

QV-18-00611078
Court File No.: OOCF

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRACEY ROGERS

Plaintiff

- and -

APHRIA INC., VIC NEUFELD AND CARL MERTON

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 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.

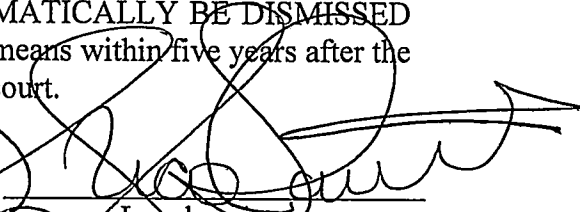
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and 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 plaintiff's claim and costs and have the costs assessed by the court.

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

Date: December 18, 2018

Issued by 
Local registrar
Address of court office 361 University Ave.
Toronto, ON
M5G 1E6 18

TO: **APHRIA INC.**
c/o 5300 Commerce Court West,
199 Bay Street
Toronto, ON, M5L 1B9

AND TO: **VIC NEUFELD**
c/o 5300 Commerce Court West,
199 Bay Street
Toronto, ON, M5L 1B9

AND TO: **CARL MERTON**
c/o 5300 Commerce Court West,
199 Bay Street
Toronto, ON, M5L 1B9

I. DEFINED TERMS

1. In this Statement of Claim the capitalized terms have the following meanings:

- (a) "**Aphria**" means Aphria Inc.;
- (b) "**Class**" and "**Class Members**" means all persons and entities who, during the **Class Period**, acquired **Aphria's** shares in the secondary market, other than the **Excluded Persons**;
- (c) "**Class Period**" means the period from July 17, 2018 to December 3, 2018;
- (d) "**Defendants**" means Aphria, Vic Neufeld and Carl Merton;
- (e) "**Excluded Persons**" means **Aphria** or its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, the **Individual Defendants** and any member of their families and any entity in which any of them has or had during the **Class Period** any legal or de facto controlling interest;
- (f) "**Impugned Documents**" means **Aphria's**:
 - (i) July 17, 2018 Press Release filed on SEDAR on July 17, 2018;
 - (ii) July 17, 2018 Share Purchase Agreement filed on SEDAR on July 27, 2018;
 - (iii) July 17, 2018 Material Change Report filed on SEDAR on July 27, 2018;
 - (iv) August 1, 2018 Press Release filed on SEDAR on August 1, 2018;
 - (v) August 1, 2018 Annual Information Form filed on SEDAR on August 1, 2018;
 - (vi) August 1, 2018 2018 Year End MD&A filed on SEDAR on August 1, 2018;
 - (vii) August 1, 2018 Form 52-109F1 for Certification of Annual Filings Full Certification for Vic Neufeld;
 - (viii) August 1, 2018 Form 52-109F1 for Certification of Annual Filings Full Certification for Carl Merton;
 - (ix) Annual Report filed on SEDAR on August 27, 2018;
 - (x) September 27, 2018 Press Release filed on SEDAR on September 27, 2018;

- (xi) September 27, 2018 Material Change Report filed on SEDAR on October 5, 2018;
- (xii) October 12, 2018 MD&A for the Three Months Ended August 31, 2018 filed on SEDAR on October 12, 2018;
- (xiii) October 12, 2018 Form 52-109F2 Certification of Interim Filings Full Certificate for Vic Neufeld filed on SEDAR on October 12, 2018; and
- (xiv) October 12, 2018 Form 52-109F2 Certification of Interim Filings Full Certificate for Carl Merton filed on SEDAR on October 12, 2018;

in each case, where applicable, including all documents incorporated by reference therein;

- (g) **"Individual Defendants"** means Vic Neufeld and Carl Merton;
- (h) **"MD&A"** means Management's Discussion and Analysis;
- (i) **"OSA"** means the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended;
- (j) **"Securities Legislation"** means, collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended; and
- (k) **"SEDAR"** means the System for Electronic Document Analysis and Retrieval which is a filing system developed for the Canadian Securities Administration.

II. THE CLAIM

2. The plaintiff claims:

- (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class;
- (b) an order granting leave to proceed with the statutory claim for misrepresentation under Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 or, if necessary, the corresponding provisions of the Securities Legislation;

- (c) a declaration that the Impugned Documents contained one or more misrepresentations within the meaning of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, the other Securities Legislation, and the common law;
- (d) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations while knowing them to be misrepresentations;
- (e) a declaration that the Defendants are liable in damages to the Class Members for misrepresentations in Aphria's public disclosure alleged herein pursuant to Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, the corresponding provisions of the other Securities Legislation, and the common law;
- (f) damages in an amount that this Court find appropriate;
- (g) punitive damages against Aphria and the Individual Defendants in an amount that this Court find appropriate;
- (h) a declaration that Aphria is vicariously liable for the acts and omissions of its officers, directors and employees;
- (i) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (j) prejudgment interest and postjudgment interest, pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O 1990, c. C.43;
- (k) costs of this action, plus pursuant to s. 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notices and of administering the plan of distribution of the recovery in this action; and
- (l) such further and other relief as to this Honourable Court seems just.

III. THE PARTIES

A. The Plaintiff

3. The Plaintiff, Tracey Rogers, resides in Windsor, Ontario. Ms. Rogers purchased 1,700 Aphria shares on the Toronto Stock Exchange during the Class Period and continued to own these shares at the end of the Class Period.

B. The Defendants

i. Aphria Inc.

4. Aphria is a public issuer continued under the laws of Ontario. It is licensed to produce and sell medical cannabis. Its registered office is in Toronto, its operations are based in Leamington Ontario, and its shares were listed under the symbol "APH" and now as "APHA" on the Toronto Stock Exchange.

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

- (a) within 45 days of the end of each quarter, quarterly interim financial statements;
- (b) within 90 days of the end of the fiscal year, annual financial statements;
- (c) contemporaneously with each of the above, a MD&A of each of the above financial statements. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects; and
- (d) within 90 days of the end of the 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. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF must describe the company, its operations and prospects, risks and other external factors that impact the company specifically.

6. Aphria controlled the contents of its MD&As, financial statements, AIFs, and the other documents particularized herein and the misrepresentations made therein were made by Aphria.

ii. Vic Neufeld, Aphria's CEO

7. Vic Neufeld has been Aphria's Chief Executive Officer since June 2014. As Aphria's CEO, Neufeld certified Aphria's quarterly and annual disclosures and signed each of the Aphria's AIFs. In so doing, he adopted as his own the false statements such documents contained, as particularized below. At all material times, Neufeld was a director and officer of Aphria within the meaning of the Securities Legislation.

iii. Carl Merton, Aphria's CFO

8. Carl Merton has been Aphria's CFO since December 2015. In his position as CFO, Merton certified Aphria's quarterly and annual disclosures. In so doing, he adopted as his own the false statements such documents contained, as particularized below. At all material times, Merton was an officer of Aphria within the meaning of the Securities Legislation.

IV. APHRIA'S REPRESENTATIONS DURING THE CLASS PERIOD

9. On July 17, 2018, Aphria issued a press release announcing its proposed acquisition 100% of the shares of LATAM Holdings Inc. ("LATAM"), a subsidiary of Scythian Biosciences Inc. ("Scythian").

10. Aphria further disclosed that it was acquiring three principal assets from Scythian: (a) Colcanna S.A.S. ("Colcanna"); (b) ABP, S.A. ("ABP"); and (c) Marigold Projects Jamaica Limited ("Marigold").

11. In exchange, Aphria announced that it would provide consideration of \$193 million (paid in Aphria shares at a deemed share price of \$12.31), plus the assumption of \$1 million in existing debt.

12. In the July 17, 2018 press release, Aphria made the following representations:

- (a) the LATAM assets were "world class assets";
- (b) that the acquisition strengthened Aphria's management team with the addition of proven local LATAM and Caribbean executives;
- (c) the LATAM management team has significantly advanced the opportunities at each of the companies acquired, while laying the groundwork for future growth;
- (d) the LATAM management team has built deep rosters of relationships and are closely connected to governmental and regulatory agencies;

Colcanna

- (e) Colcanna will be the first company in the Coffee Zone of Columbia with cultivation and manufacturing licenses for the production of medicinal extracts of cannabis, a research license for the production and extraction of cannabis, and that it was in the advanced licensing stage of a THC license;
- (f) Colcanna sat on 34 acres of highly fertile, predominantly flat land which was essential for optimal cultivation of cannabis;
- (g) Colcanna greenhouses will occupy more than 20 acres of its property;

ABP

- (h) ABP is an established and successful pharmaceutical import and distribution company;
- (i) ABP operates a pharmaceutical distribution warehouse and retail pharmacy and distributes to an extensive network of pharmacies, distributors, government clinics and hospitals throughout Argentina;
- (j) ABP holds agreements with the Top 20 health insurance companies;
- (k) ABP is at the forefront of in-country medical cannabis research and clinical trials;
- (l) ABP partnered with Hospital Garrahan, a leading pediatric hospital in Buenos Aires, for 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;

Marigold

- (m) Marigold had the "only producing commercial Tier 3 license";
- (n) Marigold has been granted key licenses by the Jamaican Cannabis Licensing Authority;

- (o) Lloyd Tomlinson would continue as Marigold's Managing Director and would be appointed Director, Jamaica Operations at Aphria International;
- (p) 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; and
- (q) In 2014, Mr. Tomlinson made history when he launched Timeless Herbal Care, Jamaica's first medical cannabis company.

13. With respect to the LATAM acquisition, Vic Neufeld is quoted in the July 17, 2018 press release touting this acquisition:

"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."

14. At the time of the announcement, Vic Neufeld as well as Cole Cacciavillani, Aphria's Co-Chair and Co-Founder, John Cervini, Aphria's Co-Founder & Vice President, Infrastructure and Technology and Renah Persofsky, an Aphria Director, held an aggregate of 20,496 shares and 215,887 warrants of Sythian, representing approximately 2.1% of Scythian. Neufeld and Persofsky were also directors of Scythian in the previous quarter.

15. On July 27, 2018, Aphria disclosed a copy of its Share Purchase Agreement with Scythian for the purchase of LATAM Holdings Inc. The Share Purchase Agreement stated that the LATAM acquisition included the acquisition of MMJ Colombia Partners Inc., a corporation existing under the laws of Colombia, and MMJ International Investments Inc., a corporation existing under the laws of the Province of British Columbia. Further details of these entities were not released.

16. 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 Holdings Inc.

17. On August 1, 2018, Aphria issued a press release announcing its results for the fourth quarter and year ended May 31, 2018 in which Neufeld was quoted stating that "[we] look forward to continued expansion within LATAM."

18. On August 1, 2018, Aphria released its Audited Annual Financial Statements, 2018 Year End MD&A, and Annual Information Form.

19. In its 2018 Year End MD&A, Aphria disclosed that it would acquire LATAM, which would provide Aphria with "immediate access to the high profile, attractive countries in South America and the Caribbean, including Colombia, Argentina, Jamaica and potentially Brazil" and "secured access to key international markets, management team bench strength with a proven knowledge and high levels of executional success within the industries and jurisdictions in which they operate."

20. Aphria further stated in its 2018 Year End MD&A that the acquisition of LATAM provides Aphria with:

- (a) ownership of Colcanna, which "provides the Company with the ability to further develop the global Aphria brand with Aphria branded products distributed to patients in Columbia";
- (b) ownership of APB, "providing the Company with a significant first-mover advantage, as APB is the first company with an in-country medical cannabis research licence" and "continue[d] to work with Hospital Garrahan, a leading pediatric hospital in Buenos Aires"; and
- (c) an interest in Marigold, which "provide[s] the Company with several key licences including a Tier 3 cultivation licence, a Tier 2 herb house licence, as well as licences for import, export and research purposes."

21. Aphria further disclosed in its 2018 Year End MD&A that APB, Marigold and Colcanna were "industry-leading companies."

22. Aphria further disclosed in its 2018 Year End MD&A that Merton and Neufeld had concluded that Aphria's disclosure controls and procedures were effective in

providing reasonable assurance that material information relating to Aphria was made known to them and information required to be disclosed by Aphria was recorded, processed, summarized and reported within the time periods specified in applicable legislation.

23. On August 1, 2018, Aphria issued its Form 52-109F1 Certifications of Annual Filings Full Certification, in which Vic Neufeld and Carl Merton certified that:

- (a) they reviewed Aphria's annual filings, including the Annual Information Form, Audited Annual Financial Statements, annual MD&A for the financial year ended May 31, 2018 (the "Annual filings")
- (b) based on their knowledge, the annual filings do 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 period covered by the annual filings;
- (c) they are responsible for establishing and maintaining disclosure controls and procedures for Aphria;
- (d) they have designed disclosure controls and procedures, or caused it to be designed under their supervision, to provide reasonable assurance that:
 - (i) material information relating to the issuer is made known to them by others, particularly during the period in which the annual filings are being prepared; and
 - (ii) information required to be disclosed by Aphria in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- (e) there were no material weaknesses relating to the design of disclosure controls and procedures; and
- (f) they evaluated, or caused to be evaluated under their supervision, the effectiveness of the Aphria's disclosure controls and procedures at the financial year end and Aphria has disclosed in its annual MD&A their conclusions about the effectiveness of disclosure controls and procedures at the financial year end based on that evaluation.

24. On August 1, 2018, Aphria held an earnings call which was open to the public. On this call, Carl Merton stated that "we made a fundamental change to our business model, expanding our business focus from Canada to international."

25. On August 27, 2018, Aphria released its Annual Report in which Aphria repeated the representations identified in paragraphs 19-22, above. Aphria again disclosed that the LATAM acquisition included "industry-leading companies".

26. On September 27, 2018, Aphria issued a press release announcing that it has closed the acquisition of LATAM Holdings Inc. In this press release, Aphria made the following representations:

- (a) "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 [...]."
- (b) Colcanna is "the first company in the Coffee Zone of Columbia with cultivation and manufacturing licences for the production of medicinal extracts of cannabis, a research license and a license for the production and extraction of cannabis";
- (c) ABP is "an established and successful pharmaceutical import and distribution company in Argentina which supported a number of University Hospitals to secure an import permit for cannabis oil";
- (d) Marigold "has received one of the only Tier 3 cultivation licenses in the country"; and
- (e) LATAM's "highly experienced and influential leadership team will remain intact and join Aphria."

27. On October 5, 2018, Aphria issued a Material Change Report announcing that it closed the acquisition of all of the shares of LATAM Holdings Inc.

28. On October 12, 2018, Aphria issued a press release reporting its results for the first quarter and quarter ended August 31, 2018, and released its Interim Financial Statements and MD&A for the Three Months Ended August 31, 2018.

29. In its MD&A for the Three Months Ended August 31, 2018, Aphria disclosed that:

- (a) the LATAM acquisition secured Aphria "to key international markets, management team bench strength with a proven knowledge and high levels of executional success within the industries and jurisdictions in which they operate"; and

- (b) repeated the same representations identified in paragraphs 19-22.

30. On October 12, 2018, Aphria issued its Form 52-109F2 Certifications of Interim Filings Full Certificate, in which Vic Neufeld and Carl Merton certified that:

- (a) they reviewed the interim financial statements and interim MD&A (together, the “Interim Filings”) of Aphria Inc for the interim period ended August 31, 2018;
- (b) based on their knowledge, the interim filings did 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 interim filings;
- (c) based on their knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the interim filings;
- (d) they are responsible for establishing and maintaining disclosure controls and procedures for Aphria;
- (e) they have designed disclosure controls and procedures, or caused it to be designed under our supervision, to provide reasonable assurance that:
 - (i) material information relating to the issuer is made known to us by others, particularly during the period in which the interim filings are being prepared; and
 - (ii) information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- (f) they have evaluated, or caused to be evaluated under their supervision, the effectiveness of the issuer’s disclosure controls and procedures at the financial year end and the issuer has disclosed in its annual MD&A their conclusions about the effectiveness of disclosure controls and procedures at the financial year end based on that evaluation.

31. On October 30, 2018, Aphria issued a press release announcing that it had been approved for listing on the New York Stock Exchange and will commence trading on November 2, 2018. Aphria further announced that upon the commencement of trading on the New York Stock Exchange, it would delist its shares from the OTCQB.

VI. THE TRUTH IS REVEALED

32. On December 3, 2018, Hindenburg Research and Quintessential Capital Management published a report revealing that Aphria had failed to disclose the material facts which are set out in the following section.

33. In summary, Hindenburg Research and Quintessential Capital Management revealed that:

- (a) the assets underlying the LATAM acquisition, being Marigold, ABP and Colcanna, were set up and acquired by Andy DeFrancesco;
- (b) the assets underlying the LATAM acquisition were then purchased by a Canadian shell company under the control of Aphria insiders and Andy DeFrancesco through his closely held private equity firm, the Delavaco Group;
- (c) Andy DeFrancesco and other Aphria insiders made efforts to conceal the ownership and control of the LATAM assets;
- (d) those shell companies agreed to be acquired by Scythian;
- (e) Scythian then sold its stake in the entirety to Aphria at a large markup; and
- (f) as a result, DeFrancesco and other insiders received cash and/or Scythian shares, Scythian got cash and/or Aphria shares, and, for the reasons identified below, Aphria's shareholders acquired assets that were essentially worthless.

34. None of these material facts have previously been disclosed by Aphria.

35. Andy DeFrancesco, who set up and acquired the LATAM assets, was integral to the formation of both Aphria and Scythian. He served as a founding investor to Aphria, and orchestrated the reverse-mergers that took both companies public. DeFrancesco also served as an advisor to all of Aphria's bought deal financings, and served as the Chairman and Chief Investment Officer of Scythian.

A. LATAM Assets Previously Named Delavaco Companies

36. Hindenburg Research and Quintessential Capital Management disclosed for the first time that the entities acquired in the LATAM acquisition were previously named after DeFrancesco's private equity firm, Delavaco Group:

- (a) Marigold Acquisitions had previously been named Delavaco Caribbean Ventures;
- (b) MMJ Columbia Partners had previously been named Delavaco Columbia Partners; and
- (c) MMJ International Investments has previously been named Delavaco MMJ International.

37. The names to all of these entities were changed just prior to Scythia's acquisition announcements, ensuring that the "Delavaco" name was not disclosed in any of the deal-related press releases.

B. Aphria Did Not Disclose Material Facts About Marigold Projects Jamaica Limited

38. In March 22, 2018, Scythian disclosed that it signed a binding letter of intent to purchase Marigold Acquisitions Inc. for 1.5 million Scythian common shares at the price of \$23.00. Four months later, on July 17, 2018, Scythian announced the sale of Marigold with the other LATAM assets to Aphria.

39. Although Aphria strongly touted Marigold's strengths and resources, at no time did Aphria disclose the following material facts:

- (a) Although Aphria described Marigold as a world class asset, in fact, the address listed in Marigold's Annual Return for Companies with Shares for the period ended July 21, 2018 for Marigold's registered office was derelict and abandoned.
- (b) Lloyd Tomlinson, whose experience and expertise was repeatedly touted in Aphria's press release announcing the LATAM acquisition, was listed the same abandoned property as his residential address. Jamaican real estate records show that neither Tomlinson nor Marigold own the property anymore. Tomlinson used to be the owner but it was sold off by the mortgage lender in January.

- (c) In Scythian's August 13, 2018 Management Information Circular disclosing the closure of its acquisition of Marigold, Scythian listed three (3) other leases in Jamaica.
- (i) The first was an 800 sq/m herb house in collaboration with the Peter Tosh Museum located at "Unit #51, Pulse Center, 38a Trafalgar Road, Kingston". The company claims to have leased the facility as of April. However, the units in the building only go up to 50. Marigold's purported unit 51 does not exist.
 - (ii) Marigold also reportedly leased space in "Suite #6" in an office building in Kingston Jamaica. The lease for the office was signed in April 2018. However, as at October 2018, this office consisted of an empty suite with a paper sign on its door and contained virtually no signs of activity.
 - (iii) Marigold's final lease was purported for cultivation facilities on a plot of land in Saint Catherine parish. According to the company, this land is intended to eventually support greenhouses and a state-of-the-art research facility. However, this site is not locatable and does not exist.
- (d) The Marigold Articles of Incorporation list Dr. Janice Simmonds-Fisher as Marigold's a Director of Marigold and a Medical Doctor. However, Ms. Simmonds-Fisher was at no time a Director of Marigold.
- (e) Marigold's Articles of Incorporation also list Ray Anthony Chin as a Director and Medical Engineer. However, Mr. Chin did not reside at the address listed in Marigold Articles of Incorporation, he is not locatable, and does not exist.
- (f) Although Aphria touted Marigold's "key" license granted by the Jamaican authority, by the time Aphria acquired Marigold, the Jamaican Cannabis Licensing Authority had approved at least 22 full licenses and over 80 conditional licenses. Moreover, these licences are easily attainable through the completion of some paperwork and payment of \$500. Finally, Marigold was not even fully licensed – it only had conditional approval for licenses, and was not licensed to operate.
- (g) Finally, Marvin Ingelman and Clifford Starke, two Canadians associated with multiple DeFrancesco-backed deals, had purchased their shares of Marigold for USD\$118. These shares were transferred to a Bermudan entity, Hampstead Holdings Ltd. which was owned by the Canadian shell entity that was formerly named Delavaco Caribbean Ventures., which name was changed to Marigold Acquisitions Inc. Two days after the name change, Scythian announced its letter of intent to acquire it.

40. None of these material facts were disclosed by Aphria.

C. Aphria Did Not Disclose Material Facts About ABP S.A.

41. On March 12, 2018, Scythian announced that it had entered into a letter of intent with MMJ International Investments Inc. which owed ABP S.A. in exchange for US\$1.2 million in cash, CAD\$32 million of Scythian shares, and US\$5 million in promissory notes. Four months later, on July 17 2018, Scythian announced the sale of ABP and the other LATAM assets to Aphria.

42. Although Aphria strongly tout ABP's strengths and resources, at no time did Aphria disclose the following material facts about ABP:

- (a) ABP's purportedly "strong platform from its distribution and retail business to build on" consisted of one small pharmacy located in a rundown section of Buenos Aires.
- (b) ABP's wholesale drugs distribution centre was an empty unfinished warehouse in a largely dilapidated residential area with no signs of operations.
- (c) ABP has a total of three (3) locatable employees, of which who were college students.
- (d) ABP's annual sales were only between USD\$212,000.00 and USD\$430,000.00.
- (e) ABP's purported partnership with Hospital Garrahan consisted of a donation by ABP of CBD oil.
- (f) Scythian acquired ABP through its agreement to purchase MMJ International Investments Inc. a privately-held British Columbia company. MMJ International Investments Inc. was the owner of ABP. On January 16, 2018, MMJ International Investments Inc. was changed its name from Delavaco MMJ Investments International, and was owned by Andy DeFrancesco.

43. None of these material facts were disclosed by Aphria.

D. Aphria Did Not Disclose Material Facts About Colcanna SAS

44. Scythian announced on April 9, 2018 that it had signed a letter of intent to acquire MMJ Columbia Partners, which was in the process of purchasing a 90% stake in

Colcanna. In exchange, Scythian paid USD\$1.2 million in cash, CAD\$32 million of Scythian common shares, and promissory notes totalling USD\$5 million. Three months later, on July 17 2018, Scythian announced the sale of Colcanna and the other LATAM assets to Aphria.

45. Although Aphria strongly touted Colcanna's strengths and resources, at no time to Aphria disclose the following material facts about Colcanna:

- (a) Colcanna was a newly formed operation established on December 27, 2017. At that time, it reported no operating activity and total assets of only about USD\$16,000.
- (b) Colcanna had a small office in Colombia with approximately five (5) workers.
- (c) Despite purportedly being the first to receive a cannabis licence in its region of Columbia, by late September 2018, Columbia had issued licenses to 73 different Colombian entities.
- (d) Colcanna was still in the licensing process, it did not have one of the mandatory licenses for cultivation, and was not near production.
- (e) Until Colcanna received all of its required licenses, it could not begin production.
- (f) The Coffee Region in Columbia in which Colcanna had a license was not desirable for growing cannabis.
- (g) Two months prior to Scythian's announcement of its purchase of a stake in Colcanna, on February 16, 2018, MMJ Columbia Partners changed its name from Delavaco Columbia Partners, which was registered in the name of Andy DeFrancesco's spouse.

46. None of the aforementioned material facts were disclosed by Aphria.

D. Aphria Did Not Disclose Material Facts About Improper Disclosure Controls and Procedures

47. At no time during the Class Period did Aphria have disclosure controls and procedures that were effective in providing reasonable assurance that disclosure of material information relating to Aphria was made.

48. At no time during the Class Period were Aphria's disclosure controls and procedures effective.

49. At no time during the Class Period did Neufeld or Merton properly evaluate or cause to be evaluated Aphria's disclosure controls and procedures.

50. None of the aforementioned material facts were disclosed by Aphria during the Class Period.

E. Aphria Did Not Disclose that Aphria Insiders Improperly Benefitted from LATAM Purchase

51. At no time did Aphria disclose that Aphria insiders, including their spouses and family members, Neufeld or Merton, were shareholders of the LATAM assets or their subsidiaries prior to their purchase by Scythia.

F. Events Subsequent to Hindenburg Research's Corrective Disclosure

52. On December 6, 2018, Aphria announced that its Board of Directors appointed a special committee of independent directors consisting of John M. Herhalt, Shlomo Bibas and Tom Looney to review the LATAM acquisition.

53. On December 11, 2018, Aphria announced that was cutting ties with Stikeman Elliot LLP, the law firm that advised Aphria on the LATAM acquisition. It was further revealed that the Stikeman Elliot LLP senior partner, Curtis Cusinato, was Andy DeFrancesco's brother-in-law.

54. When Hindenburg Research and Quintessential Capital Management disclosed these material facts on December 3, 2018, Aphria's share price, trading on the Toronto Stock Exchange, fell from a close of \$10.51 on November 30, 2018 to a low of \$5.00 on December 5, 2018.

VII. RIGHTS OF ACTION

A. The Defendants Are Liable For Negligent Misrepresentation

55. The plaintiff pleads negligent misrepresentation against the Defendants for all of the Impugned Documents.

56. The plaintiff pleads that the misrepresentations alleged herein were contained in or were incorporated by reference into the Impugned Documents.

57. The Impugned Documents were prepared, in part, for the purpose of attracting investment and inducing members of the investing public to purchase Aphria shares. The Defendants knew and intended at all material times that the Class Members would reasonably rely to their detriment upon such documents in making the decision to purchase Aphria shares.

58. The Defendants were in a relationship of proximity with the Class Members and it was reasonably foreseeable that any act or omission on their part could cause damage to the Class Members.

59. The Defendants owed a duty to Class Members to ensure the accuracy of its public statements. Therefore, they had an obligation to make full, true and accurate disclosure of material facts and changes with respect to its business and affairs.

60. The Individual Defendants, by virtue of their positions as officers and directors of Aphria, also owed a duty to Class Members to ensure that public statements on behalf of Aphria were true, accurate and not misleading. They owed a duty to ensure that material information was publicly disclosed to Class Members in a timely manner and that there were no material omissions in quarterly and annual reports.

61. The continuous disclosure requirements in Canadian securities law mandated Aphria to provide quarterly and annual reports. These reports were meant to be read by investors in the secondary market and to be relied upon in making investment decisions. These reports and other public disclosure were prepared to attract investment in Aphria and the Defendants intended that Class Members would rely upon public disclosure for that purpose.

62. Further, the Individual Defendants had similar statutory obligations under Canadian securities law to ensure the accuracy of these disclosure documents.

63. During the Class Period, the Individual Defendants signed annual reports and certified that the quarterly reports and annual reports did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading. They also certified that Aphria has appropriate Disclosure Controls & Procedures.

64. The Defendants breached the standard of conduct required in the circumstances by making the misrepresentations alleged herein.

65. The Individual Defendants made the misrepresentations alleged herein by signing, authorizing, permitting and/or acquiescing to the release of the Impugned Documents.

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

67. The plaintiff and the other Class Members directly or indirectly relied upon the misrepresentations alleged herein in making the decision to purchase and/or hold shares of Aphria, and suffered damages arising from the decline in Aphria's share price when the truth was revealed.

68. The plaintiff and other Class Members relied on the Defendants' obligation to make timely disclosure of all material facts. The Defendants violated these obligations.

69. The plaintiff and other Class Members invested in and continued to hold Aphria shares relying on the misrepresentations in the Impugned Documents alleged herein. The plaintiff reviewed Aphria's public disclosure and relied on information contained therein.

70. Alternatively, the plaintiff and the other Class Members relied upon the misrepresentations alleged herein by the act of acquiring shares of Aphria in an efficient market. As a result, the repeated publication of the misrepresentations alleged herein in these Impugned Documents caused the price of Aphria's shares to trade at inflated prices

during the Class Period, thus directly resulting in damage to the plaintiff and the other Class Members.

B. Part XXIII.1 of the Ontario *Securities Act*

71. The Plaintiff asserts the claims in Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, and, if required, the equivalent sections of the Securities Legislation, against all Defendants in respect of all of Aphria's shares that traded in the secondary market during the Class Period.

72. Each of the Impugned Documents except for the press releases are “Core Documents” within the meaning of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 and the Securities Legislation.

73. Each of these Impugned Documents contained one or more of the misrepresentations alleged herein.

74. Each of the Individual Defendants was an officer and/or director of Aphria at material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

75. Aphria is a reporting issuer within the meaning of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 and the Securities Legislation.

76. At all material times, each of the Defendants knew or, in the alternative, ought to have known, that the Impugned Documents contained the misrepresentations alleged herein.

77. The plaintiff and the other Class suffered damages arising from the decline in Aphria's share price when the truth was revealed.

VIII. PUNITIVE DAMAGES

78. The plaintiff claims punitive damages against Aphria and the Individual Defendants as a result of their conduct particularized herein and, in particular, their callous disregard for their obligations to make full, plain, and true disclosure.

79. In particular, Aphria and the Individual Defendants' conduct in continuing to hide the truth concerning the LATAM assets warrants an award of punitive damages.

IX. THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE OF APHRIA'S SHARES

80. The price of Aphria's shares was directly affected during the Class Period by the issuance of the Impugned Documents. The Defendants were aware at all material times of the effect of Aphria's disclosure documents upon the price of Aphria's shares.

81. The Impugned Documents were filed, among other places, with SEDAR and the TSX, 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.

82. Aphria routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Aphria shares. Aphria either provided copies of the above referenced documents or links thereto on its website.

83. Aphria regularly communicated with 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 new material information about Aphria's financial results to the public, the price of Aphria's shares was directly affected.

84. Aphria was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any

recommendations to purchase Aphria shares in such reports during the Class Period were based, in whole or in part, upon that information.

85. At all material times during the Class Period, Aphria's shares were traded, among other places, on the TSX, which is an efficient and automated market. The price at which Aphria's shares traded promptly incorporated material information from Aphria's disclosure documents about Aphria's business and affairs, including the Misrepresentations, which were disseminated to the public through the documents referred to above and distributed by Aphria, as well as by other means.

X. VICARIOUS LIABILITY OF APHRIA

86. Aphria is vicariously liable for the acts and omissions of the Individual Defendants and its other officers, directors, and employees because their acts and omissions with respect to the misrepresentations were carried out while they were engaged in the management, direction and control of the business affairs of Aphria.

XI. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

87. 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 headquartered in Ontario;
- (c) Class Members resident in Ontario acquired Aphria shares and suffered damage and loss;
- (d) the shares of Aphria trade on the TSX, which is located in Ontario; and
- (e) Aphria conducts extensive business in Ontario including, but not limited to, operating a manufacturing facility and marketing, selling and distributing its products.

XII. RELEVANT LEGISLATION

88. The plaintiff pleads and relies on the *Courts of Justice Act*, R.S.O 1990, c. C.43, the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Ontario *Securities Act*, R.S.O. 1990, c. S.5 and the Securities Legislation.

December 18, 2018

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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