quarter-end, the Company completed an arrangement (the "Arrangement") under the provisions of the Business Corporations Act (Ontario), pursuant to which, among other things, the Company has acquired all of the common shares of Nuuvera. Under the terms of the Arrangement, the Company shall pay \$0.62 and 0.3546 of a common share of the Company, for each Nuuvera common share held prior to the Arrangement.

52. The Interim Q3/2018 MD&A provides, under "Investor Highlights":

Acquisition of Nuuvera Inc. ("Nuuvera") and launch of Aphria International Inc. to focus on established regulated international cannabis markets.

53. The Interim Q3/2018 MD&A further states:

Acquisition of Nuuvera Inc. and launch of Aphria International Inc.

Subsequent to quarter-end, the Company completed an arrangement agreement (the "Agreement") under the provision of the Business Corporations Act (Ontario), pursuant to which, among other things, the Company acquired all the common shares of Nuuvera. Under the terms of the Arrangement, the Company paid \$0.62 and 0.3546 of a common share of the Company, for each Nuuvera common share held prior to the Arrangement. Nuuvera will be renamed to Aphria International Inc. and will focus on existing and future opportunities in established regulated international cannabis markets including, but not limited to, Germany, Italy, Spain, Portugal, Malta, Australia and Lesotho. [...]

54. These statements were materially misleading because they failed to disclose (as described above with respect to the January 29, 2018 press release and two material change reports) that the

Nuuvera shares were worth a small fraction of the \$485 million in consideration paid for them by Aphria; that the Nuuvera Transaction was completed at the instance of Aphria officers and directors who failed to disclose their conflicts of interest and who personally benefitted from the Nuuvera Transaction; and that the Nuuvera Transaction did not provide any material benefit to the non-insider shareholders of Aphria whose interests in Aphria were materially and unlawfully diluted by the Aphria shares issued as compensation to acquire Nuuvera.

55. In addition, the Prospectus failed to disclose that the shares issued by Aphria having a value of approximately \$470 million which were paid as consideration for the Nuuvera shares, was the product of a manipulation of Nuuvera's share price by the Underwriters in anticipation of the January 28 Aphria/Nuuvera Arrangement Agreement. Particulars of this manipulation include the following:

- (a) Because Nuuvera had no earnings track record before the January 28 Aphria/Nuuvera Arrangement Agreement (Nuuvera's revenue for its FY2017 was \$38,756 against expenses of \$38,079,251), the value of Nuuvera shares relative to Aphria shares was established by the Underwriters with reference to market activity;
- (b) Nuuvera shares were first publicly traded on the TSX-V commencing January 9, 2018. They were traded for only 14 days before the Aphria/Nuuvera Arrangement Agreement;

- (c) The main market activity involving Nuuvera during this 14-day trading window was a “bought-deal”⁴ which was underwritten by Clarus and Canaccord as co-lead underwriters at \$5.50 per share. This occurred on January 18, the 8th trading day after Nuuvera shares were first traded on the TSX-V;
- (d) During the eight days leading up to the \$5.50/share bought deal, Canaccord and Clarus were the most significant purchasers of Nuuvera securities, actively boosting the Nuuvera share price;
- (e) With knowledge that Aphria was planning to acquire Nuuvera, Canaccord and Clarus artificially pumped up the Nuuvera share price;
- (f) The \$5.50/share price on the January 18 bought-deal was the principal basis for the share exchange ratio in the January 28 Aphria/Nuuvera Arrangement Agreement, which ultimately resulted in the issuance of \$470 million worth of Aphria shares to acquire all of the shares of Nuuvera;
- (g) This significantly and unlawfully diluted the interests of Aphria’s non-insider shareholders.

56. As at May 31, 2018, three weeks before the Prospectus Offering, the \$485 million Nuuvera Transaction represented 43% of all of Aphria’s book shareholder equity. This value was artificial and the product of manipulation by Clarus and Canaccord .

⁴ A bought-deal is a securities offering whereby an underwriter, such as an investment bank or a syndicate of investment banks, agrees to buy the entire offering from the client issuer for the purposes of resale. The financing risk of the offering is therefore assumed by the Underwriter rather than the issuer.

57. In order for the Prospectus to constitute full, true and plain disclosure, the foregoing material facts should have been disclosed. They were not, and the Prospectus, which included the Underwriters Certificate and the Company Certificate, contained misrepresentations.

The LATAM Transaction

58. On July 17, 2018, Aphria issued a press release announcing its planned expansion into Latin America and the Caribbean. In particular, the Company announced that it entered into an agreement with Scythian whereby it acquired, from Scythian, companies in Colombia, Argentina and Jamaica and a right of first offer and refusal with respect to a Brazil entity. Pursuant to the transaction, Aphria acquired 100% of the issued and outstanding common shares of LATAM Holdings, a direct, wholly-owned subsidiary of Scythian, for approximately \$193 million (collectively, the “**LATAM Transaction**”). The Company stated that it expected to issue to Scythian 15,678,310 Aphria shares in connection with the LATAM Transaction, representing approximately 6.3% of the currently issued and outstanding shares of Aphria, calculated on a non-diluted basis.

59. The press release included the following as highlights of the LATAM Transaction:

- Solidifies Aphria’s leadership position in the global cannabis industry
- *Provides Aphria with world class assets in the most advanced regulatory jurisdictions across LATAM and Caribbean markets, from which it can further grow and expand its international operations*
- Strengthens Aphria’s leading international management team with the addition of proven local LATAM and Caribbean executives
- *Establishes Aphria’s presence in the most advanced strategic market in South America, Colombia*
- *Gains first mover advantage in Argentina for eventual in country cultivation*
- *Acquires market leadership in Jamaica with the only producing Tier 3 cultivator license in the country*

- *Yields strategic rights to potentially expand into Brazil, the largest population in South America*
- *Delivers accretive cash flow beginning in calendar 2019*

[Emphasis added]

60. The news release further detailed the various aspects of Aphria’s newly acquired “industry leading assets.” In particular, the news release stated that Aphria would be acquiring a 90% interest in a Colombian company expected to achieve “an initial annualized production of 30,000 kg, growing to 50,000 kgs” of “high-quality medical cannabis.” It states, in relevant part:

Colombia — Strategic Launch Pad into South America

Colcanna S.A.S. (“Colcanna” or the “Colombian Company”), will be the first company in the Coffee Zone of Colombia with cultivation and manufacturing licenses for the production of medicinal extracts of cannabis, a research license and a license for the production and extraction of cannabis, including cannabis oil, for domestic use and for export. It is in the advanced licensing stages for a THC license.

Unlike the former Guerilla territory where other global cannabis companies have focused their investments, the Coffee Zone has always been a land of peace, high productivity and progress. Colcanna sits on 34 acres of highly fertile, predominately flat land, which is essential for the optimal cultivation of cannabis. As a result, greenhouses will occupy more than 20 acres of the property and, with 6 harvests per year and two natural sources of water for irrigation, *Colcanna is expected to achieve an initial annualized production of 30,000 kg, growing to 50,000 kgs but with access to the country’s micro-scale growers, suitable for supplying the country and the region with high-quality medical cannabis.*

{Emphasis added}

61. The news release also stated that Aphria would receive an “established and successful pharmaceutical import and distribution company” in Argentina “at the forefront of in-country medical cannabis research and clinical trials,” with a reach “throughout Argentina” and “agreements with the Top 20 health insurance companies,” stating, in relevant part:

Argentina — First Mover Advantage

ABP, S.A. (“ABP” or the “Argentinean Company”) is an *established and successful pharmaceutical import and distribution company* that holds a series of licenses, including

for the import of CBD oil, notably the first company in Argentina to have received this license.

The Argentinean Company operates a pharmaceutical distribution warehouse and retail pharmacy and distributes to an extensive network of pharmacies, distributors, government clinics and hospitals throughout Argentina. ABP also holds agreements with the Top 20 health insurance companies, a strategic advantage in reaching patients accessing Argentina’s free public healthcare system.

ABP is at the forefront of in-country medical cannabis research and clinical trials with two significant Medical Cannabis Cooperative Agreements. The Argentinean Company has partnered with Hospital Garrahan, a leading pediatric hospital in Buenos Aires, for a clinical study on the treatment of refractory epilepsy in children, and with Universidad Nacional De La Plata to support advances in medical cannabis research and education.

[Emphasis added]

62. The news release further stated that Aphria would acquire a 49% interest in an entity with “several key licenses” granted by the Jamaican Cannabis Licensing Authority regarding the cultivation, processing and sale of cannabis, therapeutic and medical uses for the plant, and research and development.” It stated that Aphria had received the “highest level” of licensing available in Jamaica, a Tier 3 license, which had purportedly only been granted to one other company. The release stated, in relevant part:

Jamaica — Only Producing Commercial Tier 3 License

Marigold Projects Jamaica Limited (“Marigold” or the “Jamaican Company”) ***has been granted several key licenses*** by the Jamaican Cannabis Licensing Authority, including:

- A Tier 3 license to cultivate more than five acres of land with cannabis for medical, scientific and therapeutic purposes. ***This license is the highest level of license available in Jamaica, and currently only one other company has been approved for a Tier 3 license;***
- A conditional Tier 2 license to process cannabis for medical, scientific and therapeutic purposes, including the manufacturing of cannabis-based products, in a space of over 200 square meters;
- A conditional herb house retail license to sell cannabis products for medical, scientific and therapeutic purposes, with a space for immediate consumption by consumers, including tourists;
- A conditional therapeutic retail license to provide therapeutic or spa services utilizing cannabis products; and

· A conditional R&D license.

Lloyd Tomlinson will continue as Marigold’s Managing Director and will be appointed Director, Jamaica Operations at Aphria International. Mr. Tomlinson, a Jamaican native, has more than 20 years’ experience in the pharmaceutical industry and as the CEO of Blue Manhoe Estate he became the third-generation of his family to run the family’s coffee business. In 2014, Mr. Tomlinson made history when he launched Timeless Herbal Care, Jamaica’s first medical cannabis company.

[Emphasis added]

63. The news release stated that the acquisition would provide Aphria the right of first offer and refusal to purchase of a majority interest in an entity in the strategic Brazilian market expected to hold a medical cannabis license. The news release states, in relevant part:

Brazil — Strategic Option for Major Market

The Company also remains focused on identifying the most attractive emerging opportunities through the region, including in Brazil where, as a result of the Transaction, *the Company will receive a right of first offer and refusal (collectively the “Rights”) in respect of a majority interest, upon the receipt of a license, in the entity receiving the license.* With a population over 200 million and a comprehensive National Healthcare System, Brazil is poised to become an important market for medical cannabis, and Aphria’s regional and corporate leadership remain connected to the rapidly evolving opportunity in Brazil.

Impactful Leadership for LATAM and the Caribbean

Scythian’s highly experienced and well-regarded LATAM and Caribbean management team will join Aphria International as a critical component to this Transaction. Collectively, they have significantly advanced the opportunities at each of the companies acquired in this Transaction, while laying the groundwork for future growth in many countries throughout the region. They have built deep rosters of relationships throughout the region and, in particular, remain closely connected to governmental and regulatory agencies that are leading the rapid evolution of medical cannabis in LATAM.

The team will be led by Gabriel Meneses, who will be appointed Vice President, LATAM and Caribbean at Aphria International. Mr. Meneses will bring more than 14 years of extensive international leadership experience to Aphria International, where he will oversee the development of new market opportunities in Latin America while leading other initiatives that further stimulate the Company’s growth in the regions’ markets. He previously worked for Apple Inc., where he led the launch of Apple’s first Commercial & Enterprise sales Organizations in Latin America and the Caribbean.

[Emphasis added]

64. Overall, the July 17, 2018 news release represented to the market that Aphria would be acquiring very valuable strategic assets in key cannabis markets. It quoted Defendant Neufeld as stating that the acquisition would "provide the strong foundation, relationships and infrastructure to capture significant future growth as more LATAM and Caribbean markets evolve." The release stated, in relevant part:

Quotes from Leadership

"Aphria is proud with this initiative to create a true leader in medical cannabis across LATAM and extend our leadership in the global industry," said Vic Neufeld, Chief Executive Officer at Aphria. "We have spent a considerable amount of time and resources evaluating opportunities in Latin America and the Caribbean and we are confident in the long-term strategic opportunity and the value it will bring to our shareholders. The Transaction, once completed, will firmly place Aphria at the center of the medical cannabis industry in the region, and will provide the strong foundation, relationships and infrastructure to capture significant future growth as more LATAM and Caribbean markets evolve. We truly have the best international team in the business, and we are continuing to bring our industry-leading expertise, experience and know-how to strategic international markets."

65. The news release described the mechanics of the acquisition as follows:

Aphria will acquire the following entities through LATAM Holdings:

- 90% of Colcanna, a Colombian medical cannabis producer, currently holding a CBD cultivation license from the Ministry of Justice and holding a license for processing, extraction, production and research for the local market and export for the international market of cannabis derivatives, from the Ministry of Health. Colcanna expects to receive its THC license from the Ministry of Justice within the next month;
- 100% of ABP, an Argentinean pharmaceutical import and distribution company, currently licensed for the importation of CBD oil for the purposes of research and development;
- 100% of Marigold Acquisitions Inc., a BC incorporated entity, which owns 100% of Hampstead Holdings Ltd., a Bermuda incorporated entity, which owns 49% of Marigold Projects Jamaica Limited, which has received a license to cultivate and conditional licenses to process, sell and provide therapeutic or spa services using cannabis products; and,

- The Rights to purchase 50.1% of a Brazilian incorporated entity, which Scythian is currently seeking to acquire, which is expected to hold a medical cannabis cultivation, processing and distribution license in Brazil, upon receipt of a license, for \$24 million USD, and an additional right of first refusal to acquire an additional 20-39% of the same entity at fair market value at the time.

The Transaction will proceed by way of a share purchase of LATAM Holdings by Aphria and is subject to a “majority of the minority” approval requirement by Scythian shareholders (excluding Aphria and its affiliates), receipt of required regulatory and stock exchange approvals, and other customary conditions of closing. Aphria has secured irrevocable hard lock-ups (the “Lock-Ups”) from approximately 40% of the shareholders of Scythian to vote in favour of the Transaction, and also holds an approximate 9% interest in Scythian, together with 672,195 outstanding warrants of Scythian, representing an additional 4% interest of Scythian calculated on a fully diluted basis. Collectively, the shares subject to these Lock-Ups represent, together with the Scythian shares already owned by Aphria, approximately 50% of the currently outstanding Scythian shares.

66. On July 27, 2018, Aphria issued a Material Change Report announcing that it had entered into a share purchase agreement with Scythian to acquire all of the shares of LATAM.
67. On August 1, 2018, Aphria issued its disclosure for Q4/2018 and FY/2018 which included a press release announcing its results for Q4/2018 and FY/2018; its Audited Annual Financial Statements for FY/2018 including its 2018 Year End MD&A, its Annual Information Form, and its Form 52-109F1 CEO and CFO Certifications of Annual Filings.
68. Regarding the Form 52-109F1 CEO and CFO Certifications of Annual Filings, CEO Neufeld and CFO Merton certified that the annual filings 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, for the FY/2018 and that Aphria’s DC&P and ICFR were designed and operating effectively and were free of material weaknesses.

69. On August 27, 2018, Aphria released its Annual Report in which Aphria repeated representations about the LATAM transaction that were made in the July 17, 2018 Press Release and its Q4/2018 and FY/2018 disclosures.

70. On September 27, 2018, Aphria announced the closing of the LATAM Transaction. In a press release, the Company stated that the LATAM Transaction had provided “industry-leading cannabis-related” businesses in Latin America and the Caribbean, and that it “firmly cements” Aphria’s leadership in the region and on the global cannabis stage.” The press release states, in relevant part:

As a result of the Transaction, the Company has solidified an important foothold in Latin America and the Caribbean by acquiring industry-leading cannabis-related companies in Colombia, Argentina and Jamaica as well as a right of first offer and refusal in respect of a majority interest in a Brazilian entity seeking a cannabis cultivation and sales license.

“Aphria continues to execute on its plans for strategic international expansion, including in Latin America and the Caribbean,” said Vic Neufeld, Chief Executive Officer of Aphria. “With a combined population of nearly 640 million, and with significant momentum from numerous countries introducing new or modernizing existing medical cannabis legislation, the region represents a significant opportunity for long-term growth. It also hosts some of the most favourable conditions for cultivating high-quality medical cannabis at substantial efficiencies – ideal for both regional supply and export opportunities. *This acquisition firmly cements Aphria’s leadership in the region and on the global cannabis stage.*

[Emphasis added]

71. On October 5, 2018, Aphria filed a Material Change Report in respect of the LATAM Transaction stating, among other things:

“Full Description of Material Change

The Company announced that it successfully closed the Transaction. The Transaction was funded by the assumption of US\$1,000,000 of existing LATAM debt with the remaining consideration funded by the issuance of 15,678,310 common shares (the “Consideration Shares”) of the Company at a deemed price of \$12.31 per share. The closing was completed pursuant to the terms of a definitive share purchase agreement (the “Purchase Agreement”) previously announced by the Company on July 17, 2018.

As a result of the Purchase Agreement, the Company has acquired, indirectly through the acquisition of LATAM:

- a 90% ownership interest in Colcanna S.A.S., a Colombian company with cultivation and manufacturing licenses for the production of medicinal extracts of cannabis, a research license and a license for the production and extraction of cannabis, including cannabis oil, for domestic use and for export;
- ABP, S.A., a pharmaceutical import and distribution company in Argentina;
- a 49% ownership interest in Marigold Projects Jamaica Limited, which has received a “Tier 3” cultivation license in Jamaica to cultivate as well as conditional licenses to process, sell and provide therapeutic or spa services using cannabis products; and
- a right of first offer and refusal in respect of a majority interest in a Brazilian entity, upon the receipt of a license, in the entity receiving the license.

Collectively, Colcanna S.A.S., ABP, S.A. and Marigold Projects Jamaica Limited are referred to as the “Acquired Entities”

In accordance with the terms of the Purchase Agreement, Scythian, the Company and LATAM have entered into a customary non-competition agreement pursuant to which Scythian has agreed not to carry on, be engaged in, have any financial or other interest in or be otherwise commercially involved in any endeavour, activity or business in Colombia, Argentina and Jamaica which is substantially the same as or in competition with the business of the Acquired Entities.”

72. On October 12, 2018, Aphria issued its disclosure for Q1/2019 which included a press release reporting its results for Q1/2019, its Q1/2019 Interim Financial Statements including its Q1/2019 MD&A and its Form 52-109F2 CEO and CFO Certifications of Interim Filings.

73. Regarding the Form 52-109F2 CEO and CFO Certifications of Interim Filings, CEO Neufeld and CFO Merton certified that the Q1/2019 Interim Financial Statements and MD&A 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, for the Q1/2019 and that Aphria's DC&P and ICFR were designed so as to provide reasonable assurance that all required disclosure under securities law was made in the interim filings and that the financial statements during Q1/2019 were prepared in accordance with IFRS.

74. Statements in the July 17, 2018 Press Release, as well as similar statements about the LATAM Transaction made in the July 27, 2018 Material Change Report, the FY/2018 Audited Annual Financial Statements, the FY/2018 Year End MD&A, the FY/2018 Annual Information Form, the August 1, 2018 Form 52-109F1 CEO and CFO Certifications of Annual Filings, the September 27, 2018 Press Release, the October 5, 2018 Material Change Report, the Q1/2019 Interim Financial Statements, and the October 12, 2018 Form 52-109F2 CEO and CFO Certifications of Interim Filings, contained misrepresentations as follows:

- (a) the LATAM Transaction provided Aphria with “world class assets in the most advanced regulatory jurisdictions across LATAM and Caribbean markets, from which it can further grow and expand its international operations”, when this was not so as the assets acquired were marginal companies with assets of nil or negligible value;

- (b) Aphria was acquiring “industry-leading cannabis-related companies in Colombia, Argentina and Jamaica”, when this was not so as the companies Aphria was acquiring were marginal, at best;
- (c) the LATAM Transaction firmly cemented “Aphria’s leadership in the region and on the global cannabis stage”, when this was not so as the assets acquired were marginal companies having assets of nil or negligible value;
- (d) Aphria failed to disclose that the assets acquired were worth a small fraction of the approximately \$273.9 million in consideration paid by Aphria for them, without any appreciable benefit to Aphria or its non-insider shareholders;
- (e) Aphria failed to disclose that Colcanna and Marigold had not generated any income as at the time of the LATAM Transaction, and were not reasonably anticipated to generate income sufficient to justify their valuation;
- (f) Aphria failed to disclose that ABP had generated only a modest income at the time of the LATAM Transaction and was not anticipated to generate income to justify its valuation;
- (g) Aphria failed to disclose that the LATAM Transaction resulted in a significant dilution of Aphria’s non-insider shareholders’ equity interest in Aphria which resulting in a net transfer of wealth from Aphria non-insider shareholders to Aphria insiders and associates, with no appreciable benefit to Aphria or the non-sider shareholders;

- (h) The FY/2018 and the Q1/2019 financial statements were prepared in accordance with IFRS, when this was not so;
- (i) Aphria's ICFR and DC&P were designed and operating effectively, when this was not so; and
- (j) Aphria's FY/2018 annual filings and Q1/2019 interim filings were free from misrepresentations, when this was not so.

THE TRUTH ABOUT APHRIA IS REVEALED

75. Both the Nuuvera Transaction and the LATAM Transaction are, in fact, vehicles by which Aphria insiders and associates transferred wealth to themselves from non-insider Aphria shareholders. The basic structure of both transactions was the issuance of Aphria shares valued at hundreds of millions of dollars in consideration for assets of nil or nominal value. The truth about these transactions was not disclosed to Class Members and not revealed in the Company's required financial disclosure.

76. Instead, this material information was revealed by outside parties as described below.

77. On March 21, 2018, Hindenburg Research ("**Hindenburg**"), a financial research and analysis firm, published an article entitled "Could Rampant Red Flags Drown Aphria's Proposed Nuuvera Acquisition?" The article stated that "multiple red flags" existed in respect of the proposed purchase by Aphria of Nuuvera. Hindenburg reported that:

- (a) Prior to its takeover by Aphria in March 2018, Nuuvera was a newly-formed business, incorporated only on January 30, 2017. It became a

public company in January 2018 via a reverse takeover of a shell corporation and was listed on the TSX Venture Exchange; and

- (b) At the time of the Nuuvera Transaction, Nuuvera had no material assets aside from \$35 million cash on hand; and it had generated only approximately \$30,000 in revenues between January and September 2017. Nuuvera was acquired by Aphria for cash and newly issued Aphria shares valued at approximately \$470 million.

78. The Nuuvera Transaction was initiated by DeFrancesco who was a founding investor in Aphria, and who led all rounds of financing and was a strategic advisor to Aphria up to and following the Nuuvera Transaction.

79. On March 25, 2018, the *Globe and Mail* published a report entitled: “Aphria insiders held shares in takeover target, didn’t disclose.” It revealed that four Aphria executives and three directors, including Defendants Neufeld (the Chair and CEO), and Cacciavillani (Director, co-founder, and VP), and Merton (the CFO) held shares in Nuuvera prior to the sale of Nuuvera to Aphria. For an investment of approximately \$900,000 in Nuuvera shares in August 2017, the Aphria insiders received approximately \$4.75 million in consideration from the Nuuvera Transaction. They benefited from a “windfall” of approximately \$3.85 million in the space of seven months. This was not publicly disclosed prior to the closing of the Nuuvera Transaction.

80. Neufeld and Cacciavillani, as Aphria directors, voted on the Nuuvera Transaction, which was unanimously approved by the Aphria board.

81. What the March 21 and 25 disclosures by Hindenburg and the *Globe and Mail* failed to reveal was the serious breakdown in Aphria’s internal corporate governance, including its ICFR

and DC&P, and the fact that the \$485 million valuation of Nuuvera was entirely artificial and bore no connection to the actual value of the acquired Nuuvera assets, which was negligible.

82. On May 30, 2018, more than two months after the Nuuvera Transaction closed, Aphria filed on SEDAR a Business Acquisition Report in respect of the Nuuvera Transaction which confirmed in large measure the March 21 Hindenburg report, and the facts revealed by the March 25 *Globe and Mail* article. This Business Acquisition Report revealed, among other things:

- (a) “directors and officers of Aphria, together with their affiliates and associates, collectively, held approximately 720,000 shares of Nuuvera” prior to the closing of the Transaction.
- (b) the total consideration paid by Aphria for Nuuvera was valued at \$485,319,000;
- (c) The transaction closed on March 23, 2018;
- (d) according to Nuuvera’s audited financial statements dated May 15, 2018 for Nuuvera’s year ended December 31, 2017 (less than 1 month before the January 29 Aphria news release announcing the Nuuvera Transaction), Nuuvera:
 - (i) had annual revenue of \$38,756 (in its only year of operation);
 - (ii) total current assets of \$45,190,383 (including \$44.1 million in cash);
 - (iii) goodwill valued at \$10,621,414; and
 - (iv) a net loss before taxes of \$38,491,971.

83. Therefore, at the time of the Nuuvera Transaction, Nuuvera was a start-up company with negligible income, apart from \$44 million in cash, few if any assets of value, and a balance sheet with approximately \$38 million in net losses before taxes. Aphria paid \$485,319,000 for all of

Nuuvera's outstanding shares (including 720,000 Nuuvera shares owned by Aphria insiders). As noted by Nuuvera's Auditors "The Company [Nuuvera] has not yet realized any revenue from its operations and is in the start up phase There is no assurance that any prospective project in the medical or recreational marijuana industry will be successfully initiated or completed."

84. As at May 31, 2018 (Aphria's FY/2018 year-end), the value ascribed by Aphria to the acquired Nuuvera assets represented approximately 43% of all of Aphria's book shareholder equity. The Nuuvera Transaction was a material transaction for Aphria and it significantly diluted the interests of non-insider Aphria shareholders, with no benefit to these shareholders or the Company.

85. On December 3, 2018, Hindenburg and Quintessential Capital Management LLC ("**QCM**"), an investment firm, published a report entitled "Aphria: A Shell Game with a Cannabis Business on the Side" ("**Hindenburg/QCM Report**"). The release of the report was accompanied by a presentation by QCM principal, Gabriel Grego at a short sellers' conference which was broadcast on YouTube. The presentation was called "*The Black Hole*".

86. Both the Hindenburg/QCM Report and the YouTube presentation were highly critical of Aphria and presented the LATAM Transaction as part of a pattern of undisclosed self-dealing and over-valuation of acquired assets which began with the Nuuvera Transaction.

87. These were disclosures of serious corporate governance failures that were manifested in the Nuuvera and LATAM Transactions.

88. The Hindenburg/QCM Report detailed an investigation into Aphria's latest investments in Latin America in the context of earlier revelations about Nuuvera. It reported, among other things:

- (a) Under the heading “They’re at it again”, that in spite of the governance reforms announced by Aphria on April 25, 2018, documents show that Aphria insiders were undisclosed beneficiaries of the LATAM Transaction.
- (b) The LATAM Transaction involved the same sort of corporate misconduct as the Nuuvera Transaction; which misconduct the governance initiatives announced in the April 25 Press Release promised to eliminate, namely, Aphria insiders financially benefitting by Aphria acquiring “nearly worthless” assets by way of a share exchange with the target company with which Aphria insiders had undisclosed financial interests.
- (c) A common *modus operandi* emerged from the acquisitions involved in the LATAM Transaction whereby Aphria insider DeFrancesco, acquires an international company by way of a Canadian shell company under his control through his closely held private equity firm, the Delavaco Group (“**Acquisition Shell**”). The Acquisition Shell changes its name and agrees to be acquired by Scythian, where Defendant Neufeld, Aphria’s CEO, and DeFrancesco hold key roles. Scythian acquires the Acquisition Shell for a premium (in the form of Scythian shares paid to DeFrancesco and his associates). Scythian then sells its stake in the Acquisition Shell to Aphria for newly issued Aphria shares at a value substantially more than Scythian paid for the Acquisition Shell. As a result, DeFrancesco and unnamed associates and affiliates who own the Acquisition Shell receive consideration in the form of cash and, or Scythian shares; Scythian receives

newly issued Aphria shares; and Aphria's shareholders receive the international "assets" whose value is negligible, and in any event worth far less than what Aphria is paying for them.

89. Under the heading, "Background: Aphria's Nuuvera Scandal", the Hindenburg/QCM Reported:

"...Nuuvera appeared to be a worthless artifice designed to enrich insiders at the expense of Aphria's investors. The Company later admitted that its executives and directors had undisclosed stakes in Nuuvera prior to Aphria's acquisition, along with a key deal partner named Andy DeFrancesco."

[Emphasis added]

90. Under the heading "*Introduction: They're at it again – the LATAM Transaction,*" the Report stated: "Aphria recently spent over C\$280 million on nearly worthless Latin American acquisitions that appear to have clear signs of insider self-dealing."

91. At the end of the 37-page report, Hindenburg/QCM conclude:

"The "Blunt Truth": Aphria is Uninvestable. All told, Aphria's international deal spree resulted in over C\$700 being deployed to its questionable "investments". Including the Brazilian purchase option, this total could reach over C\$736 million:

Acquisition	Price Paid (C\$m)
Nuuvera	425
LATAM	280
Brazil	31
Total	736

...

We believe the conduct of Aphria's executives and deal partners has been deeply unethical and possibly criminal. With a slew of highly questionable transactions, negative operating cash flow, and low-quality product, we ultimately see no credible path forward for this company."

92. Both the Nuuvera Transaction and the LATAM Transaction involved:

- (a) the issuance of hundreds of millions of dollars worth of Aphria Shares paid as consideration for “assets” with little or no sales or operating activity, and minimal assets or cash;
- (b) Aphria insiders who were involved in the approval of the transactions, received undisclosed personal financial benefit from the transactions; and
- (c) non-insider Aphria shareholders had their interests in Aphria substantially and unlawfully diluted.

93. While he was the President and CEO and a director of Aphria, Defendant Neufeld served as the Chairman of the Board of Scythian between March and April 2018, and served as a director of Scythian between January and April 2018. Neufeld was also a substantial shareholder of Scythian. Scythian entered binding letters of intent to acquire assets which were the subject of the LATAM Transaction while Neufeld was both Scythian’s Chairman and Aphria’s CEO.

94. While Scythian was acquiring the assets which were the subject of the LATAM Transaction, Aphria director Persofsky was also a director and a shareholder of Scythian; Defendant Cacciavallani, and Aphria director Cervini both had substantial shareholdings in Scythian.

95. At the time of the April 25, 2018 Aphria Press Release announcing “Governance Initiatives”, Neufeld and Persofsky stepped down from the Scythian board. In spite of Aphria’s announced “Governance Initiatives”, Neufeld, Cacciavallani, Persofsky and Cervini, all maintained financial interests in Scythian. They all remained members of the Aphria Board at the

time of the LATAM Transaction; and all benefitted financially from the transaction as a result of their interests in Scythian.

96. Neufeld was aware, at all material times, that the underlying assets acquired by Aphria in the LATAM Transaction for \$280 million worth of newly issued Aphria shares, were of negligible value.

97. Following the revelations contained in the Hindenburg/QCM Report and the YouTube presentation at the December 3, 2018 short sellers' conference, Aphria's shares fell from \$10.51 on November 30, 2018, (the last trading day before the Hindenburg/Quintessential Report) to \$7.60 on December 3, 2018, on heavy trading. This represented a drop in Aphria's market capitalization of approximately 27.69%.

98. On December 3, 2018 and the days immediately following, independent analysts and financial commentators attributed the share price drop to serious concerns with the conduct of Aphria's Board and senior management in approving both the Nuuvera and the LATAM Transactions where there was undisclosed self-dealing and conflicts of interest.

99. On December 3, 2018, the *Globe and Mail* wrote:

“Aphria shares plunge as short-seller report questions recent deal.

Aphria Inc. paid nearly \$300-million to buy allegedly worthless foreign assets that had been owned previously by firms with apparent ties to a key investor in the cannabis grower, a short-seller report claims.

The company's stock plunged nearly 28 per cent to \$7.60 on Monday...

...

In March, The Globe reported **that seven Aphria executives and directors had personally owned shares in Nuuvera in January when they orchestrated a deal for the company. Those holdings were not disclosed to investors.** Under Ontario corporate law, the Aphria insiders weren't

required to disclose their Nuuvera shares to the market unless Aphria deemed their holdings to be material, which it didn't. The shares were worth \$5 million, five times what the insiders initially invested months earlier."

[Emphasis added]

100. Also, on December 3, 2018, analyst commentary connected the stock drop with the loss of confidence in the integrity of Aphria Management in light of the Nuuvera Transaction, as well as the LATAM Transaction. In explaining the stock drop, BMO reported:

"The concerns largely surround the value of the assets acquired [in the LATAM Transaction]. In addition, according to press disclosure at the time of the acquisition of these assets, **a group of Aphria directors and senior management had a combined 2% interest in Scythian**, which was the holding company from which Aphria acquired these assets.

...

We believe there is likely heightened investor concern surrounding Aphria's acquisitions due to the Company's previous purchase of Nuuvera, a Canadian Cannabis company, in March 2018. The transaction value was about \$450 million and a number of senior officers and directors were shareholders of Nuuvera (combined stake under 1%)."

[Emphasis added]

101. On December 3 and 4, 2018, Aphria issued statements denying the findings contained in the Hindenburg/QCM Report. These statements of denial were misrepresentations.

102. On December 4, 2018, the *Financial Post* published an interview with DeFrancesco to address the allegations described in the Hindenburg/QCM Report. DeFrancesco confirmed his participation in the transactions, stating that the use of shell companies was not unusual in private equity transactions like the LATAM Transaction. He defended the quality of the acquired assets.

103. Also on December 4, 2018, QCM issued a response to Aphria's denials of wrongdoing. The response stated, in relevant part:

After a careful review of Aphria's latest press release, we feel even more confident in our thesis. Aphria has merely repackaged the main contents of its past public statements, whilst conveniently avoiding addressing almost all of our very serious core allegations.

104. Other independent analysts also noted that the Hindenburg/QCM Report raised serious questions about the integrity of Aphria's Management. These were summarized by a BNN/Bloomberg Report on December 4, 2018:

We believe that management's credibility may have been impacted by the allegations raised in this report. It is unclear at this point how the company will re-establish trust with investors," GMP analyst Martin Landry wrote in a note to clients.

...

Scotiabank analyst Oliver Rowe, who also placed his rating on Aphria under review, said the report "raises too many questions and concerns for us to remain comfortable taking an investment view on the company.

105. On December 4, 2018, *Forbes* reported that a major US tobacco company, Altria, backed away from an investment in Aphria during the due diligence phase when it learned of some of the details surrounding the Nuuvera Transaction (the "**December 4 *Forbes* Article**"). This also was new news to the market:

During the due diligence phase with Aphria, certain transactions were called into light, **including the Nuuvera acquisition, during which a myriad of Aphria executives and backers made a significant amount of money while the shareholders were unnecessarily diluted**. Altria raised concerns about such self-dealing, which resulted in them backing out...

[Emphasis added]

106. Aphria's share price continued to decline, closing at \$5.99 on December 4 and \$5.00 on December 5, 2018 on very heavy trading.

107. By the close of trading on December 5, Aphria's share price was down \$5.51 from the pre-correction price on November 30, representing a loss of approximately 52% in three trading days.

108. In addition to the comments in the Hindenburg/QCM Report, and follow-up comments by QCM, other financial analysts including Eight Capital, BMO Capital Markets and GMP Securities, downgraded Aphria stock and lowered or removed price targets.

UNDISCLOSED CONFLICTS OF INTEREST

109. Despite the conflicts of interest manifested by the Nuuvera Transaction and the LATAM Transaction, the Impugned Core Documents contain only boilerplate "warnings" about potential conflicts of interest. They do not disclose that conflicts of interests have in fact been identified in the above transactions, in the form of Aphria's overpayment for assets, to the benefit of Aphria insiders and to the detriment of non-insider Class Members.

110. In its AIFs for the years ended May 31, 2017 and May 31, 2018 (the "AIFs") (released respectively on July 12, 2017 and August 1, 2018) Aphria purported to maintain adequate conflicts of interest procedures, stating in relevant part:

We may from time to time become involved in transactions which conflict with the interests of our directors and the officers. The interests of these persons could conflict with those of the Company. Conflicts of interest, if any, will be subject to the procedures and remedies provided under applicable laws. In particular, in the event that such a conflict of interest arises at a meeting of our directors, a director who has such a conflict will abstain from voting for or against the approval of such participation or such terms. In accordance with applicable laws, the directors of the Company are required to act honestly, in good faith and in the best interests of the Company.

111. The AIFs further warn investors, as follows:

[i]t is not always possible for the Company to identify and deter misconduct by its employees and other third parties, and the precautions taken by the Company to

detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting the Company from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations.

112. The Company also stated that it maintains an Audit Committee that is tasked with, *inter alia*, “ensuring that an effective risk management and financial control framework has been implemented and tested by management of Aphria”:

The Audit Committee has the primary function of fulfilling its responsibilities in relation to reviewing the integrity of Aphria’s financial statements, financial disclosures and internal controls over financial reporting; monitoring the system of internal control; monitoring Aphria’s compliance with legal and regulatory requirements, selecting the external auditor for shareholder approval; reviewing the qualifications, independence and performance of the external auditor; and reviewing the qualifications, independence and performance of Aphria’s internal auditors. The Audit Committee has specific responsibilities relating to Aphria’s financial reports; the external auditor; the internal audit function; internal controls; regulatory reports and returns; legal or compliance matters that have a material impact on Aphria; and Aphria’s whistleblowing procedures. In fulfilling its responsibilities, the Audit Committee meets regularly with the internal and external auditor and key management members. . . .

113. In spite of these representations, the Audit Committee failed to identify and prevent or disclose the conflicts of interest identified above.

114. The Nuuvera press release dated January 29, 2018 as well as the Material Change Reports filed February 7, 2018 and March 23, 2018 failed to disclose that Aphria insiders and associates, including Defendants Neufeld and Cacciavillani, and DeFrancesco and Merton, owned shares in Nuuvera before the Nuuvera Transaction was concluded and stood to personally profit from it at the expense of Aphria shareholders. Aphria did not admit this fact until its Business Acquisition Report filed on SEDAR on May 30, 2018.

115. Further, Defendants Neufeld and Cacciavillani as directors voted to approve the Nuuvera Transaction when they knew that the Transaction provided little or no benefit to Aphria but considerable benefit to themselves.

116. The press release announcing the LATAM Transaction did disclose that four Aphria insiders, Neufeld, Cacciavillani, and John Cervini (Aphria's Vice-President Infrastructure and Technology) and Renah Persofsky (an Aphria director), owned approximately 2.1% of Scythian shares on a fully diluted basis. However, the Impugned Documents, including the press release, failed to disclose that the Acquisition Shells, which had first acquired the LATAM assets, and which were then purchased by Scythian, and then sold by Scythian to Aphria at a substantial premium, were owned by Aphria founding investor and strategic advisor Andrew DeFrancesco and his affiliates.

NON-COMPLIANCE WITH IFRS

117. In each of its Class Period financial statements, Aphria represented that its financial reporting was IFRS-compliant. This was a misrepresentation.

118. Aphria's 2018 audited annual financial statements (released August 1, 2018) materially overstate the value of Aphria's assets as at May 31, 2018. In particular, of Aphria's total assets valued at \$1,314,092,000, a value of \$552,851,000 is attributed to the acquisition of Nuuvera.

119. The value of \$552,851,000 is materially overstated.

120. Aphria's representation that its 2018 Annual Financial Statements were presented in accordance with IFRS was a misrepresentation.

121. Aphria's Q1/2019 Interim Financial Statements for the period ended August 31, 2018 (released October 12, 2018), materially overstated the value of Aphria's assets as at August 31, 2018. In particular, of Aphria's total assets valued at \$1,625,710,000, a value of \$554,304,000 is attributed to the acquisition of Nuuvera.

122. The value of \$554,304,000 which purports to represent the value of the assets acquired in the Nuuvera Transaction as at August 31, 2018, is materially overstated.

123. Aphria's representation that its Q1/2019 Interim Financial Statements complied with IFRS was a misrepresentation.

APHRIA'S 52-109 CERTIFICATIONS

124. Pursuant to CSA National Instrument 52-109, Aphria, by its CEO Neufeld, and CFO Merton were required at the material times to certify Aphria's annual and interim financial statements, MD&A as well as Aphria's AIF (and all documents incorporated into Aphria's AIF).

125. During the Class Period, 52-109 Certifications were made by Neufeld and Merton on behalf of Aphria and filed on SEDAR on April 16, 2018 (for Q3/2018), August 1, 2018 (for FY/2018) and October 12, 2018 (for Q1/2019) (the "**Certifications**").

126. In the Certifications, Merton and Neufeld certified that, among other things:

(a) they had reviewed the financial statements and MD&A for the relevant period;

(b) based on [their] knowledge, having exercised reasonable diligence, the relevant filings do not contain any untrue statement of a 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, with respect to the period covered by the filings;

- (c) they have designed Aphria's DC&P, or caused it to be designed under their supervision, to provide reasonable assurance that material information related to Aphria is made known to them by others; and information required to be disclosed by Aphria in its annual filings, interim filings or other reports is recorded, processed, summarized and reported within the time period specified in securities legislation;
- (d) designed ICFR, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of the financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP [sic]; and
- (e) with respect to the FY/2018 certificates, that they evaluated Aphria's ICFR and DC&P and, as reported in the FY/2018 MD&A, such DC&P was effective and that its ICFR was designed to provide reasonable assurance regarding the reliability of Aphria's financial reporting and the preparation of financial statements for external purposes in accordance with IFRS and that no material weaknesses were reported.

127. These were misrepresentations in that the Q3/2018, FY/2018, Q1/2019 Financial Statements and accompanying MD&A, and Aphria's AIF did contain untrue statements of material fact and, or omitted to state material facts required to be stated or that were necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings.

128. Neufeld ~~and Merton~~ made these misrepresentations with knowledge at the time that the Certifications were publicly filed, that the Certifications contained the misrepresentations, and at or before the time the Certifications were released to the public, he ~~they~~ deliberately avoided acquiring knowledge that the Certifications contained the misrepresentations, and, or through his ~~their~~ action or failure to act he was ~~they were~~ guilty of gross misconduct in connection with the release of the Certifications.

129. In particular, the statements in the Certifications regarding Aphria's DC&P and ICFR were misrepresentations, because Aphria's DC&P and ICFR were not effectively designed or operating effectively throughout the Class Period for reasons pleaded elsewhere, including:

- (a) Aphria's DC&P and ICFR did not and could not provide reasonable assurance that material information relating to Aphria that was required to be disclosed by Aphria in its filings and reports was reported in accordance with the *OSA* and the Other Canadian Securities Legislation;
- (b) Had the DC&P and ICFR been designed and operating effectively, Aphria would have, in accordance with the *OSA* and the other Canadian Securities Legislation:
 - (i) disclosed that the value of the assets acquired in the Nuuvera Transaction and LATAM Transaction were grossly overstated;
 - (ii) disclosed that the Nuuvera Transaction and the LATAM Transaction significantly diluted the value of the non-insiders' shareholdings in Aphria with little or no benefit to Aphria or its non-insider shareholders;

- (iii) disclosed that Aphria insiders and their associates personally benefitted from the Nuuvera Transaction and the LATAM Transaction at the expense of Aphria and the non-insider shareholders; and
- (iv) presented fairly in all material respects the financial position of Aphria in the relevant reporting period in accordance with IFRS.

SUMMARY OF PUBLIC CORRECTION OF MISREPRESENTATIONS

130. The share price decline which occurred upon the December 3 and 4, 2018 disclosures to the market by the December 3 Hindenburg/QCM Report and YouTube Presentation and related financial reporting including the December 4 *Forbes* Article, was a correction of the following misrepresentations by commission and omission made by Aphria and the Individual Defendants, either explicitly or implicitly, during the Class Period:

- (a) Aphria's representations that its financial statements during the Class Period presented fairly the financial position of Aphria and its subsidiaries, in accordance with IFRS (when they did not, as described above);
- (b) Aphria's representations that its financial statements and accompanying MD&A and 52-109 Certifications for Q3/2018, FY/2018, and Q1/2019 were free from misrepresentation (when they contained misrepresentations as described above);
- (c) Aphria's representations that it was making timely disclosure of material changes to its business operations or capital (when Aphria did not make

such timely disclosure, as the break-down in its ICFR and DC&P, and the entering into of related party transactions without proper and timely disclosure of conflicts of interest contrary to Aphria's own conflict of interest policies, were material changes to Aphria's business);

- (d) The statutorily required NI 52-109 Certifications by CEO Neufeld and CFO Merton filed on April 16, 2018, August 1, 2018, and October 12, 2018 to the effect that:
 - (i) Aphria's interim and annual financial filings during the Class Period were free from misrepresentation and fairly presented in all material respects the financial condition of Aphria (when this was not so, as described above); and
 - (ii) Aphria's ICFR and DC&P were designed and operating effectively during the Class Period (when this was not so, as described above); and
- (e) Aphria's misrepresentations in its Q3/2018, FY/2018 and Q1/2019 MD&A that Aphria had in place controls, policies and practices that were designed to ensure that its financial statements were not misleading (this was not so throughout the Class Period, as described above).

THE DEFENDANTS' RELATIONSHIP TO THE CLASS

131. By virtue of their purported accounting, financial and/or managerial acumen and qualifications, and by virtue of their having assumed, voluntarily and for profit, their respective roles in Ontario's capital markets, the Defendants had a duty ~~at common law~~, informed by the OSA

and the Other Canadian Securities Legislation and, or the ~~OBCA~~, to exercise care and diligence to ensure that the Impugned Core Documents were free from misrepresentation.

132. Aphria, as a reporting issuer in Ontario, had an obligation to make timely, full, true and plain disclosure of all material facts and changes with respect to its business and affairs, and to ensure that the Impugned Documents were free from misrepresentation before they were publicly disclosed.

133. The Defendants Neufeld, ~~Merton~~, and Cacciavillani, by virtue of their positions as senior officers and/or directors, of Aphria, owed a duty to the Class Members to ensure that public statements on behalf of Aphria were not untrue, inaccurate or misleading and were free from misrepresentation.

134. The OSA and the Other Canadian Securities Legislation required Aphria to prepare and disclose interim and annual financial statements and accompanying MD&A and AIF free from misrepresentation. These documents included the Impugned Core Documents, and were intended by Aphria and its officers and directors, including Neufeld, ~~Merton~~, and Cacciavillani to be read and relied upon by Aphria shareholders, including Class Members, in making decisions as to whether to buy, hold, or sell Aphria securities.

135. The Prospectus was prepared to effect the Offering and provide all material information necessary for prospective investors, including Class Members, to determine whether they would acquire Aphria securities offered by the Prospectus during the period of distribution or during distribution to the public. The Prospectus also forms part of Aphria's continuous disclosure record and was intended to be read and relied upon by investors, including Class Members, subsequent

to the period of distribution, in making decisions as to whether to buy, hold, or sell Aphria securities.

136. Neufeld ~~and Merton~~, as the Aphria CEO ~~and CFO respectively~~, had statutory duties and obligations under the *OSA* and the Other Canadian Securities Legislation to ensure the accuracy of disclosure documents and provided the 52-109 Certifications, on behalf of Aphria, in respect of the annual and interim financial statements and related MD&A and AIF during the Class Period.

~~137. Neufeld, Merton, and Cacciavillani, as Aphria officers and, or directors during the Class Period, had statutory duties and obligations under the *OBCA* to conduct themselves as officers and directors of Aphria and in compliance with the *OBCA*, honestly and in good faith with a view to the best interests of the Company and to exercise the care diligence and skill that a reasonably prudent person would exercise in comparable circumstances.~~

138. The Underwriters each signed the Prospectus and certified that, to the best of their knowledge, information and belief, the Prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. These defendants knew that the Class Members who acquired Aphria's securities offered by the Prospectus during the period of distribution or during distribution to the public would rely on these assurances and the trustworthiness that would be credited to the Prospectus because of their involvement.

THE RELATIONSHIP BETWEEN APHRIA'S DISCLOSURES AND THE PRICE OF APHRIA'S SECURITIES

139. The price of Aphria's securities was directly affected during the Class Period by the issuance of the Impugned Documents containing the misrepresentations as particularized herein.

The Defendants were aware at all material times of the effect of Aphria's disclosure documents upon the price of its securities.

140. The Impugned Documents were filed, among other places, with SEDAR, the TSX, EDGAR and the NYSE, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

141. Aphria regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Aphria communicated that new material information about Aphria's financial results or transactions entered into by Aphria to the public, the price of Aphria's common shares was directly affected.

142. Aphria was the subject of analysts' reports that incorporated certain of the information contained in the disclosure documents, with the effect that any recommendations to purchase Aphria's common shares in such reports during the Class Period were based, in whole or in part, upon that information.

143. Aphria's securities were and are traded, among other places, on the TSX and NYSE, which are efficient and automated markets. The price at which Aphria's securities traded promptly incorporated material information from Aphria's disclosure documents about Aphria's business and affairs, including the misrepresentations alleged herein, which was disseminated to the public through the documents referred to above and distributed by Aphria, as well as by other means.

VICARIOUS LIABILITY

(a) Aphria and the Individual Defendants

144. Aphria is vicariously liable for the acts and omissions of the Individual Defendants particularized herein.

145. The acts or omissions particularized and alleged herein to have been done by Aphria were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Aphria, while engaged in the management, direction, control and transaction of the business and affairs of Aphria. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Aphria.

146. At all material times, the Individual Defendants were officers and/or directors of Aphria. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiff and the other Class Members.

(b) The Underwriters

147. The Underwriters are vicariously liable for the acts and omissions of each of their respective officers, directors, partners, agents and employees as set out above.

148. The acts or omissions particularized and alleged in this Claim to have been done by the Underwriters were authorized, ordered and done by each of their respective officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of such Underwriters. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of the respective Underwriters.

THE PLAINTIFF'S CAUSES OF ACTION

(a) *OSA Part XXIII.1 – Civil Liability for Secondary Market Disclosure*

149. The Plaintiff claims damages against all Defendants, except the Underwriters, pursuant to *OSA* section 138.3 and the analogous provisions of the Other Canadian Securities Legislation.

150. Aphria is a “responsible issuer” pursuant to *OSA* sections 138.1 and 138.3, and the analogous provisions of the Other Canadian Securities Legislation.

151. The Defendants Neufeld, ~~Merton~~ and Cacciavillani were, at the material time, directors and, or officers of Aphria pursuant to *OSA* section 138.3 and the analogous provisions of the Other Canadian Securities Legislation.

152. Each of the Impugned Documents contained one or more misrepresentations as particularized above. Such misrepresentations are misrepresentations for the purposes of the *OSA* and the Other Canadian Securities Legislation.

153. Each of the Individual Defendants was an officer and, or director of Aphria at all material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of the Impugned Documents while knowing that some or all of the Impugned Documents contained misrepresentations as particularized above.

154. At all material times, each of Aphria and the Individual Defendants knew at the time that the Impugned Documents were released that they contained misrepresentations, or in the alternative, deliberately avoided acquiring knowledge that the Impugned Documents contained misrepresentations, or in the alternative, through act or failure to act, was guilty of gross

misconduct in connection with the release of the Impugned Documents that contained misrepresentations which misrepresentations are particularized above.

(b) OSA Part XXIII Liability – Prospectus Misrepresentation

155. As against Aphria, Neufeld, Cacciavillani, ~~Merton,~~ and the Underwriters, and on behalf of those Class Members who purchased Aphria common shares offered by the Prospectus during the period of distribution or during distribution to the public, the Plaintiff pleads the cause of action set forth in section 130 of the *OSA* and the analogous provisions of the Other Canadian Securities Legislation.

156. Aphria issued the Prospectus, which, along with the Aphria disclosure documents incorporated therein by reference, contained the misrepresentations that are alleged above.

~~(c) ————— *Negligent Misrepresentation in Impugned Documents*~~

~~157. — Class Members who purchased Aphria common shares during the Class Period, other than by the Prospectus during the period of distribution or during distribution to the public, plead negligent misrepresentation in respect of misrepresentations in the Impugned Documents as described above, against all Defendants except the Underwriters.~~

~~158. — These Defendants knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Aphria’s publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.~~

~~159. — As set out elsewhere herein, these Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents were free from misrepresentation.~~

~~160.—The Impugned Documents were prepared for the purpose of informing members of the investing public in their decisions as to whether to buy, hold or sell Aphria securities.~~

~~161.—These Defendants knew and intended at all material times that the Impugned Documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making their decisions to buy, hold or sell Aphria securities.~~

~~162.—These Defendants breached that duty by making the misrepresentations in the Impugned Documents as particularized above.~~

~~163.—The Plaintiff and the other Class Members directly or indirectly relied upon the misrepresentations in the Impugned Documents in making a decision to purchase the common shares of Aphria, and suffered damages when the falsity of the misrepresentations was revealed.~~

~~164.—Alternatively, the Plaintiff and the other Class Members relied upon the misrepresentations by the act of purchasing Aphria's common shares in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of Aphria.~~

~~165.—As a result, the repeated publication of the misrepresentations in these Impugned Documents, the misrepresentations caused the price of Aphria's common shares to trade at inflated prices during the Class Period, directly resulting in damage to the Plaintiffs and Class Members.~~

~~(d) ————— *Oppression*~~

~~166.—The Plaintiff and the Class Members are complainants within the meaning of sections 245 and 248 of the *OBCA*.~~

~~167. The Plaintiff and the Class Members had reasonable expectations about the manner by which the business and affairs of Aphria would be conducted. Those reasonable expectations are informed, in part, by the statutes regulations and policies governing Aphria and its officers and directors, including the OSA and the OBCA and the regulations and policies promulgated thereunder; and Aphria's own governance policies and procedures including Aphria's AIF which was filed on SEDAR; Aphria's Corporate Disclosure Policy, Aphria's Code of Conduct and Ethics, and Aphria's Whistleblower Policy all of which were published on Aphria's website during the Class Period, including:~~

~~(a) Aphria's AIF which stated, in part:~~

~~"Conflicts of Interest~~

~~We may from time to time become involved in transactions which conflict with the interests of our directors and the officers. The interests of these persons could conflict with those of the Company. Conflicts of interest, if any, will be subject to the procedures and remedies provided under applicable laws. In particular, in the event that such a conflict of interest arises at a meeting of our directors, a director who has such a conflict will abstain from voting for or against the approval of such participation or such terms. In accordance with applicable laws, the directors of the Company are required to act honestly, in good faith and in the best interests of the Company."~~

~~(b) Aphria's statement of corporate governance posted on its website which stated, in part:~~

~~"The Board of Directors equally serves as a prudent fiduciary for shareholders and provides oversight of management in the conduct of Aphria's business. The obligations of the Board of Directors and of Aphria's management are codified in the documents available in this section, and reinforced regularly at all levels of the Company."~~

~~(c) Aphria's Code of Conduct and Ethics which stated, in part:~~

~~“2.0 General Principles~~

~~Aphria is committed to conducting its business and affairs with honesty, integrity and in accordance with the highest ethical and legal standards.~~

~~This Code of Business Conduct and Ethics (the “**Code**”) provides a set of ethical standards to guide each director, officer, employee, consultant and contractor of Aphria (“**Representatives**”) in the conduct of their business, and for each director, officer and employee constitutes conditions of employment, and for each consultant and contractor constitutes conditions of providing services to Aphria.~~

~~This Code provides an overview of Aphria’s expectations for its Representatives and is supplemented by other current policies adopted by Aphria and those other policies that may be adopted by Aphria from time to time.~~

~~...~~

12.0 Conflict Of Interest

~~Representatives, in discharging their duties, shall act honestly and in good faith with a view to the best interests of Aphria. Representatives shall avoid situations involving a conflict, or potential conflict, between their personal, family or business interests, and the interests of Aphria, and shall promptly disclose any such conflict, or potential conflict, to Aphria.~~

~~Representatives shall perform their duties and arrange their personal business affairs in a manner that does not interfere with their independent exercise of judgment. No one working for Aphria shall accept financial compensation of any kind, nor any special discount, loan or favor, from persons, corporations or organizations having dealings or potential dealings with Aphria.”~~

~~(d) Aphria’s Corporate Disclosure Policy which stated, in part:~~

~~“2.0 Objective of the Policy~~

~~The objectives of this Corporate Disclosure Policy (the “**Policy**”) are to:~~

~~(a) — reinforce Aphria’s commitment to compliance with the continuous disclosure obligations imposed by Canadian securities law and regulations and the rules of the Toronto Stock Exchange (the “**TSX**”) with an aim to ensuring that all communications to the investing public about the business and affairs of Aphria are:~~

informative, timely, factual and accurate, and consistent and broadly disseminated in accordance with all applicable legal and regulatory requirements;

...

3.0 Application of the Policy

This Policy applies to all directors, officers, employees, consultants and contractors of Aphria who have access to confidential corporate information as well as those persons authorized to speak on behalf of Aphria. This Policy also covers all disclosure made in documents filed with stock exchanges, securities regulators, all financial and non financial disclosure, including management's discussion and analysis and written statements made in Aphria's annual and quarterly reports, press releases, letters to shareholders, presentations by senior management and information contained on Aphria's website and other electronic communications. It extends to all oral statements made in meetings and telephone conversations with analysts and investors, interviews with the media as well as presentations, speeches, press conferences, conference calls and webcasts.²²

(e) Aphria's Whistleblower Policy, which stated, in part:

"Our Code of Ethics and Business Conduct (the "Code") requires our directors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the Corporation, or any of its subsidiaries, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations."

168. — The reasonable expectations of the Plaintiff and the Class Members during the Class Period included the following:

(a) That the business and affairs of Aphria would be conducted in a manner that complied with the *OSA*, the *OBCA* and all applicable laws, and Aphria's own publically disclosed policies and procedures to the extent that they are consistent with all applicable laws;

- ~~(b) That each director and officer of Aphria would act honestly and in good faith with a view to the best interests of the corporation, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;~~
- ~~(c) That the officers and directors of Aphria, or any one of them, would not cause Aphria to enter into transactions which personally benefited officers and directors of Aphria to the detriment of Aphria and the non-insider shareholders;~~
- ~~(d) That the officers and directors of Aphria, or any one of them, would immediately advise the Board of Aphria of any manifest or potential conflict of interest that such officer or director may have with the interests of Aphria, and that such officer or director would recuse him or herself from the governance or decision-making process of Aphria in respect of any decision or transaction relating to such conflict of interest;~~
- ~~(e) That Aphria's financial statements would be prepared in compliance with applicable securities laws and in accordance with IFRS and, as such, that those financial statements would accurately represent the financial performance and condition of Aphria as at the effective date of such report;~~
- ~~(f) That Aphria had in place ICFR and DC&P that was properly designed and/or operating effectively;~~
- ~~(g) That Aphria would make full, true and plain disclosure of all material facts relating to its securities; and~~
- ~~(h) That Aphria would periodically update its disclosures by issuing interim financial reports, quarterly and annual MD&A, quarterly and annual certifications by its~~

~~CEO and CFO, audited annual financial statements and material change reports all in accordance with the OSA, which would accurately describe its business, operations, financial results and financial position as at the time that each such disclosure was made, and would be free of misrepresentation.~~

169. ~~Such reasonable expectations were defeated in that, and as particularized throughout this Statement of Claim:~~

- ~~(a) The business and affairs of Aphria during the Class Period were not conducted in a manner that complied with the OSA, the OBCA and all applicable laws, and Aphria's own publically disclosed policies and procedures;~~
- ~~(b) The Individual Directors caused Aphria to breach the requirements of the OSA and other applicable laws, all as pleaded herein, and in so doing misled the capital markets and caused the price of Aphria's shares to trade at inflated prices during the Class Period, which resulted in damage to the Plaintiff and the Class Members;~~
- ~~(c) The Individual Defendants, as officers and, or directors of Aphria during the Class Period, did not act honestly and in good faith with a view to the best interests of the corporation, and, in the discharge of their duties, they did not exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;~~
- ~~(d) The Individual Defendants, as officers and, or directors of Aphria during the Class Period, caused Aphria to enter into transactions, namely the Nuuvera Transaction and the LATAM Transaction, when they had conflicts of interest where they~~

personally benefited from such transactions to the detriment of Aphria and the non-insider shareholder Class Members;

- (e) ~~The Individual Defendants, as officers and, or directors of Aphria failed to advise the Aphria Board of their conflicts of interest and failed to recuse themselves from Aphria's decisions in respect of the Nuuvera Transaction and the LATAM Transaction;~~
- (f) ~~Contrary to statutory and regulatory requirements, and contrary to the Defendants' own representations, Aphria's periodic and annual financial statements during the Class Period were not prepared in compliance with IFRS and, as such, these financial statements did not accurately represent the financial performance and condition of Aphria as at the effective dates of such reports;~~
- (g) ~~Contrary to the representations of Aphria and CEO Neufeld and CFO Merton, Aphria did not have in place ICFR and DC&P that was properly designed and/or operating effectively;~~
- (h) ~~Contrary to applicable securities laws and regulatory requirements, and Aphria's own internal Disclosure Policy, Aphria did not make full, true and plain disclosure of all material facts relating to Aphria's securities during the Class Period; and~~
- (i) ~~Contrary to applicable securities laws and regulatory requirements, and its own internal Disclosure Policy, Aphria's periodic financial disclosure (namely the Impugned Documents), were not free from misrepresentations, and they failed to accurately describe Aphria's business, operations, financial results and financial position as at the time that each such disclosure was made.~~

~~170. This conduct had the effect of oppressing, unfairly disregarding, and unfairly prejudicing the interests of the Plaintiff and the Class Members and caused damage to the Plaintiff and the Class Members.~~

~~171. The Plaintiff and the Class Members seek a remedy for the oppressive conduct, namely an award of compensation, pursuant to section 248(3)(j) of the OBCA.~~

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

172. The Plaintiff and the Class Members plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) Aphria is a reporting issuer in Ontario;
- (b) Aphria is an Ontario company, which is resident in Ontario and which does business in Ontario;
- (c) Aphria's shares trade on the TSX, which is located in Toronto, Ontario;
- (d) the Impugned Documents were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario; and
- (f) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

SERVICE OUTSIDE OF ONTARIO

173. 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 (para 17.02(a));

- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (d) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

RELEVANT LEGISLATION, PLACE OF TRIAL

174. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the *OBCA*, the *OSA* and the Other Canadian Securities Legislation.

175. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

February 7, 2019

Amended June , 2021

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM**

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SCHEDULE "B"

COMMON ISSUES

Liability: Part XXIII.1 of the *Securities Act*

1. Which of the "Impugned Documents", as defined by the Amended Fresh as Amended Statement of Claim (the "Claim"), were:
 - a. "documents" as defined by [section 138.1](#) of the *Securities Act*;
 - b. "core documents" as defined by [section 138.1](#) of the *Securities Act*;
 - c. "non-core documents" as contemplated by [section 138.4\(1\)](#) of the *Securities Act*?
2. Are any of the alleged misrepresentations in the Claim barred by the *Limitations Act, 2002*?
3. Did any or all of the representations, as described in the Claim, made by any of the Defendants (except the Underwriters), during the Class Period, constitute a misrepresentation within the meaning of [sections 1\(1\)](#) and [138.3](#) of the *Securities Act*?

Core Documents

4. If the answer to (3) is "Yes", were any such misrepresentations made in an Impugned Document which was a "core document"?
5. If the answer to (4) is "Yes", did any of the Individual Defendants authorize, permit, or acquiesce in the release of any or all of those Impugned Documents containing a misrepresentation within the meaning of [section 138.3](#) of the *Securities Act*?

Non-Core Documents

6. If the answer to (3) is "Yes", were any such misrepresentations made in an Impugned Document which was a "non-core document"?

7. If the answer to (6) is "Yes", did any of the Defendants (except the Underwriters):
- a. know, at the time that the document was released, that the document contained the misrepresentation;
 - b. at or before the time that the document was released, deliberately avoid acquiring knowledge that the document contained the misrepresentation;
or
 - c. commit, through action or failure to act, gross misconduct in connection with the release of the document that contained the misrepresentation?

Public Correction and Defenses

8. If the answer to (3) is "Yes", were the misrepresentations contained in the Impugned Documents publicly corrected and if so by what means?
9. If the answer to any of (4), (5), (6), or (7) is "Yes", have the Defendants (except the Underwriters), or any of them established a "reasonable investigation" defense as contemplated by [section 138.4\(6\)](#) and [138.4\(7\)](#) of the [Securities Act](#) or any other defenses under [section 138.4](#) of the [Securities Act](#)?

Damages: Part XXIII.1 of the [Securities Act](#)

10. If the answers to (3) and (8) are both "yes", and after any defenses raised under (9) are considered, is one or more of the Defendants (except the Underwriters) liable to the Class Members for misrepresentation(s) under [sections 138.3](#) of the [Securities Act](#)?:
- a. If the answer is "yes", did the Class Members suffer damages and, if so, on what basis are the damages suffered by Class Members to be determined?
 - b. In calculating such damages, was any change in the market price of Aphria's securities unrelated to the misrepresentation(s) for which liability is established, pursuant to [section 138.5\(3\)](#) of the [Securities Act](#), and if so, in what amount?

- c. After taking into account the answers to 10 (a) and (b), what are the aggregate damages suffered by the Class for the Defendant(s)' (except the Underwriters') liability under Part XXIII of the [Securities Act](#)?
- d. Does any Defendant liable to the Class for damages have a liability limit under section 138.7(1), and if so, what is that limit?
- e. Subject to any limits set out in subsection 138.7(1), what is the proportionate, joint or several liability of each of the liable Defendants, pursuant to [section 138.6](#) of the [Securities Act](#)?

Liability: Part XXIII of the [Securities Act](#)

11. Did the Prospectus contain a misrepresentation as particularized in the Claim, within the meaning of [sections 1\(1\)](#) and [130](#) of the [Securities Act](#)?
12. If the answer to (11) is “Yes”, have the Defendants, or any of them, proven a “reasonable investigation” defense or any other defense pursuant to [section 130](#) of the [Securities Act](#)?

Damages: Part XXIII of the [Securities Act](#)

13. If one or more of the Defendants are liable to Class Members who acquired Aphria shares offered by the Prospectus during the period of distribution or during distribution to the public under [section 130](#) of the [Securities Act](#),
 - a. What are the damages on a per share basis for the Aphria shares acquired by Class Members which shares were offered by the Prospectus during the period of distribution or during distribution to the public?
 - b. What are the aggregate damages of the Class Members who acquired Aphria shares offered by the Prospectus during the period of distribution or during distribution to the public?
 - c. What are the limits, if any, on the Underwriter Defendants' liability individually and collectively pursuant to [section 130\(6\)](#) of the [Securities Act](#)?

- d. Can any or all of the Defendants rely on [section 130\(7\)](#) of the *Securities Act* in order to limit the damages payable to Class Members?
- e. What are the limits, if any, on the Defendants' liability pursuant to [section 130\(9\)](#) of the *Securities Act*?
- f. Pursuant to section 130(8) of the *Securities Act*, which Defendants are jointly and severally liable to Class Members for damages arising out of misrepresentations in the Prospectus?

ANCILLIARY COMMON ISSUES

- 14. Should the Defendants, or any of them, pay the costs of administering and distributing any monetary judgment and/or the cost of determining eligibility and/or the individual issues? If so, who should pay what costs, why, in what amount and to what extent?
- 15. If the court determines that the Defendants are liable to the Class, and if the court considers that participation of individual Class Members is required to determine individual issues:
 - a. Are any directions necessary?
 - b. Should any special procedural steps be authorized?
 - c. Should any special rules relating to admission of evidence and means of proof be made?
 - d. What directions, procedural steps or evidentiary rules ought to be given or authorized?
- 16. Should the Defendants, or any of them, pay prejudgment and post-judgment interest, at what annual interest rate, and should interest be compounded interest?

VECCHIO LONGO CONSULTING SERVICES INC.

Plaintiff

- and -

Court File No. CV-19-0061408600 CP
APHRIA INC., et al

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

PROCEEDINGS COMMENCED AT TORONTO
Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Certification and Leave to Proceed)

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