

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**JONATHAN A. LUBUS, MARCO STAJIC,  
MORDECAI BOBROWSKY, and KYLE YAMAMURA**

Plaintiff

– and –

**WAYLAND GROUP CORP., BENJAMIN ALLAN WARD,  
CANACCORD GENUITY CORP., and GMP SECURITIES L.P.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers 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 PLAINTIFFS' CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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

Date Issued:	Issued by: _____ Local Registrar
	<i>Address of Court Office:</i>

**TO: WAYLAND GROUP CORP.**  
3-845 Harrington Court  
Burlington, Ontario L7N 3P3

**AND TO: BENJAMIN ALLAN WARD**  
3-845 Harrington Court  
Burlington, Ontario L7N 3P3

**AND TO: TORYS LLP**  
79 Wellington St. W. 33 Floor  
Toronto, Ontario M5K 1N2  
Tel: 416-865-0040  
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**John Fabello**  
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*Lawyers for the Underwriter Defendants*

## DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following capitalized terms used throughout this fresh as amended statement of claim have the meanings indicated below:

- (a) “**AIF**” means Annual Information Form;
- (b) “**Audit Committee**” means Wayland’s Audit Committee, Messrs. Gerhard Muller, Paul Pathak, and Michael Stein, which reported that it was responsible for monitoring the Company’s systems and procedures for financial reporting and internal control, reviewing disclosure documents and accuracy of the Company’s regulatory filings;
- (c) “**Canaccord**” means Canaccord Genuity Corp., which served as a co-lead agent of the October 1, 2018 offering and the lead underwriter of the October 24, 2018 offering;
- (d) “**CEO**” means Chief Executive Officer;
- (e) “**CFO**” means Chief Financial Officer;
- (f) “**Class**” means all persons, other than Excluded Persons, who acquired Wayland’s common shares during the Class Period and who held some or all of those common shares until after the release of at least one of the Public Corrective Disclosures;
- (g) “**Class Period**” means January 24, 2018 through April 23, 2019, inclusive;
- (h) “**Company**” means Wayland;

- (i) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (j) “**Equivalent Securities Act**” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;
- (k) “**Excluded Persons**” means any of the Defendants, their executives and business partners during the Class Period, and any family member or business entity in which the Defendant Ward’s family had a controlling interest during the Class Period;
- (l) “**GMP**” means GMP Securities L.P., which served as a co-lead agent of the October 1, 2018 offering and an underwriter of the October 24, 2018 offering;
- (m) “**Impugned Statements**” means the documents or statements containing alleged misrepresentations released on January 24, 2018; March 28, 2018; April 27, 2018; May 29, 2018; June 29, 2018; August 24, 2018; October 24, 2018; November 28, 2018; February 21-22, 2019; and April 23, 2019

all concerning how Defendant Wayland and Ward were going to use the proceeds from each of the Company's Class Period offerings would be used, how much each phase of the expansion of the Langton Facility would cost and when it would be completed, that the expansion of the Langton Facility was fully-funded, and how much cannabis the Company would produce beginning in 2019;

- (n) “**Langille**” means Scott Langille who served as Wayland’s Chief Financial Officer during the Class Period;
- (o) “**Langton Facility**” means Wayland’s main production facility located in Langton, Ontario, which at all times during the Class Period was undergoing a multi-phase expansion that began in November 2016.
- (p) “**MD&A**” means management discussion and analysis;
- (q) “**Muller**” means Gerhard Muller, the Chair of Wayland’s Audit Committee and Board of Directors during the Class Period, who resigned on July 8, 2019;
- (r) “**NI 51-102**” means the CSA’s National Instrument 51-102—*Continuous Disclosure Obligations*, as amended;
- (s) “**NI 52-109**” means the CSA’s National Instrument 52-109—*Certification of Disclosure in Issuers’ Annual and Interim Filings*, as amended;
- (t) “**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (u) “**OSC**” means the Ontario Securities Commission;

- (v) “**Pathak**” means Paul Pathak, a member of Wayland’s Audit Committee and Board of Directors during the Class Period, who resigned on April 23, 2020;
- (w) “**Primary Market Claim**” means the common law and statutory claims being advanced by the Plaintiff, on behalf of himself and on behalf of all similarly situated investors, that purchased Wayland’s securities in an offering arising from the October 1 and October 24, 2018 final short form prospectuses, including the distribution period, against the Underwriter Defendants;
- (x) “**Public Corrective Disclosures**” means the material facts released to the market on: October 1, 2018; November 28, 2018; February 21-22, 2019; and April 23, 2019 concerning when the various phases of expansion of the Langton Facility would be completed, how much each phase would cost, whether the expansion was fully-funded, and how the funds raised in each financing offering conducted during the Class Period were distributed;
- (y) “**Secondary Market Claim**” means the common law and statutory claims being advanced by the Plaintiffs, on behalf of themselves and on behalf of all similarly situated investors, that purchased Wayland’s securities in the secondary market, against Defendant Wayland and Ward;
- (z) “**SEDAR**” means the Canadian Securities Administrators’ System for Electronic Document Analysis and Retrieval;

- (aa) “**Stein**” means Michael Stein, a member of Wayland’s Audit Committee and Board of Directors during the Class Period, who resigned February 21, 2019;
- (bb) “**Underwriter Defendants**” means Canaccord and GMP;
- (cc) “**Ward**” means Benjamin Allan Ward, the former Chief Executive Officer of Wayland until August 2, 2019; and
- (dd) “**Wayland**” means Wayland Group Corp. (formerly known as Maricann Group, Inc. prior to January 7, 2019).

## **LIFTING OF THE STAY OF PROCEEDINGS AND LIMITATIONS PERIOD**

2. On December 2, 2019, on application of Defendant Wayland, and its related entities, the Ontario Superior Court of Justice (Commercial List) granted a stay of proceedings.

3. On July 9, 2020, the Ontario Superior Court of Justice (Commercial List) lifted the stay of proceedings “solely for the limited purpose of granting the plaintiff in Court File No. CV-19-114 (“Class Plaintiff”) leave to establish the claims of the Class Plaintiff” and to enforce such claims only against (i) the Insurers and/or the Defendants named in CV-19-114 under any relevant insurance policies issued to Defendant Wayland; and (ii) Defendant Ward, and not against any present or future assets of Wayland but not Defendant Ward. The stay of litigation does not apply to third-parties, such as the Underwriter Defendants.

4. On July 15, 2020, the Ontario Superior Court of Justice (Commercial List) further clarified and ordered that any claim against Defendants Wayland any any other current or former director and officer of Wayland, excluding Defendant Ward, based in whole or in part on any action or omission, taking place prior to April 24, 2020 in respect to Defendant Wayland (the “D&O Claims”) as reflected in CV-19-114 shall only be permitted to commence and/or continue its D&O Claim to the point of determination of liability, if any, and seeking the enforcement of any judgement solely as against any insurance policy maintained by the Defendant Wayland.

## **CAUSES OF ACTION**

5. The causes of action asserted by the Plaintiffs in this proceeding are:
  - (a) Primary Market common law and statutory claims against the Underwriter Defendants that certified the accuracy of the relevant prospectuses for the October 1 and 24, 2018 offerings; and
  - (b) Secondary Market common law and statutory claims against the Defendant Wayland, limited to the available insurance and not the assets or future assets of Wayland, and Ward.

## **RELIEF CLAIMED**

6. The Plaintiffs claim on their own behalf and on behalf of the members of the Class, subject to further disclosures, discovery and due diligence:
  - (a) An order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing them as the representative plaintiffs for the Class advancing the causes of action identified herein;
  - (b) An order granting leave to pursue the statutory causes of action as set out in Part XXIII.1 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
  - (c) A declaration that the Impugned Statements released by the Defendants contained misrepresentations related to the Company's business, operations and finances because the documents omitted material facts regarding the cost and timing of the expansion of Wayland's facility in Langton, Ontario, misrepresented that the expansion allegedly was fully-funded from prior public offerings, misrepresented how proceeds

from each public offering conducted during the Class Period would be used, and misrepresented the amount of production the Company would be able to achieve in 2019;

- (d) Damages in a sum to be determined, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (e) 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;
- (f) Prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (g) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (h) Such further and other relief that this Honourable Court deems just.

#### **NATURE OF THIS ACTION**

7. Wayland is a Canadian cannabis producer which at all times relevant to this action was in the process of expanding its main production facility in Langton, Ontario (i.e. the Langton Facility).

8. Wayland conducted multiple public offerings and made representations with its prospectuses that contained misrepresentations:

- (a) about how the proceeds from those public offerings would be used;

- (b) regarding when each phase of the expansion of the Langton Facility would be completed and how much each phase would cost;
- (c) that the expansion of the Langton Facility was fully-funded from prior public offerings;
- (d) that the *pro forma* output and revenues from the additional cannabis that would be produced beginning in 2019, as a result of the expansion of the Langton Facility was not reasonable when released; and,
- (e) the core documents incorporated by reference did not contain misrepresentations.

9. Despite the Company's repeated misrepresentations of material fact, Wayland subsequently released a series of public corrective disclosure statements that revealed:

- (a) the expansion of the Langton Facility was not fully-funded;
- (b) the expansion would not be completed when the Company had represented it would be and would cost more than the Company represented;
- (c) it would not achieve the production or revenue targets the Company had represented it would achieve in 2019;
- (d) it would not be able to release its annual 2018, Q1 2019, and Q2 2019 financial statements and MD&A; and,
- (e) its auditors were blaming, in part, Individual Defendant Ward's Class Period conduct for the Company's accounting problems.

10. The Public Corrective Disclosures had the foreseeable effect of removing the artificial inflation in the Company's stock price that had resulted from the aforementioned misrepresentations:

- (a) October 1, 2018: Wayland released a prospectus qualifying the securities for a public offering which had previously closed on August 10, 2018. In this core document, Wayland disclosed, in contradiction to its prior statements, that its Phase One expansion would now be completed in Q1 2019, rather than during 2018. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.80 down to \$1.58, or a drop of 12.2%;
- (b) November 28, 2018: Wayland released its Q3 2018 financial statements and MD&A and disclosed, in contradiction to its prior statements, that its Phase One and Two expansions no longer had completion dates. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.44 down to \$1.32, or a drop of 8.3%;
- (c) February 21 and 22, 2019: Wayland released statements that its Board members Michael Stein, who was a member of Wayland's Audit Committee, and Eric Silver, who was a member of Wayland's Corporate Governance and Compensation Committee, were resigning effective immediately. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.17 down to \$0.98, or a drop of 16.2%; and,

- (d) April 23, 2019: Wayland released a statement announcing that it would delay the release of its annual 2018 financial statements and MD&A. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$0.88 down to \$0.71, or a drop of 19.3%.

#### **THE PLAINTIFF (SECONDARY MARKET CLAIMS)**

11. Marko Stajic is an investor who resides in Windsor, Ontario, Canada. During the Class Period, he purchased shares of Wayland listed on the CSE and suffered a loss by holding those securities until after the Public Corrective Disclosures.

#### **THE PLAINTIFFS (PRIMARY MARKET CLAIMS)**

12. Mordecai Bobrowsky is an investor who resides in North York, Ontario, Canada. During the Class Period, he purchased shares of Wayland in an October 2018 offering and suffered a loss by holding those securities until after the Public Corrective Disclosures.

13. Kyle Yamamura is an investor who resides in Toronto, Ontario, Canada. During the Class Period, he purchased shares of Wayland in an October 2018 offering and suffered a loss by holding those securities until after the Public Corrective Disclosures.

#### **THE DEFENDANTS**

14. Wayland is a company incorporated pursuant to Ontario's *Business Corporations Act*, which maintained its headquarters in Oakville, Ontario. Wayland is a federally licensed producer and distributor of cannabis with production facilities in Canada and in Europe.

15. During the Class Period, Wayland's common shares, which have a CUSIP identifier number of 944204, were listed under the ticker symbol "WAYL" on the CSE, "75M" on the FSE, and "MRRCF" on the OTC Market.

16. On December 9, 2019, Wayland filed an application for and received an order for protection pursuant to the Companies' Creditors Arrangement Act staying the within action:

(a) On July 9, 2020, the stay of proceedings was lifted for this proceeding against the Insurers under any relevant insurance policies issued to Wayland; and

(b) On July 15, 2020, another order was issued to clarify that this proceeding may continue against the relevant insurance policies to the point of determination of liability and enforcement of any judgment solely against any insurance policy maintained by Wayland. These limitations do not apply to Individual Defendant Ben Ward or any third-parties. These limitations also do not apply to any former director or officer that engaged in gross negligence, willful misconduct, or fraud.

17. Benjamin (Ben) Allan Ward was Wayland's President, Chief Executive Officer and a director on its board from April 20, 2017, until his resignation was announced on August 2, 2019. He made or authorized the making of the misrepresentations that were released during the Class Period, and certified that the core documents released during the Class Period did not contain any untrue statements of material fact or omit to state any material facts.

18. Canaccord is an investment bank headquartered in Vancouver, British Columbia, that served as the co-lead selling agent for Wayland's offerings pursuant to the final short form prospectuses dated October 1 and October 24, 2018.

19. GMP is an investment bank headquartered in Toronto, Ontario, that served as the co-lead selling agent for Wayland's offerings pursuant to the final short form prospectuses dated October 1 and October 24, 2018.

#### **MATERIAL EVENTS AND DISCLOSURES**

20. On January 24, 2018, Wayland released its AIF for the year ended December 31, 2016, as well as the CEO and CFO certifications on Form 52-109F1 attesting that the 2016 AIF did not contain any misrepresentations. However, the AIF contained multiple misrepresentations about the expansion of the Langton Facility, stating in relevant part that:

- (i) Phase One of the expansion of 217,000 sq. ft., of the three phase expansion for an overall 942,000 sq. ft., which had commenced in November 2016, was progressing on schedule and within 2% of budget, with an initial production capacity to be 22,500kg annually, and was expected to be completed in Q2 2018;
- (ii) Phase Two of the expansion of 635,000 sq. ft., which had commenced in January 2018, and was expected to be completed by the end of 2018, was expected to bring an additional 70,000kg of annual production on line by the end of 2018, thus representing that Phases One and Two would add an additional 92,500kg of production to the company's existing 2,000kg/year production capability by the end of 2018; and,

- (iii) Phase Three of the expansion of 90,000 sq. ft., had commenced and was expected to add additional processing capacity.

21. This document contained a misrepresentation because the Defendants' statements that they expected either purported completion date to be achieved were unreasonable when made.

22. On March 28, 2018, Wayland released its Code of Business Conduct affirming that its officers and directors were (i) promoting honest and ethical conduct, including the handling of conflicts of interest; (ii) promoting full, fair, and accurate timely disclosure in reports provided to securities regulators, and fostering a culture of honesty and accountability. The Code of Business was approved by Wayland's full Board of Directors.

23. On March 28, 2018, Wayland released a final short form prospectus, which the CEO, CFO and Board certified contained all material facts. Wayland represented that:

- (i) The vast majority of the net proceeds from the Offering (roughly \$30 million of \$38 million) would be used to fund Phase Two and Phase Three of the expansion, and the remaining roughly \$8 million would be used for brand development and corporate marketing initiatives and for working capital and general corporate purposes (i.e. none of the proceeds were required to fund Phase One);
- (ii) Phase One of the expansion of the Langton Facility was already fully-funded (at p.15), and management expected the Phase One expansion to be completed during Q2 2018 (at p.15);

- (iii) Phase Two and Phase Three of the Langton Facility expansion were targeted for Q4 2018 completion, including the concrete foundations and installation of the operational equipment (at p. 15); and,
- (iv) Upon completion of the Langton Facility expansion (i.e. in Q4 2018), Wayland expected annual production capacity to be in excess of 95,000kg of cannabis per year.

24. On April 27, 2018, Wayland released its annual 2017 financial statements and MD&A, as well as the CEO and CFO certifications on Form 52-109FV1 attesting that these core documents did not contain any misrepresentations. The MD&A represented that Phase One of the Langton Facility was expected to be completed in Q2 2018 (at pp. 4 and 16). Moreover, a different page of the same MD&A stated that Phase One would be “fully completed” in Q4 2018 (at p. 9). Wayland and the members of the Audit Committee authorized the content of this core document.

25. This document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded and the reasons why it would not be completed during Q2 2018 or fully completed by Q4 2018, and, at a minimum, the Defendants’ statements that they expected either purported completion date to be achieved were unreasonable when made.

26. On May 29, 2018, Wayland released its Q1 2018 financial statements and MD&A, as well as the CEO and CFO certifications on Form 52-109FV2 attesting that these core documents did not contain any misrepresentations. The MD&A represented that Phase One of the Langton Facility was expected to be completed in Q4 2018 (at pp.

4, 7 and 14). Wayland and the members of the Audit Committee authorized the content of this core document.

27. This core document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded and the reasons why it would not be completed during Q2 2018, and, at a minimum, the Defendants' statements that they expected either purported completion date to be achieved were unreasonable when made.

28. On June 29, 2018, Wayland released its AIF for the year ended December 31, 2017, as well as the CEO and CFO certifications on Form 52-109F1 attesting that the 2017 AIF did not contain any misrepresentations. The 2017 AIF represented that Phase One of the Langton Facility expansion was expected to be fully completed in Q4 2018, and that Phase Two was expected to bring additional cannabis production capacity on line in Q1 2019 (at pp. 12). Wayland and the members of the Audit Committee authorized the content of this core document.

29. This core document contained a misrepresentation because it omitted the material fact that Phase One was not fully-funded and the reasons as to why it was not completed during Q2 2018 as well as the reasons as to why Phase Two would not be completed in Q4 2018 as previously represented. Further, the Defendants' statements that they expected Phase One to be finished in Q4 2018 and Phase Two in Q1 2019 were unreasonable when made.

30. On August 24, 2018, Wayland released its Q2 2018 financial statements and MD&A, as well as the CEO and CFO certifications on Form 52-109FV2 attesting that these core documents did not contain any misrepresentations. The MD&A represented

that Phase One of the Langton Facility was expected to be fully completed in Q4 2018 (at pp. 4 and 8). Wayland and the members of the Audit Committee authorized the content of this core document.

31. This core document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded and the reasons as to why it was not completed during Q2 2018, and, at a minimum, the Defendants' statements that they expected either purported completion date to be achieved were unreasonable when made.

32. On October 1, 2018, Wayland released a final short form prospectus qualifying the exempt distribution of units distributed pursuant to its offering that had previously closed on August 10, 2018, along with the corresponding CEO and CFO certifications as well as certifications from the Defendant Underwriters, Canaccord and GMP, attesting that this core document did not contain any misrepresentations. This core document represented that approximately \$15.1 million of the net proceeds raised from the offering would be allocated to the Phase One expansion of the Langton Facility, which was now expected to be completed on January 30, 2019 (at pp. 19-20), and the first-part of the Phase Two expansion was now not expected to be completed until Q3 2019.

33. Individual Defendant Ward provided a certification that this core document, together with all the incorporated documents, constituted full, true and plain disclosure of all the material facts relating to the offering.

34. Underwriter Defendants Canaccord and GMP provided a certification that this core document, together with all the incorporated documents, constituted full, true and plain disclosure of all the material facts relating to the offering.

35. This core document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented as well as the reasons as to why it was not completed during Q2 2018 and would be even further delayed from Q4 2018 to Q1 2019, and also because it omitted to disclose why Phase Two was now being described as a two-part process and why the first part of the Phase Two expansion would not be completed until Q3 2019.

36. This core document also served as a partial public corrective disclosure as it revealed to the market that Phase One of the expansion would not be complete in Q4 2018 and Phase Two would not be bringing additional cannabis production online in Q1 2019 as previously represented. This disclosure sent Wayland's share price down 12.2%.

37. On October 15, 2018, Wayland released the preliminary short form prospectus for its Prospectus Offering which would close on October 31, 2018. In this core document under the heading "Use of Proceeds," Wayland represented that it would use roughly \$22.5 million of the expected \$47.6 million in net proceeds for Phase One of the Langton Facility expansion and that amount was all the remaining cost required to complete Phase One. This core document also indicated that Phase One of the expansion would be completed on January 30, 2019, and part one of Phase Two of the expansion would be completed in Q3 2019. This core document also represented that upon the completion of Phase One and the first part of Phase Two, Wayland would have an annual production capacity of approximately 95,000 kg of cannabis per year.

38. This core document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented and as to why it was not completed during Q2 2018 and was being delayed to Q1 2019, and also because it omitted to disclose why Phase Two was now being described as a two-part process and why the first part of the Phase Two expansion would not be completed until Q3 2019. It additionally misrepresented that as of 2019 the Company would be able to produce 95,000 kg of cannabis per year.

39. On October 24, 2018, Wayland released the final short form prospectus for its Prospectus Offering, which would close on October 31, 2018, offering 30,350,000 units at \$1.65 per unit, for a total of \$50,077,500. This core document repeated the representations that roughly \$22.5 million of the expected \$47.6 million in net proceeds from the Prospectus Offering would be used for Phase One of the Langton Facility expansion and that amount was all the remaining cost required to complete Phase One, that Phase One would be completed on January 30, 2019, and part one of Phase Two completed in Q3 2019, and that upon the completion of Phase One and the first part of Phase Two the Company would have an annual production capacity of approximately 95,000 kg of cannabis per year.

40. Individual Defendant Ward provided a certification that this core document, together with all the incorporated documents, constituted full, true and plain disclosure of all the material facts relating to the offering.

41. Underwriter Defendants provided a certification that this core document, together with all the incorporated documents, constituted full, true and plain disclosure of all the material facts relating to the offering.

42. This core document contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented and as to why it was not completed during Q2 2018 and was being delayed to Q1 2019, and also because it omitted to disclose why Phase Two was now being described as a two-part process and why the first part of the Phase Two expansion would not be completed until Q3 2019. It additionally misrepresented that as of 2019 the Company would be able to produce 95,000 kg of cannabis per year.

43. On November 26, 2018, Wayland released its management information circular, dated November 9, 2018, for its annual and special meeting of shareholders to be held on December 20, 2018. It appears to have been prepared and approved by the full board of directors. This core document reported that:

- (a) To the knowledge of the Company, which is the full board of directors, no proposed director has been subject to any other penalties or sanctions that would likely be considered important in deciding whether to vote for a proposed director;
- (b) As of November 9, 2018, there were a total of 201,002,592 common shares issued and outstanding and there would be a 3 to 1 consolidation so that there would be 67,000,864 common shares; and,
- (c) The board recognizes the importance of corporate governance to protect its shareholders and the board fulfills its mandate through the Audit Committee (Messrs. Muller (Chair), Pathak, and Stein), which included the Audit Committee Charter at Schedule C.

44. This core document contained a misrepresentation.

45. On November 28, 2018, Wayland released its Q3 2018 financial statements and MD&A (when it increased its fully diluted number of shares to 300 million), as well as the CEO and CFO certifications on Form 52-109FV2 attesting that these core documents did not contain any misrepresentations within the meaning of the *OSA*. With respect to Phases One and Two of the expansion, this MD&A omitted the status of and completion date of both and also omitted disclosure of whether Phase One was fully-funded (after yet another Offering where it was represented they had raised well in excess of the funding requirements for Phase One). Wayland and the members of the Audit Committee authorized the content of this core document.

46. This core document contained a misrepresentation, and also served as a partial public corrective disclosure, because it revealed that its Phase One and Two expansions no longer had completion dates and it omitted the material facts that Phase One was not fully-funded and as to why it was not completed during Q2 2018 (and whether it was going to be completed in Q4 2018 as represented). This disclosure sent Wayland's share price down 8.3%.

47. On February 21 and 22, 2019, Wayland released statements that its directors Michael Stein, who was also a member of the Company's Audit Committee, and Eric Silver, who was also a member of the Company's Corporate Governance and Compensation Committee, were resigning effective immediately. Wayland and the members of the Audit Committee authorized the content of this impugned document and had to have intentionally known that they omitted the material facts as to why Messrs. Stein and Stone were resigning effective immediately.

48. This non-core document served as a partial public corrective disclosure because the rapid exodus of directors revealed that there were problems with Wayland's corporate governance, as well as containing a misrepresentation by omitting the material fact that there were material problems with Wayland's books and records. This disclosure sent Wayland's share price down 16%.

49. On April 23, 2019, Wayland released a statement that it would be forced to delay the release of its annual 2018 financial statements and MD&A and, implicitly, its Q1 2019 financial statements and MD&A. Wayland and the members of the Audit Committee (i.e., Muller and Pathak) authorized the content of this impugned document.

50. This non-core document contained a misrepresentation and served as a partial public corrective disclosure, because it further confirmed that there were problems with Wayland's corporate governance, and omitted the material facts that were material problems with Wayland's books and records and that the individual Defendant Ward was part of the problem. This disclosure sent Wayland's share price down 20%.

#### **THE STORM WARNINGS: PUBLIC CORRECTIVE STATEMENTS**

51. On October 1, 2018, Wayland released a prospectus qualifying the securities for a public offering which had previously closed on August 10, 2018. In this core document, Wayland disclosed, in contradiction to prior statements, that its Phase One expansion would be completed in Q1 2019. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.80 down to \$1.58, or a drop of 12.2%.

52. On November 28, 2018, Wayland released its Q3 2018 financial statements and MD&A and disclosed, in contradiction to prior statements, that its Phase One and Two expansions no longer had completion dates. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.44 down to \$1.32, or a drop of 8.3%.

53. On February 21 and 22, 2019, Wayland released statements that its board members Michael Stein, who was a member of the Company's Audit Committee, and Eric Silver, who was a member of the Company's Corporate Governance and Compensation Committee, were resigning effective immediately. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.17 down to \$0.98, or a drop of 16.2%.

54. On April 23, 2019, Wayland released a statement announcing that it would delay the release of its annual 2018 financial statements and MD&A. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$0.88 down to \$0.71, or a drop of 19.3%.

55. Soonafter, Defendants Wayland and Ward's conduct caused Wayland to liquidate in a proceeding under the *Companies' Creditors Arrangement Act*.

## **POST CLASS PERIOD'S MATERIAL EVENTS AND DISCLOSURES**

56. On July 8, 2019, Muller resigned from Wayland's board of directors.
57. On August 2, 2019, Wayland released a statement that its auditor MNP LLP resigned because of the conduct of the individual Defendant Ward in respect of the audit of Wayland's annual 2018 financial statements. It was reported that auditor NVS Chartered Accountants would become the successor auditor.
58. On August 2, 2019, Wayland released a statement that the individual Defendant Ward was resigning effective immediately. Wayland has not released any further information about its former Chief Executive Officer and director, such as a material change report explaining why he resigned or any type of severance package provided to him.
59. On December 2, 2019, Wayland applied for and received protection pursuant to the *Companies' Creditors Arrangement Act* and received a stay of proceedings.
60. On December 4, 2019, Wayland released a statement that its newest auditor NVS Chartered Accountants had resigned effective December 3, 2019.
61. On April 23, 2020, Pathak resigned from Wayland's board of directors.

## **REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO**

62. The Plaintiffs plead that this action has a real and substantial connection with Ontario for the application of Ontario substantive and procedural laws to this claim on behalf of all Class Members because, among other connecting factors, Wayland was a reporting issuer in Ontario and is headquartered in the province of Ontario.

## **RELEVANT LEGISLATION, PLACE OF TRIAL AND JURY TRIAL**

63. The Plaintiffs plead and rely upon the *CJA*, the *CPA*, the *OSA* and the Equivalent Securities Acts.

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

65. The Plaintiffs may serve a jury notice.

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